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Ministry of Finance
(Department of Revenue)
OFFICE OF THE DIRECTOR GENERAL OF SAFEGUARDS
CUSTOMS AND CENTRAL EXCISE

NOTIFICATION

F.No. D-22011/26/2015/Pt-III/

New Delhi, the 15th March, 2016

Subject: Safeguard investigation concerning imports of “Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more” into India.-**Final Findings.**

GSR – Having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 thereof.

A. PROCEDURE

1. An application was filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as “Safeguard Rules”] by M/S Steel Authority of India Limited; M/S Essar Steel India Limited, and M/S JSW Steel Limited through M/S Lakshmi Kumaran & Sridharan Attorneys, New Delhi seeking imposition of Safeguard Duty on imports of “Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more”, as increase in imports is causing and/or threatening to cause serious injury to the domestic producers.
2. The product under consideration is “**Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more**” hereinafter referred to as ‘PUC’ (Product under consideration) classifiable under Chapter 72 of the Customs Tariff Act, 1975, under tariff heading 7208 and tariff item 72253090. The applicant has claimed that these products are not further worked than hot-rolled and are flat products of iron, alloy or non-alloy steel, in prime or non-prime condition having ‘as-rolled’ edge or ‘trimmed’ edge or ‘slit’ edge. These products may be pickled or non-pickled (with or without skin-pass or tempering), slit or non-slit and having nominal width of greater than or equal to 600mm. These products may be as-rolled or thermo-mechanically rolled or thermo-mechanically controlled rolled or controlled rolled. These products may have patterns in relief derived directly from rolling. These products may have been subjected to various processing steps like pickling, oiling, rewinding, temper rolling, heat treatment, etc.
The following are not included in the scope of the product under consideration:
 - a) Hot-rolled flat products of steel with nominal width less than 600mm;
 - b) API grade steel;
 - c) Silicon electrical steel;
 - d) Hot-rolled flat products of steel of spring steel quality;
 - e) Hot-rolled flat products of steel which are electrolytically plated or coated with zinc;
 - f) Hot-rolled flat products of steel otherwise plated or coated with zinc; and
 - g) Hot-rolled flat products of stainless steel.
3. In order to satisfy the requirements under Rule 5 of the said Safeguard Rules, the information presented by the applicant was verified by on-site visit to the plants of the domestic producers to the extent considered necessary. The non-confidential version of verification report was kept in the public file. On being satisfied that the requirements of Rule 5 were satisfied, the Notice of Initiation of Safeguard investigation concerning imports of “Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more” into India was issued under Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 7th September, 2015 and was published in the Gazette of India Extraordinary on the same day.
4. A copy of the Notice of Initiation dated 7th September, 2015 along with copy of non-confidential version of the application filed by the Domestic Industry were forwarded to the Central Government, in the Ministry of

Commerce, and other Ministries concerned, Governments of major exporting countries through their Embassies in India, and the Interested Parties listed below, in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Questionnaires were also sent, on the same day, to all known domestic producers and importers and exporters and they were asked to submit their response within 30 days.

4.1 Domestic Producers

- a. M/s Essar Steel India Limited,
- b. M/s Steel Authority of India Limited,
- c. M/s JSW Steel Limited
- d. TATA Steel Limited, Mumbai
- e. M/s Jindal Steel & Power Limited, Gurgaon
- f. M/s Bhushan Steel Limited, New Delhi

4.2 Known Importers (M/s):

- a. Alstom India Ltd., Mumbai
- b. Arcelor Neel Tailored Blank Private Limited, New Delhi
- c. Bharat Heavy Electricals Limited, New Delhi
- d. Bhilai Engineering Corporation Ltd., Bhilai, Chattisgarh
- e. C.R.I. Pumps Private Limited, Coimbatore
- f. Caterpillar India Pvt. Ltd., Chennai
- g. Denis Plast Limited, Gandhinagar Mehsana, Gujarat
- h. Desmi Equipments Pvt.Ltd., Thane(W), Maharashtra
- i. Escorts Ltd., Faridabad
- j. Exedy India Limited, Aurangabad, Maharashtra
- k. Fine Forge Limited., Hyderabad
- l. Flakt (India) Limited, Chennai
- m. Gamesa Wind Turbines P.Ltd, New Delhi
- n. Ganpati Enterprises, Jaipur
- o. Hindustan Shipyard Ltd., P.O. Gandhigram, Visakhapatnam
- p. Hindustan Construction Co. Ltd., Vikhroli(W), Mumbai
- q. IDL Explosives Limited PO Kukatpally, Hyderabad,
- r. IFB Automotive Private, Kolkata(W.B.)
- s. JBM Industries Ltd., New Delhi
- t. JCB India Limited, New Delhi
- u. Kalinga Fixtures Ltd. Parel, Mumbai
- v. Kalpataru Power Transmission Ltd., Gandhinagar , Gujarat
- w. Larsen & Toubro, Mumbai, Maharashtra
- x. Lloyds Steel Industries Ltd, Mumbai, Maharashtra
- y. Maruti Suzuki India Limited, New Delhi
- z. MPP Technologies Private Ltd., Bangalore
- aa. NCL Industries Limited, Hyderabad
- bb. Neel Metal Products Ltd., New Delhi
- cc. Orient Impex, Chennai
- dd. Orient Weartech, Chennai
- ee. P & H Joy Mining Equipment India Limited, Kolkata
- ff. POSCO Electrical Steel India Pvt. Ltd., Mumbai
- gg. Ravi Steel Co., Andher(E), Mumbai
- hh. SG Iron Works Private Limited, Kolkata
- ii. Shakti Pumps (India) Ltd., Indore
- jj. Shelf Drilling Offshore Services (India) Pvt.Ltd, Powai, Mumbai
- kk. Shree Chamunda Enterprises, Navi Mumbai
- ll. Superior Steel Industries, Mumbai
- mm. Tranter India Private Limited, Pune
- nn. TRF Limited, Jamshedpur
- oo. Viraj Impex Pvt.Ltd., Mumbai

- pp. Virgo Industries, Panchkula.
- qq. Welspun Corp Ltd., Dist-Kutch , Gujarat
- rr. Wudtools, Mumbai
- ss. Yatin Steels India Pvt. Ltd., Mumbai
- tt. YSI Automotive P Ltd, Chennai
- uu. Zyfix Tools Private Limited-II, Balanagar, Hyderabad

4.3 Known Exporters (M/s):

- a. Nippon Sumitomo, Japan.
- b. Kobe, Japan
- c. JFE Steel Corporation, Japan
- d. POSCO, Korea
- e. Hyundai Steel Co Ltd, Seoul
- f. Dongkuk Steel Mill Col Ltd., Seoul
- g. Ilyich Iron & Steel Works, Ukraine
- h. Severstal Steel, Belarus
- i. Zaprostahl, Ukraine
- j. Azvostah, Ukraine
- k. Alchesck, Ukraine
- l. Mobarakeh Steel Company, Esfahan
- m. Pt.KrakatauPosco Steel works, Indonesia
- n. Arcelor Mittal, Luxembourg
- o. Dillenger and Salzitter, Germany
- p. Arcelor Mittal, Brazil
- q. Rizhao, China
- r. Betai Iron & steel, China
- s. Baotou Iron and Steel Group, China
- t. Jiangsu Shagang Group Company Limited, Jiangsu Province, PRC.
- u. Tonghua Iron Steel Group Corporation, China
- v. Angang Steel Company, China
- w. Nanjing Iron and Steel, Nanjing, People's Republic of China
- x. Tangshang Iron & Steel, Tangshan, Hebei.
- y. Wuhan Iron and Steel, China
- z. Tianjin Iron & Steel Group Co Ltd, China

4.4 Exporting country Government

- a. Embassy of Indonesia
- b. Embassy of Ukraine
- c. Embassy of the Russian Federation
- d. Embassy of Korea RP
- e. The Embassy of People's Republic of China
- f. Embassy of Japan

5. Request to consider as an interested parties were received from the following parties:

- a. ArcelorMittal Brasil S.A., Brazil
- b. ArcelorMittal Flat Carbon Europe S.A. Luxembourg
- c. China Iron and Steel Association, China
- d. CORSMA, New Delhi
- e. Devki Nandan J. Gupta Iron and Steel Merchants, Mumbai
- f. Dmson's Metal Pvt. Ltd., Andheri (West), Mumbai
- g. EEPC India, New Delhi
- h. Embassy of Brazil, New Delhi
- i. Embassy of Turkey, New Delhi

- j. European Union Delegation to India, New Delhi
- k. Federation of Association of Maharashtra (FAM)
- l. Federation of Industries of India (FII), Delhi
- m. Hero Steels Limited, Hero Nagar, Ludhiana
- n. Honda Cars India Limited, GNOIDA, Distt. Gautam Budh Nagar (U.P.)
- o. Hyndai Steel Company, Seoul, Republic of Korea
- p. Japan Chamber of Commerce and Industry in India (JCCII), New Delhi
- q. Jawandamal Dhanamal Iron and Steel Merchants, Mumbai
- r. JFE Steel Corporation, Japan
- s. Kobe Steel Ltd
- t. Magnitogorsk Iron & Steel Works, Kirov stret, 93
- u. Magnum Steels, Khar (W), Mumbai
- v. Manaksia Steels Ltd, Bikaner Building, Kolkata
- w. Metal One Corporation India Pvt. Ltd., New Delhi
- x. Ministry of Economic Development of Russian Federation, New Delhi
- y. Ministry of Industry and Trade, Russian Federation, New Delhi
- z. Mitsui & Co. Ltd, Japan
- aa. Mudhra Fine Blanc Pvt Ltd, Chennai
- bb. Nezone Strips Limited, Kolkata
- cc. Nezone Tubes Limited, Kolkata
- dd. Nippon Steel & Sumikin Pipe India Pvt. Ltd., Neemrana Dist. Alwar (Raj.)
- ee. Nippon Steel & Sumitomo Metal Corporation, Japan
- ff. Nisshin Steel Co. Ltd., Japan
- gg. POSCO India Delhi Steel Processing Centre Pvt. Ltd., Rewari
- hh. POSCO International Trade Affairs Group, POSCO Centre, Korea
- ii. Posco-Maharashtra Steel Pvt. Ltd.,
- jj. Prabhat Steel Traders Pvt. Ltd., Mumbai
- kk. Ratnamani Metals & Tubes Ltd., Ahemdabad
- ll. RKB Global Pvt Ltd
- mm. RNV Industries Pvt. Ltd., Mumbai
- nn. S M Steels, Borivali (W), Mumbai
- oo. Severstal Management, Russian Federation, Vologda Regio, Cherepovets Mira Str., 30
- pp. Shree Krishna Steels, Carnac Bunder, Mumbai
- qq. SSZ Commodities Pvt. Ltd., Dist. Raigad
- rr. Steel Drum Association of India, Chembur, Mumbai
- ss. The Bombay Iron Merchants' Association, Carnac Bunder, Mumbai
- tt. The Japan Iron and Steel Federation, Japan
- uu. Trade Representation of Russian Federation, New Delhi
- vv. TT Steel Service India Pvt. Ltd., Ramanagara Distt. Bidadi
- ww. Tube Investment of India, Chennai
- xx. Turakhia Ferromet Pvt. Ltd., Carnac Bunder, Masjit (E) Mumbai
- yy. V.K. Industrial Corporation Limited, Carnac Bunder, Mumbai
- zz. Van Bael & Bells, Belgium [on behalf of Metinvest Holding (Ukraine)]

6. All the above requests were accepted. Some of the interested parties requested for grant of extension for filing their reply to the notice of initiation. Their requests were accepted and they were granted extension.
 7. The Domestic Industry has made a request for immediate interim relief by way of provisional safeguard duty in their application filed. In support of the same they have submitted details of their precarious condition based on listed economic parameters showing existence of critical circumstances being faced by them and prayed that in case provisional safeguard duty is not levied they would face irreparable damage, difficult to repair.
 8. The request made by the domestic industry for imposition of provisional safeguard duty was examined and it was prima facie found that there exist critical circumstances which warranted imposition of provisional safeguard duty in order to provide interim relief to the domestic industry from suffering irreparable damage, which could have been difficult to repair.
 9. Accordingly, the Preliminary Findings for Provisional safeguard duty was issued under Rule 9 (2) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 9th September, 2015 and was published in the Gazette of India vide G.S.R.690(E) on the same day i.e. 9th September, 2015.
 10. Provisional safeguard duty was subsequently imposed vide Ministry of Finance, department of revenue Notification No. 02/2015-Cus (SG) dated 14th September, 2015 imposing Safeguard duty @20% for a period not exceeding 200 days from the date of issue of the Notification concerned.
 11. Thereafter, a public hearing was held on 16th November, 2015. The interested parties, along with the Domestic Industry made oral submissions at the time of Public hearing. In terms of sub rule (6) of rule 6 of the Custom Tariff (Transitional Product Specific Safeguard Duty) Rules, 1997, all the interested parties who participated in the public hearing were requested to file written submission of the views presented orally.
 12. Copy of written submissions filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.
 13. All the views expressed by the interested parties in their written submissions in pursuant to the public hearing held on 16th November, 2015 were examined and have been taken into account in making appropriate determination. The non confidential version of the information received or acquired has been kept in the public file.
- B. POST INITIATION SUBMISSIONS:** The submissions received post initiation but prior to the Public Hearing are summarized as under:

Submissions by Embassies and Delegations from countries

- I. **The Embassy of the Russian Federation and the Ministry of Industry and Trade of the Russian Federation**
 - a. Substantial increase of the export of commodity from the Russian Federation to India did not happen.
 - b. In addition, the export of commodity from Russia to India is not the reason of Indian producers' damage.
 - c. According to official data with the Russian Federation from its federal agency, export of the commodity from the Russian Federation has fallen.
 - d. The reasons for initiation of a special safeguard investigation are insufficient and unconvincing for the following reasons:
 - i. Stable number of employees and level of productivity of the India domestic industry may be associated with a full load capacity and sufficient labour resources.
 - ii. Profitability of the Indian domestic industry increase in 2014-15 in comparison to 2013-14.
 - iii. Increase in inventory of the domestic industry is very small (2-3%)
 - iv. There is decline in the proportion of imports from the Russian Federation in total volume of imports of the commodity into India.
 - v. There is insignificant effect due to share of sales of Russian manufacturers on the Indian market.
 - vi. The investigation should be completed with respect to the Russian Federation without taking action.

II. Embassy of the Republic of Indonesia

- a. As per the WTO Appellate Body Report in Argentina Import Footwear, WT/DS121/R, increased imports within the meaning of Article 2.1 of the Agreement on Safeguards has been defined as “recent, sudden, sharp and significant”, both qualitatively and quantitatively. The comparison of imports as per the data on record shows no recent, sudden, sharp and significant increase at all both quantitatively and qualitatively.
- b. Imports of PUC have decreased by 97% on 2014-15 to 33% on 2015-16 (Annualised). Thus, there is no valid reason to establish critical circumstances for the imposition of provisional safeguard measure as required by Article 6 of the Agreement on Safeguards since no increased import within the meaning of Article 2.1 of the Agreement on Safeguards has taken place.
- c. As per UN Comtrade data, the share of imports of the PUC originating from Indonesia in 2014 is less than 3%. Provisional safeguard duty has been imposed on a general heading of 7208, which includes both “coils and plates”. This will cause loss to Indonesia’s exporters, since Indonesia’s share of imports of PUC is less than 3%, in fact only 0.75% compared to the total world import into India.
- d. Indonesia is a developing country and exporter of the PUC. However, PUC originating from Indonesia has specific types (not in coil and/or hot rolled plate) and the share of imports is less than 3%. Therefore, Indonesia strongly requests to exclude it from the imposition of safeguard duty.
- e. PT Krakatau POSCO, an exporter from Indonesia has only exported certain products under the classification of “not in coil and/or hot-rolled plate”. Therefore, it is clear that there is no export of the steel product with specific type of “in coils” from Indonesia. The Authority should issue an immediate clarification about the classification of the PUC on whether the type of not in coil and plate are also included under the PUC as the subject goods in this safeguard investigation.
- f. Since there is no import of the PUC under the classification of “not in coil and/or plate” originating from Indonesia into India, especially from PT Karakatau POSCO, imports from Indonesia cannot cause injury to India’s domestic industry.
- g. Indonesia’s import market share is only 2% in total imports of plates. Therefore, imports from Indonesia cannot cause serious injury to Indian domestic market.
- h. Most of the imports into India, except China, is happening from Asian countries under India-ASEAN FTA, India-Japan CEPA and India-Korea CEPA on concessional duty, even though India had increased import duty on flat steel product in 2015.
- i. Imposition of provisional safeguard measure is inconsistent with the Agreement, and it is requested that Indonesia should be excluded from imposition of safeguard duty.

III. Embassy of the Republic of Korea

- a. There would be little negative impacts, if any, on the Indian domestic steel industry resulting from imports of HR steel products from Korea, since most of imported products are consumed for raw materials in Korean corporation, to produce high quality steel products specially used for automobile industry in India.
- b. Chapter 2 (Trade in Goods) Section B-2 (Trade Remedies – Safeguard Measures) Article 2.27 (Global Safeguard Measures) in the Korea-India CEPA stipulates that a party taking a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement may, to the extent consistent with the obligation under the WTO Agreement, exclude imports of an originating good of the other Party, if such imports are not a substantial cause of serious injury or threat thereof. Korea believes that HR steel products imported from Korea are subject to this clause since the negative impact of the imports from Korea on the Indian domestic market is limited.
- c. Korean corporations’ import of HR steel products from Korea is part of their contribution toward ‘Make in India’, as they are importing high quality HR steel products to provide to the Indian authorities. For instance, POSCO-Maharashtra Pvt. Ltd. produces high quality steel products specially used for automobile industry in India. The import of HR steel is unavoidable since local procurement is limited considering the need to meet the high quality and sufficient quantity demanded by its key customer, automobile industry. Korea fears that the imposition of the safeguard measures on imports of HR steel from Korea will cause a severely adverse effect on downstream industries and consumers in India.
- d. Korean corporations’ commitment and contribution to be a genuine partner of ‘Make in India’ and ‘Invest in India’ should be fully considered. POSCO, as one of the major Korean corporations in India, has invested more than USD 1 billion and is currently operating 6 plants in India. Especially, through its subsidiary company in India (POSCO-Maharashtra Pvt. Ltd.), POSCO recently completed the construction for 1.8

MTPA downstream steel plant in the State of Maharashtra to produce high quality steel products specially used for automobile industry in India.

- e. Causal link is lacking between increase in imports from Korea and the serious injury that the Indian industry claims to have suffered. It is also difficult to acknowledge that the increase in imports is a result of unforeseen development.
- f. The current situation in the global steel industry and the increase in demand of the product in question in India could explain the increase of imports.
- g. A great majority of the product imports from Korea is used by downstream industries. In particular, 100% of the hot-rolled (HR) products exported by POSCO Korea are used for re-rolling in Indian steel mills (i.e. POSCO – Maharashtra), and pickling and oiling (P0) steel exported by Hyundai Steel Korea are used as intermediary products in Hyundai Motors India.
- h. Considering the public interest of India's downstream industries, particularly India's steel and automobile manufacturing industries, the levying of duties on Korean EIRC products may harm India's domestic industry.
- i. We must renew our commitment to the multilateral trading system in order to prevent protectionism during this global economic slowdown.

IV. **The Royal Embassy of Saudi Arabia**

- a. According to the Export-Import Data Bank of the Department of Commerce of India, imports of the product under consideration from the Kingdom of Saudi Arabia account for significantly less than 3 percent of total imports into India during the period from 2013-14 to 2015-16 (Apr – Jul.).
- b. Imports from developing countries that are members of the WTO and that are not major suppliers of the product concerned to India account for less than 9 percent of total imports.
- c. Because the Kingdom of Saudi Arabia is a developing country WTO member, its exports should be excluded from the scope of any safeguard measure India may decide to impose on imports of the product concerned further to the safeguard investigation.
- d. In line with the obligations under Article 9.1 of the Agreement on Safeguards, imports from the Kingdom of Saudi Arabia should be exempted from any safeguard measure India may impose on the product under consideration.

V. **European Union**

- a. The safeguard instrument should be used in exceptional circumstances only. When imports come from one or several sources, the anti-dumping or anti-subsidy instrument, which targets unfair practices from these specific countries, would be more effective. Safeguard measures on the other hand, since they are applied equally to imports from all sources, often limit legitimate market access to imports that are not causing injury.

Increased imports

- b. While imports increased overall, a breakdown of imports by domestic is not provided in the report on preliminary findings. However, in relation to the unforeseen development, sources such as China, Russia and Ukraine are mentioned. As indicated above, in cases where imports increase mainly from one or several sources, the anti-dumping or anti-subsidy instrument would be more suitable.
- c. The domestic industry does not produce grades falling under HS codes 72253090, 72082590 and 72082790, as per the information available with the Commission. If the absence of domestic production is confirmed, these grades should be excluded from the product scope as it would be impossible to conclude that these grades can be the cause of any injury. Any measures on these grades would unduly harm the downstream industry, in particular, automotive end users, as they would confront a limited choice, lesser quality and/or higher prices.

Injury and causality

- d. The data for 2015-16 has been extrapolated based on 1st quarter only. This methodology is likely to lead to biased conclusions. An objective analysis should be based on comparative periods using actual figures. At the very least, the actual data for the second quarter should have been included.
- e. Even when taking into account the annualised data, the injury picture is not conclusive. Most injury indicators such as production, sales, capacity, capacity utilisation rate, inventories, employment or productivity remain stable.

- f. Though market share decreased by 8%, when viewed in light of increase in demand of around 20% over the same period, the complainant and other Indian producers together, still hold 88% market share.
- g. Profits turned into losses but only in Q1 of 2015-16. Profitability figures in different tables are different, which may be due to indexation and the use of a different basis as reference, but it does not allow interested parties to have a clear picture of the situation. This should be clarified.
- h. In view of the above, it is difficult to argue that the domestic industry is suffering any serious injury.
- i. It is difficult to explain how the domestic industry's profits are very high and increasing when undercutting is high, with all indicators remaining stable.
- j. It seems that there are other factors that have had an impact on the situation of the domestic industry. Unfortunately, no information on other factors has been provided in the preliminary report. In terms of Article 4.2(a) of the Safeguards Agreement, other factors such as the development of captive sales and sales by other Indian producers should be examined.
- k. While the domestic industry's sales remained stable throughout the period, its captive sales increased by 24%. This should be further investigated, in particular the reasons why the domestic industry decided to sell more captively than on the open market.
- l. An important element that should be taken into account is that other Indian producers increased not only their captive sales by 18%, but also their sales on the open market by 42%. Therefore, it is necessary to analyse the impact of the local competition on the situation of the domestic industry.

Conclusion

- m. Analysis on the following issues is warranted:
 - i. The development of the situation of the domestic industry for a longer period;
 - ii. An in depth analysis of other factors, in particular, the performance of the domestic industry, the impact of captive sales and of competition from other Indian producers;
 - iii. The scope of the investigation and in particular the product types not produced in India.

VI. Republic of Turkey

- a. Article 9.1 of the Agreement on Safeguards provides that a WTO member shall not impose a safeguard measure to a developing country so long as its share of imports of the product concerned in the importing member does not exceed 3%, provided that developing country members with less than 3% of import share collectively do not account for more than 9% of total imports of the product concerned.
- b. According to the International Trade Centre statistics, Turkey's individual share in India's subject merchandise imports in terms of quantity corresponds to levels under 3% (1.05% in 2014, 0% in 2013, 0.59% in 2012 and 0.18% in 2011). In addition, the collective imports share of developing countries with a ratio below 3% is far from reaching 9% of India's total imports of the product under consideration.
- c. In light of the negligible import levels of the PUC from Turkey into India, India should exclude Turkey from the application of any possible safeguard measure.

Submissions by Producers/Exporters and Associations

- VII. **Metinvest Group represented by Van Bael & Bellis:** Metinvest Group is a vertically integrated group of steel and mining companies that manages every link of the value chain, from mining and processing iron ore and coal to making and selling semi-finished and finished steel products. It has steel and mining production facilities in Ukraine, Europe and the US, as well as a sales network covering all key global markets. Metinvest Group produces a diversified range of semi-finished and finished steel products including slabs, billets, hot-rolled plates, hot-rolled coils, shapes and bars, rails, grinding balls, rail fasteners and large diameter pipes. There submissions are as below:
 - a. Imposition of a safeguard measure cannot be based on annualised data:
 - i. Article 3.1 of the AS, last sentence, provides that the findings of the competent authority are to consist of "pertinent issues of fact and law". The Appellate Body in US — Lamb underlined in this regard that, "[a]s facts, by their very nature, pertain to the present and the past, the occurrence of future events can never be definitively proven by facts."
 - ii. Annualisation entails the mathematical calculation of a variable to reflect a value for that variable on a yearly basis. It is therefore a projection of a future value based on the past. Such projection cannot be held to be a "fact" on which the Investigating Authority can establish its determination, especially when that annualisation is based on data from only the first quarter of the financial year 2015-16.

- iii. In particular, Article 4 1(b) of the AS provides even in relation to the determination of a threat of serious injury, a "future-oriented" determination, that the existence thereof is not to be based on "allegation, conjecture or remote possibility".
 - iv. In addition, the Appellate Body in *Argentina — Footwear (EC)* emphasized that the investigation period "[...] should be the recent past." Whilst it is not contested that the Investigating Authority can rely on the most recent available import data, this data should be the recent past and not a future projection.
- b. There is no clear evidence of unforeseen developments or of any effect of relevant GATT 1994 obligations:
- i. The "unforeseen developments" and the effect of GATT 1994 obligations in Article XIX:1(a) of the GATT 1994 are both "circumstances" which must be demonstrated "as a matter of fact" in order for a safeguard measure to be applied consistently with the provisions of Article XIX of the GATT 1994. They constitute "prerequisites".
 - ii. Consequently, the text of the first clause of Article XIX:1(a) of the GATT refers to unexpected factual circumstances due to which the increase in imports causing injury has taken place and expresses a logical relationship between these circumstances and the ensuing increase in imports causing injury.
 - iii. The Preliminary Determination contains a factual description of certain developments with respect to the steel sector in general and a number of developments concerning specific exporting countries. These developments largely overlap with the section "on factors that may be attributing to increased imports" in the Application.
 - iv. The central thread throughout the described developments is that (i) capacity in Russia, Ukraine and the People's Republic of China ("China") and(ii) demand in the US and the EU have decreased, and that (ii) the resulting excess capacity was primarily diverted to India.
 - v. In contrast with the findings of the Preliminary Determination stating that "the United States and the European Union have reduced their dependence on imported steel", it appears from the information given by Metinvest that the consumption of steel has increased in the United States and Europe between 2013 and 2014.
 - vi. Furthermore, contrary to the finding that "Ukraine has joined Russia and China PR to drive down steel prices and divert its surplus steel to countries with good demand", the information submitted by Metinvest demonstrates that imports of the product concerned from Ukraine have decreased by 50%.
 - vii. Even assuming that the factual analysis provided in the Preliminary Determination is correct, the Preliminary Determination remains fundamentally inconsistent with the legal requirements set out above.
 - viii. First, the events described in the Preliminary Determination do not at all establish how they have changed the competitive relationship between the domestic product concerned and the imported product concerned. There is no account of any development which could explain why imports of the product concerned have gained ground to the detriment of the domestic product concerned.
 - ix. Second, even if it were to be held that the account of the developments in the Preliminary Determination consists of an explanation pertaining to the change in the competitive relationship, quod non, the Preliminary Determination does not contain any explanation as to why the developments were unexpected. It is not indicated anywhere in the Preliminary Determination that there was an unexpected event which led to an increase in imports.
 - x. Third, the Investigating Authority has failed to establish any logical connection between the developments and the increase in imports. It is merely stated that "India, with relatively better demand prospects (domestic demand up by 3.1%) and high domestic prices, has remained an attraction for these steel surplus economies to channelize their excess capacities".²⁴ This sentence only indicates that India has remained attractive for importers, but does not explain how this development led to a change in the competitive relationship between the domestic and the imported product.
 - xi. The Investigating Authority's determination with respect to unforeseen developments is therefore largely deficient and in violation of VVTO requirements.
 - xii. It is apparent from the Preliminary Determination that the Investigating Authority has not identified, in accordance with Article XIX of the GATT 1994 and of the AS, the obligations under GATT 1994 (for example, tariff concessions) with respect to the product concerned that have had the effect of precluding India from taking the measures necessary to prevent the change generated by the "unforeseen development", i.e. resulted in the increase in imports causing serious injury to the domestic industry. Indeed, as underlined by the Appellate Body, this is one of the "circumstances" included in the first clause of Article XIX:1(a) which "must be demonstrated as a matter of fact."

- xiii. Furthermore, Metinvest would like to draw the Investigating Authority's attention to the fact that the wording of Article XIX:1(a) provides that the increase in imports must have come about "as a result" of the effect of the obligations incurred by the Member under the GATT 1994. However, the Preliminary Determination not only lacks any identification of the obligations incurred under the GATT 1994, but also lacks a "reasoned and adequate explanation" of how the effect of these obligations resulted in the product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. The Preliminary Determination fails to explain how these obligations have the effect of precluding India from taking measures, such as an increase in import duties, in order to prevent or remedy the change generated by the "unforeseen development" in the competitive relationship between the imports and the domestic products with a view to restoring the pre-existing competitive condition. This explanation would also have clarified why the imposition of additional duties under the safeguard measures at issue is necessary, if it is demonstrated that the unforeseen development resulted in an increase in imports causing serious injury to the domestic producers.
 - xiv. The fact that it is "known or knowable" that India has made tariff concessions with regard to the product concerned when it joined the WTO does not exonerate the Investigating Authority from complying with the aforementioned requirements.
 - xv. In conclusion, the failure to indicate the effect of the obligations incurred under the GATT 1994 renders the Preliminary Determination inconsistent with WTO law.
- c. There is no clear evidence of increased imports:
- i. In the present case, the Investigating Authority merely provided a table in its Preliminary Determination with absolute and relative import figures for the financial years 2013-14, 2014-15 and 2015-16 (annualised).
 - ii. As a result, the Investigating Authority relied on an end-point-to-end-point analysis, namely a comparison between financial year 2013-14 on the one hand, and financial years 2014-15 and 2015-16 (annualised) on the other hand, to determine that the imports of the product concerned "have shown an increasing trend in absolute terms as well as in relative terms".
 - iii. First, it is submitted that there is no increasing trend in imports in absolute terms. As stated by the Appellate Body, an end-point-to-end-point analysis, namely a comparison between financial year 2013-2014 and financial years 2014-2015 and 2015-2016 (annualized) is not an analysis in accordance with the requirements under Article 2.1 of the AS and Article XIX:1(a) of the GATT 1994.
 - iv. If the analysis is made in accordance with Article 2.1 of the AS and Article XIX:1(a) of the GATT 1994, it appears from Graph 1 below that the trend in imports shows a decrease. From financial year 2011-12 to financial year 2013-14 there is a significant decrease of almost 42% in imports of the product concerned in absolute terms.
 - v. The figures demonstrate that the increase in imports between financial year 2013-14 and financial year 2014-15 is around the same level as the imports in financial year 2011-12. It is therefore more appropriate to qualify the trend in imports of the product concerned in terms of a significant decrease, followed by a recovery of the import levels, to a level comparable to the level prior to the decrease in imports.
 - vi. With respect to the alleged increase in imports in relative terms, the clear decreasing trend is even more apparent. While the share of imports in total domestic production was 11% in the financial year 2011-12, it decreased to only 5% in the financial year 2013-14. While the share of imports in total domestic production indeed rose to 10% in the financial year 2014-15 this share is still below the share of the financial year 2011-12.
 - vii. The increase in imports between the financial years 2013-2014 and 2014-15 was not significant at all, since the imports were approximately at the same level as in the financial year 2011-2012.
 - viii. Furthermore, in light of the sharp decrease in imports in two consecutive financial years, i.e. between financial years 2011-2012 and 2013-2014, the increase in imports between the financial years 2013-2014 and 2014-15 cannot be considered to be wholly unexpected. The increase is therefore not "sudden" enough.
 - ix. In addition, the imports cannot be held to be "sharp" enough. It must be emphasised that this factor should also be assessed in light of the historical context.
 - x. In absence of an increase in imports that is sharp, sudden and significant enough as required pursuant to Article 2.1 of the AS and Article XIX.1(a) of the GATT 1994, the imposition of the provisional duty is manifestly unlawful. The increase in imports is also not unexpected.

- d. There were no critical circumstances justifying the application of preliminary safeguard duties:
- i. The concept of "critical circumstances" is not further defined in the AS. Critical means "having the potential to become disastrous; at a point of crisis". The circumstances must therefore have the potential to become disastrous in the sense that there is a risk of "damage which it would be difficult to repair". "Damage" means "physical harm that impairs the value, usefulness, or normal function of something" or "detrimental effects". The concept of "damage which it would be difficult to repair" suggests that the "circumstances" must be such as to warrant expeditious intervention in the form of a provisional safeguard duty in order to prevent any detrimental effects that would be difficult to repair.
 - ii. The "critical circumstances" and the "damage which it would be difficult to repair" therefore indicate a certain sense of urgency. Indeed, the materialisation of the damage must occur at a rate which cannot be addressed timely enough by a definitive safeguard measure. Consequently the concept of "damage which it would be difficult to repair" possibly points to circumstances so critical where the domestic industry risks being wiped out completely or partially.
 - iii. It can be assumed that the "critical circumstances" and the "damage which it would be difficult to repair" are not the equivalent of "serious injury" or "threat of serious injury" within the meaning of Article 4.1 of the AS, as the inclusion of these concepts in Article 6 of the AS would otherwise be redundant. The "critical circumstances" and the "damage which it would be difficult to repair" are therefore conditions in addition to serious injury or threat of serious injury, and these conditions must also be met in order to justify the imposition of a provisional safeguard duty.
 - iv. Contrary to the wording and scheme of the AS, the Preliminary Determination seems to equate "serious injury" and "threat of serious injury" with "critical circumstances, where delay would cause damage which it would be difficult to repair".
 - v. Furthermore, the Preliminary Determination fails to identify any "damage which it would be difficult to repair". This is not surprising, since there is no damage which it would be difficult to repair" to speak of. It appears from the complete data of the Application that the above-mentioned selective use of data provides an inaccurate picture of the state of the domestic industry, since most factors pertaining to any detrimental effect on the Applicants have changed insignificantly or have remained stable:
 - the market share of the Applicants is still 58% in Q1 of financial year 2015-2016 and the market share of imports is only 16%;
 - the market share of other domestic producers has increased by 4% between Q1 of 2014-15 and Q1 of 2015-16, despite the alleged increase in imports;
 - capacity utilization has dropped from 77% to only 76% between Q1 of 2014-15 and Q1 of 2015-16;
 - production has dropped by only 2% between Q1 of 2014-15 and Q1 of 2015-16;
 - sales of the applicants increased by 2% between Q1 of 2014-15 and Q1 of 2015-16.
 - vi. The above-mentioned figures unmistakably indicate that there are no circumstances "having the potential to become disastrous" and the alleged increase in imports has barely had an impact on the domestic industry.
 - vii. It is therefore unequivocally clear that the condition of "critical circumstances, where delay would cause damage which it would be difficult to repair" has not been met and, as a result, the imposition of the provisional safeguard duty is flagrantly in violation of WTO law.
- e. The Applicants do not suffer serious injury or threat thereof contrary to the provisional determination:
- i. Among the factors, the Preliminary Determination reported a positive (or flat) performance by the domestic industry with regard the following injury factors:
 - Production;
 - Productivity;
 - Employment;
 - Capacity utilization;
 - Inventory.
 - ii. At the same time, factors which the investigating authority found to have an adverse trend, apart from increased imports, are: 1) Market share of domestic producers; 2) Profit/loss; and 3) Price depression.
 - iii. Market share: If one were to consider the market shares during the complete, more relevant period of the investigation, he would note that import market share in fact decreased marginally from 11% in 2011-12 to 10% in 2014-15. What's also important is that market share of the domestic industry during the same period stayed almost flat, decreasing marginally from 40% in 2011-12 to 39% in 2014-15:

- iv. Profit/Loss: At the outset, it should be recalled that the Provisional Determination refers to information contained in the Application that the profitability of the domestic industry "has declined sharply in 2015-16(Q1) and the domestic industry recorded losses". At the same time, the conclusion on profitability does not mention the fact that profit levels of the domestic industry increased during the POI between 2013-14 and 2014-15 financial years by 35%. Moreover, a decrease of profitability to -55 (indexed) is reported only for Q1 of 2015 compared to financial year 2013-14. Moreover, despite the above-mentioned conclusions of the Investigating Authority with regard to domestic industry's profitability, JSW Steel Limited and Essar Steel India Limited, reported themselves that they enjoy a healthy and stable financial performance, especially on the domestic market. Although Steel Authority of India Limited reported negative profitability during the period concerned, it explicitly attributed it to factors other than imports from third countries. Finally, it should be noted that the Applicants also produce and export other products apart from the product concerned (HRC), and that any losses reported at the companies' group level should not automatically explain the losses of the domestic industry with respect to the product concerned. Moreover, there was no information providing whether the profitability calculation results take into account depreciation costs and indirect costs. It is submitted that if all these factors, mentioned above, are taken into account, this will demonstrate that the domestic industry in India is not suffering serious injury or threat thereof.
- v. Price depression: In its Preliminary Determination the Investigating Authority notes that "the domestic industry was always under consistent pressure to either reduce their prices to match the import prices or to hold on to their prices". Apart from the relevant factors discussed above, it should be noted that the Investigating Authority didn't consider a number of other factors which have a bearing on the domestic industry's performance. This are as below:
- Divergence between global prices of raw materials and local prices in India: High prices for the main raw material on the domestic market in India, due to structural and availability issues have a direct impact on the viability and financial performance of the domestic industry in India.
 - Pricing strategies of the main Indian producers did not reflect the actual situation on the domestic market: The pricing strategies of the main steel producers in India did not correspond to the actual market situation, as there was no preconditions for increase in prices of steel products. This also had an impact on the performance of the domestic industry, which neither the Preliminary Determination, nor the Application accounted for.
- vi. Out of the eight injury factors mentioned above and which were considered by the Investigating Authority, five factors were reported as performing favourably (or flat) during the POI: production, productivity, employment, capacity utilization and inventory. On the other hand, only three factors were reported as performing negatively during the POI: market share of domestic producers, profit/loss and price depression.
- vii. When the above-mentioned injury factors, as well as other factors not taken into account in the Preliminary Determination, are taken into account, the Preliminary Determination of the Investigating Authority does not appear to be duly supported by the facts at hand, nor by the adequate evaluation of the relevant factors.
- viii. Indeed, the production of the domestic industry, productivity, employment, capacity utilization and inventories remained flat and at healthy levels during the POI. On the other hand, it was demonstrated above that the profitability of the domestic industry in India reported by the Investigating Authority as negatively performing is in fact positive explanation, can result in an adequate and reasoned conclusion with respect to the existence of serious injury or threat thereof to the domestic industry in India. It is therefore maintained that the indicators of serious injury mentioned in Article 4.2(a) of the WTO Safeguards Agreement were inadequately evaluated by the Investigating Authority and that the explanations provided in the Preliminary Determination do not support the conclusion that the overall position of the domestic industry indicated significant overall impairment.
- f. There is no causal link between the alleged increase in imports and the alleged injury:
- i. The evolution of imports in absolute terms should be assessed in light of the rate and amount of such imports, in accordance with Article 4.2(a) of the WTO Safeguards Agreement and the interpretation given to this provision by WTO case law.
 - ii. Metinvest submits and trusts that the Indian Investigating Authority will acknowledge that the decrease in imports by almost 10% between 2011-12 and 2014-15 in relation to domestic production in India, as well as the insignificant increase by 14% only between 2011-12 and 2014-15 in absolute terms resulting in an import level in 2014-15 which is almost identical to that recorded in 2011-12, should

- lead to the conclusion that no causal link between the alleged increase in imports and the alleged serious injury can be established.
- iii. If one were to assume that the evolution of imports as outlined in the above graphs would be of such a nature that it could possibly cause any injury to the domestic industry (quod non), one would expect such injury to materialize in 2014-15, as compared to 2013-14 when imports increased almost 97% year-on-year.
 - iv. However, an analysis of the injury indicators on the basis of figures provided in the Application, as well as from public sources, demonstrates that the situation of the domestic industry had in fact improved (or at least, remained stable) from 2011-12 to 2014-15, despite the alleged increase in imports.
 - v. Furthermore, the important decrease of imports in absolute terms in 2013-14, as compared to 2012-13 and 2011-12 has resulted in a continued improvement of the state of the domestic industry seen throughout the period concerned (i.e. between 2011-12 and 2014-15), including for injury parameters such as production (+35%), capacity (+26%), domestic sales (+23%), investments (+41%) whereas other factors remained flat to little changed such as capacity utilization (+1%).
 - vi. Metinvest therefore submits that there is no coincidence in time between any alleged increase in imports and any alleged injury in the present case. Indeed, as was demonstrated above, from 2013-14 to 2014-15, when the imports allegedly increased (even though not in a way which satisfies the requirements of Article XIX:1(a) of the GATT 1994 and Article 2.1 of the VVTO Safeguards Agreement), the injury indicators improved or remained stable. Clearly, this demonstrates that there is no causal link between the alleged increase in imports and the alleged injury.
 - vii. If one compares the evolution between 2013-14 and 2014-15 with the evolution between 2011-12 and 2012-13, as provided in the Application, he would note that the situation of the domestic industry in 2014-15, as compared to 2011-12 is (for almost all injury indicators) better, despite the alleged increase in imports levels.
 - viii. Metinvest therefore submits that, in view of the striking lack of coincidence in time between the evolution of the import level (both in absolute and in relative terms) and the evolution of the injury indicators, no causal link between them can be found. Consequently, the causation requirement laid down in Article XIX of the GATT 1994 and in Articles 2.1 and 4.2 of the WTO Safeguards Agreement is not met and no safeguard measures can be imposed.
 - ix. Metinvest trusts that the Investigating Authority will carry out an in-depth non-attribution analysis in line with the requirements described above and that this analysis will lead to the conclusion that any alleged injury is caused by factors other than imports. Metinvest maintains that this aspect is of the utmost importance in the framework of this safeguard investigation.
 - x. In particular, as was extensively explained above, there was, among others, a striking divergence between global prices for raw materials and the prices on local market in India. First, the high cost of domestically available iron ore, the main raw material for the product under investigation, in India during the period concerned is an important factor for the viability of the domestic industry, which was not evaluated by the Investigating Authority. Second, the pricing policies of the main Indian producers didn't reflect the actual situation on the domestic market. Last, but not least, the apparent slowdown in economic growth of India in 2015 as compared to 2014 should also be taken into account in the evaluation of the alleged serious injury or threat thereof to the domestic industry of India.
 - xi. The Applicants admit themselves that China is one of the key reasons leading to alleged injury of the domestic industry in India. Most of the articles which are annexed to the Application (see e.g. Exhibit 10 of the non-confidential version of the Application, pp. 101-203) refer to Chinese imports to India surging at "prices lowest in over 20 years".
 - xii. Indeed, the significant overcapacity (more than 44 million tons⁸³) and slowing domestic consumption in China due to sluggish economy growth (projected to be below the government target of 7%) leads to increasing exports from this country to third country markets at low, depressed prices.
 - xiii. Metinvest submits that targeting the injurious imports from China through a safeguard investigation is a wrong choice of trade defence instrument, since it punishes other reliable and historical suppliers of the product concerned to India, including Ukraine.
- g. Legal basis for choice of level and form of the safeguard measure:
- i. The provisions of Article 5.1 of the WTO Safeguard Agreement imposes an obligation upon the Members to ensure that the measure applied is commensurate with the goals of preventing or remedying serious injury.

- ii. The Panel in Korea — Dairy Safeguards, upheld by the Appellate Body, also added that the final safeguard measure to be imposed upon importation of the products must be defined by the following elements: product coverage, form, duration and level, which altogether must be considered in their totality when making decision about the final measure.
- iii. Therefore, by imposing a safeguard measure a Member shall consider not only its level ("is commensurate"), but also its form in order to be "no more restrictive than is necessary to prevent or remedy' any alleged serious injury, be it a safeguard duty, a quantitative restriction, including quotas or tariff quotas, or any other forms restricting the imports from third countries.
- iv. Article 5.1 of the WTO Safeguard Agreement explicitly allows a quantitative restriction to be imposed as a form of a safeguard measure. This provision also clarifies the modalities of a quantitative restriction to be applied as a safeguard measure, i.e. that it "shall not reduce the quantity of imports below the level [...] in the last three representative years". Article 5.2(a) of the WTO Safeguard Agreement further details how a particular form of a quantitative restriction, i.e. quotas, shall be determined and imposed.
- v. It should also be added that Article XIII:2 of GATT further clarifies that in applying import restrictions to any product Members "shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions".
- vi. It follows from the above that India has an obligation to ensure that any safeguard measure to be imposed upon importation of the product concerned from, inter alia, Ukraine must be commensurate with the goals of preventing or remedying the alleged serious injury of Indian domestic industry, i.e. being least trade-distorting, taking into account, inter alia, the form and level of the proposed measure.
- h. Ukraine has substantial interest in supplying the product concerned to India:
 - i. Ukraine has been historically a reliable and regular supplier of the product concerned to Indian consumers. Imposition of a provisional safeguard duty at a level of 20% and which can be potentially confirmed at a definitive stage, effectively bars Ukrainian imports of the product concerned into the Indian market, as producers in Ukraine will not be able to continue exporting to India with profit.
 - ii. At the same time, as was mentioned above, the goal of the safeguard measure is not to ban imports from third countries altogether, but rather to allow the local domestic industry to remedy or prevent any alleged serious injury, and to adjust accordingly.
 - iii. It is submitted hereby that these objectives can be achieved through a quantitative restriction, e.g. through a tariff rate quota as a form of safeguard measure, for the following reasons.
 - iv. First, a tariff rate quota is the least trade-distorting measure out of any other available for the purposes of safeguard application (e.g. quotas, bans, safeguard duties, etc.). It allows to limit any continued increase in imports from third countries by imposing an out-of-quota duty, thus shielding the domestic industry and allowing it to adjust accordingly. At the same time, tariff rate quota allows the historical suppliers having substantial interest in the product concerned, including Ukraine, to continue exporting to India within their historical in-quota amounts.
 - v. Second, unlike anti-dumping and countervailing duties which are designed to sanction unfair trade practices (dumping and subsidizing, respectively), safeguard measures are imposed against fair trade practices of third countries. Therefore, any potential safeguard measure against imports of the product concerned from, inter alia, Ukraine must take into account this fact and accommodate the legitimate interests of the supplying countries.
 - vi. Finally, it should be noted that provisions of Article 5 of the VVTO Safeguard Agreement and the corresponding VVTO case-law release the Members from the responsibility to provide a "clear justification", at a time of a decision, for a safeguard measure if it doesn't reduce the quantity of imports below the average imports in the last three representative years. In other words, should the Investigating Authority in the present case decide to impose safeguard measures in the form of a tariff rate quota, which is set at a level reflecting the last three representative years, there will be no obligation on its part to provide detailed and substantial justifications for such decision.
- i. Current situation in Ukraine:
 - i. The situation in the Eastern regions of Ukraine (Donetsk and Lugansk areas) has continued to improve in recent months and there are legitimate expectations that this will continue to the end of the year and beyond, bringing normalization of life in these regions.
 - ii. Given the particular situation in these areas, the construction business, aimed at restoring the heavily damaged and destroyed infrastructure, could be expected to absorb any additional capacities of the

Ukrainian domestic industry and even take part of the current export quantities, once the security and political situation in those areas normalizes.

- iii. Given the expected increase in domestic demand in Ukraine for the product concerned, as explained above, it can be concluded that any continued alleged increase of imports from Ukraine to third markets, including to India, is not to be expected.

VIII. China Steel Corporation (“CSC”): CSC is a producer and exporter of the product under consideration based in Taiwan.

- a. The imports from Taiwan only amounts for 0.88%, 0.25%, and 0.27% of the total import volumes and all are below the negligible threshold 3% under Article 9.1 of the Agreement on Safeguard. Further Taiwan is considered as developing country by multiple WTO members and international organisation:
 - i. EU safeguard measure’s on certain steel products mandarins and other citrus fruits, and farmed salmon
 - ii. Indonesia Safeguard measure’s on wheat flour.
 - iii. Malaysia excluded Taiwan from the application of preliminary safeguard measure on hot-rolled steel plate.
 - iv. United Nations: Taiwan was granted as developing country in:
 - The Economic and Social survey of Asia and Pacific,
 - UN Conference on Trade and Development (UNCTAD),
 - Organisation for Economic Co-operation and Development (OECD) and
 - The International Bank for reconstruction and development (IBRD)
 - Fifth Ministerial Conference: The Economic Minister of Taiwan pronounced that Taiwan is “newly acceded developing Member”.
- b. The imports from the developing countries with negligible import collectively account for only 2.0% (2013-14), 0.9% (2014-15), and 0.9% (2015-Q1) of the total import of PUC. That the import from Taiwan should be exempted from any safeguard measure.
- c. Exclusion of High strength Steel (“HSS”) from the PUC as it is used by the Indian Automobile Industries.
- d. Taiwan has been exporting HSS, which is rapidly growing demand of the automobiles industry for stringent quality HSS. HSS are not available from the local mills and, as such, HSS needs of the Indian auto industry must be filled by imports from inter alia, Taiwan.
- e. There is inconsistency with Article 6 of agreement on safeguard as there are no critical circumstances where delay would cause damage which will be difficult to repair. The key economic indicators of the domestic industry, including domestic production, productivity and employment, capacity utilisation and inventory remained virtually unchanged in the reference period:
 - The market share of domestic producers in respect to their commercial sales to the open market remained unchanged during the POI.
 - PUC import did not increase in such a way to continue an import “surge”, according the Appellate Body interpretation. That import surge must present itself in a state of “recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively to cause or threaten to cause serious injury.
 - Mere 4.35% increase in market share simply cannot be “share enough” or “significant enough” and hence cannot constitute “surge” by any count.
 - Profitability of the domestic industry, increased substantially during 2014-2015 from the preceding years 2013-14 i.e. from 100 to 135 by index. Given the positive movement on profitability of DI, and only a marginal decline in DI’s market share during the first two full references years, there is no critical circumstance proven to exist on the case record.

IX. China Iron and Steel Association filed submissions through their representative M/s. Athena Law Associates

- a. The Association has filed preliminary submissions based on the material in the initiation notification and the preliminary findings.
- b. Safeguard measures are based on a “no fault principle” and applied on imports that are made fairly and not with the intention of hurting the domestic industry. Therefore, recourse to safeguard measures should be taken only in strong cases where there is no other alternative other than imposition of duty to save a dying industry. The Appellate Body in Korea – Dairy held that safeguard measures are extraordinary remedies which should be adopted only in emergency situations. The present petition does not demonstrate an extraordinary or emergency situation and thus should be dismissed.

- c. The Supreme Court in *Haridas Exports v. All India Float Glass Manufacturers Association* held that the availability of goods outside India at lower prices is not per se bad and encourages competition.
- d. Article XIX of the Safeguards Agreement provides that safeguard measures can be imposed only if there is a sudden and share increase in imports in the most recent period; there is a clear causal linkage between injury to the domestic industry and such increased imports; safeguards duty is not in public interest.
- e. The safeguard investigation has been initiated without examining the details or satisfying the requirements of a valid application under Rule 5.
- f. The provisional findings were issued in haste and there did not exist a situation so critical that any delay in imposing provisional measures would cause irreparable damages. The critical circumstances required for provisional measures have not been fulfilled.
- g. Paragraph 10 of initiation notification stated that interested parties were to be given 30 days to make their views known to the authorities but without waiting for any response the authority issued the preliminary findings.
- h. The Applicant has claimed excessive confidentiality and does not allow a reasonable and meaningful understanding of the domestic industry's case.
- i. Unforeseen developments are unexpected and unpredictable and hence are developments or advancements that come as a surprise before the domestic industry and due to which the domestic industry is taken aback. However, the developments referred to in the petition are merely normal market fluctuation which every entrepreneur could have foreseen. The freeing of trade and the consequential increase in imports was expected and foreseen by Indian negotiators in GATT when countries were negotiating to ensure free and fair international trade by reducing tariff and non-tariff barriers.
- j. The Authority should take into account all relevant factors of an objective and quantifiable nature while evaluating whether the increased imports have caused or threatened to cause serious injury to the domestic industry. The following facts demonstrate that no serious injury or threat of injury has been caused to Applicant:
 - i. No significant changes in the capacity of the Applicants.
 - ii. Slight increase in the production during 2015-16 (annualized) as compared to 2013-14.
 - iii. Capacity utilization has remained the same during the period 2013-14 to 2015-16 (annualized)
 - iv. Applicants have shown losses in 2015-16 (01) but during the same period PBIT was significantly positive. Therefore, losses are on account of interest burden and not due to import price as evidence from negative price undercutting.
 - v. Inventory levels slightly increased from 100 points in 2013-14 to 103 points in 2015-16 (01) but the same was not considerable as significant.
 - vi. The employment and productivity remained the same throughout the injury period.
 - vii. There is negative price undercutting since 2014-15 (quarterly) till available data 2015-16(Q1) thereby the landed price was higher than the net sales realization of the Applicants. Hence, the losses to the Applicants are due interest cost and their inefficiencies and not on account of imports.
 - viii. Market share of domestic producers in domestic demand were not determined correctly in the preliminary findings as total demand in India was determined considering captive consumption. However, sales of the domestic industry were considered excluding captive consumption for the purpose of market share of the domestic industry.
- k. Therefore, in terms of both volume and price, no injury is apparent to the domestic industry, leave aside serious injury.
- l. Even if serious injury were assumed to the domestic industry, such injury was not because of the increased imports. Applicant has not provided evidence to establish that injury claimed is due to the increased imports.
- m. Injury to the domestic industry is due to the burden of interest cost and there is no influence of import prices as the price undercutting has been consistently negative.
- n. Applicant has not provided any adjustment plan and the preliminary findings also do not mention an adjustment plan. In an application filed by United Phosphorus in 1999 for safeguards duty imposition, the authority refused to impose a safeguard duty on the ground of lack of an adjustment plan.
- o. Imposition of the safeguard duty is not in public interest. The term "public interest" has not been defined in the safeguards laws but has been interpreted by the Apex Court under different laws. In *Bihar v. Kameshwar Singh* it was noted that expression "public interest" is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours form the statute in which it occurs, the concept varying with the time and state for society and its needs. In an application filed by United Phosphorus in

1999 for safeguards duty imposition, the authority refused to impose a safeguard duty on the ground that imposition of the duty would not be public interest.

X. The Japan Iron and Steel Federation

- a. The share of imported steel products in total consumption is around 10% to 15%. This means there are a certain number of customers who need imported products.
- b. The supply demand balance in the domestic hot rolled flat products market has become extremely tight. The production capacity of steel producers in India is insufficient to meet the demand for hot rolled flat products in the country.
- c. Imposition of safeguard duty is likely to have serious impact on users which depend on imported hot rolled flat products.

XI. Arcelor Mittal, Brasil (AM Brasil): The conditions required to initiate a safeguard investigation are not fulfilled in this case

- a. Indian authorities breached the right of defense of interested parties by imposing safeguard duty at abnormally early stage.
- b. There has been no increase of imports within the meaning of the WTO safeguard Agreement as interpreted by the WTO case-law.
- c. The Petitioner has not suffered serious injury or a threat of serious injury. In addition there is no causal link between the alleged serious injury (if any) and imports.
- d. Available information shows that there had not been any significant increase in imports within the meaning of WTO Safeguard rules. The increase in imports of the product concerned to India is far from being sharp, recent, sudden and significant.
- e. AM Brasil highly challenges the investigation period selected by the Indian authorities which also includes 2015-2016 based on annualized data. Most recent data should only serve to confirm or infirm trends evidenced during the period of investigation.
- f. While imports increased quite significantly between 2013-14 and 2014-15, an end-to-end comparison shows that imports remained in fact stable during the whole period 2011-2015, and even decreased by 2.3% during the same period. In this respect, it should be noted that the WTO jurisprudence makes clear that in assessing whether an end-point-to-end-point increase in imports satisfies the increased imports requirement of Article 2.1, the sensitivity of the comparison to the specific years used as the end-points is important as it might confirm or reverse the apparent initial conclusion.
- g. In the present case, it appears prima facie that all indicators regarding the situation of the Indian domestic industry are positive. The Indian Authority failed to demonstrate the existence of a serious injury or a threat thereof.
- h. A closer look at the evolution of the production of the Indian domestic industry during a longer period seems to reverse the allegation of serious injury. Indeed, instead of remaining stable, the data contained in the complaint reveals an increase in production during the period 2011 – 2015.
- i. The Applicant's production increased by 26% over the analyzed period while the other producers increased their production by 57%, indicating that this is the internal competition that may limit the production and sales growth of the applicants.
- j. While the Indian authorities are trying to evidence an increase in the market share of imports by only relying on the period 2013-14 to 2014-15, an analysis over a longer period (such as the one used in the Petition) shows that the market share of imports remained stable at a level of 10% and even decreased by 1% over the period 2011-2015.
- k. The recent financial results and public statements of the companies composing the Indian industry evidence a good financial health of the Indian industry.
- l. There is no causal link between the alleged serious injury (if any) and imports. There is hardly any evidence of coincidence of alleged increased imports and alleged serious injury and the existence of a causal link.
- m. The Indian authorities imposed provisional safeguard measures only 7 days after the initiation. Such an early imposition of provisional measures is exceptional in view of the practice of the Indian authorities in safeguard cases.
- n. AM Brasil questions the inclusion of Brazilian imports within the scope of Application of safeguard measures under Article 9.1 of the WTO Safeguard Agreement.

- o. There seems to be nothing in the non-confidential version of the petition regarding the question of the shares of developing countries within total imports, and on which the Indian authorities may have relied to preliminarily conclude that developing countries should be included within the imposition of provisional measures.
- p. By failing to substantiate their analysis, the Indian authorities breached their obligations under Article 3.1 of the WTO Safeguard Agreement.
- q. There is breach of Article 12(1) as a result of a failure to notify immediately. AM Brasil notes that the case was initiated on 7th September and was notified to the WTO Committee on Safeguards on 15th September, i.e., 8 days after the initiation of the investigation.
- r. There is breach of Article 12(4) as a result of a failure to notify before taking a provisional safeguard measure.

XII. JFE Steel Corporation, Nissin Steel Co. Ltd, Nippon Steel & Sumitomo Metal Corporation and Kobe Steel Ltd represented by M/s. AZB & Partners

- a. The DG Safeguards has failed to examine the accuracy and adequacy of evidence as required under Rule 5(3) of the SG Rules. The initiation of the investigation is not grounded in law.
- b. The DG Safeguards has erred in issuing the Preliminary Findings in absence of critical circumstances. The absence of clear evidence of increased imports causing serious injury or threatening to cause serious injury, the existence of critical circumstances is itself untenable.
- c. The product produced by the Domestic Industry is not a like product' as compared to the imported product. The Petitioner has not provided a coherent methodology for determination of the Product under Consideration. The DG Safeguards accepted the definition of the PUC without an objective assessment of the Conditions of Competition in the market.
- d. Products exported by the Japanese Mills are not manufactured/supplied by the domestic industry and the same should be excluded from the scope of the Product Under Consideration. Further, some hot rolled products exported by the Japanese mills to India differ in chemical composition of components.
- e. Hot Rolled Coils imported from Japan are able to meet the specific quality requirements that the domestic industry is unable to meet. Hot Rolled flat products exported from Japan significantly differ from those manufactured by the domestic industry and must be excluded from the definition of the PUC.
- f. It is not clear as to how the DG Safeguards has verified the data with respect to the PUC as the PUC consists of denied and specific set of products and there is no evidence to show that the Petitioners maintain segregated data with respect to the PUC.
- g. The conditions for the application of a safeguard measure are not satisfied in the present case. The finding on 'unforeseen developments' by the DG Safeguards is inconsistent with article XIX of GATT and the SGA. Unforeseen developments must be made for each specific product and not only for steel in general.
- h. The analysis of 'unforeseen developments' does not take into account other relevant events such as depreciation of Indian Rupee, reduction in imports by industrial users to source the raw material locally and signing of the India-Japan CEPA.
- i. The POI selected by DG Safeguards is not long enough to analyse the import trends.
- j. There is no serious injury or threat of serious injury to the domestic industry. There is no decline in production levels, employment, and capacity utilization during the POI. The market share of the Petitioners has decreased due to inter-se competition among the Indian producers and increase in captive consumption. Further, existing levels of production of DI are already high.
- k. The movement in profit/loss is not correlated with imports. Imports have increased in 2014-15 by 97% and during the same period domestic industry saw a rise in profits by 35%.
- l. Injury, if any suffered by the domestic industry is not caused by increased imports. Domestic Industry is suffering from diversion of supply for internal captive consumption, delayed implementation of projects, no lending support by the Government, exposure to global price shocks, handicaps in capacity building and generation, competitive products from other countries, lower-quality iron ores which require more coal, lower quality of coal, problems in acquisition of raw material etc.
- m. High transportation costs and poor infrastructure are impacting Indian producers' efficiency.
- n. Injury caused by dumping of the PUC into India must be segregated from alleged injury due to increased imports.
- o. The adoption of safeguard measure is against public interest because Hot rolled flat products are not manufactured in sufficient quantities by the domestic industry and imports are necessary for downstream

industrial users. As per JPC data, imports of HR Coil in the past 5 years have been essential to meet the requirements of the domestic market.

- p. The imposition of safeguard duty will also prove to be detrimental to the Indian auto industry and downstream producers of Cold Rolled products.
- q. DG Safeguard is requested to exclude the hot-rolled coils exported by the Japanese Mills that are used in the production of auto/home appliances from the scope of PUC.
- r. We further request the DG Safeguards to apply Tariff-rate quotas (TRQ) on HRCs for construction use, as the domestic industry does not produce these products in sufficient quantities.

XIII. POSCO, Korea and POSCO Maharashtra Steel Private Limited filed submissions through their legal representative M/s. Shardul Amarchand Mangaldas & Co.

- a. The company has filed submissions in response to the petition filed by the Applicant.
- b. The Applicant has misrepresented the market share of other producers of the PUC and has shown the market share of domestic supporters as the market share of other producers of the PUC in the market. As a result, the market share of only Tata Steel Limited, Bhushan Steel Limited, Jindal Steel and Power Limited are included in the market share of other producers.
- c. In order to facilitate fair comparison of data at the same level of trade, the volume of imports which is used for captive consumption must be excluded from total demand if the captive consumption of domestic producers is excluded from total demand.
- d. Total demand of the PUC is incorrect as sales of other producers have not been included. Therefore, as demand is more, the market share of imports would also decline.
- e. Imports have shown minor fluctuations with no significant increase the market share of the domestic industry has remained mostly constant with only minor variations. There has however been a significant rise in the market share of domestic supporters by approximately 6%.
- f. Applicants have experienced an increase in profits in the previous financial year and the decrease in sales is due to capacity underutilization and high debt/finance costs. Various news reports and press releases indicate that demand in India has declined as a result of which Indian steel companies have accumulated huge debt over the last few years because of capacity expansions, acquisitions and rupee depreciations.
- g. Applicants sell the PUC in the domestic market at a higher rate whereas export the same product at prices prevailing in the global market.
- h. There is no causal link between imports and injury or threat to the domestic industry as rise in imports has been negligible and the same is attributable to the inability of the domestic industry to meet domestic demand. Despite being unable to meet domestic demand has resorted to exporting part of its production outside India.
- i. The provisional duty imposed by the DG, Safeguards was without proper analysis of the facts and circumstances of the case. Further, interested parties were not given an opportunity to file their comments.
- j. The domestic industry cannot meet the quality requirements of downstream consumers. Further, certain grades of the PUC should be excluded from the investigation as the same are not being produced by the domestic industry.
- k. Imposition of a safeguard duty will contravene India's commitments under the India-Korea Comprehensive Economic Partnership Agreement as under the Agreement the duties on the PUC have been brought down to zero. Further, the Agreement provides that safeguard actions taken under Article XIX may to the extent consistent with the obligations under the WTO Agreement, exclude imports of an originating good if such imports are not a substantial cause of serious injury or threat. Therefore, imports from Korea are covered under this clause.
- l. Safeguard measures are emergency actions to be imposed in special and exceptional circumstances intended to give the domestic industry only temporary and short term protection.
- m. As per findings of the Hon'ble Delhi Court in *United Phosphorous v. Director General, Safeguards* the existence of serious injury to the domestic industry and a causal link being established with the increase in imports does not bind the authority to impose a safeguard duty.
- n. Applicant has not provided any statement on efforts being taken, or planned to be taken, or both to make a positive adjustment to import competition.
- o. Applicant has not established any unforeseen circumstances that led to the increase of imports of the PUC into India. Applicant has stated that imports have risen due to various geo-political and economic conditions such as tensions between Ukraine and Russia as well as Europe and Russia, crises in the global steel market due to sluggish demand.

- p. Imports from Korea cannot be considered as an unforeseen development as it cannot be expected that the negotiators making the concessions could not foresee at the time when the concessions were negotiated that such a development would not have occurred. When the Agreement was signed, both the domestic industry and global steel producers were investing heavily in new manufacturing facilities and anyone in the industry could have been aware that imports would start to rise to satisfy the fast growing demand.
- q. The Agreement on Safeguards and Article XIX do not specifically define what the period of investigation is but the definitions of the terms serious injury and threat of injury indicate that determinations must be based on objective facts and assertions, opinions and conclusions that are not based on factual evidence must be rejected. The period taken by the DG relating to merely 2013-14 to 2015-16 is artificial data of a micro-period. Data should be taken for at least a five year data base commencing from 2010-11 to 2015-16. The period of 2013-14 cannot be taken as a base year as it was a rock-bottom year for the steel industry.

XIV. **Hyundai Steel Company, Korea (dated 08.11.2015):** Hyundai Steel is a producer and exporter of the subject goods from Korea RP. The company has requested confidential treatment on their submissions. In view of this request, their contentions are summarised below in a non-confidential manner to the extent possible:

- a. After reviewing the preliminary findings, there is no clear evidence that Hyundai Steel caused serious injury to the domestic industry/producers of hot-rolled coil in India.
- b. Hyundai Steel's export selling prices were higher than the prices that were offered by the domestic manufacturers in India and other foreign exporters. The quantity exported to India was at average during the past several years without any drastic increase. The other findings and observations in the notice also appear to be irrelevant to Hyundai Steel.
- c. For these reasons, Hyundai Steel asks the Director General to immediately terminate the safeguards investigation and the 20% provisional duty. As a result of this unexpected and inappropriate measure, a number of Indian manufacturers are losing their competitiveness and struggling to compete with other global corporations. These firms need the services of Hyundai Steel as the company produces merchandise that Indian companies cannot manufacture. Hyundai Steel offers just-in-time supply, and make superior quality hot-rolled coils at a reasonable price.
- d. Hyundai Steel's sales of hot-rolled coils with pickling and oiling to Hyundai Steel India Limited (HSIL) should be especially exempted from this investigation. These products are manufactured mainly for the production of Hyundai Motors automobiles.
- e. In addition, HSIL, an Indian entity by law, evidently generates important benefits to the domestic economy and general public in India. It is, therefore, not in public interest to impose such a measure.
- f. Continuation of this investigation and consideration to impose safeguard measure will damage the overall Indian economy and bring negative effects to hot-rolled coil importers, as well as general public.
- g. Serious Injury:
 - i. Import Increase: The Director General failed to illustrate how the increase in imports was caused by the Republic of Korea and Hyundai Steel. The Director General should have examined not only the increased imports but also other factors as well, as he is obligated to do so pursuant to the WTO Safeguard Agreement.
 - ii. Import Price: In the preliminary findings, the Director General relied on an alleged increase in low priced imports to find surge in imports. In the imposition of safeguard duty, however, the investigating authority must review whether there is surge in imports, not surge in low priced product imports.
 - iii. Causal Link: The investigating authority must provide a non-attribution analysis, which is required by law, to separate and distinguish the injurious effects of other possible factors.
- h. Principles of Natural Justice: The preliminary findings cannot be issued without offering opportunity to all interested parties and allow them to file their comments on the petitioner's claim. This practice goes against the principles of natural justice which demands a due investigation and presents an opportunity to be defend oneself.
- i. Unforeseen Development: It is difficult for the Republic of Korea and Hyundai Steel to become responsible for the Director General's arguments on unforeseen development as nowhere in his findings mentions any causes by Korea and Hyundai.
- j. Adjustment Plan: The safeguard investigation requires the petitioners to build a comprehensive adjustment plan and explain that they need time and emergency relief to restructure their organisations. Simply put, the instant case is missing this requirement.
- k. Undue Protection: India is known to over-protect its domestic industries. This should risk their relations and future trade status with the Republic of Korea and the rest of the international community.

- l. Public Interest: The imports of subject goods from Hyundai Steel have contributed in satisfying the Indian industry's demand and it is far more important to protect the different interests of end-users and consumers rather than to reinforce the dominant position of the petitioners by means of over-protecting the domestic producers against imports from various countries.
- m. Hot-rolled coil with pickling and oiling (PO): Hyundai Steel Korea sells the PO product to HSIL, which, in turn sells the merchandise to an affiliated customer, Hyundai Motor India Limited, to be utilised as raw material for its automobile production. These PO products are manufactured mainly and particularly for the production of Hyundai Motor automobiles. Hyundai Steel performs special testing and manufacturing process to produce the PO products for Hyundai Motors. They are, therefore, irreplaceable; they cannot be substituted with other merchandises. Doing so would cause a significant quality performance issue for Hyundai vehicle, which would result in risking the safety of automobiles drivers in India. This is the reason why the export selling prices are much higher for these PO products than other hot-rolled coil products. These PO products thus should have not been included in the scope of the product under consideration and should have been listed along with the API grade steel, silicon electrical steel and five (5) other excluded product types.

Submissions by Importers, Users and Associations

- XV. **Federation of Associations of Maharashtra (FAM):** FAM is a Mumbai based apex organisation of trade associations of Maharashtra consisting of 1000 transport, small-scale and trade associations in Maharashtra.
- a. The steel sector is facing excessive debts and losses due to such factors are not attributable to import prices of steel in India.
 - b. Quantities imported under advance authorisation cannot injure the Applicants.
 - c. There has been undue haste in imposition of provisional safeguard duty in this case.
 - d. The PUC only accounts for 9% of the capacity of the applicants.
 - e. JPC is an officially empowered agency in India for the collection and maintenance of data, by the Ministry of Steel. There is deviation in JPC data and IBIS data relied upon in the application.
 - f. It has been alleged that there has been a surge in imports, drastic drop in sales turnover, decline in capacity utilization, consistent losses and reduction in employment levels which are clear indicators of injury. All these basic parameters are missing altogether in the present case of the applicants.
Alleged surge in imports ('000 tonnes)

Particulars	2011-12	2012-13	2013-14	2014-15
Imports (as per JPC)	1812	1871	1104	2006
Indexed	100	103	60	109

As per JPC data, the increase over the period of 4 years (which is a more logical period for a trend analysis) is only about 9%. While alleging surge in imports in 2014-15 over the period of 2013-14, a due thought has not been given to the fact that there was an abnormal drop of roughly 40% in the earlier year mainly due to the unprecedented dollar volatility during that period.

Moreover, the applicants took the advantage of this dollar volatility and increased imports and hence keeping domestic prices much higher at the cost of the Indian consumer.

- g. On perusing the sales figures of the JSW Steel Ltd. it shows an increase of about 29% over the period. On a similar analysis of the Steel Authority of India (SAIL) figures, it shows a more or less stable trend in the sales turnover.
- h. In cases of both these applicants, it shows a fairly increasing / stable trend in the annual sales in spite of the drop in the prices of the major raw materials such as iron ore, coaking coal and coke by almost about 40-60%
- i. For the same period, capacity utilization of JSW Steel Ltd. had surged from the base year of 2012-13 to the year 2014-15 by about 62% thereby achieving almost about 88% of productivity.
- j. Essar Steel India Ltd. on the other hand has underutilization of capacity which is basically attributable to financial indiscipline and non-availability of raw materials. However, by combining their performance with

the performance figures of the other applicants tends to show an incorrect grim picture of the whole domestic industry.

- k. SAIL and JSW Steel have been showing reasonable profits over the period of last four years barring a somewhat dim picture in the recent quarter. Infact, in case of JSW Steel, losses incurred by the foreign subsidiaries when consolidated / transferred to Indian operations displays an incorrect picture as is seen in its financial statements.
- l. The profitability of these applicants, especially at the time when the entire steel industry globally is making the huge losses only demonstrates how the Indian consumers are being over-charged.
- m. It is submitted that from the above Applicants, there are some Applicants who are facing serious problems of financial indiscipline. These books of accounts of these Companies does not appear to be giving true and fair view of its state of affairs and are apparently pursuing to window dressing techniques. The interested party only requests this Authority to order for the CAG Audit to check the fairness of the affairs of these companies.
- n. Instead of an alleged drop in the basic wages and salaries, there has been a consistent increase in the employment costs of these applicants over the last four years.
- o. The major raw materials used for the manufacturing of the subject steel goods are iron ore and coaking coal. The prices of these raw materials have dropped between 40-60%.
- p. It is fairly logical that the selling prices of these subject goods be accordingly adjusted. However, it is interesting to note that in spite of that the sales of the applicants have been increasing.
- q. The subject goods which are used as raw materials for certain re-roller mills such as POSCO, Uttam Steel, National Steels, Asian Color Coated etc. it needs to be noted that PUC is a raw material and not a product for trade. In such cases, PUC is further worked upon and converted into cold rolled sheets / galvanized sheets / corrugated sheets etc. POSCO alone had imported around 0.95 million tonnes of the subject goods for this purpose between the period of May 2014 to September 2015 for their own Steel Plant in Maharashtra.
- r. It is submitted that, if these imports as well as the quantity of imports attributable to other cold roller mills is removed from the total import figures as produced by the applicants, there is actually the decline in the imports of the subject goods in India over this period. In fact, local plants have declined POSCO to provide the subject goods due to their own inability to produce the required quality and quantity of those goods. The quantum of such imports of raw material may be around 35-40% of the total imports of PUC in India.
- s. The applicants have argued that the countries like Thailand and Malaysia had also taken recourse to these tariff barriers by imposing the safeguard and anti-dumping duties respectively. However, it is hereby submitted that the scenario of surge in imports and other parameters have been very critical at that point in time in those countries. These could not be in any manner comparable to present situation in India.
- t. All the aspects when examined in detail with facts and figures substantiate that there is no sudden or sharp increase in imports of alloy steel imports so as to cause or threaten to cause serious injury to the domestic industry.
- u. There is no threat of or serious injury caused to the domestic industry due to the imports of alloy steel products and imposition of the Safeguard Duty in the absence of any threat of or serious injury to the domestic industry is violative of Article 14, 19 & 21 of the Constitution of India.
- v. The pre-requisites as prescribed under the Safeguard Rules does not exist and as such there is no significant overall impairment of domestic industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by the increased imports, changes in the levels of sales, production, productivity, capacity utilization, profits and losses and employment, none of these is adversely affected as misrepresented by the Applicants.
- w. The Applicants have sought for imposition of Safeguard Duty on products which are distinctly categorized as different products with separate identity of their own.
- x. The Applicants have not excluded the imports on account of captive consumption which needs to be excluded for the computation of total imports. The Applicants have not excluded the imports under advance authorizations i.e. imports for exports which needs to be excluded for computation of total imports. There is no nexus between the imposition of safeguard duty in the absence of any emergency and the objective to be achieved by such imposition. The capacity utilization of the Applicants has reached its optimum well above the International Standards. Despite optimum capacity utilization, the alloy steel production by the domestic industry is negligible. The Applicants have wrongly relied on safeguard measures like imposition of safeguard duty by other countries viz. Thailand and anti-dumping duty by Malaysia which is completely irrelevant and does not apply to the situation in India as it prevails today.

- y. The nature and quantum of safeguard duty sought to be imposed is arbitrary and without any basis. The Applicants intend to make windfall profits by seeking imposition of safeguard duty and should not be allowed misrepresent facts before the Authority. All the aforesaid aspects substantiate that there is no sudden or sharp increase in imports of alloy steel imports so as to cause or threaten to cause serious injury to the domestic industry.

XVI. Purva Metal Sections Pvt. Ltd.

- a. We require HR coils as raw material for manufacturing Steel Pipes & Tubes. Imposition of safeguard duty will shoot up our raw material procurement cost and our product cost will increase unreasonably, thereby we will lose competitiveness in the market.
- b. One side we will incur higher cost of production while on the other side there is always threat of competition from foreign exporters.
- c. By implementing safeguard duty, you will be knowingly creating & supporting monopolistic trade practices in India.
- d. If safeguard duty is being recommended in this investigation, then we request you to impose the safeguard duty on import of Steel pipes & tubes into India also.

XVII. Bharat Chamber of Commerce

- a. Imposition of safeguard duty will seriously affect the automobile, construction and other industries which are consuming HR steel coil as raw material.
- b. Engineering industry will lose its competitiveness globally.
- c. Imposition of safeguard duty will affect the manufacturing industry and thus Make-in-India campaign will get affected.

XVIII. Mitsui & Co. India Pvt. Ltd: Mitsui & Co. India Pvt. Ltd. have invested in ISC (Indian Steel Corporation) as Joint Venture. ISC is involved cold rolling & galvanizing and painting steel mill. They are importing HRC from Japan. Their submissions are as under:

- a. Substituting imports with local procurement of HRC might not be possible in short terms in terms of financial (payment terms), quality and various size availability and economical point (price) of view.
- b. Steel or HRC is basic raw material for broad industries and segments. However, HRC safeguard duty, if implemented, would damage or destroy viability and growth potential of downstream industry.

XIX. Nezone strips Limited and Nezone Tubes Limited: Nezone strips Limited and Nezone Tubes Limited are the producers of Black Pipes, C.R. Strips and Precision Tubes. Their submissions are as under:

- a. We have been importing HR coil in thickness 2.00 mm and below because our regular supplier M/s Tata Steel Ltd. had stopped supplying due to availability constraints. Therefore, we are forced to import this specific product and this should be excluded from the product scope.
- b. We have already entered into contact with our exporter and duty is levied on transaction which has effectively been completed before the imposition of duty and thus is retrospective in nature which we believe was never the intension of Government.
- c. The fair level capacity utilization of 76% indicates that the situation is not as threatening as has been made out to be.
- d. Market share of 12% is not alarming if we view it in the light of the fact that domestic production have not increased to cater to higher demand.
- e. Steel material prices have fallen internationally due to fall in iron ore, coal and oil prices. Since basic raw material prices are witnessing a fall, there is no reason why the profitability of domestic industry should fall.
- f. The demand for H.R. Coil in India will diminish as all downstream products will be imported and thus defeating the very purpose of Safeguard Duty of protecting domestic industries.
- g. This will dent the government policy of "MAKE IN INDIA" and will result in dumping of final consumable products into India wiping out lacs of industries in India.

XX. Prabhat Steel Traders Pvt. Ltd.

- a. 1/5th of the steel exposure of PSU banks has already been restructured. This exercise usually takes 12 to 18 months. This means that the companies were already in default from years which can be attributed to the

indiscipline in cost, political issues of raw material supply etc. Imports are not the reason of this condition of steel industry.

- b. JPC data shows export of approx. one million ton at prices lower than domestic prices which created a deficit which has been filled by the imports.
- c. Imposition of safeguard duty will lead to increase in import of finished goods making Indian manufacturers more non-competitive.
- d. In the increased imports figure, one of the largest constituent is has been the import quantity of POSCO and China Steel Corporation who are importing HR coil from their parent companies to convert it into cold rolled and electrical sheets in their new steel plants commissioned in Maharashtra and Gujarat respectively.
- e. Some industries have been forced to import due to lack of availability of their products in right sizes, quality and correct prices.

XXI. Cold rolled steel manufacturers Association of India (CORSMA)

- a. The imports of HR Coil were high during 2014-15 because the Indian producer despite a shortage situation in domestic market exported over 1 million tonnes of HR Coil well below the global prices in order to maintain shortage in the domestic market.
- b. Data examined should be based on 5 year data commencing from 2010-2011 to 2015-16. It may be pointed out that 2013-14 was one of the worst years for steel industry as the consumption and imports of steel were rock bottomed and it cannot be taken as base year for investigations.
- c. HR coil producers are already protected by 12.5% custom duty. Ocean freight of USD 30 and incidental charges of around USD 15 along with custom duty @ 12.5% amounts to USD 90 per ton and domestic prices fixed on landed costs basis are higher by around USD 90 per MT eroding global competitiveness of manufacturing sector both in domestic and global market resulting in import of manufactured steel product at the cost of Indian industry. Imposition of safeguard duty @ 20% will further hike protection level and domestic prices by 64 USD which will be disastrous for Indian manufacturing industry and 'Make in India' mission.
- d. Imposition of safeguard duty will result in erosion of global competitiveness of the manufacturing sector.
- e. The past three Petitions were rejected by the Anti-Dumping directorate and Safeguard directorate as well as Calcutta and Delhi High court due to misrepresentation of the facts.
- f. Provisional duty should have been imposed after a public hearing to ascertain the facts.
- g. Petition is not based on authentic JPC data. Joint Plant Committee under the Ministry of Steel is the official and authentic data bank for the Steel industry and HR coil producers regularly submit comprehensive data to JPC for compilation of its reports. The Petition for the imposition of Safeguard duty has been based on data from a private agency which is not authentic and also manipulated by the petitioners.
- h. It is observed that the period of investigation has been reduced to 2 years and 1 quarter by DGSG which is considered too short and against the norms to establish any trend. The POI should be extended to at least 5 years.
- i. At least 4 more grades should be added to the PUC exclusion list to ensure that heavy custom duty do not lead to import of manufactured goods instead of HR Coils.
- j. There is no injury to the domestic industry from excessive imports because the production of HR coils has increased. Moreover, neither there is any decline in the capacity utilization nor there is laying off of the workers
- k. Reduction in global prices of HR Coils due to sharp fall in prices of raw materials. The global and domestic prices of basic inputs for steel making like Iron ore, coking coal, oil and lubricants have registered a steep decline of leading to a decline in the global prices of HR Coils.
- l. Allegation of cheap imports of steel from China flooding the Indian market is also baseless as imports from China constituted only 28% of total imports in April-June 2015 while for HR Coils it was around 30%
- m. HR Coils producers have incurred heavy debt mainly due to indiscreet and unproductive investments
- n. Domestic HR coils producers have not been able to match the global prices despite having captive iron ore and coal mines because of absence of technological and product development.

XXII. Surya Roshni Limited

- a. If injury is found to be suffered by the HR coil producers, then all the downstream products including Cold Rolled, GP/GC Sheets/ Coil, MS ERW and Spiral Pipe, Color coated steel etc. should also be considered for safeguard duty.

- b. If safeguard duty is imposed on HR coil without imposing the duty on downstream products then it will cause serious injury to the downstream industry using HR coil as raw material.
- XXIII. **EEPC India (Formerly Engineering Export Promotion Council):** Most of the members of EEPC India, who are MSME engineering manufacturing units and exporters, have represented their concern over possible imposition of safeguard duty on HR coil which is a basic raw material for an entire range of engineering industry.
- a. Industries like automobile, transportation equipment, construction equipment, fabricated steel products etc. will be affected due to imposition of safeguard duty on HR Coil.
 - b. The engineering industry consuming HR coil as raw material will become uncompetitive globally. Imports of the finished goods will increase thereby affecting the domestic manufacturing and Make in India initiative.
- XXIV. **Sunil Tripathi**
- a. There has already been two-stage rise in custom duty for the subject goods, two anti-dumping actions on cold-rolled products already in force and non-tariff barriers that require suppliers abroad to be registered with BIS.
 - b. Imposition of safeguard duty will further affect the downstream industry and other small manufacturers.
- XXV. **Godrej & Boyce Mfg. Ltd.:** Godrej & Boyce Mfg. Ltd. is an importer of the subject goods during the POI.
- a. Safeguard duty imposed at 20% on H.R, products over 600 MM would benefit few large integrated Steel producer only, but it would be detrimental to the Steel users in the organized, as well as unorganized sector.
 - b. The contribution made by steel user to the Ex-chequer by way of direct and indirect taxes is higher than that of the Steel manufacturers. The employment generated by the Steel user's runs into millions, these factors should be considered by the Government, as both these factors have a direct impact on the economic growth.
 - c. The 20% Safeguard Duty over and above the regular Customs Duty of 12%, making the import from all other countries, beside China is Prohibitive. Indiscriminate increase in price would impact the growth of steel user industries, which is already on the decline and at all-time low, at the expense of a few.
 - d. No rationale of imposing Safeguard Duty on entire range of H.R, which are not currently produced in the Indian Steel Industries viz. High Tensile, High Strength Impact Resistant and need to be imported for end user.
 - e. China is exporting steel at FOB rates, the Government may curb import from China and not restrict blanket import from other countries such as Japan. Korea, with whom we have existing Free Trade Agreements.
 - f. Safeguard Duty will affect our relationship with ETA countries and our exports to these countries may be severely affected.
 - g. Safeguard Duty and Customs Duty on H.R. Coils, aggregate to 32.5%, whereas the Customs Duty on finished goods is much lower (average 10 %) and hence imports of finished goods would increase, particularly from China which would be contrary to our "Make in India" policy.
- XXVI. **Textile Machinery Manufacturers Association (India):** The representation is made for one of its member Lakshmi Machine Works Ltd., Coimbatore, who is an importer of the subject goods.
- a. There are no manufacturers in the country who are supplying above 4mm thickness of hot rolled skin passed pickled and oiled laser stabilised sheets.
 - b. It would be unwise to impose safeguard duty of 20% on all types of hot rolled flat products of 600 mm width or more.
- XXVII. **Automotive Component Manufacturers Association of India ("ACMA"):** ACMA is an association of importers/ users of the subject goods:
- a. The cost of raw material price had major impact on the Steel Industry:
 - i. HR prices declined in August- September 2014, October-November 2014, amid sluggish demand in China and rising Global surplus from Chinese exports. Prices dipped in December 2014-January 2015, due to weak demand from the US energy sector and oversupply in the global market.

- ii. The safeguard duty will make it more expensive for the domestic component manufacturers to procure the raw material. This will render them completely non- competitive in the domestic market, as also for the exports.
- iii. During 4Q- FY 15, automotive industry reported YOY production growth of 9% (vehicle volume) on the back of significant growth in two wheelers and three wheelers segment and strong exports.
- iv. The Indian auto-component industry is today, burdened with high raw material price and declining profitability.
- v. At a time when the auto component industry is facing increased competition from countries having an FTA with India, it is imperative that the industry is insulated against such arbitrary increase in cost of raw material.
- vi. Unforeseen and sudden moves are against the India's "Make in India" programme.
- vii. The Automotive Mission Plan 2016-26 has a vision of the Indian automotive industry ranking among the top three of the world in engineering and in manufacture and export of vehicles and auto components. To grow in value to over 12 % of India's GDP, and generate an additional 65 million jobs. The auto component industry is expected to grow five –fold from the current level of USD 40 billion to cross the USD 200 billion mark in the next 10 years with exports growing from the current level of USD 11.2 billion to USD 80 Billion by 2026.

XXVIII. **HB Sons, Nagoan (Assam):** They are user/ retailer of steel items in Nagaon. They contend that the imposition of safeguard duty will allow middle players to take the advantage of the situation and they will increase the price abnormally.

XXIX. **Asian Containers (Virat Industries):** They are users of electrolytic tin plates for manufacture of aerosol cans.

- a. The local manufacturers of tinplate are not in a position to cater to our requirement both in quality as well as quantity. Unreasonable pricing make it difficult to cater to the consumer's budget and service & delivery is extremely poor.
- b. The custom duty on tin plates have increased from 7.5% to 12.5 % which has made tinplates competitive compared to other packaging material. Moreover the local tinplate has deficiency in quality like pin holes etc., which are hindrance to market safety and environment.

XXX. **World Trade Scanner:** They are a weekly magazine and contend that the matter needs further investigation from other points of view besides that the Indian producers.

XXXI. **United Human Rights Federation ("UHRF"):**The UHRF is engaged in taking up various common problems of the peoples for redressal and engaged in safeguarding public interest. The submissions are based on the letter filed by Manufacturers Association of India (CORsMA). UHRF had also filed writ petition in the Hon'ble Supreme Court Writ Petition No. (Civil) No. 764 of 2015, against the decision of imposition of preliminary safeguard duty on the product concerned. The Supreme Court vide its order dated 30.10.2015, disposed the said Writ Petition while granted permission to the petitioner/ UHRF to withdraw the same with liberty with the liberty to "approach the appropriate forums/ authority for appropriate relief's. The Hon'ble apex court has also directed "If and when such petition(s) is/are filed, we request the appropriate forum(s)/ authority to consider the same as expeditiously as possible". There submissions are summarised as below:

- a. The duty is imposed on the misrepresentation of the applicant companies (M/s SAIL and others).
- b. The Notification dated 14.09.2015 as issued by the Directorate General of Safeguard has not followed as per the prescribed Customs Tariff Rules. The Director General (Safeguard) was appointed on 28.08.2015 and had taken charge on 07.09.2015 and issued the notice of initiation of safeguard investigation on 07.09.2015 and recommended the imposition of safeguard duty on 09.09.2015, which indicates the decision is hastily taken.
- c. In order to order to safeguard domestic Industry that relevant investigation period should be effective sufficiently long to allow the conclusion to be drawn on increased import and serious injury.
- d. The notification dated 09.09.2015, the source of information Director General Safeguard has taken, is from International Business Information Service that for the period 2013-14 and first quarter of 2015, though it in the report.

- e. The notification dated 09.09.2015, the source of information Director General Safeguard has taken, is from international Business Information Service that for the period 2013-14 and first quarter of 2015, though it is mentioned in the report that the same has been verified on the site visit, but no particular in the notification dated 09.09.2015 about which site has been visited.
- f. No urgency shown in the notification for imposition of safeguard duty.
- g. The Notification dated 14.09.2015 read with Notification dated 09.09.2015 the Director General Safeguard failed to justify the reason behind imposing Safeguard duty, exactly as asked by applicant.
- h. Capitalizing on this, the local steel mills would increase the price and the user industry will be hit hard. The steel industry expert predicts that such a shutdown of Small & Medium Enterprises and Micro, Small & Medium Enterprises industries would leave about 50,000 people jobless across the country directly.
- i. The efforts of safeguard measure should go hand in hand with commensurate increase in duty drawback to exporters and with the domestic prices being influenced by such levies, the drawback rates should simultaneously go up.
- j. Neither the prescribed procedure nor the timelines pertaining thereto have been followed.
- k. There is no difference material difference in the production process between the applicant and the exporters from the subject country.
- l. The Notification completely ignores the views of the Domestic Market on the said subject goods, it also does not take into consideration the effects on the final product by virtue of higher cost of the raw material and penalising the end user.
- m. The levy of import duty on a particular item at the instance of hand of Domestic manufactures of hot rolled coil cannot be a ground for the entire industry to suffer.
- n. The views of interested parties have not been taken into consideration.
- o. The said applicants have failed to seek any causal link between imports and alleged serious injury or threat of serious injury and hence, the said notification has been issued in breach of Customs Tariff Rules.
- p. There is no base in the Notification how exact 20% duty has been imposed as sought by the said applicants. There is a very significant drop in imports between 2009-10 and 2014-15, as per the data available.
- q. The undue haste with which whole process of imposing of exaggerated safeguard duty has been completed in gross violation of the procedure laid down in the Customs Tariff Act 1975 and Customs Tariff Rules and timelines compels one to infer that there has indeed been a strong motive behind this action, which is ostensibly to favour certain beneficiaries, evidently on a quid pro quo basis.
- r. The imposition of safeguard duty is against the make in India and instead gives boost to dump in India.
- s. Countries such as Japan and South Korea have also expressed their discontent on the issue. They have been enjoying substantial duty benefits on steel imports as having made large investments in India through their companies Posco, Honda, Toyota and Suzuki etc, which are going to be affected by the levy.
- t. The applicants have mislead the Directorate General safeguard by providing incomplete data with a self-serving motive, and using only fiscal 2012-13 and 2013-14 as reference years to infer that there is huge surge in imports resulting in "serious injury" to them.
- u. The period of investigation should be at least six years. For this investigation the period of investigation should have been considered by comparing the situation in the industry between 2009-10 and 2015, as in 2009-10 the application on similar ground had been rejected by the Director General.
- v. The Authority has itself confirmed on the page 5 of the notification dated 9th September 2015, that there has been no adverse impact on the capacity utilization of the said applicant's plant which remained unchanged throughout the period of investigation.
- w. The notification itself stated that there has actually been a significant rise in the profits of the said applicant during the period of investigation, whereas the indexed profit per ton has increased from Rs. 100/- in 2013-14 to Rs. 135/- in 2014-15. They say that there has been drop in the profit per ton in the subsequent year, viz., 2015-16 annualized based on first quarter figures. This is largely on account of sales realisation, owing to depressed market conditions worldwide.
- x. The surge in inventory levels during the Period of Investigation is completely false and misleading statement, as in real terms, the increase in inventory is mere 11,411 MT during 2014-15 as compared to 2013-14 and a merge of 8,809 MT during quarter one of 2015-16.
- y. The fall in market share and fall in revenues/ profits are prominent global phenomenon, being experienced by even mega steel players worldwide.
- z. The safeguard duty is against the national objective of increasing industrial production and in turns the Gross Domestic Product growth, and makes a mockery of the Central Government's avowed policy dictum of "Make in India".

- aa. The end users are not concerned about the source of hot rolled coils (whether Indian or imported) as long as the quality is not compromised, and the price is more competitive.
- bb. The said applicant do not produce a large range of certain special steel grades which end users are therefore compelled to continue to import, as they have been doing historically and those end users will be penalized by the steep Safeguard Duty, when there is no domestic supply of such requirements, then the consumers end up paying more, just to help the said applicants before the Directorate General of Safeguard earn higher profits.
- cc. The data must be sourced from Joint Plant Committee, Ministry of Steel, Government of India, and assessment /decisions must be based thereon.
- dd. The new process of registration would require 10 to 12 months and would affect the imports of Hot Rolled Steel, as the merchants would have to pay 20% more to the local suppliers. This would in turn monopolized the business of local mills and lead to anti-competitive practices.
- ee. The petition filed was Laconic even on merits and his conclusions of irreversible damage were wrongly founded:
 - i. There is inverse correlation between the inventory of the stock held by petitioners and rate of duty. While the rate of Customs Duty increased from 5 % in 2011-12 to 12.5% in 2015-16, the inventory held by the applicants went up from 331101 Mt to 648290 MT as on 31st March, 2015 making it an Index of 100 to 196.
 - ii. As the duty rate as increased, in two phases from 7.5% to 12.5% only between 16.06.2015 to 12.08.2015. The applicant just desiring to hoard the stock with an eye to profit rather than having any real injury due to higher imports as even their production index during the period 2011 to 12 to 2015-16 had also gone up from 100 to 157.
 - iii. The higher duties have only let higher inventories as the said applicants were expecting to gain substantially blocking imports and doing away with the international competition to secure gains for themselves.
 - iv. No evidence to show that any country was cutting down its prices or was dumping its product in Indian market.
 - v. 20% duty can eventually damage the economy by curbing competitiveness of its manufacturing sector which consumes Steel, an by increasing the cost of building infrastructure.
 - vi. Safeguard duty will create monopoly for the applicants.
 - vii. Safeguard duty will hurt small engineering exporters as it increases inputs costs from them and makes imports of finished engineering product from China cheaper, which will erode their competitiveness.

XXXII. Sri Jagannath Steel Company: Safeguard duty will be a road block in the growth of the country due to following reasons:

- a. From 38 steel companies 25 are into debt. The effective value of loans taken by the segment equivalent to the turnover. Safeguard duty could be attributed to indiscipline in costs, political issues of raw material supply etc.
- b. There is clear evidence from JPC of the export of approx. One million ton at price in line with import price and globally prevailing price. These prices were lower than the domestic price and created a deficit, which is very much the gap, which has been filled by imports.
- c. This is against the “Make in India” concept of reducing tariff barriers ad making available competitive environment.
- d. The largest constituent has been the import quantity from Posco /India and China Steel Corporation. If the imports figures are removed for them the imports quantities would be much softer.
- e. The imports are available in various quantities which are not produced in India, due to size, quality, specification etc.

XXXIII. Manaksia Steels Limited: Manaksia Steels Limited is an importer of the subject goods in India. They contend that:

- a. The imposition of the safeguard duty on the subject goods which is raw material in their industry will compel them to shut down their operations.
- b. The imposition of safeguard duty is against the very purpose of “Make in India” campaign and would culminate the import of finished products.

XXXIV. **WhirlpoolIndia Limited:** They are a user of the subject goods in India.

- a. There has been decline in the prices of Steel around the world in past one year:
 - 34% in China
 - 22% in USA
 - 10% in Europe
 - 10% in India
- b. India being the lowest, due to:
 - Slowdown in the global economy
 - Decline in price of Iron ore
- c. Indian consumers did not enjoy the decline in prices of steel in India.
- d. Further following questions are important in the light of above argument:
 - Is the Indian industry prices higher because of inherent inefficiencies and therefore not competitive globally?
 - Are safeguard duties therefore a crutch that only perpetuates the lack of competitiveness?
 - Should the Indian Steel Industry not look within to make themselves competitive with global players rather than seek support from the government?
- e. The government should take cognizance of price trends of steel globally and compares steel price in India with those prevailing in other regions.
- f. The government should take assurances from steel industry that during the period for which the safeguard duty is applicable (200 days) there should be no increase in steel prices.

XXXV. **Maruti Suzuki India Limited:** Maruti Suzuki India Limited is an importer of the subject goods in India. They contend the following:

- a. The Preliminary Finding was issued by the DG Safeguard within 2 days of initiation of Investigation, without providing an opportunity of being heard to the importers, exporters and other interested parties. There by violating the Principles of Natural Justice. The Authority has issued the preliminary finding in haste. They have relied upon:
 - Siemens Engineering & Manufacturing Co of India Ltd. v. Union of India &Anr. [1976] Suppl. S. C.R 489,
 - C.B Gautam V. Union of India (1993) 1 SC 78,
 - Swadeshi Cotton Mills vs. Union of India 1981 SCR (2) 533,
 - Automotive Tyre Manufacturers vs The Designated Authority &Ors. 2011-TIOL-03-SC-CUS.
- b. The Directorate General of Safeguard in the present case was appointed on September 7, 2015. The reliance was placed on in Automotive Tyre Manufacturers vs The Designated Authority &Ors. Where-by it was stated that the new designated authority should have provided a separate hearing.
- c. India being member of Comprehensive Economic Partnership Agreement needs to abide by Article 23 of the FTA. Which states that India needs to follow certain specific guidelines in case of safeguard investigations initiated under FTA. FTA provides for a different regime for the initiation of bilateral safeguard measures with additional mandatory requirements to be complied with. The Authority has completely ignored the provisions of FTA in relation to bilateral safeguards and the special conditions and procedure set out therein.
- d. In the present case no intimation has been provided to the Embassy/ Government of Japan regarding the initiation of the investigation proceeding regarding the import of the product under Consideration from Japan. The act of issuing a Preliminary Finding by the Authority, without providing any intimation or information to the Embassy/ Government of Japan, is an act of clear defiance of the provisions of the FTA. The reliance was placed on US- Underwear , Appellate Body Report, US-Underwear, where it was held that prior publication of a measure, as required under Article- X of GATT, could not in and of itself, justify the retroactive effects of applying import quotas with respect to imports during a period starting before the quota's publication date.
- e. No methodology provided for the determination of the Product under Consideration. The transaction wise import data made available by the petitioner has various discrepancies and at various instances proper gradation and series identification with respect to the imported product has not been done by the petitioner. Therefore certain products identified by the petitioner in the petition and thereafter relied upon by the

- Authority in the Preliminary Finding for the import data are not correct and fall outside the scope of Product under Consideration.
- f. In the past also the Designated Authority in Anti-dumping investigation had excluded certain Colled Rolled Steel Products imported from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA, from the scope of investigation for the reason that those were not considered to be like article within the meaning of the Safeguard Rules.
 - g. In the instant case, the petitioner has sought inclusion of all grades including such grades which were specifically excluded and were not considered 'like product' within the scope of the product under consideration.
 - h. DGCI&S should be consulted to corroborate and authenticate the import data of the Product under Consideration as provided by the Petitioner.
 - i. The Authority has nowhere recorded the Product under Consideration with that of the products imported by the importers on the touchstone of the definition of "like product" as provided in the Rule 2 (e) of the safeguard Rules.
 - The Product from Korea and Japan is not like article in terms of the Rule 2(e) of the safeguard Rule and thus different from the product manufactured by the domestic producers. Product under Consideration imported by the Respondent from Japan and Korea are of superior quality.
 - The need for the import of Product under Consideration from Japan is because of the incapacity of the Domestic Producers to supply the high quality of products as required by Respondent. The Authority should exclude such imported goods that are not being manufactured by the Petitioners. Reliance has been placed on Hon'ble Customs, Excise and Service Tax Appellate Tribunal in Magnet Users Association vs. Designated Authority [2003 (157) ELT 150 (Tri-Del)], wherein was held that there is no justification in including those grades that are not manufactured in India.
 - The Product under Consideration are heterogeneous set of products imported and thus they cannot be included in the same grade for comparison with the products manufactured by the domestic producers/petitioners. The reliance is placed upon Panel Report issued by WTO in DS 427- China- Anti Dumping and Countervailing Duty Measures on Broiler Products from the United States.
 - The inclusion of the non- furnished Product under Consideration by the Authority is unjustified and not required as these products are imported in different volumes and are differently priced.
 - j. The Respondent is purchaser of steel products from
 - JSW Steel Limited,
 - Essar Steel Limited,
 - Bhushan Steel Limited,
 - Tata Steel Limited
 - Hero Steel Limited.
 - k. 93% of the total raw material and components consumed by the Respondent have been procured from the above-named domestic producers, which also include two Petitioners. It is only the remaining 7% of the special kind of steel, the demand of which is not fulfilled by the Domestic industry, is imported from Japan and Korea by the respondent. Indian products are different from the products that are manufactured from these countries :
 - Imported products are manufactured by Japanese Industrial Standards,
 - Includes better making standard, chemical composition, Categorization, Tensile strength, draw ability and wend ability of the Product.
 - Indian products have no mention of Hole Expansion Role
 - There is difference in quality level (formability, crack generation during rolling etc) for different steel makers for the same grade.
 - The respondent being one of the largest producers and manufacturers of the Automobiles, the levels of quality for automotive application is a major concern for it in order to avoid any commercial problems and complications.
 - The product imported is manufactured by way of patented state of the Art technology and the same has distinct characteristics.
 - l. The Petitioner have claimed excessive confidentiality and sufficient information is not supplied by them in order to determine the manufacturing, production and sales of the Domestic market. The petitioners did not provide any reasons for claiming the confidentiality on the information provided to the Authority. The Respondent have relied upon Sterlite Industries (India) Ltd. vs Designated Authority.

- m. The importers and the interested parties were not intimated by the Authority about the development regarding the examination and corroboration of the information provided by the Domestic Producers. Without corroborating the evidence produced by the Domestic Producers, the Authority heavily relied on the said information and recommended imposition of Safeguard Duty at a whopping rate of 20%.
- n. The Authority did not disclose the methodology adopted to determine the level of safeguard Duty recommended by the Authority. The Authority did not follow the principle laid down in Article XIX of GATT 1994. The initiation notice was silent on the unforeseen development that has led to increase of imports of Product under Consideration. The petitioner also failed to show factual or legal basis to demonstrate that unforeseen development exist in the present matter.
- o. There has been miniscule increase in the import data as provided in the petition. No justification provided to show on which petitioners have annualised the imports for the entire year of 2015. There is gradual increase in the imports of the Product under Consideration and there is no “sharp”, significant or “sudden” increase in imports.
- p. The increased import of Product under Consideration has no impact on the domestic production of the goods. The Authority at para 25(a) of the Preliminary Finding has recommended that the production of the Domestic Producers have remained at the same level. The Authority has not substantiated as to what are the critical circumstances to warrant an issue of Preliminary Finding. The Authority has acted in contravention principles of safeguard investigation.
- q. No evidence provided by Petitioner to show serious injury. The Authority has ignored in the Preliminary Finding that the requirement under Safeguard Rule is to initiate investigation only when there is “sufficient evidence” to suggest that the increased imports of the product has caused an injury to the Domestic Producers.
- r. The Authority has acted in contravention of Paragraph 1 and 2 of the Annexure to the Safeguard Rules. The Respondent relied upon the Appellate Body Report on US- Cotton Yarn. Following submissions are made based on the case cited:
- Petition does not show any injury whatsoever.
 - Petitioners has fared consistently well in terms of production, domestic sales and total sales and profitability.
 - The methodology prescribed for segregating capacity for the Product under Consideration from total Capacity is still unclear.
 - Essar Steel India Limited has made complete Turn around and earned profits from operations.

Particulars	FY 2014-2015 (Rs. – Crores)	FY 2013-2014 (Rs. - Crores)
Gross Revenue	19,258.50	16,286.59
Net Revenue	17,162.39	14,348.55
Profit/(Loss) before exceptional items and taxation	334.29	(3,916.21)
Profit/(Loss) before Taxation	1,008.96	(2,314.74)
Earnings per share (diluted)	Rs. 2.26	Rs. (5.70)

- s. JSW Profitability have increased.

Particulars	FY 2014-2015 (Rs - Crores)	FY 2013-2014 (Rs. - Crores)	Growth %
Gross Turnover	49,658	48,527	2%
Net turnover	45,352	44,529	2%
Operating EBIDTA	8,872	8,783	1%
PAT	2,166	1,335	62%
Earnings per share (diluted)	Rs. 88.24	Rs.53.86	64%

- Sail has been consistently making profits.
- Price Underselling, depression and suppression data has not been indicated in detailed from in the NCV of the petition filed by the Petitioner.
- There is no change in the capacity utilization of the Domestic Producers as per Para 25 (d) of the Preliminary Finding.

- The Authority in Preliminary Finding has also not pointed out any possibility of likelihood of a sudden decline in the capacity utilisation of the Domestic producers.
 - The Authority has not corroborated any piece of information provided by the Petitioner and has without any recording any reasons assumed a prima facie case and initiated the investigation process.
 - The safeguard duty will have cascading effect on the overall prices of vehicles and parts on the automobile industry.
- t. A number of Automobile companies and OEMs are extensive importers of the subject products, and levy of any safeguard duty will affect the business interest of the said importers substantially. Safeguard Duty will be inconsistent with fiscal incentives introduced by the Government of India for improving the ailing health of the Automobile Industry.

XXXVI. V.K. Industrial Corporation Limited

- a. Steel imports only constitute 10% of the total steel consumption in India. This is very small share of total market.
- b. Government has already given too many benefits to the steel mills.
- c. Importers are a very small percentage of total market and are catering small and medium sized business and startup companies which require goods on credit basis. Domestic manufacturers are unable to cater to such small requirements.
- d. Prices of raw material fell steeply. Thus domestic mills should also be able to decrease their prices. It is due to fall in raw material prices, other countries are supplying at lower prices
- e. Domestic producers are exporting steel prices lower than domestic prices. Thus domestic mills are able to compete globally with other cheap steel mills and maintain profits.
- f. Small engineering and consumer firms will not be able to compete globally resulting in shutting down of these industries.

XXXVII. Lakshmi Machine Works Limited: Lakshmi Machine Works Limited is textile machinery manufacturer in India.

- a. In India no manufacturer is available to supply above 4mm hot rolled skin passed pickled and oiled laser stabilized sheets. Skin passed is required to meet required flatness in our parts.
- b. No manufacturer is available in India to supply laser stabilized material. Our parts are manufactured in laser cutting for which stabilized material is required.
- c. Most of the items manufactured out of these sheets are functional components with precise tolerance.
- d. Imposition of safeguard duty will lead to un-competitiveness in global market.

XXXVIII. JBM Industries Limited

- a. Domex 650 grade alloy is used for manufacturing high strength components in automotive industry. There is no alternate grade developed by the domestic mills till date so we will continue importing these special grades. Imposition of safeguard duty will lead to increase in our cost which will eventually lead to increase in cost of final product.
- b. A lot of special grade HR steel is imported by secondary mills, direct users and OEMs. The imposition of safeguard duty will increase the cost of raw material which will further increase the cost of vehicles. This will adversely impact the automotive industry.

XXXIX. Neel Metal Products Limited

- a. A lot of special grade HR steel is imported by secondary mills, direct users and OEMs. The imposition of safeguard duty will increase the cost of raw material which will further increase the cost of vehicles. This will adversely impact the automotive industry.
- b. Neel Products may import grade HR material in future that go in manufacturing of safety components of vehicles. Imposition of safeguard duty has increased cost of raw material which will lead to increase in the costs of vehicles.
- c. The imposition of safeguard duty will adversely affect the strained automotive industry and also the infrastructure industry where a lot of steel is used in fabrication work in projects.

XL. Larsen & Toubro Ltd.

- a. Larsen & Toubro has some export equipment orders which were not applied for advance authorization for import of raw material @ 0% duty, but it opted to get the export incentive under “All Industry Rate Draw Back Scheme’ @ 1.9% of export FOB value. Due to provisional safeguard duty of 20%, cost of raw material of these equipment have risen. Larsen & Toubro requests DG Safeguards to waive the safeguard duty for imports of inputs required for manufacture of export products.
- XLII. Uttam Value Steels Ltd.:** The Company extends full support for imposition of safeguard duties against imports of the subject goods.
- XLII. Tube Investments of India (TII)**
- a. Imports by TII are based on agreed specifications with the suppliers. Being an auto component supplier, TII’s product undergoes a lot of validation process and imports are done irrespective of international and domestic steel prices.
- b. Levy of safeguard duty on hot rolled coils will impact the cold rolling business heavily as consumers will switch to import of cold rolled coils.
- c. DG Safeguard should look at a fair floor price mechanism for imposition of safeguard duty for HR Coils. Moreover, CR/CRCA should also be considered along with HR for purpose of imposing safeguard duty.
- XLIII. Nippon Steel Pipe India Pvt. Ltd. (NPI) represented by AZB & Partners**
- a. NPI imports 22 different specifications of PUC which are used for producing tubes for automobile manufacturing. Hot rolled flat products imported by NPI differ in chemical composition of components such as carbon, manganese, silicon, boron and phosphorus which are tailored to meet the needs of the end user.
- b. Indian steel mills are unable to produce special hot rolled coils imported by NPI. Importation of the PUC is necessary to meet the needs of the downstream Industries.
- c. Adoption of safeguard measure will be detrimental to the Indian auto industry which accounts for 7% of India’s GDP and provides provide direct and indirect employment to 19 million people.
- d. Levy of safeguard duties on the PUC would affect NPI’s supply chain adversely. This would decrease production volumes to the extent that customer demand stemming from the Indian automobile industry would not be able to be met. Further, in view of lower profitability as a company, NPI may also be forced to lay off employees.
- e. NPI requests DG Safeguards to exclude from the scope of the PUC, imports used for the production of Tortion beam, door impact beams, stabilizers in automobiles, front forks in motorbikes and other products imported by NPI. These imports are either not produced locally by the Domestic Industry with quality specifications required by the Indian industrial users of the PUC or have not yet been granted approval from OEMs.
- XLIV. The Bombay Iron and Merchants Association (BIMA) represented by M/s. MV Kini Law Firm**
- a. The domestic industry is suffering due to excessive borrowings, indiscipline in costs, political issues of raw material supplies etc.
- b. Domestic industry exported approximately 1 million tonnes at a price in line with the import price and globally prevailing price. These prices were lower than the domestic price.
- c. Existing barrier of 12.5% duty and high interest rates will lead to a situation of Indian manufacturers becoming non-competitive and will lead to imports of finished goods.
- d. One of the large constituent in import figures are the imports made by POSCO India and China Steel Corporation for captive consumption. If these figures are removed, so called trumpet of huge increase in imports would sound much softer.
- e. Imports include various quantities that are not produced in India due to size, quality, specification etc.
- f. The Applicants do not constitute Domestic Industry. Applicants have not distinguished between alloy and non alloy products. These are distinctly classified products having different identities and customs classification
- g. Authenticity of the data relied by the Applicants is questionable as it is not from a government recognized entity specifically authorized to collect and maintain such data. Further, the methodology used for sorting the product under consideration is a mere reproduction of the definition of the product under consideration and does not sort the product as claimed

- h. Applicants have misrepresented to the Authority by submitting that one of the uses of the subject goods is for automotive industry. Automotive industry relies on alloy steel products which has negligible domestic production
- i. If alloy steel production is excluded from the total imports, there would be no substantial increase of imports. Moreover, 2013-14 cannot be construed to be a benchmark as it was an abnormal year.
- j. Quarter to quarter comparison has to be of a quarter of a year with the same quarter the previous year.
- k. Imports for captive consumption should not be considered as it does not determine the regular demand. Import by POSCO Maharashtra and China Steel in 2014-15 for captive consumption for industrial set up must be excluded from total imports.
- l. The Applicants have not excluded the imports under advance authorization i.e. imports for exports which needs to be excluded for computation of total imports.
- m. Decrease in market share of the Applicants is due to increase in market share of the 'supporters' to the Petition.
- n. The reasons of unforeseen developments specified are mere global scenarios of events which has no "India Only" impact.
- o. The Capacity utilization of the Applicants has reached its optimum well above the International standards. Moreover, even if domestic industry was to achieve 100% capacity utilization, the demand for alloy steel products cannot be met.
- p. Perusal of information from the Annual Reports of the Applicants depicts that that none of the pre-requisites exist for imposition of safeguard duty.
- q. The Applicants have not taken into account their high finance costs incurred due to huge debts.
- r. Comparison with trade measures by countries like Thailand and Malaysia is unsustainable and misleading as the surge in imports and other parameters were very critical in those countries.
- s. The Applicants have nowhere through the Petition specified the measures that the affected party is required to take to check and counter the perceived surge in imports.
- t. The Applicants intend to maintain higher prices in domestic market and create artificial shortage by resorting to exports which is evident from the price comparison of domestic prices vis a vis general import prices and export prices of the Applicants.
- u. Applicants have maintained prices of finished goods steady and are making windfall profits without passing over the benefit of decline in prices of iron ore.
- v. Allegations with regard to price undercutting, price depression and prevention of rise in price is denied and the Applicants be put to strict proof of the same.
- w. There is no decrease in profitability on perusal of the annual reports of the Applicants. Despite being listed companies, the Applicants have not shared the actual profits on ground of confidentiality although the information with regard to profits of a listed company cannot be subjected to confidentiality.
- x. The profitability and ROCE of the domestic industry has no bearing on the alloy steel products. Applicants have made a vague statement that imports during August 2015 is in the range of USD 320-350/MT. Applicants have not provided details of alloy steel imports as two distinct products cannot have the same prices.
- y. The nature and quantum of safeguard duty sought is arbitrary and without any basis. Imposition of safeguard duty on the importers of alloy steel products, the production of which is negligible in nature, is violative of right to livelihood of the Interested Party and the like more specifically Article 14, 19 and 21 of the Constitution of India.

XLV. Honda Cars India Limited (HCIL)

- a. HCIL uses steel products as per its global Honda Engineering Standards. HCIL has developed steel grades as per these standards with various steel mills globally, among which there are various Indian steel mills like Tata, JCAPCPL, JSW, POSCO.
- b. HCIL has been working to localise its raw material requirements to a large extent. However, even after lots of localisation, local steel mills have not been able to meet HCIL's entire steel grades requirement. To meet its requirements, HCIL is importing some of HR material either for direct application or as a raw material for cold-rolling by local mills POSCO-Maharashtra and JSW steel from Japan and Korea.
- c. It is not possible for automotive OEM's to switch sources of raw material supply during the model life. All material sources are decided early during the model development and validation of the product quality through testing is done accordingly. Therefore, to ensure quality of the cars manufactured, steel material sources cannot be changed during the model life.

- d. So with sudden imposition of safeguard duty, HCIL will have to continue use of imported HR material directly or indirectly which will have a huge cost impact, and lead to increase in manufacturing cost of HCIL's cars.
- e. HCIL understands that the safeguard measure is being taken to curb excessive dumping of imported steel in Indian market to save interest of local steel mills, but considering that for some of the automotive grades, there are no appropriate substitutes available with local steel mills or local steel cannot be used due to technical reasons also fall under this category which will directly impact automotive industry.
- f. It is requested that the Indian Government should exempt HR grades for automotive application from the safeguard measures to support in sustainable development of the automotive industry.

XLVI. Bharat Heavy Electricals Limited, Bhopal (BHEL)

- a. Customs authorities are applying safeguard duty notification dated 14 September 2015 on imports of steel plates falling under CTH 7208. BHEL's recent imports of 160 mm thick plates of ASTM 537 Class-I has been assessed by Mumbai Customs under BE No. 2699772 dated 24 September 2015 with 20% safeguard duty. Although Customs clearance of these plates was nil duty under Advance Authorisation No. 1110027559 for an export job, the bond value was debited with 20% safeguard duty and it is apprehended that safeguard duty of 20% may be imposed by Customs on subsequent imports.
- b. The domestic industry does not have capability to manufacture following category of carbon steel plates:
 - i. BQ Steel Plates to IS 2002 (ASTM 515 Gr. 70) of thickness of 120 mm and above;
 - ii. Carbon steel plates for pressure vessels to IS 2041 (ASTM 516 Gr. 70 & A537 Class-I, Furnace normalised) of thickness 100 mm and above;
 - iii. Carbon Steel Plates to ASTM 537 class-II (no equivalent IS available) of 80 mm and above.
- c. The intention of the notification dated 14 September 2015 is to levy safeguard duty of 20% on hot-rolled coils to protect the domestic industry and not Plates described as flat products under CTH 7208. Moreover, the Plates, as indicated above are not manufactured by domestic industry and hence there is no need for levy of safeguard duty.
- d. It is requested that suitable amendment/instructions under Notification No. 02/2015 dated 14 September 2015 should be issued to avoid misinterpretation of safeguard provision and exempt import of Steel Plates (Flat Products) falling under CTH 7208 from imposition of 20% safeguard duty.

C. POST-PUBLIC HEARING WRITTEN SUBMISSIONS

I. Domestic Industry

- a. Domestic Industry reiterates all the facts, contentions, averments and statements presented in the petition and requests that such submissions made earlier shall be deemed to be incorporated herein. The earlier submissions on behalf of Domestic Industry should be treated as part and parcel of the present submissions.
- b. Import data upto 19th October 2015 and costing information has been provided.
- c. Domestic Industry has excluded the API Grade Steel from scope of PUC keeping in view the availability of API Grade Steel for Indian users.
 - a. It is being observed by the domestic industry from various reports in media that some of the Indian importers / foreign exporters are trying to evade the provisional safeguard duty applicable on commercial / base grade structural steels (meant for conventional structural applications) in the guise of 'API 5L' grade, which is exempted from safeguard duty. Therefore, Domestic Industry requests DG Safeguards to kindly clarify the exclusion of API Grade Steel with the following explanation:
"API Grade Steel refers to steel intended for manufacturing welded steel pipes used for pipeline transportation systems in the petroleum and natural gas industries"
- d. The Applicants production together accounts for more than 50% of the total production of PUC in India and it represent a major proportion of Indian production of the product under consideration in the country.
- e. The Applicants production together accounts for more than 50% of the total production of PUC in India and it represent a major proportion of Indian production of the product under consideration in the country.
- f. Imports have increased from 2,219,711 MT in the year 2011-12 to 4,167,886 MT in the year 2015-16 (Annualized). Further, imports have increased more than threefold during 2015-16 as compared to 2013-14.
- g. The average quarterly import during 2011-12 and 2012-13 was around 550,000 MT. From that level, average quarterly imports during 2013-14 went down to 323,025 MT. From such low levels, the average quarterly imports during Q2 2015-16 increased to 1,239,103 MT.

- h. Monthly analysis of import data during 2014-15 to Q2 2015-16 indicate that imports have increased aggressively during each month.
- i. There is constant decline in imports prices of PUC.
- j. The year-on-year analysis, quarter-wise analysis and month-wise analysis of imports strongly indicate a sudden, sharp and significant surge in imports of the PUC
- k. Increased imports of the PUC are causing injury to the domestic industry and are having a significant impact on production, sales, capacity utilization and profits of the applicants.
- l. The market share of imports of the PUC has almost doubled in total demand including captive in 2014-15 from the previous year 2013-14. A similar trend is also visible for market share of the PUC in total demand excluding captive. The imports have taken away all the increase in demand of the PUC
- m. The quarterly trends for the recent period indicate that the market share of imports in total demand including captive increased from 7% in the first quarter of 2014-15 to 13% by the fourth quarter. Market share of imports in total demand excluding captive increased from 11% in the first quarter of 2014-15 to 21% by the fourth quarter. The market share of imports in total demand remained high during the first quarter of 2015-16. If imports continue to increase at this pace, the Domestic Industry will be wiped out soon.
- n. During 2014-15, demand (excluding captive) increased by 1,158,614 MT compared to 2013-14. At the same time, sales of the applicant domestic industry decreased by 393,351 MT during the same period. The Domestic Industry has not been able to increase its sales commensurate with the increase in demand.
- o. The domestic industry has made significant investments during 2012-13 and 2013-14 in view of increasing demand of subject goods in India. However, capacity utilization of the Domestic Industry has remained stagnant over the entire period of investigation.
- p. The inventory of Domestic Industry has increased substantially as compared to the base year due to constant pressure of increasing imports.
- q. The domestic industry has turned into losses during Q1 2015-16. Further, the losses have increased during Q2 2015-16. The ROCE of Domestic Industry has declined drastically.
- r. Domestic Industry has been constantly forced to reduce its prices to match with the landed value of imports. If the Domestic Industry does not respond to imports by bringing down its prices, it will loose more customers and the injury would be more severe.
- s. Price underselling which was negative during the first two quarters of 2014-15, has turned positive during the last two quarters of 2014-15 due to the surging imports at alarmingly low prices.
- t. Following are such factors (Unforeseen developments) that may be attributed to the increased imports
 - Crisis in global steel market due to sluggish demand
 - Geopolitical tensions between the European Union and Russia
 - Depreciation of Ruble and Hryvnia
 - Slowdown in China PR led to weak domestic demand and strong urge to export
 - Huge surplus capacities in China PR and Japan and rising steel consumption in India
 - Trade remedy measures adopted by countries like US, Turkey, Thailand and Malaysia has resulted in diversion of exports from major exporting countries to India.
- u. There exists a strong nexus between the sudden and sharp increase in imports of the subject goods and the serious injury being faced by the Domestic Industry.
- v. The landed value of the imports has been decreasing constantly. From April 2014 to September 2015, the landed value of imports has fallen by approx. 30%.
- w. During the month of October 2015, imports from Korea RP are coming into India at CIF value of US\$ 224 per MT. This clearly shows that provisional safeguard duty imposed by Government of India has been absorbed by the exporters.

Submissions by Embassies and Delegations from countries

II. The Trade Representation of the Russian Federation in the Republic of India

- a. The Russian side is extremely worried by the initiation of special safeguard investigation concerning hot-rolled flat products
- b. The main volume of import of PUC into India in the first place came from China PR, Korea RP and Japan.
- c. The Russian deliveries of the production to India for the mentioned periods were insignificant and in no way could affect economic performance Indian producers.

- d. The reduction of share of Russian import confirms the lack of intention of the Russian producers to extend their deliveries to India. The considerable part of it plays the fact that the Russian producers do not have significant export potential for delivery the hot-rolled flat products.
- e. The fact that regulations of WTO stipulates the possibility of pointed neutralization of unfair methods of competition with resort to antidumping or countervailing measures. Besides that, India has Free Trade Agreements with Korea RP and Japan and there is opportunity to settle concern of the Indian side with utilization of bilateral mechanisms stipulated by the Agreements.
- f. The WTO Agreement on special safeguard measures specifies high standards of evidence of injury / threat of injury, which, in accordance with the Agreement, should be classified as serious for purposes of taking some kind of measures.
- g. The economic performance of national industry, in spite of increase in deliveries from China PR, Japan and Korea RP, remains at the same level. Investments level of Indian producers - shows increase.

III. **Federative Republic of Brazil**

- a. Safeguard measures are emergency measures, these should be applied only after complying with the high standards set by the WTO Dispute Settlement Body.
- b. India failed to notify imposition of provisional safeguard measure prior to its imposition, India failed to satisfy the requirements under Article 12.4 of the SA.
- c. The Authority only considered domestic industry's data for the period 2013-14, 2014-15 and for 2015-16, the Authority simply multiplied by four the injury parameters based on the first quarter of 2015-16. Brazil argues that such an approach is incorrect as it is inconsistent with general accounting principles, and also because one quarter of 2015-16 is not sufficient enough to indicate domestic industry's performance during 2015-16, as this financial year has not elapsed yet. Brazil further argues that the Indian Authority chose to ignore data for the period April 2011 to March 2012, despite the fact that such data was available with the Authority. This, according to Brazil is a violation of Article 4.2(a) of the SA. Brazil further argues that the period for examination of serious prejudice should be three years as per the recommendation of the WTO Anti-dumping Committee and the period of two years and one quarter in this case is not sufficient. Brazil argues that the period of investigation cannot be reduced on a justification that actual data for most recent period would be collected during the course of the investigation. In light of these contentions, Brazil argues that India has failed to comply with the objectives set out in the SA.
- d. Injury parameters of the domestic industry do not indicate existence of serious injury or threat thereof. It appears that Brazil has only referred to injury parameters as given in the preliminary findings but not in the petition.
- e. There is no causal link in this case, as an analysis of other factors indicates that injury to the domestic industry is not due to imports but other factors.
- f. Share of each exporting country has not been informed by the Authority and a list of developing countries has also not been provided. Brazil also argues that the period taken into account for calculation of the volumes imported from each source has not been specified. Due to lack of such essential information, Brazil argues that it has not been able to exercise its right of defence under Article 3.1 of the SA.
- g. Brazil argues that there is no serious injury or threat thereof to the domestic industry, and there is no causal link as well. Brazil further contends that formal requirements such as notification to the WTO and publication of essential information have not been observed in this case.

IV. **China PR**

- a. There is no unforeseen development in terms of Article XIX of GATT and what has been experienced by Petitioners is normal market fluctuation which cannot be ruled as unforeseen.
- b. There are no critical circumstances within the meaning of Article 6 of the Agreement on Safeguards ("SA") that warranted imposition of provisional safeguard duty.
- c. There is no serious injury or threat thereof to the domestic industry.
- d. Imposition of safeguard duty is not in public interest as downstream industries such as automotive and consumer durables might suffer.
- e. Provisional safeguard duties should be immediately revoked.

V. **Chinese Taipei**

Taiwan's primary concern is that its name does not feature in the list of developing countries that was notified by India vide Notification No. 103/98-Cus dated 14 December 1998. Taiwan believes that since it is not on the

list, if safeguard duty is imposed, imports from Taiwan would be subjected to safeguard duty even though imports from Taiwan were below 3% during the most recent period as per World Trade Atlas statistics. Taiwan has sought assistance from the Hon'ble Director General to update the aforesaid notification so that Taiwan's economic status as a developing country is reflected correctly.

VI. European Commission

- a. Safeguard instrument should be used in exceptional circumstances only and the present case is suitable for anti-dumping or anti-subsidy investigation.
- b. Certain specific grades of the subject goods should be excluded from product scope as the domestic industry may not be manufacturing them.
- c. Use of annualised figures for 2015-16 is not objective and injury analysis as well as causality is not conclusive based on such annualised figures.
- d. Data for a longer period should have been considered for 2015-16. Factors considered in determining serious injury and causality including the market share, production, capacity, utilisation rate, employment, profits, market share etc. are insufficient and these factors do not indicate injury and causality.
- e. Captive sales and sales by other domestic producers should be examined. Indian producers have increased their open market sales by 42%.

VII. Government of Indonesia

- a. Indonesia notes that levy of provisional safeguard duty would impact their exports to India.
- b. Imports have increased by 97% between 2013-14 and 2014-15 but the increase between 2014-15 and 2015-16 (Annualised) was only 33%. Therefore, there is general decline in the level of increase and such imports should not be treated as sudden, sharp, significant and recent.
- c. There were no critical circumstances that warranted levy of provisional safeguard duty.
- d. UN Comtrade data shows that imports of the subject goods from Indonesia were below 3% and therefore, Indonesia should be outside the purview of safeguard duty as it is a developing country.
- e. Indonesian company PT Krakatau Posco only produces specific product under the classification of "not in coil and/or hot rolled plate". There is no export of steel product with specific type of "in coils" from Indonesia.
- f. Consequently, imports from Indonesia cause no serious injury to the domestic industry.
- g. India has increased import duty on steel recently but imports from certain Asian countries are happening at low duty to bilateral trade under India-ASEAN FTA, India-Japan CEPA and India-Korea CEPA.

VIII. Republic of Turkey

- a. Competent authorities are required by the WTO rules to identify the existence of "unforeseen developments" which have led to "increased imports" causing or threatening to cause "serious injury" on the relevant domestic industry.
- b. The notifications by India to the WTO do not contain a reasonable or adequate explanation/analysis concerning the existence of unforeseen developments. The Indian authorities should clarify what are the unforeseen developments that led to alleged increase in imports of the subject goods.
- c. Increase in imports on annualised basis for 2015-16 does not show the correct picture. Extrapolation on figures in the first quarter of 2015-16 and disregarding 2011-13 periods raise questions and pave the way for misleading perceptions in analysing the effects of imports on the Indian domestic industry.
- d. Movement in injury parameters for period 2011-12 and 2012-13 should also be examined. Slight increases in imports in recent period should be regarded as routine.
- e. Upward movement of profitability in 2013-14 and 2014-15, and increases in sales during the injury analysis period do not indicate serious injury to the domestic industry.
- f. There is no causal link between increased imports and serious injury. The domestic industry is suffering injury due to other factors. For example, Annual Report 2014-15 for SAIL shows that profitability was affected due to stagnant sales, higher salaries and wages higher usage of imported coal and higher depreciation of capitalisation of new facilities, and reduction in interest earning on term deposits.
- g. Turkey's imports are less than the 3% threshold, and therefore, Turkey should be excluded from the purview of safeguard duty in terms of Article 9.1 of the Agreement on Safeguards ("SA"), as it is a developing country.

IX. Embassy of Ukraine

- a. Imports of the subject goods increased only by 14% in 2014-15, as compared to 2011-12. Such a slight increase in imports cannot be considered as significant enough to cause or threaten to cause serious injury.
- b. The Authority initiated the investigation based on forecasted data for 2015-16, which was annualised based only on the first quarter of 2015-16. Thus, the Authority violated Article 2 of the Agreement on Safeguards (“SA”) when it took the decision to initiate this safeguard investigation and impose provisional safeguard duty based on forecasted data.
- c. Ukraine relies on import data from International Trade Centre to demonstrate that there were no increases in imports of hot-rolled products in India under the headings 7208 and 72253090 during the injury analysis period. As per this data, imports into India decreased by 41% in 2014, when compared to 2010 levels.
- d. Consequently, there was no reason for India to initiate the investigation or impose provisional safeguard duty within the meaning of Article 2.1 of SA.
- e. Industry indicators show positive trends for domestic sales, production, market share, capacity, capacity utilisation when parameters are compared in 2014-15 vis-à-vis 2011-12. Therefore, there was no reason for India to come to a positive determination for serious injury under Article 4.1(a) of the SA. Consequently, there were no critical circumstances that warranted levy of provisional safeguard measures under Article 6 of the SA.
- f. There is no causal link in this case in terms of Articles 2.1 and 4.2(b) of the SA, as injury to the domestic industry is due to loss of market share to other domestic producers. Consequently, competition between domestic producers was the other factor causing injury to the domestic industry.

Submissions by Producers/Exporters and Associations

- X. **China Iron and Steel Association; Angang Group Hong Kong Co. Limited; Angang Steel Company Limited; Shanghai Meishan Iron & Steel Co., Limited; Angang Group International Trade Corporation; Baosteel Singapore Pte Ltd; Maanshan Iron & Steel Co., Ltd.; Benxi Iron & Steel (Group) International Economic & Trading Co., Ltd.; Jiangsu Shagang Group; Handan Iron & Steel Group Co., Ltd. represented by Athena Law Associates**
 - a. Safeguard measures are based on a “no fault principle” and applied on imports that are made fairly and not with the intention of hurting the domestic industry. Therefore, recourse to safeguard measures should be taken only in strong cases where there is no other alternative other than imposition of duty to save a dying industry. The Appellate Body in *Korea – Dairy* held that safeguard measures are extraordinary remedies which should be adopted only in emergency situations. The present petition does not demonstrate an extraordinary or emergency situation and thus should be dismissed.
 - b. The PUC selected is too wide and placed together heterogeneous products. As per Section 8B(1) of the Act read with Rule 4, a duty is cast upon the DG to specifically identify the article liable for safeguard duty. The PUC needs to be identified in singularity and there may be plurality of articles which can be called like articles. The Delhi High Court in *Andhra Petrochemicals Ltd. v. Designated Authority* supports this argument. In the present investigation, the products classified under subheading 7225 are materially different from the articles classified under subheading 7208. Therefore, the products under the two heading which are not identical and which are plural or heterogeneous in nature cannot be put together in one basket to determine a single PUC.
 - c. Section 8B of the CTA read with the Safeguards Rules and interpretations of the articles of the agreement by the WTO show that the fundamental prerequisites for a safeguard duty to be imposed are – sudden and sharp increase in imports; sudden increase should be on account of unforeseen developments; serious injury or threat of serious injury to the domestic industry; causal linkage between injury and increased imports; ability of domestic industry to adjust itself to meet competition after withdrawal of duty; and duty must not be against public interest. The above legal standards have not been met in the present investigation.
 - d. There is no sudden and sharp increase in imports of PUC. Imports were 1.29 million MT in 2013-14 and increased to 3.38 million MT in Q1 of FY 2015-16 (Annualised). An endpoint analysis with the latest period is misleading and the authority should consider a wider and realistic analysis. The AB in *US-Certain Steel Products* held that examination must not be restricted to merely end points but rather must consider a wider examination considering the facts of the case.
 - e. An examination of the import information over the years and even a quarterly examination of imports during FY 2014-15 shows that there is no sudden and sharp increase in the imports in the recent period. Imports have rather declined in Q1 of FY2015-16 from 3.60 million MT in the previous quarter to 3.38

- million MT. There were sharp increases between 2013-14 and 2014-15 but the domestic industry was in profit then. The increase, if any, was of a temporary nature with a strong reversal character as evident during FY 2015-16 (Q1).
- f. Article XIX of the Safeguards Agreement and the interpretations by the Panel in *Argentina – Footwear* and the AB in *US-Certain Steel Products* hold that safeguard actions are of an exceptional nature which should be adopted only in exceptional circumstances. Applicant has relied upon unsubstantiated claims such as crisis in global steel market, geopolitical tension, depreciation in currency, slowdown in China, huge surplus capacities in China and Japan, trade measures by other countries. However, these claims do not establish the existence of unforeseen developments concerning the product. Applicants claim that exports from Russia, Ukraine, China and EU have suddenly increased on account of geopolitical tensions, excess capacity and currency depreciation is a false statement. Imports from China diminished by almost 50% between FY 2014-15 and FY2015-16(Q1). Also there was a dip of 4.22% between 2011-12 and FY2015-16(Q1). Therefore, there is no logical connection between the increase in imports and the alleged injury caused.
 - g. The Authority should take into account all relevant factors of an objective and quantifiable nature while evaluating whether the increased imports have caused or threatened to cause serious injury to the domestic industry. The following facts demonstrate that no serious injury or threat of injury has been caused to Applicant:
 - i. Production of domestic industry has remained stable but production of other producers has increased by almost 15 points.
 - ii. No significant changes in the capacity of the Applicants. Even if the entire demand was met by the Indian producers, there would be excess capacity in India. The excess capacity is obviously targeted towards exports markets
 - iii. Sales of domestic industry increased and that of other domestic producers is much higher.
 - iv. Indian producers hold 88% of the Indian demand and only 12% is held by imports.
 - v. ROCE has increased, particularly in FY2015-16 (Q1) over FY 2012-13. The decline in FY2015-16 (Q1) should be examined by the inverse relation between increases in ROCE at a time when the domestic industry has alleged existence of serious injury.
 - vi. There is no correlation between selling price and landed price of imports. In fact there is an inverse relation, where the landed price increased during FY14-15(Q1) and the selling price of the domestic industry declined. In FY2014-15(Q1) the profits increased but the landed price declined.
 - vii. Inventory levels do not show any adverse situation.
 - viii. Productivity and employment remain robust.
 - h. Indian producers have participated selectively with companies such as Tata Steel, Bhushan Steel not giving injury data. Therefore, DG should examine injury data of the supporting producers as well to comprehensively examine the alleged injury situation of the domestic industry.
 - i. The Applicant has not provided information to establish that it is suffering injury. Further, there is no causal link between alleged injury to the domestic industry and the alleged increased imports.
 - j. The Annual Reports of JSW indicate that other reasons have a serious bearing on their performance. The other circumstances must be examined by the Authority.
 - k. The provisional findings were issued in haste and there did not exist a situation so critical that any delay in imposing provisional measures would cause irreparable damages. The critical circumstances required for provisional measures have not been fulfilled.
 - l. Paragraph 10 of initiation notification stated that interested parties were to be given 30 days to make their views known to the authorities but without waiting for any response the authority issued the preliminary findings.
 - m. Applicant do not qualify as domestic industry under Section 6(d) of the CTA as it cannot be concluded that the Applicants constitute 50% of total Indian production.
 - n. The Applicant has claimed excessive confidentiality and does not allow a reasonable and meaningful understanding of the domestic industry's case.

- o. Applicant has not provided any adjustment plan and the preliminary findings also do not mention an adjustment plan. In an application filed by United Phosphorus in 1999 for safeguards duty imposition, the authority refused to impose a safeguard duty on the ground of lack of an adjustment plan. Imposition of the safeguard duty is not in public interest. The term “public interest” has not been defined in the safeguards laws but has been interpreted by the Apex Court under different laws. In an application filed by United Phosphorus in 1999 for safeguards duty imposition, the authority refused to impose a safeguard duty on the ground that imposition of the duty would not be public interest.

XI. Metinvest Group represented by Van Bael Bellis

Metinvest Group filed a summary of their contentions taken in the pre-hearing submissions, which have been comprehensively summarised earlier. The contentions are not repeated herein for the sake of brevity.

XII. Dillinger Huttenwerke

- a. Name of the company mentioned in the notice sent to us by the Authority is ‘Dillinger and Salzitter’ whereas the correct name is ‘Dillinger Huttenwerke’.
- b. We are not engaged in production or exports to India of the subject goods. We are producing heavy steel plates which are materially different from PUC.

XIII. JFE Steel Corporation, Nisshin Steel Co., Ltd., Nippon Steel & Sumitomo Metal Corporation and Kobe Steel Ltd. represented by AZB & Partners

- a. DG Safeguards has failed to examine the adequacy and accuracy of evidence in terms of Rule 5(3) of Safeguard Rules.
- b. The DG Safeguards has erred in issuing the preliminary findings in absence of critical circumstances in terms of Article 6 of the Safeguards Agreement and Rule 2(b) of the Safeguards Rules.
- c. Petitioner has not provided any coherent methodology in arriving at the product under consideration. HRC being imported are used in a variety of downstream industries such as automobiles, home appliances, transportation equipment, fabricated steel products, and construction materials.
- d. There are no manufacturers in India to supply the specific grades of PUC that are exported by the Japanese mills.
- e. HR products exported by the Japanese mills to India differ in chemical composition (content percentage) of components such as carbon, manganese, silicon, boron and phosphorous remedies against impurities, which are tailored to meet the specifications prescribed by the end-user.
- f. Hot-rolled products exported to India satisfy certain OEM required specifications high hole expansion rate, high formability, required tensile strength, conditions of surface, etc., which the domestic industry till date has not been able to produce successfully. The Indian customers rely exclusively on the hot-rolled steel coil supplied by certain Japanese mills, since it is critical for the structural application and no perfectly substitutable product is manufactured by any domestic manufacturer.
- g. The process of selecting an HRC supplier is a long drawn and expensive process and involves many rounds of testing to ensure that the product meets stringent quality standards to ensure reduced weight and high strength of the automobile component. All material sources are decided early during the model development and it is very difficult for an Automotive OEM to switch sources of HRC during the lifetime of the model in order to ensure consistency in the quality of cars manufactured. Therefore, even after imposition of safeguards, auto-manufacturers will need to continue use of imported HRC directly or indirectly, which will need to continue use of imported HRC directly or indirectly, which will lead to a significant increase in the manufacturing cost of automobiles.
- h. The DG Safeguards has clubbed all grades of hot-rolled coil products into a single PUC. It is not clear from the application and preliminary findings if the PUC excludes hot-rolled coil products which are exported by the Japanese mills but not manufactured by the domestic industry and Petitioners.
- i. There are no unforeseen developments in terms of Article XIX:1(a) of GATT and there are no increased imports in terms of Article 2.1 of the Safeguards Agreement.
- j. There is no serious injury to the domestic industry. There is no decline in production levels of the domestic industry. Market share seems to have declined but such analysis is based on annualisation of data for 2015-16 based on the first quarter, which does not show the correct picture. Market share of domestic industry has declined due to inter-se competition. Captive consumption by Petitioners has increased. There is no decline in productivity and employment, capacity utilisation, profits have increased in 2014-15 when

imports have also increased in the same period. The domestic industry is already protected by the high customs duty of 12.5% on HR coils.

- k. There is no causal link in this case. The domestic industry has also failed to identify other factors that may have caused injury.
- l. The domestic industry is struggling to produce finished steel products with economic efficiency and cost-effectiveness due to unavailability and high cost of raw materials. High transportation cost and poor infrastructure is also impacting the domestic industry.
- m. Hot-rolled products are not manufactured in adequate quantities by the domestic industry and imports are necessary for downstream industrial users. Indian producers exported 1.3 million tonnes of HR coils in order to maintain shortages and high prices in the domestic market. Shortage of supply of PUC in the domestic market is evident in the JPC data, which is maintained by the Ministry of Steel. Therefore, safeguard duty will not be in public interest and in particular detrimental to the Indian auto industry. It will also frustrate the aims and objectives of Make in India programme of the Government of India. Safeguard duty will also be detrimental to downstream producers of cold-rolled products.
The DG Safeguards may consider applying tariff-rate quotas on HRCs for construction use, as the domestic industry does not produce these products in sufficient quantities.

XIV. **Arcelor Mittal Brasil Sa**

- a. As a preliminary remark, while the Petitioners provided the volume of imports for the period 2011-2012 to 2014-2015, the Indian authorities, in their notice of initiation, decided to retain an **investigation period from 2013-2014 until 2015-2016**. AM Brasil highly challenges the investigation period selected by the Indian authorities which also includes **2015-2016 based on annualized data**.
- b. In fact, the situation of imports shows a significant decrease from 2011 until 2014: by 13% between 2011-12 and 2012-13, and by 40% between 2012-13 and 2014-15. Between 2011 and 2014, imports decreased by almost 50%.
- c. The decrease in 2013-2014 was followed by a recovery of the imports levels to a level comparable to the level prior to the decrease and can hardly be viewed as “sharp, significant, recent and sudden enough”, as such notions were defined by WTO case law.
- d. The way the volume of imports was computed for the most recent period, through annualization based on Q 1 2015-2016 is likely to lead to biased results.
- e. If imports increased (by 14%), it must necessarily be analyzed in conjunction with the evolution rate for consumption (+ 29%)
- f. The (excessive) focus on profit for one quarter of the investigation based on an annual basis is likely to lead to biased results. All the more that all other factors show stability or positive evolutions.
- g. Petitioners lost 5% market share when non petitioners gain 5% market share. It is an indication of a lack of coincidence between alleged injury and imports and that there is in fact an internal competition issue.
- h. While the domestic industry’s sales remained stable throughout the period, its captive sales increased by 24%. It is against the demonstration of a serious injury?
- i. There is currently a lack of reasoned and adequate explanations as to the justification for the imposition of safeguard measures in this case
- j. Imports from Brazil must fall within the “developing country” clause
- k. Its imports to its Indian related downstream company must, in any event, be excluded from any safeguard measures, for reasons linked to the public interest, the principle of proportionality (Article 5.1 of the WTO Safeguard agreement), and the need to protect investment

XV. **China Steel Corporation**

- a. The investigation process followed by the Directorate General (Safeguards) is totally contrary to the instructions given to all the interested parties with regard to filing of responses to the Initiation.
- b. The Directorate General (Safeguards) did not wait for the basic process to complete and in a hasty manner issued its Preliminary findings with thin 3 days of the initiation of the investigation.
- c. Trade Notice SG/TN/1/97 dated 06-09-1997 puts an obligation on the Directorate General (Safeguards) to issue its findings (whether Preliminary or Final) only after due investigation. An investigation is not complete unless all interested parties are given an opportunity to participate.

- d. The Directorate General (Safeguards), being a **Quasi-Judicial Authority** is bound to follow Principles of Natural Justice. The Preliminary Findings issued in the instant Investigation are, however, in gross violation of the **Principles of Natural Justice** as enshrined under the Rules and Trade Notice issued by Directorate
- e. The Domestic Industry had adopted base year as 2011-12 as base year but DG Safeguards has of its own has changed the base year.If DG Safeguards adopted 2011-12 as base year there would not have been any increase in imports rather market share of imports from China in total demand would have shown a decline from 20% to 12%. On the contrary the DG Safeguards has adopted a base year as 2012-13 to show an increase from 6% to 12%. This playing of numbers clearly shows that DG Safeguards has acted in a manner to favour the Domestic Industry.
- f. Domestic Industry has been seeking undue and unwarranted protection from the Government from time to time.
- g. No non-confidential version of the adjustment plan was ever filed by the Domestic Industry.
- h. Article 3(1) of the WTO Agreement on Safeguards requires that the investigation Authority should record its findings as to whether imposition of Safeguard duty will be in public interest or not. The Preliminary Finding is silent on this issue.
- i. Taiwan is widely regarded as a developing country by multiple WTO members and international organizations and hence Imports from Taiwan must fall within the “developing country” clause.
- j. High-strength steels (HSS) used primarily by the Indian automobile industries, including, but not limited to, E34 SS4012A, JSH780RNN-22002OP, SAE 1005M, SAE 1006, SAE 1006M, SAE 1008, SAE 1040, SCM435, SPA-H , SS400, SS490, CUST-S235, JSH590RNN-22002OP,JSH780RNN-22002OP, SAE 1010 , SAE 1020 , SAPH 440, and SPHC grades, as well as CSC’s own standards compatible with the foregoing international standards catering to auto industries should be excluded from the safeguard measure .
- k. A mere 4.35% increase in market share simply cannot be “sharp enough” or “significant enough”, and hence cannot constitute a “surge” by any count.¹ As such, there is no critical circumstance existing whatsoever on the record of this case that justifies the preliminary safeguard duty.

XVI. **Hyundai Steel Company, Korea:** M/s Hyundai Steel Company, Korea vide their e-mail informed that their earlier submission dated 08.11.2015 (summarized above) may be treated as their final submission in the matter.

Submissions by Importers, Users and Associations

XVII. **Mitsui & Co., Ltd./Japan**

- a. Mitsui has currently 23 joint ventures in India and one of them is M/s. Indian Steel Corporation (ISC) in Gujarat State.
- b. Currently ISC is suffering from SG duty. SG duty on HRC is at a policy of one-sided and favoring domestic integrated steel mills. The interest of the downstream industries should also be considered properly.
- c. There are certain needs for HRC import from Japan, in terms of demand & supply gap in India HRC, quality difference such as fewer defects, surface quality, higher productivity, size/grade availability.
- d. The ISC does not have enough size to absorb SG duty as integrated mills like Sail, JSW, Tata, etc. and now ISC is facing a serious situation. As such, HRC from Japan for major re-rollers is based on MOU, a kind of long term understanding of supply & purchase.
- e. From foreign investor’s point of view or as shareholder of ISC, if favoring HRC or raw material industry through safeguard duty only at the expense of steel user segments or manufacturing, it is hostile environment for growth of manufacturing industries, obstacle for foreign investment and “Make in India” vision.

XVIII. **Federation of Industries of India (FII)**

- a. HR Coil is a basic raw material consumed by thousands of downstream engineering units in the Country.

¹ See Appellate Body Reports, *Argentina — Footwear (EC)*, paragraph 131.

- b. 20% Safeguard Duty together with a regular customs duty of 12.5% aggregating to 32.5% on HR Coil, and a lower average of 10% import duty on finished downstream products, would give a fillip to imports of finished goods into India.
- c. The downstream units in India are merely processing the HR Coil to produce CR Coil, GP/GC sheets, Pipes & Tubes, Color Coated Sheets etc.
- d. Safeguard duty imposed on HR Coil without imposing any duty on the downstream products has no meaning and this will finish the value adding downstream Industry in India.

XIX. Nippon Steel & Sumikin Pipe India Co., Ltd.

- a. From a plain reading of Article 2(1) the SGA along with Rule 2 of the SG Rules, it is clear that safeguard measures cannot be imposed on imports that are not identical or alike in all respects to the products produced by the domestic industry.
- b. The Hot Rolled Coils (**HRCs**) imported by NPI must be excluded from the scope of the PUC as they are not 'like or directly competitive article' to the products manufactured by the Domestic Industry.
- c. NPI imports very specific types of HRCs to make automotive pipes and tubes required by its customers in India.
- d. *HRC produced by the DI differ in chemical composition from HRC's imported by NPI*
- e. *HRC's produced by the DI differ in quality from those imported by NPI*
- f. NPI imports HRCs for use in manufacture of automotive pipes that Indian domestic steel manufacturers (i) are unable to supply HRCs of sufficient quality or (ii) have not obtained the approval from the ultimate end users (i.e., the automobile manufacturers).
- g. NPI is unable to use HRCs produced by the Domestic Industry because the Domestic Industry has not secured industrial user approval for their products.

XX. Cold Rolled Steel Manufacturers Association in India (CORSMA)

- a. D.G. Safeguards in his Report dated 09th September 2015 while recommending the imposition of Provisional duty of 20% on the imports of HR Coils has based his decision on the data for only two and a half years in violation of norms.
- b. A casual scrutiny of the data in the Petition regarding production, exports, imports and inventories of HR Coils shall reveal that has been manipulated to confuse the issue by dividing the data in to groups and subgroups and expressing the variations in percentages rather than actual figures.
- c. No analysis has been done to identify the reasons for the variations for remedial action for a rational decision on the Petition by the Govt.
- d. The statement made by the Petitioners in regarding surge in imports in April-July 2015 is entirely misleading and as it does not indicated reasons for rise in imports in April-July 2015 y.o.y., simple analysis shall reveal that imports rose from 4.71 lakh tonnes in April-July 2014 to 1.144 million tonnes in April-July 2015 by 6,73,000 tonnes due to decline in domestic production and rise in consumption
- e. The Petitioners have alleged that the domestic producers have suffered an injury due to rise in inventories due the high imports but as per data published by JPC there has been no rise in inventories.
- f. The Petitioners have held that there has been loss in profitability due to imports but it is not tenable as per the JPC data.
- g. It has been held by some producers that the high prices of HR Coils in India are due to high cost of power, interest rates and Land. It may be clarified that most of the Petitioners have their own captive Power Plants and the issue is the high Power consumption per tonne of Steel by around 30% vis a vis the global standards which needs reduction.
- h. The imports of Hot Rolled Coil were essential, diversified and at global prices to bridge the gap between the domestic availability and production both in terms of quantity and quality.
- i. The rise in imports in the first quarter of 2015-16 was due to the facts that while the domestic consumption of HR Coils increased by 3,62,000, the production declined by 2,63,000 resulting in higher imports.
- j. The imports were at global prices in line with the Indian producer exported over 1 million tonne of HR Coil in 2014-15 and 2 lakh 30 thousand tonne in April-Sept 2015-16.

- k. The Hot Rolled Coil producer have been making high profits in the past five years by fixing the domestic prices on landed cost basis and losses incurred by some of them may be directly attributed to indiscreet investments in India and abroad in Steel and other industries incurring debt and interest burden.
- l. The financial performance should be improved by sale of stake as held by RBI rather than destabilize the industrial and economic growth of the country by blocking Steel imports and monopolistic pricing by the domestic producer.
- m. The imposition of Provisional Safeguard duty on the imports of HR Coils has also led to inverted duty structure as while be total import duty on HR Coil the intermediate product amounts to 32.5%, the duty on the finished Cold Rolled products is only 12.5% and lead to heavy imports of value added Cold Rolled products hitting the domestic industry.

XXI. Tubes Limited & Nezone Strips Limited

- a. They produce Black Pipes, Rectangular & Square Hollow Sections and Galvanised Pipes at their plant located at Dankuni, Hooghly, West Bengal and Ranipet, Vellore, Tamilnadu.
- b. They opened the L/C on 21/07/2015. The last date of shipment in the aforementioned Contract and L/C was 30/09/2015 and the material was shipped on 29/09/2015 and 20% Safeguard Duty was imposed on 14/09/2015.
- c. This imposition resulted in huge unforeseen cost to them which is threatening their existence.
- d. All integrated plants also produces downstream products and capitally consume H.R. Coil as Raw material, hence are not in a position to supply H.R. Coil to the standalone downstream industries like them who consume H.R. Coil as Raw material.
- e. The other domestic industries i.e. SME like NTL will have to compete with integrated plants paying 20% Safeguard Duty & 12.5% Custom Duty to the exchequer.
- f. The export of downstream product will be impossible by SME Industries as the prices of H.R. Coil, their Raw material will be arbitrarily hiked by effect of the Safeguard Duty.
- g. Levy of Safeguard Duty on H.R. Coils having width more than 600mm will encourage import of sub-standard H.R. Strips having width less than 600mm.
- h. Safeguard Duty will also encourage import long products like billets etc. for Re-rollers which in turn again suffers with the quality issues.
- i. The demand for H.R. Coil in India will diminish as all downstream products will be imported and thus defeating the very purpose of Safeguard Duty of protecting domestic industries.

XXII. POSCO, Korea & POSCO Steel, Maharashtra

- a. A significant percentage of the PUC (almost 90%) has been imported for use exclusively by POSCO Maharashtra from POSCO Korea, as raw materials or their downstream product. Therefore, 90% of the said import of PUC is captively consumed by POSCO and does not compete with like goods in domestic market in India.
- b. The volume of imports which is captively consumed must be excluded from the total volume of imports so as to depict a true picture of the volume of imports competing directly in the market and to enable us to compare data fairly.
- c. Authority has included captive consumption of PUC by the domestic industry and domestic industry supporters for deriving the total demand of PUC in the market, they have excluded the captive consumption of domestic industry while calculating its % market share in domestic market.
- d. However, at the same, no such method has been adopted for calculation of % market share of imports as the volume of imports captively consumed (which is a major proportion) has been considered for calculating the % market share of imports in domestic market.
- e. Market share of other producers have increased from 25% (2011-12) to 31% (2014-15). The market share which is alleged to have been lost by the Petitioners, has been taken up by other producers, and quite evidently, has not been captured by imports.
- f. The surface quality of the PUC supplied by the DI cannot be used and is often rejected due to the low quality.
- g. The exact grade of the PUC which do not meet the quality requirements have been tabulated and are enclosed with submission as **Exhibit – V**.

- h. Reasons for alleged decrease in sales of domestic industry are due to: (a) underutilization; (b) high debt/finance cost (being a capital intensive industry); (c) PUC when exported by DI are those prevalent in the global market; (d) PUC when sold by DI in domestic market is much higher than the global/international prices.
- i. The analysis of injury has been done on the basis of first quarter of 2015-which is not a correct method for injury analysis and a significantly long period of time must be considered for this purpose.
- j. A news article dated 05.06.2015, published by Business Standard and uploaded on JSW's website clearly states that JSW has had a 75% increase in net profits while SAIL saw a 24% dip in profits which was attributable to high finance costs.
- k. Safeguard duty imposition in direct contravention of India-Korea Partnership Agreement ("CEPA") signed in 2009, where India has undertaken to bring down duty to zero on PUC.
- l. There is no causal link between alleged surge in imports and injury suffered by DI.

XXIII. V.K Industrial Corporation Limited

- a. The company is an importer and stocks flat steel products.
- b. Capacity utilization of domestic steel firms is 76% which is higher than the world average of 72.86%. There has been no decline in the capacity utilization.
- c. Production of domestic steel firms has increased proportionately to the increase in capacity.
- d. There have been no job losses in 2014-15 but instead it has increased by 0.2%
- e. There has been hardly any market loss for domestic manufacturers. Three year average of market share of importers was 9% which increased to 10% in 2014-15. The 1% increase cannot be considered as causing injury.
- f. Prices of hot rolled coils have plummeted globally over the last year. Reason for the decline is fall in prices of iron and coal which are the most important raw material required for steel production. Iron ore prices fell by 41% and coal by 21% in 2014-15.
- g. Domestic producers are facing high costs compared to their global counterparts due to the following reasons:
 - i. High freight costs as logistics costs in India are very high. Global steel producers are located near the shore which reduces their costs.
 - ii. The ban on iron ore mines in India has reduced iron ore production as a result the decline in iron ore prices in India was minimal. Not all domestic producers have captive iron ore mines and even those that have captive ore mines have higher costs due to royalties, duties and higher pricing bids.
 - iii. Capital costs in India are very high in comparison to countries like China.
- h. The safeguard measure will protect the domestic industry only temporarily and not strengthen the industry permanently.
- i. Domestic producers are earning profits and sustain high turnovers. The World Steel Association reported that India had a 2.8% growth in steel output while world steel production fell by 3% in 2014-15.
- j. Imports are a lifeline to SMEs that are trying to compete with MNCs. The imposition of the safeguard duty has put the supply chain partners in deep losses.
- k. India thrives on exports of capital goods and steel is one of the main raw materials for production of these capital goods. Exporters of these products will therefore face very high production costs and become incompetent. Imposition of safeguard measures on steel will reduce capital goods export by 25% and increase costs by 15% compared to global competitors.
- l. The safeguard duty has disappointed many foreign investors and puts India's relationship with Korea in jeopardy. Therefore, foreign investment will decrease in India.

- m. Imposition of safeguard duties will increase the costs to engineering firms in India by 33-35%. Therefore, importing the capital good will make for economic sense rather than manufacturing the same.

XXIV. Hyundai Motor India Limited

- a. It will be retrograde step if safeguard duty is imposed on raw materials like HR coils of steel, since it will raise the prices of passenger cars and make them unsalable in India as well as international markets and our exports will further come down.
- b. Most passenger car companies import Automotive Grade HR Coils for quality reasons, since the imported steel is required to have a delicate balance of “High Tensile Strength” and “Formability” (or ability to take shape). We will continue to import this grade, as safeguard duty will not be an incentive to us to shift our purchases from foreign sources to Indian mill makers.
- c. Automotive Grade Steel is imported at USD 600 – USD 700 per ton and there is absolutely no logic to further raise this price by imposing safeguard duty.
- d. Customs duties are about to approach zero under India-Korea CEPA, and in anticipation of this, Korean companies have lot of investments in India. It will be unfair to now impose a 20% safeguard duty on Korean firms, which are importing in the price range of USD 600 – USD 700 per ton.
- e. Korean Automotive Grade Steel imported by car manufacturers’ OEM should be excluded from the scope of the investigation. If this is not possible, the Authority may fix a reference price of USD 450 – USD 500 per ton so that all imports above this price will be exempted from payment of safeguard duty. This will protect domestic industry without affecting genuine importers of high quality material and export volumes.

XXV. Manaksia Steels Limited

Manaksia Steels Limited is an importer of the subject goods in India. They have made the following submissions:

- a. The imposition of Safeguard Duty is forcing the Industry to shut down their operations as the Product under Consideration is one of the major raw material for their finished products.
- b. Landed cost of our raw material “Hot Rolled Steel Coils” is higher than the landed cost of imported “Colled Rolled Steel Coils”, which is our finished product.
- c. Due to imposition of Safeguard Duty the import price of Pre-painted Galvanised Coils is less than the imported Hot Rolled Steel Coils as raw material.
- d. The imposition of Safeguard Duty is against the concept of “Make in India”.

XXVI. Maruti Suzuki India Limited

- a. The Preliminary Finding was issued by the DG Safeguard within 2 days of initiation of Investigation, without providing an opportunity of being heard to the importers, exporters and other interested parties. There by violating the Principles of Natural Justice. The Authority has issued the preliminary finding in haste. They have relied upon:
- Siemens Engineering & Manufacturing Co of India Ltd. v. Union of India &Anr. [1976] Suppl. S. C.R 489,
 - C.B Gautam V. Union of India (1993) 1 SC 78,
 - Swadeshi Cotton Mills vs. Union of India 1981 SCR (2) 533,
 - Automotive Tyre Manufacturers vs The Designated Authority &Ors. 2011-TIOL-03-SC-CUS.
- b. The Directorate General of Safeguard in the present case was appointed on September 7, 2015. The reliance was placed on in Automotive Tyre Manufacturers vs The Designated Authority &Ors. Where-by it was stated that the new designated authority should have provided a separate hearing.
- c. India being member of Comprehensive Economic Partnership Agreement needs to abide by Article 23 of the FTA. Which states that India needs to follow certain specific guidelines in case of safeguard investigations initiated under FTA. FTA provides for a different regime for the initiation of bilateral safeguard measures with additional mandatory requirements to be complied with. The Authority has completely ignored the provisions of FTA in relation to bilateral safeguards and the special conditions and procedure set out therein.
- d. In the present case no intimation has been provided to the Embassy/ Government of Japan regarding the initiation of the investigation proceeding regarding the import of the product under Consideration from Japan. The act of issuing a Preliminary Finding by the Authority, without providing any intimation or information to the Embassy/ Government of Japan, is an act of clear defiance of the provisions of the FTA. The reliance was placed on US- Underwear , Appellate Body Report, US-Underwear, where it was held that

- prior publication of a measure, as required under Article- X of GATT, could not in and of itself, justify the retroactive effects of applying import quotas with respect to imports during a period starting before the quota's publication date.
- e. No methodology for determination of the product under Consideration as the subject product for imposition of safeguard Duty on the import of the Product under consideration. The transaction wise import data made available by the petitioner has various discrepancies and at various instances proper gradation and series identification with respect to the imported product has not been done by the petitioner. Therefore certain products identified by the petitioner in the petition and thereafter relied upon by the Authority in the Preliminary Finding for the import data are not correct and fall outside the scope of Product under Consideration.
 - f. In the past also the Designated Authority in Anti-dumping investigation had excluded certain Colled Rolled Steel Products imported from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA, from the scope of investigation for the reason that those were not considered to be like article within the meaning of the Safeguard Rules.
 - g. In the instant case, the petitioner has sought inclusion of all grades including such grades which were specifically excluded and were not considered 'like product' within the scope of the product under consideration.
 - h. DGCI &S should be consulted to corroborate and authenticate the import data of the Product under Consideration as provided by the Petitioner.
 - i. The Authority has nowhere recorded the Product under Consideration with that of the products imported by the imported by the importers on the touchstone of the definition of "like product" as provided in the Rule 2 (e) of the safeguard Rules.
 - The Product from Korea and Japan is not like article in terms of the Rule 2(e) of the safeguard Rule and thus different from the product manufactured by the domestic producers. Product under Consideration imported by the Respondent from Japan and Korea are of superior quality.
 - The need for the import of Product under Consideration from Japan is because of the incapacity of the Domestic Producers to supply the high quality of products as required by Respondent. The Authority should exclude such imported goods that are not being manufactured by the Petitioners. Reliance has been placed on Hon'ble Customs, Excise and Service Tax Appellate Tribunal in Magnet Users Association vs. Designated Authority [2003 (157) ELT 150 (Tri-Del)], wherein was held that there is no justification in including those grades that are not manufactured in India.
 - The Product under Consideration are heterogeneous set of products imported and thus they cannot be included in the same grade for comparison with the products manufactured by the domestic producers/ petitioners. The reliance is placed upon Panel Report issued by WTO in DS 427- China- Anti Dumping and Countervailing Duty Measures on Broiler Products from the United States.
 - The inclusion of the non- furnished Product under Consideration by the Authority is unjustified and not required as these products are imported in different volumes and are differently priced.
 - j. The Respondent is purchaser of steel products from
 - JSW Steel Limited,
 - Essar Steel Limited,
 - Bhushan Steel Limited,
 - Tata Steel Limited
 - Hero Steel Limited.
 - k. 93% of the total raw material and components consumed by the Respondent have been procured from the above-named domestic producers, which also include two Petitioners. It is only the remaining 7% of the special kind of steel, the demand of which is not fulfilled by the Domestic industry, is imported from Japan and Korea by the respondent. Indian products are different from the products that are manufactured from these countries :
 - Imported products are manufactured by Japanese Industrial Standards,
 - Includes better making standard, chemical composition, Categorization, Tensile strength, draw ability and wend ability of the Product.
 - Indian products have no mention of Hole Expansion Role
 - There is difference in quality level (formability, crack generation during rolling etc) for different steel makers for the same grade.

- The respondent being one of the largest producers and manufacturers of the Automobiles, the levels of quality for automotive application is a major concern for it in order to avoid any commercial problems and complications.
 - The product imported is manufactured by way of patented state of the Art technology and the same has distinct characteristics.
- l. The Petitioner have claimed excessive confidentiality and sufficient information is not supplied by them in order to determine the manufacturing, production and sales of the Domestic market. The petitioners did not provide any reasons for claiming the confidentiality on the information provided to the Authority. The Respondent have relied upon Sterlite Industries (India) Ltd. vs Designated Authority.
 - m. The importers and the interested parties were not intimidated by the Authority about the development regarding the examination and corroboration of the information provided by the Domestic Producers. Without corroborating the evidence produced by the Domestic Producers, the Authority heavily relied on the said information and recommended imposition of Safeguard Duty at a whopping rate of 20%.
 - n. The Authority did not disclose the methodology adopted to determine the level of safeguard Duty recommended by the Authority. The Authority did not follow the principle laid down in Article XIX of GATT 1994. The initiation notice was silent on the unforeseen development that have led to increase of imports of Product under Consideration. The petitioner also failed to show factual or legal basis to demonstrate that unforeseen development exist in the present matter.
 - o. There has been miniscule increase in the import data as provided in the petition. No justification provided to show on which petitioners have annualised the imports for the entire year of 2015. There is gradual increase in the imports of the Product under Consideration and there is no “sharp”, significant or “sudden” increase in imports..
 - p. The increased import n Product under Consideration has no impact on the domestic production of the goods. The Authority at para 25(a) of the Preliminary Finding has recommended that the production of the Domestic Producers have remained at the same level. The Authority has not substantiated as to what are the critical circumstances to warrant an issue of Preliminary Finding. The Authority has acted in contravention principles of safeguard investigation.
 - q. No evidence provided by Petitioner to show serious injury. The Authority has ignored in the Preliminary Finding that the requirement under Safeguard Rule is to initiate investigation only when there is “sufficient evidence” to suggest that the increased imports of the product has caused an injury to the Domestic Producers.
 - r. The Authority has acted in contravention of Paragraph 1 and 2 of the Annexure to the Safeguard Rules. The Respondent relied upon the Appellate Body Report on US- Cotton Yarn. Following submissions are made based on the case cited:
 - Petition does not show any injury whatsoever.
 - Petitioners has fared consistently well in terms of production, domestic sales and total sales and profitability.
 - The methodology prescribed for segregating capacity for the Product under Consideration from total Capacity is still unclear.
 - Essar Steel India Limited has made complete Turn around and earned profits from operations.

Particulars	FY 2014-2015 (Rs – Crores)	FY 2013-2014 (Ra- Crores)
Gross Revenue	19,258.50	16,286.59
Net Revenue	17,162.39	14,348.55
Profit/(Loss) before exceptional items and taxation	334.29	(3,916.21)
Profit/(Loss) before Taxation	1,008.96	(2,314.74)
Earnings per share (diluted)	Rs. 2.26	Rs. (5.70)

- JSW Profitability have increased.

Particular	FY 2014-2015 (Rs – Crores)	FY 2013-2014 (Ra- Crores)	Growth %

Gross Turnover	49,658	48,527	2%
Net turnover	45,352	44,529	2%
Operating EBIDTA	8,872	8,783	1%
PAT	2,166	1,335	62%
Earnings per share (diluted)	Rs. 88.24	Rs.53.86	64%

- SAIL has been consistently making profits.
 - Price Underselling, depression and suppression data has not been indicated in detailed from in the NCV of the petition filed by the Petitioner.
 - There is no change in the capacity utilization of the Domestic Producers as per Para 25 (d) of the Preliminary Finding.
 - The Authority in preliminary Finding has also not pointed out any possibility of likelihood of a sudden decline in the capacity utilisation of the Domestic producers.
 - The Authority has not corroborated any piece of information provided by the Petitioner and has without any recording any reasons assumed a prima facie case and initiated the investigation process.
 - The safeguard duty will have cascading effect on the overall prices of vehicles and parts on the automobile industry.
- s. A number of automobile companies and OEMs are extensive importers of the subject products, and levy of any safeguard duty will affect the business interest of the said importers substantially. Safeguard Duty will be inconsistent with fiscal incentives introduced by the Government of India for improving the ailing health of the Automobile Industry.

XXVII. Tube Investments of India (TII)

- a. Some of the grades used in automotive applications are imported for reasons such as customer approved source, customer preference, consistent quality, limited availability etc. The following grades must be exempted:
- i) SAE 1541
 - ii) SAE 1020/1040/1045/1050/1055
 - iii) SCM 435
 - iv) Boron Steel
 - v) 16 MnCr5
 - vi) SAE 1006/1010
 - vii) ST 52.3
- b. Floor price mechanism should be implemented to control cheaper imports.
- c. CR/CRCA should also be included along with HR for effecting safeguard duty.
- d. Quantity of subject goods already contracted as on the date of implementation of provisional safeguard duty should be excluded.

XXVIII. Bombay Iron Merchants Association (BIMA) represented by M/s. MV Kini Law Firm

- a. Imports undertaken with respect of each of the products have to be confirmed to see any surge as alleged. Products of different nature and statistics have been subjected to similar analysis. Segregation of products combined by the Applicants is imperative because alloy steel production capabilities of the Applicants are negligible.
- b. The problems faced by the Applicants is not related due to increased imports but due to high debts, oppression and mismanagement issues in case of Bhushan Steel , problems in procurement of raw materials in case of Essar Steel.
- c. The Applicants kept the domestic prices much higher and increased exports at globally competitive prices. Applicants have decreased their export prices by almost 35% against a mere 4% decrease in domestic prices.
- d. Surge in imports in 2014-15 relates to import by POSCO (approx. 1 million tonnes) in 2014 to set up its plant in Maharashtra. If this import by POSCO is excluded, it would rather show a slump in imports.
- e. Major Applicants have shown a rise in sales turnover. Sales figures of JSW Steel Ltd. show an increase of about 29% from 2012-13 to 2014-15. The sales figures of SAIL also show a stable trend.

- f. The financial statements show that instead of an alleged drop in wages and salaries, there is a consistent increase in employment costs of the Applicants.
- g. Imports under Advance License that are used in the manufacturing of finished goods for exports must be excluded from the import figures as they do not come into the domestic market at all and could not impact the Indian domestic market.
- h. Authenticity of the IBIS data relied by the Applicants is questionable as it reflects inflated figures when compared with the JPC data.
- i. Prices of major raw materials have dropped between 40-60% and the selling prices of the subject goods must be adjusted accordingly.
- j. Comparison with trade measures by countries like Thailand and Malaysia is unsustainable and misleading as the surge in imports and other parameters were very critical in those countries.
- k. Applicants are themselves importing cheaper raw material as well as the PUC. The alleged surge in imports during July- September 2015 is on account of huge imports of the subject PUC by the applicants specifically JSW Steel Ltd.
- l. Undue haste has been shown in the imposition of safeguard duty without even consulting a cross section of the stakeholders.

XXIX. Federation of Associations of Maharashtra (FAM)

In addition to the contentions already raised by FAM in their pre-hearing submissions, FAM stressed on the following contentions:

- e. The steel sector is facing excessive debts and losses due to such factors are not attributable to import prices of steel in India.
- f. Quantities imported under advance authorisation cannot injure the Applicants.
- g. There has been undue haste in imposition of provisional safeguard duty in this case.
- h. The PUC only accounts for 9% of the capacity of the applicants.
- i. JPC is an officially empowered agency in India for the collection and maintenance of data, by the Ministry of Steel. There is deviation in JPC data and IBIS data relied upon in the application.
- j. It has been alleged that there has been a surge in imports, drastic drop in sales turnover, decline in capacity utilization, consistent losses and reduction in employment levels which are clear indicators of injury. All these basic parameters are missing altogether in the present case of the applicants.

Alleged surge in imports ('000 tonnes)

Particulars	2011-12	2012-13	2013-14	2014-15
Imports (as per JPC)	1812	1871	1104	2006
Indexed	100	103	60	109

As per JPC data, the increase over the period of 4 years (which is a more logical period for a trend analysis) is only about 9%. While alleging surge in imports in 2014-15 over the period of 2013-14, a due thought has not been given to the fact that there was an abnormal drop of roughly 40% in the earlier year mainly due to the unprecedented dollar volatility during that period.

Moreover, the applicants took the advantage of this dollar volatility and increased imports and hence keeping domestic prices much higher at the cost of the Indian consumer.

- k. While alleging surge in imports in 2014-15 over the period of 2013-14, a due thought has not been given to the fact that there was an abnormal drop of roughly 40% mainly due to the unprecedented dollar volatility during that period. Interestingly, the applicants took the advantage of this dollar volatility and increased exports at globally competitive prices whereas kept domestic prices much higher at the expense of the Indian consumers and infrastructure development in India and on the other hand, making windfall profits for themselves. The same is evident from JPC data.
- l. The subject goods which are used as raw materials for certain re-roller mills such as POSCO, Uttam Steel, National Steels, Asian Color Coated etc. it needs to be noted that PUC is a raw material and not a product for trade. In such cases, PUC is further worked upon and converted into cold rolled sheets / galvanized sheets /

- corrugated sheets etc. POSCO alone had imported around 0.95 million tonnes of the subject goods for this purpose between the period of May 2014 to September 2015 for their own Steel Plant in Maharashtra.
- m. It is submitted that, if these imports as well as the quantity of imports attributable to other cold roller mills is removed from the total import figures as produced by the applicants, there is actually the decline in the imports of the subject goods in India over this period. In fact, local plants have declined POSCO to provide the subject goods due to their own inability to produce the required quality and quantity of those goods. The quantum of such imports of raw material may be around 35-40% of the total imports of PUC in India.
 - n. The applicants have argued that the countries like Thailand and Malaysia had also taken recourse to these tariff barriers by imposing the safeguard and anti-dumping duties respectively. However, it is hereby submitted that the scenario of surge in imports and other parameters have been very critical at that point in time in those countries. These could not be in any manner comparable to present situation in India.
 - o. The pre-requisites as prescribed under the Safeguard Rules does not exist and as such there is no significant overall impairment of domestic industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by the increased imports, changes in the levels of sales, production, productivity, capacity utilization, profits and losses and employment, none of these is adversely affected as misrepresented by the Applicants.
 - p. The Applicants have not excluded the imports on account of captive consumption which needs to be excluded for the computation of total imports. The Applicants have not excluded the imports under advance authorizations i.e. imports for exports which needs to be excluded for computation of total imports. There is no nexus between the imposition of safeguard duty in the absence of any emergency and the objective to be achieved by such imposition.

D. REJOINDER SUBMISSIONS

I. Rejoinder by Domestic Industry to the submissions of Interested Parties post public hearing

All contentions raised by Petitioners in their petition, written submissions and during the course of this investigation effectively rebut all the contentions raised by interested parties in their written submissions. All contentions raised by Petitioners in their petition, written submissions and during the course of this investigation should be deemed as part and parcel of this rejoinder and such contentions which are not repeated in the present submissions for the sake of brevity should not be held in prejudice to Petitioners. For all other issues raised by other interested parties, Petitioners provide their rejoinders below:

- a. Imports from developing countries that are below 3% should not be subject to safeguard duty:
Many interested parties have argued that developing countries whose respective imports do not exceed 3% and aggregate of imports from such countries do not exceed 9% should be kept outside the purview of safeguard duty. It is also argued that imports from Brazil and Taiwan meet the above requirement and should be outside the purview of safeguard duty. With respect to the contention concerning Taiwan, Petitioners have already addressed this contention in the specific rejoinder to the Embassy of Taiwan. However, Petitioners reiterate their contention here briefly. It is understood that a list of developing countries has been issued by the Government of India vide Notification No. 103/98-Cus dated 14 December 1998. It is pertinent to note that Taiwan's name does not feature in this list. Therefore, even if for the sake argument it is accepted that imports from Taiwan are below 3% and aggregate of imports from developing countries does not exceed 9%, Taiwan can still not be excluded from the purview of safeguard duty, as it is not recognised as a developing country by Government of India as of today. Therefore, the contention with respect to exclusion of Taiwan from the purview of safeguard duty cannot be accepted in light of the Notification No. 103/98-Cus dated 14 December 1998 issued by the Government of India. Further, we understand from perusal of import data that imports from Brazil constitute more than 3% in total imports. Therefore, the contention that Brazil should not be subject to safeguard duty cannot be accepted either.
- b. No increase in imports within the meaning of Article XIX of GATT and Agreement on Safeguards ("SA"):
Many interested parties have argued that imports of the subject goods are not sudden enough, sharp enough, significant enough and recent enough within the meaning of Article XIX of GATT and SA. Therefore, safeguard duty is not warranted in this case. Petitioners wholly object to this contention. Petitioners submit that the data on record clearly demonstrates that imports of the subject goods have rapidly increased during the injury analysis period. In fact, imports were 7% in production of the domestic industry in 2013-14, which

doubled to 14% in 2014-15. This situation has become more severe in 2015-16, where imports were 19% in production of the domestic industry during Q1 of 2015-16. During Q2 of 2015-16 imports further increased to 31% in production of the domestic industry. Further, imports were 9% in demand (excluding captive) in 2013-14, which increased to 16% in 2014-15. This has further aggravated in 2015-16, where in Q1 of 2015-16, imports were 19% in demand (excluding captive), which has now sharply increased to 24% in Q2 of 2015-16. If this does not qualify as a sudden, sharp, significant and recent increase in imports, then Petitioners do not know what else would constitute as a sudden surge in imports. The domestic industry is facing an emergency situation. Imports of the subject goods in the first two quarters of 2015-16 have already peaked and based on the available data, it is expected that imports during 2015-16 will exceed 2014-15 levels. Based on the data available for first two quarters of 2015-16, imports of the subject goods are expected to be 4,167,884 MT on annualised basis, which exhibits a 160% increased from 2014-15 levels when imports were 2,540,114 MT. Imports are already coming at significantly low prices causing price undercutting, price underselling, price suppression and depression. Imposition of safeguard duty alone can address the domestic industry's situation.

c. Source of import data, methodology adopted in sorting import statistics and accuracy of information:

Many interested parties have argued that import data from a private agency like IBIS is not authentic and tenable and the Authority should consider only JPC data. Interested parties further argue that a detailed methodology for determining product under consideration is not provided in the petition. Interested parties also argue that DGCI&S data should be used to verify the authenticity of IBIS data used in the petition. Interested parties further argue that certain imports fall outside the purview of the product scope. Petitioners object to all the contentions above. It is submitted that IBIS is a renowned agency and its data is regularly used in many trade remedy investigations, be it safeguards or anti-dumping investigations. Further, it is standard practice for the Authority to procure DGCI&S data and compare the data with IBIS data to verify authenticity of the information. The Authority has the discretion to use IBIS or DGCI&S data. Further, Petitioners submit that JPC data cannot be used in this investigation because this data is only available at a broader level for the steel sector and not at PUC level, which is relevant for the purpose of this investigation. Further, interested parties have failed to clarify what kind of imports fall outside the scope of the product under consideration. Such a claim is too vague and cannot be accepted. At least interested parties could have provided the grades or specification of imports which they are concerned with. In absence of such information, such vague claims by interested parties should be rejected.

d. Excess confidentiality claimed by domestic industry:

Many interested parties have complained that several parameters have been considered as confidential in the petition and no reasons have been provided by the domestic industry for treating them as confidential. Interested parties further argue that even the Authority has not recorded any reasons for granting confidentiality in the preliminary findings. Petitioners strongly object to the above contentions. Petitioners submit that they have exercised due caution while claiming confidentiality in the petition and have considered only such information as confidential disclosure of which could adversely affect the interest of Petitioners. Further, Petitioners have duly provided reasons for claiming confidentiality in the petition. Interested parties wrongly contend that the Authority has not provided any reasons in the preliminary findings while granting the domestic industry's confidentiality claims. In this regard, Petitioners rely on the following extract from the preliminary findings:

*11. The domestic industry has provided some information on confidential basis and sought confidentiality on the information /data submitted. The domestic industry provided non confidential version of the application for safeguard measure as per the provisions of Safeguard Rules 1997 and Trade Notice No. SG/TN/1/97 dt. 06.09.1997. **Further the domestic industry has submitted reasons for seeking confidentiality at the time of filing the application.***

*12. Rule 7 of the Safeguards Rules, 1997 and Art. 3.2 of WTO Agreement on Safeguards also provide for confidentiality. **The applicant is not required to disclose such information which is confidential information of the company, disclosure of which can cause serious prejudice to the business interests of the company, which is not in public domain and which the applicant has not disclosed before public at large in the past. Accordingly confidentiality, as prayed for by the domestic industry, is granted.** (emphasis supplied)*

The Authority has clearly observed that Petitioners are not required to disclose such information, disclosure of which would cause serious prejudice to business interests of the domestic industry. In this regard, the Authority has adhered to Rule 7 of the Safeguard Duty Rules read with Article 3.2 of the SA to demonstrate compliance with the legal requirements. In accordance with the above, the Authority has granted confidentiality claims of Petitioners. Therefore, interested parties are wrong in arguing that the Authority has not provided any reasons while granting confidentiality claims of Petitioners.

e. Deficiencies in the petition:

Several interested parties argue that no additional questionnaire was filed by the constituents of the domestic industry. Therefore, the Authority did not have complete information when preliminary findings were issued. Interested parties further argue that no creditable adjustment plan has been provided by the domestic industry and there is no mention of the same in the preliminary findings. Petitioners strongly object to the above contentions. It is submitted that Petitioners had filed their respective questionnaire responses in both confidential and non-confidential versions along with the petition itself. Non-confidential versions of the questionnaire responses were also available in the public file. If interested parties failed to collect the questionnaire responses from the public file, then it shows negligence on their part. Further, all constituents of the domestic industry had provided a proper adjustment plan in their respective questionnaire responses. The Authority had also satisfied itself of the workability of the adjustment plan during the verification visits to the constituents of the domestic industry. Merely because, certain analysis on adjustment plan is not given in the preliminary findings, it does not mean that Petitioners had not provided such information to the Authority. Therefore, contentions by interested parties on deficiencies in the petition are unfounded and should be rejected.

f. Standing of domestic industry:

Interested parties argue that Petitioners do not qualify as domestic industry in this case. Interested parties rely on the table given under paragraph 25(b) of the preliminary findings and argue that market share of the domestic industry was 45% in 2013-14 and for Indian other producers, it was 51%. Similarly, it is argued that in 2014-15 as well as 2015-16 (Annualised), market share of other producers was 51%. Petitioners strongly object to this contention and submit that interested parties cannot be more wrong in advancing this contention. In the table under paragraph 25(b), market share given is a ratio of sales of domestic industry vis-à-vis domestic demand. However, this market share is not a measure of standing. Standing has to be determined in terms of Section 8B(6) of the Customs Tariff Act, 1975, which defines domestic industry as follows:

“domestic industry” means the producers

(i) as a whole of the like article or a directly competitive article in India, or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.

In terms of the above definition, Petitioners' production was 70% in total production during 2013-14, 68% in 2014-15 and 67% in Q1 of 2015-16. Thus, Petitioners clearly qualify as domestic industry in this case. Contentions of interested parties on standing of domestic industry are, thus, incorrect and should be rejected outright.

g. Imports by domestic industry:

Interested parties argue that surge in imports during Q2 of 2015-16 is because the domestic industry, specifically M/s JSW Steel Ltd. had imported huge quantities of the subject goods during this period. Petitioners strongly object to this contention and submit that interested parties are simply making baseless arguments. Petitioners have provided their data to the Authority, which has also been duly verified. Imports by the domestic industry were miniscule during the injury analysis period, which fact is also supported by their data on record. Such miniscule imports were only for internal consumption and not for sales in open market. Therefore, the above contentions of interested parties are incorrect and should be rejected.

h. Scope of the product under consideration:

Several interested parties have raised issues on the product under consideration. All such issues are addressed below:

- i. HR Coil in thickness 2.00 mm and below: M/s Nezone Strips Ltd. and M/s Nezone Tube Ltd. argued that they have been importing HR coil in thickness 2.00 mm and below because their regular supplier M/s Tata Steel Ltd. had stopped supplying due to availability constraints. Therefore, they are forced to import this specific product and such products should be excluded from the product scope. Petitioners strongly object to this contention and submit that both companies could have approached any other producer in India who would have easily supplied such material of thin gauge to them. Merely because one Indian manufacturer is not supplying to these companies, it cannot be a ground for exclusion of these products. Requirements of both the companies can be conveniently served by Indian steel manufacturers including Petitioners. Therefore, this specific product cannot be excluded from the product scope.
- ii. Automotive Grade of HR Coils: M/s Hyundai Motors India Ltd. argues that Korean Automotive Grade Steel should be exempted from safeguard duty as even after imposition of safeguard duty, they will have to necessarily import this product. They further argue that their Nanyang R&D Centre does not allow them to change the specifications for the cars manufactured in India. Therefore, they will have to import this grade. Petitioners object to the contention and submit that M/s Hyundai Motors India Ltd. have failed to identify the specific grade which they import. Automotive Grade of HR Coils is a very generic description and cannot be excluded unless they substantiate that Indian steel producers cannot supply this grade. Just because their R&D centre will not allow them to procure from elsewhere does not mean that the domestic industry should be allowed to suffer serious injury by exempting imports of this grade from safeguard duty. It is requested that M/s Hyundai Motors India Ltd. may be directed to specify the grade, along with chemical as well as physical parameters, for which they wish to claim exemption for subject to mutual discussion with the domestic industry. If this information is not provided, their claim cannot be accepted. Petitioners further submit that they are already on the approved vendor list of several automobile makers, their vendors and auto component manufacturers. A list of such automobile makers, their vendors and auto component manufacturers to which Petitioners supply the subject goods has been provided to the Authority.
- iii. Claims by TII: TII argues that the following grades should be excluded from the product scope due to limited availability, quality issues and because TII has already identified and approved sources of supply which they cannot change now:
 - a. SAE 1541
 - b. SAE 1020/1040/1045/1050/1055
 - c. SCM 435
 - d. Boron Steel
 - e. 16 MnCr5
 - f. SAE 1006/1010
 - g. ST 52.3

TII's claims are baseless. They have failed to substantiate the availability and quality issues they are facing from domestic manufacturers. Further, if TII has approved their sources of supply, they can even approve domestic manufacturers for supply of the same grades. It is submitted that the domestic industry has proven capability to manufacture all the grades listed above and have achieved the necessary quality standards as well. The domestic industry is competent to manufacture and supply TII's requirements. Therefore, these grades cannot be excluded from the product scope.

- iv. Hot-rolled coil with pickling and oiling ("PO"): M/s Hyundai Steel Korea argues that PO products manufactured by them are sold to M/s Hyundai Steel India Limited, which, in turn sells it to M/s Hyundai Motor India Limited. They argue that such imports are inevitable as stopping it would mean risking safety of passengers in automobiles. They argue that PO products should be kept outside the product scope. Petitioners strongly object to this contention and submit that Petitioners have proven capability to manufacture Auto Grade Steels including steels suitable for

higher strength levels. The domestic industry can manufacture various categories of steels including pickled and oiled steels required by auto companies including M/s Hyundai Motors India Ltd. The entire domestic industry has required facilities for pickling and oiling process and the domestic industry is regularly manufacturing such products. Therefore, these products cannot be excluded from product scope. Further, Petitioners submit that they are already on the approved vendor list of several automobile makers, their vendors and auto component manufacturers. A list of such automobile makers, their vendors and auto component manufacturers to which Petitioners supply the subject goods has been provided to the Authority.

- v. Hot-rolled coils based on narrowly defined customer specifications: M/s Nippon Steel & Sumikin Pipe India Co. Ltd. argues that hot-rolled coils based on narrowly defined customer specifications should be excluded from the product scope as these imports differ in tensile strength, steel cleanliness, grain size and chemical composition. M/s Nippon Steel & Sumikin Pipe India Co. Ltd. has, however, claimed confidentiality on the description and types of products they have imported but they have requested exclusion of these products from product scope anyhow. Petitioners strongly object to the above contentions. How can Petitioners be expected to rebut the above contentions if the specific grades or types of products are not even disclosed by M/s Nippon Steel & Sumikin Pipe India Co. Ltd.? Without such information, Petitioners are not in a position to make an appropriate response to the above contention. The Authority is requested to direct M/s Nippon Steel & Sumikin Pipe India Co. Ltd. to at least disclose specific grades, with chemical and physical characteristics, that this company imports so that Petitioners can appropriately examine and make comments. If M/s Nippon Steel & Sumikin Pipe India Co. Ltd. fails to disclose even this minimal information, their claim should be rejected outright, as Petitioners have been denied an opportunity to effectively defend their case.
- vi. Grade JSH 270/370 and Grade JSH 590: M/s Maruti Suzuki Ltd. argues that these two grades should be excluded from product scope as these grades are imported to meet requirements of customer safety and meeting emission norms. They argue that domestic manufacturers cannot meet the required quality standards and are inconsistent suppliers of raw material. Petitioners strongly object to the above contentions. During the public hearing, M/s Maruti Suzuki Ltd. admitted that they are trying to localise their procurement to the maximum extent. However, Petitioners submit that despite having proven capabilities to manufacture these grades, M/s Maruti Suzuki Ltd. hardly gives an opportunity to domestic manufacturers to supply these grades. This goes contrary to M/s Maruti Suzuki Ltd.'s claim that they are trying to localise procurement of all raw materials. M/s Maruti Suzuki Ltd. should give an opportunity to domestic manufacturers to supply these grades who can meet the quality that M/s Maruti Suzuki Ltd. requires. Further, Petitioners submit that they are already on the approved vendor list of several automobile makers, their vendors and auto component manufacturers. A list of such automobile makers, their vendors and auto component manufacturers to which Petitioners supply the subject goods has been provided to the Authority. Further, it may be worthy to note that if M/s Maruti Suzuki Ltd. is importing Grade JSH 270/370 and Grade JSH 590 from its parent company M/s Suzuki, Japan, then it would be in their interest to continue such imports from M/s Suzuki instead of sourcing them locally. Therefore, their claim that they are trying to localise procurement is nothing but misrepresentation before the Authority. It is understood that M/s Maruti Suzuki Ltd. has a long-term procurement agreement with M/s Suzuki, Japan to procure the above grades. However, such fact has not been disclosed to the Authority. In light of this, M/s Maruti Suzuki Ltd.'s claim that they are trying to localise their procurement of these grades but are unable to do so because domestic manufacturers cannot meet their requirements is nothing but a false claim.
- vii. Alloy Steel: Federation of Association of Maharashtra ("FAM") argues that alloy steel is produced in negligible quantities in India, so the question of imposition of safeguard duty on alloy steel does not arise. They further argue that imports of non-alloy steel constitutes only 7-8% of total domestic production and more than 90% market share for non-alloy steel is with domestic units. FAM further argues that such low imports of non-alloy steel do not warrant imposition of safeguard duty. Petitioners strongly object to these claims. FAM is relying on JPC data which is not at PUC level. Therefore, the assumptions taken by FAM in their analysis are

incorrect. Further, in the later part of this submissions, it can be seen that market share of imports is much higher in domestic production and demand and is constantly on the rise. Further, the product scope covers only one tariff item 7225.30.90 and not the entire alloy steel heading. Therefore, FAM is incorrect in stating that the entire alloy steel category has been included in the product scope. Petitioners have already provided detailed reasons in their letter dated 8 August 2015 as to why alloy steel falling under customs classification 7225.30.90 should be included in product scope. To summarise the issue briefly, it is submitted that imports which are characterised as alloy steel under tariff item 7225.30.90 actually have very minute quantities of boron due to which they get classified under this tariff item. These imports are disguised as alloy steel and are severely affecting the domestic industry, as these imports are technically and commercially substitutable with non-alloy flat products of hot-rolled steel in coils produced by the domestic industry. Due to this reason, Petitioners have included imports under the tariff item 7225.30.90 under the product scope. In light of the above, FAM's contentions should be rejected outright. China Iron & Steel Association have also questioned why alloy steel falling under customs tariff heading 7225 has been included in product scope. The above analysis also addresses the contentions by China Iron & Steel Association.

- viii. High Strength Steel ("HSS"): China Steel Corporation, Taiwan argues that HSS grade used in automobile industry should be excluded from product scope. As stated earlier, Petitioners have proven capability to manufacture Auto Grade High Strength Steels (HSS) including higher strength levels. Therefore, HSS grade cannot be excluded from product scope.
- ix. Steel produced by Japanese Mills: M/s JFE Steel Corporation, M/s Nisshin Steel Co. Ltd., M/s Nippon Steel & Sumitomo Metal Corporation and M/s Kobe Steel Ltd. together argue that steel produced by Japanese mills should not be subject to safeguard duty and should be excluded from product scope. Petitioners find such a contention as too vague and difficult to accept. These companies have not provided names of grades or specifications of their products for which they want exclusions. Without such information, such contentions have no merit and should be rejected outright. These companies further argue that the domestic industry cannot produce automotive grade steel. This contention is again incorrect as Petitioners have already substantiated that they produce automotive grades as well.
- i. Critical circumstances that justify levy of provisional safeguard duty: Several interested parties argue that there were no critical circumstances in the present case that warranted imposition of provisional safeguard measures. It is argued that the Authority also failed to demonstrate in their analysis that such critical circumstances existed. Petitioners strongly object to the above contentions and submit that the petition as well as paragraph 34 of the preliminary findings comprehensively throws light on the critical circumstances that warranted imposition of provisional safeguard duty in this case. The Authority has, thus, met the requirements of Article 6 of the SA and Rule 9 of Safeguard Duty Rules in this case.
- j. Inconsistency with FTAs and other bilateral agreements: Interested parties argue that import duties on the subject goods are about to be eliminated in India-Korea CEPA and India-Japan CEPA. Therefore, it is argued that India should not have levied safeguard duty on imports of the subject goods from Korea RP and Japan as these imports have occurred due to low customs duty on imports from these countries. It is also argued that India could have explored bilateral mechanisms with these two countries under the respective FTAs rather than simply imposing general safeguard duty on Korea RP and Japan. Interested parties also argue that India-Korea CEPA provides that in the event imports from Korea RP are not the reason of injury to the domestic industry, such imports should be excluded from imposition of safeguard duty. Petitioners strongly object to these contentions and submit that imports from both Korea RP and Japan have caused serious injury to the domestic industry. It is immaterial that imports from Korea RP and Japan increased due to low customs duty under the respective FTAs. Imports from these two countries have occurred in huge quantities in the most recent period and these imports are at unfairly low prices causing serious injury to the domestic industry. Further, it is the discretion of the Government of India to explore bilateral mechanisms under the respective FTAs or adopt a general safeguard measure in this case. Both the FTAs nowhere mention that India is obligated to explore bilateral mechanisms first and only after failure of such mechanisms can adopt a general safeguard measure. Further, these FTAs have specific provisions that allow India to impose general safeguard duty. The only exception under SA and Safeguard Duty Rules is exclusion of developing countries

whose individual share in imports is below 3% and whose aggregate share in imports is below 9%. Korea RP and Japan do not fall under this exception, as both of them are developed countries. Therefore, contentions of interested parties are incorrect and should be rejected.

- k. Fall in raw material prices justifies fall in steel prices: Interested parties argue that prices of iron ore and coal have declined by 42% and 21% respectively in 2014-15 and consequently there is a fall in prices of the subject goods. Therefore, import prices cannot be considered as low and domestic industry should also translate the decrease in raw materials to their hot-rolled products. Interested parties further argue that the domestic prices of Petitioners are much higher than export prices. Petitioners strongly object to these contentions and submit that they have already decreased their prices in line with decrease in raw material prices. But the contention of parties that there is a steep decline in raw material prices is incorrect as it does not take into account the cost of transporting the raw material to factory. Such costs are inclusive in production cost. Further, transportation cost also has consistently increased during the injury analysis period. Therefore, the overall decline in raw material prices is much lower than what is claimed by interested parties. It is also pertinent to note that during recent periods, landed value of imports of the subject goods have declined much more than the decline in raw material prices. Further, it should not be ignored that imports have come at grossly low prices and the domestic industry has been forced to match such low prices, to the extent that their prices have gone below the cost of production of the domestic industry. Petitioners would like to add that of late, exports are being made even below the marginal cost of production by certain countries which are also major exporters to India. This poses a serious threat of unfair trade practices. Interested parties are, thus, wrong in claiming that the domestic industry's export prices are lower than domestic prices. It is important to note that international prices of steel products are already suppressed due to rampant dumping by countries like China PR, Russia and Ukraine. Domestic industry's export prices are also suppressed. That does not mean that the domestic industry should also sell their products at suppressed prices in their domestic market as well.
- l. 2013-14 should not be considered as base year for injury examination: Interested parties argue that 2013-14 should not be considered as base year as it does not take into account the downward trend of imports between 2012-13 and 2013-14. Some interested parties argue that period of analysis should be 5 years and a shorter period is erroneous. Petitioners strongly object to these contentions. It is submitted that the legal provisions nowhere specify the minimum period for which serious injury should be examined. The only available guidance in this respect is in Article XIX of GATT where it is stated that imports should be sudden, sharp and significant in a recent enough period. Further, the only guidance on length of the period for which data should be provided by parties is given in Trade Notice No. SG/TN/1/97 dt. 06.09.1997 where in paragraph 5(i) it is stated that *parties should provide information for the most recent period of three years (or longer) for which data is available*. However, the Trade Notice also does not prescribe what should be the length of injury analysis period, which the Authority should examine. In light of the above, Petitioners submit that they have provided information from 2011-12 onwards to Q1 of 2015-16 in the petition, which is as close and recent to the initiation of the investigation. In Petitioners' written submission data has now been provided up to Q2 of 2015-16. Therefore, the petition and written submissions satisfy the above requirement of Article XIX of GATT and the aforementioned Trade Notice. With respect to considering 2013-14 as base year, it is the discretion of the Authority to conduct analysis in a manner the Authority deems fit. There is nothing wrong in using 2013-14 as base year. Without prejudice to above, Petitioners submit that even if 2011-12 is considered as base year, the trends would again show that the domestic industry is suffering serious injury due to sudden, sharp, significant and recent increase in imports.
- m. Captive consumption of product under consideration: Several interested parties have argued that captive imports by downstream units should be exempt from safeguard duty. Mostly, these claims have been raised by companies like POSCO Korea and POSCO Maharashtra, and Hyundai Steel Korea and its Indian affiliates. Here the modus operandi is that the foreign steel producer is supplying the subject goods to its Indian affiliate/affiliates. A very surprising claim by these entities is that Indian manufacturers cannot supply hot-rolled steel of high quality, specifications, strength, and meeting environmental or safety norms that these entities require. Basically, on one pretext or the other, these entities are of the view that somehow the domestic industry cannot meet the requirements of their Indian affiliates. Petitioners strongly object to such assumptions by these parties and submit that the subject goods manufactured by the domestic industry fully meets all the requirements that these companies are looking for. The only concern of these companies is that

safeguard duty will prevent them from importing unfairly low priced subject goods from Korea RP. Petitioners submit that there is no provision under law that exempts goods imported for captive consumption from the purview of safeguard duty. Therefore, the above contentions by interested parties cannot be entertained.

- n. No unforeseen developments: Many interested parties are of the view that Petitioners have failed to identify unforeseen developments that led to increase of imports of the subject goods. Some interested parties also claim that even the Authority has failed to discuss unforeseen developments in the preliminary findings. A few interested parties also claim that unforeseen developments have been identified but do not correlate with the subject goods. Some interested parties are of the view that depreciation of Indian Rupee and local procurement by users offset unforeseen developments. Petitioners believe that none of the interested parties have actually perused the petition and preliminary findings in entirety. Such negligence on the part of interested parties is astonishing considering they seem to have made significant efforts to rebut Petitioners' claims. The petition documents in very precise terms the unforeseen developments that led to sudden, sharp, significant and recent increase in imports of the subject goods that caused or threatens to cause serious injury to the domestic industry. The preliminary findings also discuss in very precise manner such unforeseen developments. Further, there is no provision in law that suggests that one development can offset an unforeseen development as suggested by one of the parties. Therefore, depreciation of Indian Rupee and local procurement by user industry is irrelevant and immaterial as far as offsetting unforeseen developments is concerned.
- o. Exclusion of imports made to related downstream industry: Some interested parties are of the view that imports made to related downstream industry in India should be excluded from the purview of safeguard duty by practice of market segmentation. Petitioners have heard of such practice for the first time in the context of safeguard investigations. It is irrelevant whether imports are to a related party or an unrelated party. The key here is that sudden, sharp, significant and recent imports of goods should have caused or threatened to cause serious injury to a domestic industry so as to merit levy of safeguard duty. The character of imports (to a related party or unrelated party) is immaterial. Therefore, such contentions by interested parties should be rejected outright.
- p. Adverse impact on downstream industry: Some interested parties are of the view that downstream industry would be hurt by imposition of safeguard duty. Petitioners respectfully submit that if the downstream industry had not encouraged huge quantities of imports at unfairly low prices, this situation would have not arisen at all. It is because the domestic industry is now in such a precarious situation that even their survival is difficult, they have come before the Authority. Safeguard duty will only restore balance to market forces. Without safeguard duty, competition in the market will remain distorted and preferences of downstream industry would remain intact on unfairly low priced imports. Further, M/s Mitsui & Co. India Pvt. Ltd. has submitted that they are re-rollers of the subject goods and have long term contracts with a supplier in Japan for procurement of the subject goods. They submit that their size of operations is not large enough to absorb the burden of safeguard duty. Petitioners respectfully submit that safeguard duty would only establish a level playing field and stabilise the distorted competition in the market. Safeguard duty in no way can harm the small re-rollers, rather it is a measure to provide temporary protection to the domestic industry from low priced imports that are coming in increased quantities into India.
- q. Non-applicability of safeguard duty on those hot-rolled flat products in coil form for which contracts were entered into before levy of provisional safeguard duty: Some interested parties are of the view that for contracts for which LCs were recently opened before imposition of provisional safeguard duty or on the day such duty was imposed would be affected, as such imports will be subject to safeguard duty. In fact, such parties have also requested for refund of safeguard duty as they are of the view that imposition of provisional safeguard duty was unforeseen to them. Petitioners submit that such contentions cannot be entertained. There is no mechanism under law that allows such exemptions. Such imports should be subject to safeguard duty like all other imports of the subject goods.
- r. Situations in Thailand/Malaysia cannot be compared: Interested parties argue that countries like Malaysia and Thailand have imposed anti-dumping duties and safeguard duties respectively, on the subject goods in a situation when there was a huge surge in imports to the extent of 1350%, which is not the case in the present

investigation. Thus, interested parties argue that comparison with these countries is incorrect. Petitioners object to this contention and submit that if Indian domestic industry waits till imports rise to 1350% in India, by that time there will be no domestic industry left to protect. The domestic industry is already facing an alarming situation by the sudden, sharp and significant increase in imports. The domestic industry cannot be expected to wait for imports to rise further, as the domestic industry is already suffering serious injury from imports. Without prejudice to the above, it is clarified that the petition referred to Malaysia and Thailand in a different context than what is alleged by the interested parties. Petitioners had argued in the petition that levy of anti-dumping duty and safeguard duty on the subject goods by Malaysia and Thailand respectively was an unforeseen event. Due to this unforeseen event, exporters could no longer export to these countries and started to export increased quantities to a country like India, which had and still has better demand. In light of the above, it is submitted that interested parties have simply failed to understand the context in which grounds were raised by Petitioners in their petition. Petitioners submit that contentions of interested parties on unforeseen developments are incorrect and should be rejected outright. The above contentions of interested parties are, thus, unacceptable and should be rejected.

- s. Imports net of captive consumption and net of advance authorization/EPCG: Many interested parties argue that import volumes should be considered after excluding imports meant for captive consumption, or under advance authorization/EPCG. Petitioners strongly object to such claims and submit that for the purposes of safeguard investigation, total imports are to be examined. Character of imports, whether for captive consumption, under advance authorization or EPCG is irrelevant.
- t. Cumbersome process of claiming duty drawback: M/s Hyundai Motor India Limited claims that the process for claiming duty drawback is very cumbersome in India and safeguard duty should not be imposed until this process is simplified. This contention is irrelevant for the purpose of this investigation and should be rejected outright.
- u. Effect on export competitiveness: Interested parties have also argued that imposition of safeguard duty would hurt the export competitiveness of India. Petitioners wholly object to the above contention and submit that export competitiveness cannot be hurt by imposition of safeguard duty, because producers/exporters in India always have the option to import the subject goods under advance license, wherein subject goods are exempt from payment of safeguard duty. The above contention of interested parties is, thus, unacceptable and should be rejected.
- v. Safeguard duty would threaten employment and create monopoly: Many interested parties wrongly claim that imposition of safeguard duty would threaten employment in India. Petitioners humbly submit that if safeguard duty is not imposed, huge employment of domestic industry would be at stake. It is in public interest to impose safeguard duty immediately and protect the domestic industry. Further, imposition of safeguard duty would not create a monopoly as there are several manufacturers of the subject goods in India and there is healthy competition among them. Imports of the subject goods that are distorting the competition have to be checked by imposition of safeguard duty. Further, imposition of safeguard duty does not ban imports of the subject goods. Further, safeguard duty is just a temporary protection for the domestic industry to correct the market distortion create by huge quantities of low priced imports of the subject goods into India.
- w. Other procedural issues in the investigation: Several interested parties are concerned that India failed to notify to the WTO about imposition of provisional safeguard duty before adopting such measure. Even exporters are concerned about India's non-compliance with such notification requirements. Further, a few interested parties are of the view that a list of developing countries whose imports were below the legal threshold of 3% should be excluded from the purview of safeguard duty. Interested parties are also of the view that provisional safeguard duty was imposed in haste without giving an opportunity to be heard. Petitioners object to these contentions and submit that merely because there was slight delay by India to notify the measure to the WTO, it does not mean that imposition of provisional safeguard duty itself is per se inconsistent with provisions of Article 12.4 of SA. Mere non-compliance with a procedural requirement such as late notification to the WTO does not compromise the substantive merits of the provisional safeguard duty. Further, exporters need not worry about such notification requirements by India. It is the prerogative of WTO member countries to bring such concerns to the Government of India and not foreign exporters.

Petitioners further submit that the Authority already has data on record for volume of exports from each exporting country. Further, Petitioners have also clarified the same by their letter dated 9 November 2015 to the Authority. Therefore, the Authority may examine the same while finalising this case and notify the list of developing countries who are exempt from application of safeguard duty. Further, interested parties have been able to exercise their right of defence fully at all stages of this investigation. Therefore, it is incorrect to argue that imposition of safeguard duty in a span of few days is a violation of natural justice. Petitioners, in their letter dated 27 July 2015 have provided instances where WTO member countries have imposed provisional safeguard duty on the same day on which the investigation was initiated. In this case, provisional safeguard duty was imposed after one full week of initiation of the investigation. This, in no event is a violation of any WTO provision. Further, Rule 9(1) of the Safeguard Duty Rules allows the Authority to proceed expeditiously with the conduct of the investigation and in critical circumstances, record a preliminary finding regarding serious injury or threat of serious injury. As critical circumstances existed in this case, the Authority expeditiously issued preliminary findings in this case, and thereafter customs notification was issued after one week of initiation of this investigation. Therefore, all legal requirements have been met in this case keeping in view existence of critical circumstances.

Contentions by interested parties on injury parameters

Petitioners object to the submissions made by interested parties with respect to injury and causal link issues and would like to draw the attention of the Authority to the following key submissions in this respect:

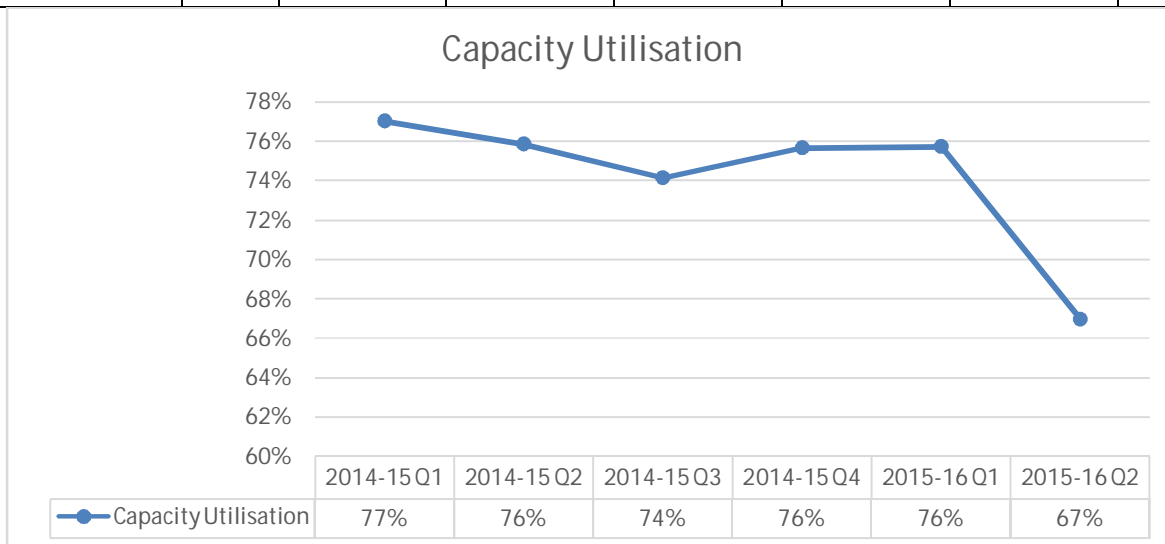
i) Injury indicators including sales, production, capacity, investment levels, inventories, employment have remained stable and some indicators show positive trend:

Petitioners have provided updated information on all economic parameters with rejoinder.

- x. Petitioners object to the contention of interested parties that injury indicators including sales, production, capacity, investment levels, inventories, employment, etc. have remained stable and some indicators show positive trend.
- y. The demand for the subject goods in India has increased in the injury analysis period. Despite increase in demand, the production, employment and sales of Petitioners have remained stagnant. While inventories have increased, the capacity utilisation of the domestic industry has declined. Imports have taken away all the increase in demand of the subject goods. In 2014-15, while demand excluding captive increased by 1,158,614 MT and imports increased much more by 1,248,015 MT. This shows the aggressive manner in which imports of the subject goods are entering the Indian market.
- z. Further, POSCO Maharashtra has contended that the surge in imports in 2014-15 is mainly because of imports by them for setting up manufacturing facility and if the same is excluded, there would be a slump in imports. Petitioners strongly reject this contention and submit that imports have surged not only in 2014-15 but also in Q1 and Q2 of 2015-16. Moreover, POSCO itself is admitting that it has made most of the imports during the first two quarter of 2015-16, which substantiates the point that are causing serious injury to the domestic industry by importing huge quantities of the subject goods at unfairly low prices from Korea RP.
- aa. Had there been no serious injury due to imports of the subject goods, the capacity utilisation, production, employment and sales would have increased commensurate to the increase in demand in India. However, sales and employment of the domestic industry have remained stagnant over the period of investigation.
- bb. **Capacity utilisation** has come down from 77% in Q1 of 2014-15 to 67% in Q2 of 2015-16 as evident from the following table below:

Particulars	Unit	2014-15 Q1	2014-15 Q2	2014-15 Q3	2014-15 Q4	2015-16 Q1	2015-16 Q2
Capacity of Domestic Industry	MT	5,884,372	5,915,879	5,915,879	5,852,865	5,884,372	5,884,372

Production of Applicant Domestic Industry	MT	4,532,770	4,488,093	4,386,470	4,429,604	4,456,795	3,941,208
Capacity Utilisation	%	77%	76%	74%	76%	76%	67%



cc. **Inventory levels** of domestic industry have increased substantially as compared to the base year due to constant pressure of increasing imports. The domestic industry has raised its capacities foreseeing the increasing demand in India. However, the domestic industry is unable to increase its production and sales which is leading to a situation of inventory accumulation over the injury period.

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16 Q1	2015-16 Q2
Inventory (MT)	331,101	583,311	636,879	648,290	657,099	871,440
<i>Indexed</i>	100	176	192	196	198	263

dd. It is, therefore, evident that the contentions of interested parties are wrong. Sales, production, capacity utilisation, investment levels, and employment are showing negative trend indicating injury to the domestic industry.

ii) Domestic Industry has been earning profits till 2014-15 whereas losses have been incurred only in Q1 of 2015-16

ee. Interested parties have argued that profits of the domestic industry have followed an upward trend and losses have been suffered only in Q1 of 2015-16 and therefore it cannot be concluded that domestic industry has suffered serious injury. Petitioners object to the above contention that there is no serious injury because profits have increased. Petitioners submit that the domestic industry has not only suffered losses in Q1 of 2015-16 but also in Q2 of 2015-16. It is to be noted that not only the profits of domestic industry have vanished rather substantial losses are being incurred thereby substantiating the claim of Petitioners to impose safeguard duty in such an extraordinary situation. Profit trends are shown in the following table:

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16 Q1	2015-16 Q2
Profits (INR crores)	****	****	****	****	****	****
Profits (INR Indexed)	100	34	96	79	(59)	(87)

Profits (INR per MT)	****	****	****	****	****	****
Profits (INR per MT Indexed)	100	27	68	95	(90)	(227)

ff. It can be seen from the above table that Petitioners' profitability has gone down drastically during the recent periods. The domestic industry has been suffering severe losses since Q1 2015-16. Further, the losses have increased during Q2 2015-16. From profit per MT of 100 indexed units in 2011-12, the domestic industry is now facing losses of (90) indexed units during Q1 2015-16 and further losses of (227) indexed units during Q2 2015-16.

gg. Quarter-wise analysis of 2014-15 and the first six months of 2015-16 shows a grim picture. Profits started declining in 2014-15 itself, and position of the domestic industry further worsened in Q1 and Q2 of 2015-16. In Q1 of 2014-15, profits were 100 indexed points, which sharply declined to 52 indexed points in Q4 of 2014-15. The domestic industry suffered severe losses in Q1 of 2015-16, when it suffered losses to the extent of (36) indexed points. This further worsened in Q2 of 2015-16 when losses increased to (52) indexed points.

Particulars	Unit	2014-15 Q1	2014-15 Q2	2014-15 Q3	2014-15 Q4	2015-16 Q1	2015-16 Q2
Profits	INR(Cr.)	****	****	****	****	****	****
Indexed		100	118	42	52	(36)	(52)
Profits per MT	INR/MT	****	****	****	****	****	****
Indexed		100	111	48	45	(17)	(42)

hh. The major reason for decline in profitability and losses of domestic industry is increased imports at reduced prices. If the same trend continues, the domestic industry fears that they would be forced to shut down their operations. If appropriate remedial measures are not put in place immediately, the domestic industry runs a risk of banks/financial institutions recalling their loans and thereby inflicting a sudden death to the domestic industry.

iii) Market share of imports is not significant to cause injury

ii. Many interested parties have argued that there is no sudden or sharp increase in imports that have caused serious injury to the domestic industry. Further, interested parties have argued that the market share of imports is insignificant to cause injury. Some of the interested parties have also contested that there is no increase in imports in absolute terms. Further, a few interested parties have added that increase in imports is of temporary nature and allegation of surge in imports is misleading. Some interested parties have also submitted that imports from Korea RP, Russia and Japan are insignificant to cause serious injury.

jj. Petitioners wholly object to the above contentions of the interested parties that imports, being insignificant, are not causing injury to the domestic industry and that there is no sharp increase in imports of the subject goods. In fact, sudden increase in imports is the only reason of serious injury to the domestic industry. The quarterly trends for the recent period indicate that market share of imports in total demand including captive increased from 7% in the first quarter of 2014-15 to 13% by the fourth quarter. Market share of imports in total demand (excluding captive) increased from 11% in the first quarter of 2014-15 to 21% by the fourth quarter. The market share of imports in total demand remained high during the first and second quarter of 2015-16. The data on record shows a gradual increase in demand in all quarters of 2014-15 and Q1 and Q2 of 2015-16. In contrast, imports show a sharp increase in every quarter of 2014-15 and in Q1 and Q2 of 2015-16. The share of imports in total demand (excluding captive) increased from 11% in Q1 of 2014-15 to 19% in the Q1 of 2015-16 and further to 24% in Q2 of 2015-16. If imports continue to increase at this pace, the domestic industry will be wiped out soon.

kk. Further, regarding the submission that imports from Korea RP, Japan and Russia are insignificant, Petitioners strongly object the same and submit that the imports from the abovementioned countries are very significant as evident from the table given below. Also, law provides that only a developing country which satisfies the 3%/9% criteria can be excluded. Therefore, the contention that Korea RP, Japan and Russia should be excluded is not correct because these countries are not developing countries but developed countries, and at the same time imports from these countries are significant.

Country	Import Qty (MT)	Share in total imports
JAPAN	1,957,260	33.08%
KOREA	1,586,318	26.81%
RUSSIA	361,511	6.11%
Other	2,011,066	33.99%
Grand Total	5,916,155	100.00%

iv) Injury is caused due to internal problems and factors other than imports

ll. Interested parties have submitted that injury being suffered by the domestic industry is due to their own internal factors including the following:

- High interest cost, depreciation and fixed cost burden
- High freight cost and poor infrastructure
- Raw material crisis
- Underutilised capacities
- Inability to meet the quality requirements of specific downstream industry

mm. Petitioners object to the above claims of the interested parties. These claims are very general and without any facts and figures to support. The fact that injury has been caused due to increased quantities of imports of the subject goods in India has already been established above. The domestic industry has been in existence since many years and has been doing well in the past. Infrastructure and capacities are in place with the domestic industry to meet the demand of the subject goods. But now it is alleged that the domestic industry is facing losses due to abovementioned internal issues. If such internal issues actually existed, the domestic industry would not have done well in the past also. Therefore, the allegation that the domestic industry is facing losses due to the above internal problems is not correct. It is the sudden and significant surge in imports of the subject goods which have caused injury to the domestic industry. Moreover, interested parties, in their contentions, are unable to substantiate the quality requirement which the domestic industry cannot produce.

v) Domestic industry is facing competition from other Indian manufacturers and therefore, losses suffered cannot pertain to imports in increased quantity

nn. Interested parties have argued that other Indian producers are giving competition to domestic industry because of which domestic industry is suffering losses. Further interested parties have argued that other Indian producers have increased their open market sales by 42% (2,994,323 MT in 2013-14 to 4,263,888 MT in 2015-16(A)). Petitioners submit that share of other Indian producers is very small in absolute terms and therefore, rise in their open market sales is also limited in absolute terms.

Financial Year	Total Import (MT)	Sales of DI (MT)	Sales of other Indian Producers (MT)	Captive sale of DI(MT)	Captive sale of Others (MT)	Total Demand (MT)	Market Share (%)	
							DI	Import
2013-14	1292099	10342565	2994323	4274000	4000724	22903711	45	6
2014-15	2540114	9949214	3298273	5019741	4615864	25423206	39	10
2015-16(Q1)	844840	2589929	1065972	1321497	1180681	7002919		
2015-16(A)	3379360	10359716	4263888	5285988	4722724	28011676	37	12

oo. From the above table, it can be seen that from 2013-14 to 2015-16 (A) combined open market sales of all Indian producers have increased only by 9.6% (1,286,716 MT in absolute terms) whereas imports have increased by a massive 160% (2,087,261 MT in absolute terms) in the same period.

pp. Interested parties are trying to mislead the Authority by highlighting rise of 42% in sales of other Indian producers whereas a comprehensive study of the data shows that this rise in sales is trivial when compared with the demand in India.

vi) Other Issues

1) Use of Q1 data for annualising 2015-16 figures

qq. Interested parties have submitted that annualising the Q1 figures of 2015-16 in order to arrive at annualised figures of 2015-16 is not a correct method for injury analysis. They further added that this method does not provide objective and reasonable basis for injury analysis and is misleading. One of the interested parties has submitted that longer period should be considered for annualisation.

rr. In this regard, Petitioners submit that in the petition filed with the Authority, Petitioners have provided data for the period January 2015 to June 2015 (6 Months), based on which figures were annualised for the year 2015. It is worth noting that nowhere in Article XIX of GATT, SA, Section 8B of the Custom Tariff Act, 1975 and the Safeguard Duty Rules, the method of annualisation is given. The only legal requirement is to provide data for a period as recent as possible and the same has been complied with by the domestic industry. Further, in the written submissions post public hearing, Petitioners have provided data for both Q1 and Q2 of 2015-16. Now annualisation is done based on data of the first six months of 2015-16, which is sufficient enough for the purpose of annualisation.

2) Effect of cheaper imports on competition

ss. China Iron and Steel Association has argued that cheaper imports in India would encourage competition in the Indian industry and increase in imports or availability of goods at low prices is not bad and should not be discouraged. Petitioners wholly object to this contention. Imports of the subject goods are not bad as long as they are not unfairly priced and causing any serious injury to the domestic industry. If imports are causing serious injury or threat of serious injury to the domestic industry, then such imports need to be controlled by way of safeguard measures. Moreover, levy of safeguard duty would only provide a level playing field to domestic manufacturers. Imports can still happen subject to payment of appropriate duty. Also, it is not a permanent measure but a temporary protection for the domestic industry to ensure huge quantities of unfairly low priced imports of the subject goods do not distort competition in the Indian market. Safeguard duty would in fact encourage healthy and fair competition in the Indian market.

3) Safeguard duty on floor price mechanism`

tt. M/s Tube Investment and M/s Hyundai Motors have suggested that floor price mechanism should be put in place to control cheaper imports. Petitioners agree with this proposal and submit that floor price mechanism may be resorted to after taking into account the manufacturing cost of the domestic industry and serious injury suffered by the domestic industry due to low priced imports. The Authority may invite views from the domestic industry if such a mechanism is required to be put in place.

- uu. In light of the above contentions, Petitioners submit that there is no merit in the contentions raised by interested parties.

II. Rejoinder by Domestic Industry to the submissions of Federative Republic of Brazil post public hearing

Petitioners provide rejoinder to the written submissions by the Federative Republic of Brazil (“Brazil”) in subsequent paragraphs:

Opening two paragraphs of the written submissions: In the first two opening paragraphs of the written submissions, Brazil makes very general submissions on the requirement to follow Article XIX of GATT 1994 (“GATT”) and the Agreement on Safeguards (“SA”). Brazil, then cautions India that since safeguard measures are emergency measures, these should be applied only after complying with the high standards set by the WTO Dispute Settlement Body. Petitioners agree with Brazil’s general comments and submit that the Authority has complied with the requirements under Article XIX of GATT and the SA in the present case. The petition contains all the relevant information that merits imposition of safeguard duty. Such information has been duly examined by the Authority in line with the requirements under GATT, SA, Section 8B of the Customs Tariff Act, 1975 and Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (“Safeguard Duty Rules”). Only after satisfying itself of the rigorous legal standards, the Authority initiated the present investigation.

- a. Notification to the WTO: In paragraphs 3 to 8 of the written submissions, Brazil contends that since India failed to notify imposition of provisional safeguard measure prior to its imposition, India failed to satisfy the requirements under Article 12.4 of the SA. Petitioners object to this contention and submit that merely because there was slight delay by India to notify the measure to the WTO does not mean that imposition of provisional safeguard duty itself is per se inconsistent with provisions of SA. Mere non-compliance with a procedural requirement such as notification to the WTO does not compromise the substantive merits of the provisional safeguard duty. Brazil’s contention cannot be accepted.
- b. Period of investigation of serious injury (and threat thereof) and increased imports: In paragraphs 9 to 16 of the written submissions, Brazil argues that the Authority only considered domestic industry’s data for the period 2013-14, 2014-15 and for 2015-16, the Authority simply multiplied by four the injury parameters based on the first quarter of 2015-16. Brazil argues that such an approach is incorrect as it is inconsistent with general accounting principles, and also because one quarter of 2015-16 is not sufficient enough to indicate domestic industry’s performance during 2015-16, as this financial year has not elapsed yet. Brazil further argues that the Indian Authority chose to ignore data for the period April 2011 to March 2012, despite the fact that such data was available with the Authority. This, according to Brazil is a violation of Article 4.2(a) of the SA. Brazil further argues that the period for examination of serious prejudice should be three years as per the recommendation of the WTO Anti-dumping Committee and the period of two years and one quarter in this case is not sufficient. Brazil argues that the period of investigation cannot be reduced on a justification that actual data for most recent period would be collected during the course of the investigation. In light of these contentions, Brazil argues that India has failed to comply with the objectives set out in the SA. Petitioners object to all the contentions by Brazil. Petitioners submit that though the WTO Anti-dumping Committee has specifically suggested that the period of data collection for injury analysis in an anti-dumping investigation should be three years, however, the same requirement cannot be simply transposed in a safeguard investigation. Brazil is incorrect in arguing that in the present investigation, since the Authority has only considered data for a period of two years and one quarter, the Authority has failed to comply with the requirement of examining three years of data. There is no such requirement under GATT, the SA, the Act and the Safeguard Duty Rules that the Authority has to collect and examine data for at least three years to carry out analysis of serious injury to the domestic industry. Further, Brazil also fails to point out the specific provisions under general accounting principles which have not been met in this case. Petitioners submit that the legal requirement under Article XIX is that imports should be *recent enough*, and such requirement was discharged by the domestic industry by providing data up to the first quarter of 2015-16 in the petition. Merely because the Authority chose to extrapolate data of one quarter for the whole year does not mean that this itself violates any provision of GATT, the SA, the Act and the Safeguard Duty Rules. Petitioners have been regularly assisting the Authority during the course of this investigation and have been providing data on imports for recent quarters as well. Information on updated injury parameters

up to the second quarter of 2015-16 has also been provided in Petitioners' written submissions. Interested parties have full opportunity to comment on such updated information. In light of these contentions, Petitioners respectfully submit that Brazil's contentions in paragraphs 9 to 16 are unwarranted and should be rejected.

- c. **Serious injury and threat thereof:** In paragraph 17 to 23 of the written submissions, Brazil argues that injury parameters of the domestic industry do not indicate existence of serious injury or threat thereof. It appears that Brazil has only referred to injury parameters as given in the preliminary findings but not in the petition. Petitioners reject Brazil's contention and submit that there is serious injury to the domestic industry and threat of serious injury thereof. This is evident from the data on record with the Authority, which has also been duly verified. Therefore, Brazil's contention should be rejected.
- d. **Causal Link:** In paragraphs 24 to 28 of the written submissions, Brazil argues that there is no causal link in this case, as an analysis of other factors indicates that injury to the domestic industry is not due to imports but other factors. Petitioners strongly object to this contention and submit that there is clear causal link in this case. Petitioners have comprehensively established during the investigation that imports of the subject goods had increased both relative to production and consumption in India. Imports were 7% in production of the domestic industry in 2013-14, which doubled to 14% in 2014-15. Quarter-wise analysis of 2014-15 and Q1/Q2 2015-16 also shows that share of imports has been consistently on the rise in relation to production of the domestic industry. Market share of imports has also increased in total demand during 2015-16. The domestic industry is not able to increase its production and sales commensurate to increase in demand. Capacity utilisation, production, sales and profitability of the domestic industry has suffered. There is significant price depression, suppression, undercutting and underselling due to imports of the subject goods. Profitability and ROCE of the domestic industry have severely deteriorated during Q1 and Q2 of 2015-16. Inventories of the domestic industry have also increased. All of these factors clearly establish existence of causal link in this case. There are no other factors causing injury to the domestic industry other than sudden, sharp, significant and recent increase of imports of the subject goods.
- e. **Special treatment given to developing countries:** In paragraphs 29 to 31 of the written submissions, Brazil argues that share of each exporting country has not been informed by the Authority and a list of developing countries has also not been provided. Brazil also argues that the period taken into account for calculation of the volumes imported from each source has not been specified. Due to lack of such essential information, Brazil argues that it has not been able to exercise its right of defence under Article 3.1 of the SA. Petitioners object to these contentions and submit that the Authority already has data on record for volume of exports from each exporting country. Further, Petitioners have also clarified the same by their letter dated 9 November 2015 to the Authority. Therefore, the Authority may examine the same while finalising this case and notify such information in the final findings as well. Further, Brazil has been able to exercise its right of defence fully at all stages of this investigation. There is, thus, no inconsistency in terms of Article 3.1 of the SA. Further, since Brazil's share of imports is more than 3% in total imports as per the available data, it cannot be excluded from the purview of safeguard duty.
- f. **Conclusion:** In paragraphs 32 and 33 of the written submissions, Brazil argues that there is no serious injury or threat thereof to the domestic industry, and there is no causal link as well. Brazil further contends that formal requirements such as notification to the WTO and publication of essential information have not been observed in this case. Petitioners object to these contentions and submit that the data on record comprehensively establishes that there is serious injury and threat of serious injury to the domestic industry in this case. There is causal link between sudden, sharp, significant and recent increase in imports of the subject goods and serious injury to the domestic industry. Merely because there was slight delay by India to notify the measure to the WTO does not mean that imposition of provisional safeguard duty itself is per se inconsistent with provisions of SA. Petitioners submit that all essential information has been published in this case which has enabled interested parties to exercise their right of defence.

In light of the above contentions, Petitioners submit that there is no merit in Brazil's contentions.

III. Rejoinder by Domestic Industry to the submissions of China PR post public hearing

Petitioners object to all the contentions made by China PR. China PR's submissions are mere general statements that are not supported by concrete data. Petitioners provide their rejoinder to China PR's contentions below:

- a. There are unforeseen development that led to the sudden, sharp, significant and recent increase in imports of the subject goods in India. Petitioners have provided very detailed analysis in this regard in the petition. China PR has failed to take notice of such analysis in the petition.
- b. The petition as well as the preliminary findings comprehensively throw light on the critical circumstances that warranted imposition of safeguard duty in this case. China PR has failed to take notice of the same. The Authority has met the requirements of Article 6 of the SA in this case.
- c. The petition as well as the preliminary findings establish that there is a sudden, sharp, significant and recent increase in imports of the subject goods which has caused serious injury to the domestic industry and is also threatening to cause serious injury to the domestic industry. There is clear causal link in this case. China PR's contention, thus, has no merit.
- d. If safeguard duty is not imposed, the domestic industry will not be able to survive. Public interest of downstream industries alone cannot be the sole criteria in this case. It is in public interest that Indian steel producers should be protected from sudden, sharp, significant and recent increase in imports of the subject goods otherwise, the domestic industry would be wiped out.
- e. Provisional safeguard duty should not be revoked as there exist critical circumstances that warrant continued imposition of provisional safeguard duty for 200 days.

In light of the above contentions, Petitioners submit that there is no merit in China PR's contentions.

- IV. **Rejoinder by Domestic Industry to the submissions of Chinese Taipei post public hearing:** Petitioners submit that the Authority may look into Taiwan's request for assistance to deem it as a developing country and take it forward appropriately. Further, whether imports from Taiwan are below 3% or not may be examined from the data on record and only then an appropriate decision may be taken. As Taiwan has not made any substantive comments on the merits of the petition or any other aspect, Petitioners have no further comments on Taiwan's written submissions.
- V. **Rejoinder by Domestic Industry to the submissions of European Commission post public hearing:** Petitioners provide rejoinder to the written submissions by the European Commission ("Commission") in subsequent paragraphs:
 - a. The Commission has submitted in the introductory lines that safeguard instrument should be used in exceptional circumstances only and the present case is suitable for anti-dumping or anti-subsidy investigation. Petitioners object to this contention because at present the Indian steel industry is going through a very critical phase due to sudden, sharp, significant and recent increase in imports of the subject goods. The Indian steel producers are suffering serious injury due to such imports as a result of unforeseen developments and in order to protect their interest from the sudden surge in imports, safeguard duty is the only suitable measure. Due to this reason, the domestic industry has approached the Authority to take an emergency action to protect the domestic industry.
 - b. Regarding Commission's contention that certain specific grades of the subject goods should be excluded from product scope as the domestic industry may not be manufacturing them, it is submitted that the Commission has failed to identify what all grades the domestic industry does not produce, for which exclusions are required. In the absence of information on specific grades, Petitioners cannot effectively rebut such vague contentions. The Commission should give clarifications on the grades of the subject goods that is concerned with, otherwise, the Authority should reject the Commission's above contention.
 - c. The Commission has raised a number of issues in order to conclude that there is no injury and causality. The Commission argues that use of annualised figures for 2015-16 is not objective and injury analysis as well as causality is not conclusive based on such annualised figures. The Commission argues that data for a longer period should have been considered for 2015-16. The Commission further argues that the factors considered in determining serious injury and causality including the market share, production, capacity, utilisation rate, employment, profits, market share etc. are insufficient and these factors do not indicate injury and causality. Petitioners object to the arguments raised by the Commission. Serious injury and causality are clearly evident from the facts and figures given in the petition and written submission dated 16 November 2015. Petitioners have comprehensively established during the course of this investigation that imports of the subject goods had increased both relative to production and consumption in India. Imports

were 7% in production of the domestic industry in 2013-14, which doubled to 14% in 2014-15. Quarter-wise analysis of 2014-15 and Q1/Q2 2015-16 also shows that share of imports have been consistently on the rise in relation to production of the domestic industry. Market share of imports has also increased in total demand during 2015-16. The domestic industry is not able to sell its production and sales commensurate to increase in demand. Capacity utilisation, production, sales and profitability of the domestic industry has suffered. There is significant price depression, suppression, undercutting and underselling due to imports of the subject goods. Profitability and ROCE of the domestic industry have severely deteriorated during Q1 and Q2 of 2015-16. Inventories of the domestic industry have also increased. All of these factors clearly establish existence of serious injury and causal link in this case. There are no other factors causing injury to the domestic industry other than sudden, sharp, significant and recent increase of imports of the subject goods. As a result, there is no violation of Article 4.2(a) of the Agreement on Safeguards.

- d. The Commission argues that captive sales and sales by other domestic producers should be examined. The Commission further adds that other Indian producers have increased their open market sales by 42%. Petitioners object to these contentions and submit that share of other Indian producers is very small in absolute terms and therefore, the rise in their open market sales is also limited in absolute terms. Moreover, imports have taken away all the increase in demand of the subject goods. In 2014-15, demand (excluding captive) increased by 1,158,614 MT and imports increased by 1,248,015 MT. When demand (including captive) increased to 25,423,206 MT and (excluding captive) increased to 15,787,601 MT in 2014-15, imports almost doubled to 2,540,114 MT. This shows the aggressive manner in which imports of the subject goods are entering the Indian market. There is no need for the Authority to wait for development of the domestic industry for a longer period as suggested by the Commission, as the domestic industry was established a long time back. The economic parameters of the domestic industry present a fair and accurate picture of the state of the domestic industry.

In light of the above contentions, Petitioners submit that there is no merit in the Commission's contentions.

VI. Rejoinder by Domestic Industry to the submissions of Government of Indonesia post public hearing:

Petitioners provide their rejoinder to Indonesia's contentions below:

- a. Imports were 7% in production of the domestic industry in 2013-14, which doubled to 14% in 2014-15. Quarter-wise analysis of 2014-15 and Q1/Q2 2015-16 also shows that share of imports has been consistently on the rise in relation to production of the domestic industry. Market share of imports has also increased in total demand during 2015-16. Therefore, Indonesia's analysis is incorrect. Imports have almost doubled from 2013-14 to 2015-16 (Annualised).
- b. The petition as well as the preliminary findings comprehensively throw light on the critical circumstances that warranted imposition of safeguard duty in this case. Ukraine has failed to take notice of the same. The Authority has met the requirements of Article 6 of the SA in this case.
- c. The data from UN Comtrade relied upon by Indonesia is incorrect as it does not represent data for the product under consideration. Any analysis based on such data would give an incorrect picture.
- d. The Indonesian company PT Krakatau Posco should provide complete data for its exports to India to substantiate that it did not export the subject goods to India. Further, Indonesia should also substantiate with the aid of concrete data its producers/exporters never exported the subject goods to India. Such data should also be provided to Petitioners for examination and comments. Without such data, such claims by Indonesia would have no meaning.
- e. The domestic industry is not able to increase its production and sales commensurate to increase in demand.
- f. India's import policy and general increases or decreases in customs duty on steel is not relevant in this case. Petitioners are aware that imports from certain Asian countries like Korea RP, Japan and ASEAN countries that include Indonesia are occurring at concessional rates of duty. However, this is just factual information and Indonesia has not substantiated how this information is relevant in this case.

VII. Rejoinder by Domestic Industry to the submissions of Russian Federation post public hearing: Petitioners provide their rejoinder to Russia's contentions below:

- a. Section 8B(1) of the Customs Tariff Act, 1975 clearly provides that no safeguard duty can be imposed on imports of an article from a developing country if the share of imports from that country does not exceed 3% as long as the aggregate of imports from all such countries taken together does not exceed 9% of total imports. Petitioners submit that in the present case, since Russia is a developed country, it cannot be excluded from the purview of safeguard duty.

- b. There exist substantial reasons to invoke safeguard duty in this case, and it cannot be argued that since substantial imports took place from China PR, Korea RP and Japan, safeguard duty cannot be invoked.
- c. Petitioners respectfully submit that a WTO member country like Russia has no locus to tell domestic industry or the investigating authority of another country that anti-dumping or countervailing measures are more appropriate in a case than safeguard measures. Petitioners have suffered serious injury due to sudden, sharp, significant and recent increase in imports of the subject goods. The circumstances were critical and warranted immediate redressal of the situation by imposition of safeguard duty. Whether India should also explore bilateral mechanism with Korea RP or Japan is the sole discretion of the Government of India.
- d. Economic performance of the domestic industry has in fact deteriorated due to sudden, sharp, significant and recent increase in imports of the subject goods. Petitioners have comprehensively established during the investigation that imports of the subject goods had increased both relative to production and consumption in India. Imports were 7% in production of the domestic industry in 2013-14, which doubled to 14% in 2014-15. Quarter-wise analysis of 2014-15 and Q1/Q2 2015-16 also shows that share of imports has been consistently on the rise in relation to production of the domestic industry. Market share of imports has also increased in total demand during 2015-16. The domestic industry is not able to sell its production and sales commensurate to increase in demand. Capacity utilisation, production, sales and profitability of the domestic industry has suffered. There is significant price depression, suppression, undercutting and underselling due to imports of the subject goods. Profitability and ROCE of the domestic industry have severely deteriorated during Q1 and Q2 of 2015-16. Inventories of the domestic industry have also increased. All of these factors clearly establish existence of causal link in this case. There are no other factors causing injury to the domestic industry other than sudden, sharp, significant and recent increase of imports of the subject goods.
- e. Provisional safeguard duty has been imposed only after thorough examination of the critical circumstances in this case. The Authority has taken a balanced view by initiating this investigation to safeguard the interests of the domestic industry. It is the practice of the Authority to examine public interest as well while examining the need of safeguard duty. Whether safeguard duty should be recommended or not will be decided only after taking into account views of all stakeholders. Therefore, Russia need not worry whether the Authority has taken a balanced view or not, as the Authority examines the need of safeguard duty only after rigorous analysis of all facts and considerations.

In light of the above contentions, Petitioners submit that there is no merit in Russia's contentions.

VIII. Rejoinder by Domestic Industry to the submissions of Republic of Turkey post public hearing: Petitioners provide their rejoinder to Turkey's contentions below:

- a. The Authority has notified unforeseen developments that led to sudden, sharp, significant and recent increase in imports of the subject goods. The Authority has, thus, satisfied the requirements under Article XIX and the SA.
- b. India has notified to the WTO about the initiation and levy of provisional safeguard duty based on the notification requirements under the SA. It cannot be said that the notification did not contain a detailed examination of unforeseen developments. The notification expressly refers to the preliminary findings of the Authority dated 9 September 2015. Interested parties including governments can access the preliminary findings from the website of the Authority, which can be easily accessed. India's notification to the WTO when read with the preliminary findings of the Authority very clearly specifies examination all the parameters including unforeseen developments in this case.
- c. It is to be noted that Petitioners have not annualised data in the petition based on the first quarter of 2015-16. Petitioners have annualised data for the year 2015 on basis of six months' data for January – June 2015, which is on the record of this investigation. The Authority has also duly examined the same data during the course of this investigation. Petitioners have now provided data for the second quarter of 2015-16 as well in their written submissions dated 16 November 2015. Data has now been annualised based on the first six months data for 2015-16, which also shows existence of serious injury to the domestic industry.
- d. Petitioners have duly put on record injury parameters for the years 2011-12 and 2012-13. The Authority has also duly verified this information. The Authority has the discretion to consider and examine data for these periods as well. Such analysis will again show the extent of serious injury the domestic industry has suffered and will continue to suffer if definitive safeguard measures are not imposed. Further, import data does not show slight increase; rather the increase is significant. Imports in 2014-15 almost doubled in

- comparison to 2013-14. Imports in 2015-16 are expected to almost double than 2014-15 levels based on the available data for the first six months of 2015-16.
- e. Profitability for 2013-14 and 2014-15 cannot be examined in isolation. Profitability figures have to be examined for recent periods as well. The domestic industry's profitability has sharply declined to (613) and (1,547) during the first two quarters of 2015-16 itself. This is going to further decrease as imports are still coming at very significant levels and hurting the domestic industry. The domestic industry has been unable to increase its sales during the injury analysis period due to sudden, sharp, significant and recent increase in imports of the subject goods.
 - f. Economic parameters of the domestic industry should be examined for the product under consideration as specified in the petition. Mere reference to annual reports of individual petitioners without appreciating the surrounding circumstances would not give the correct picture.
 - g. Petitioners have already put on record the detailed break-up of imports of the subject goods from all sources. The Authority can examine the same and take an appropriate view on whether Turkey should be excluded from application of safeguard duty or not.
 - h. Turkey's contention that it should be excluded from the purview of safeguard duty as it is a developing country is incorrect. India does not recognise Turkey as a developing country in terms of Notification No. 103/98-Cus dated 14 December 1998. Therefore, Turkey cannot be excluded from the purview of safeguard duty.

In light of the above contentions, Petitioners submit that there is no merit in Turkey's contentions.

IX. Rejoinder by Domestic Industry to the submissions of Embassy of Ukraine post public hearing: Petitioners submit that Ukraine has indulged in end-to-end analysis of domestic industry's parameters for the period 2011-12 vis-à-vis 2014-15. This kind of selective analysis leads to skewed observations. The WTO Panel in *Dominican Republic – Safeguard Measures on Polypropylene Bags and Tubular Fabric* has clearly noted that mere end-to-end analysis is not enough. As per the Panel report, an investigating authority should also consider year-on-year analysis to holistically examine variations in domestic industry's parameters. As all of Ukraine's submissions are based only on end-to-end analysis, all the contentions raised by Ukraine are inconsistent with the aforesaid WTO Panel Report. End-to-end analysis alone is incorrect. End-to-end analysis along with year-on-year analysis is the correct legal methodology as established by the WTO Panel in aforesaid case. Petitioners have conducted both end-to-end and year-on-year analysis in the petition and their written submissions dated 16 November 2015. Based on the above analysis, the following are submitted:

- a. Imports were 7% in production of the domestic industry in 2013-14, which doubled to 14% in 2014-15. Quarter-wise analysis of 2014-15 and Q1/Q2 2015-16 also shows that share of imports have been consistently on the rise in relation to production of the domestic industry. Market share of imports has also increased in total demand during 2015-16.
- b. The domestic industry is not able to sell its production and sales commensurate to increase in demand.
- c. Capacity utilisation, production, sales and profitability of the domestic industry has suffered.
- d. There is significant price depression, suppression, undercutting and underselling due to imports of the subject goods.
- e. Profitability and ROCE of the domestic industry have severely deteriorated during Q1 and Q2 of 2015-16. Inventories of the domestic industry have also increased.
- f. All of these factors clearly establish existence of causal link in this case. There are no other factors causing injury to the domestic industry other than sudden, sharp, significant and recent increase of imports of the subject goods.
- g. The petition as well as the preliminary findings comprehensively throw light on the critical circumstances that warranted imposition of safeguard duty in this case. Ukraine has failed to take notice of the same. The Authority has met the requirements of Article 6 of the SA in this case.
- h. The data from International Trade Centre relied upon by Ukraine is incorrect as it does not represent data for the product under consideration. Any analysis based on such data would give an incorrect picture.

In light of the above contentions, Petitioners submit that there is no merit in Ukraine's contentions. India has, thus, not committed any violation of Articles 2.1, 4.1(a), 4.2(b) and 6 of the SA.

- X. **Rejoinder by Domestic Industry to the submissions of Dillinger Huttenwerke post public hearing:** Petitioners provide rejoinder to the written submissions by Dillinger Huttenwerke (“Dillinger”) in subsequent paragraphs:
- Dillinger has submitted that the name of the company mentioned in the notice sent to them by the Authority is ‘Dillinger and Salzitter’ whereas the correct name is ‘Dillinger Huttenwerke’. Further it is submitted that Dillinger is not engaged in production or exports to India of the subject goods. Dillinger has admitted on record that it is a producer of heavy steel plates.
 - Petitioners request the Authority to examine the veracity of the above claims by Dillinger and also examine whether Dillinger is producing any other products falling under definition of the subject goods, which it has exported to India. Petitioners request the Authority that if any further information is provided by Dillinger, it should be provided to Petitioners for examination and comments.
- XI. **Rejoinder by JFE Steel Corporation, Nisshin Steel Co., Ltd, Nippon Steel & Sumitomo Metal Corporation and Kobe Steel, Ltd. (together referred as “Japanese Mills”) represented by M/s. AZB & Partners**
- The Japanese Mills deny all the contentions averred in the DI’s submissions and submit that no part of the rejoinder may be read to be or deemed to be an admission of the facts and contentions pleaded in the DI submissions, unless and insofar as specifically admitted in this rejoinder.
 - The DI’s post hearing submissions do not provide adequate evidence that is necessary for the initiation of a safeguard duty investigation on imports of the subject goods.
 - The DI does not manufacture the kind of HRC that is identical or alike in all respects to the products exported by the Japanese Mills.
 - The DI had requested exclusion of API Grade Steel based on end-usage substitutability. On similar lines, the Japanese Mills also request that the products manufactured and exported by them are not substitutable with those produced by the DI as these are guided and tailored to meet its end consumer preferences and specifications. Therefore, the type of HRC supplied by the Japanese Mills are not like or directly competitive with the HRCs produced by the DI. The Authority should examine if the DI is manufacturing the specific grades of HRC exported by the Japanese Mills and accordingly, exclude the same from the scope of the product under consideration.
 - There is no consistent trend of increase in imports. This is notwithstanding the fact that JSW Steel is importing about 150,000 MT of HRC into India from China to artificially inflate import figures. If there is any increase in imports, it is due to the increase in demand of HRCs in the domestic market coupled with the low global prices of HRCs and the inability of the DI to meet the needs of the domestic market by supplying products of sufficient quality and quantities to meet the needs of industrial users.

Particulars (Excluding Captive Consumption)	2011-12	2012-13	2013-14	2014-15
Market share of DI	66%	68%	71%	63%
Market share of other domestic producers	15%	17%	20%	21%
Market share of imports	18%	14%	9%	16%

- Market share of the DI has consistently increased in the years 2011-12, 2012-13 and 2013-14. The DI’s market share has only decreased in the year 2014-15. The market share of the DI, excluding captive consumption, has only fallen from 66% in 2011-12 to 63% in 2014-15. Whereas there has been a significant increase in the market share of other producers from 15% in 2011-12 to 21% in 2014-15.
- Domestic sales of other domestic producers have also increased from 1,880,877 MT in 2011-12 to 2,994,323 MT in 2013-14 and then further to 3,298,273 MT in 2014-15. It is evident from this data that the loss in market share of the DI is due to inter-se competition between the DI and other domestic producers.
- Contrary to the submissions of the DI, the market share of Imports fell from 18% in 2011-12 to 9% in 2013-14, and then increased to 16% in 2014-15, still lower than the imports in 2011-12. Even monthly analysis of import data doesn’t lead to a conclusion of a consistent surge in Imports, for instance imports fell from 153,500 MT in April 2014, to 98,192 MT in May 2014, and then rose to 277,891 MT in October 2014 only to fall again to 171,927 MT in November 2014.

- i. On an analysis of the data in the DI Written Submissions for 2011-12 to 2014-15, it is evident that there has been an increase in the sales of the DI in absolute terms. Moreover, any decrease in sales between 2013-14 and 2014 -15 can be attributed to the DI willfully diverting HRCs to be sold in the domestic market towards captive consumption. This is evident from the increase in captive consumption of the DI from 4,274,000 MT in 2013-14 to 5,019,741 MT in 2014-15.
- j. Sales of the DI increased only marginally from 10,039,219 MT in 2012-13 to 10,342,565 MT in 2013-14 even while imports fell from 2,120,996 MT in 2012-13 to 1,292,099 MT in 2013-14. The DI was unable to increase its supply of HRCs to the Domestic Market to make good for the significant decrease in imports. This is a clear indication of the lack of correlation between increased imports and domestic sales.
- k. The capacity utilization of the DI increased from 4,429,604 MT in Q4 2014-15 to 4,456,795 in Q1 2015-16. It is pertinent to note that JSW, which is one of the Petitioners in the present Petition/Applicants, topped the industry in capacity utilization. In the fourth quarter of 2014, it operated its plants at 90 per cent rated capacity. JSW's revenue run-rate clearly indicates that it had higher utilization levels compared to its peers.
- l. In addition, Steel Authority of India Limited ("SAIL"), which is one of the Petitioners in this investigation announced a production of 15.4 million tonnes (MT) of hot metal in financial year 2014-2015, registering an increase of 7% over the financial year 2013-2014 and its saleable production was 13.5 MT which was 3% higher than the previous financial year.
- m. The decline in capacity utilization if any in Q2 2015-16, is due to excess newly added capacity by the DI with no corresponding increase in demand. The recent report of India Ratings and Research (Ind-Ra) which expects the capacity utilization of Indian steel manufacturers to decline, as close to 12-14 million tonnes of crude steel capacity will come on board by FY16 with no significant hike in consumption demand. The report found that the total Indian capacity for FY15, was 46 per cent higher than at FY10, whereas, the domestic steel consumption growth, which was a robust 11.9 per cent during FY11, had declined by 2.4 per cent each year over the last two years due to a slump in construction, capital goods and automobile industries. This also demonstrates that the increased inventory of the DI is not caused by the pressure from increasing imports but from the over-production by the DI.
- n. Reduced capacity utilisation is also due to the inefficiencies of the Indian Steel Mills and challenges in infrastructure, building design and engineering capabilities and high production costs due to shortage of raw material.
- o. The reasons for high operating expenditure can be attributed to reasons like handicaps in capacity building and generation, delayed implementation of their projects due to land acquisition and environmental clearances, less or no lending support by the Government, exposure to global price shocks, competitive products both in terms of price and quality from other countries, lower-quality iron ores which require more coal, and lower quality of coal.
- p. These are challenges that cannot be resolved by imposing Safeguard duties on imports. It is pertinent to note that even after the imposition of Safeguard Duties, Moody's Investors Service cut JSW Ltd.'s outlook to negative this November and Fitch Ratings has also observed that the safeguard duty on certain steel products would not be adequate to reform the Steel sector.
- q. The DI has claimed excessive confidentiality in the non-confidential version of the post-hearing written submissions filed with the Authority with respect to the inventories lying unsold with them. The DI has also not provided data on how long does the DI take to turn its inventory into sales, so as to ascertain the "Days Sales on Inventory" value. In light of the lack of data, the Authority is requested to put the DI to the strict proof of the same.
- r. The DI has provided indexed figures for profits, instead of actual figures despite the fact that all the companies are listed companies.
- s. ROCE of the DI has not only been positive but also shows signs of improvement and recovery in the first quarter (Q1) of FY 2015-16 in comparison to FY 2012-13.
- t. Unforeseen developments alleged by the DI in their submissions are neither unexpected, nor reasoned and adequate, and neither has the Authority been able to demonstrate such alleged unforeseen developments resulted in surge in imports of specific category of products under the product under consideration.
- u. The DI has only alleged general arguments with reference to "steel", as a whole, which is clearly not the PUC and not been able to address each specific product under the PUC. The alleged developments mentioned by the DI have a global scenario and as such their impact is not just "India specific".
- v. Imposition of safeguard duty is inconsistent with India's obligations under the India-Korea CEPA. It could severely strain the relations between the two countries and risk jeopardising any future investment from Japan into India.

- w. In light of the above, the Authority may terminate the investigation, recall the preliminary findings and decline to apply a safeguard measure on imports of the PUC. Alternatively, the Authority may exclude the hot-rolled coils exported by the Japanese Mills as identified in Annexure 1 of the post-public hearing written submissions dated 23 November 2015 from the scope of the PUC as the products exported by the Japanese Mills significantly differ from those produced in India in terms of quality and specifications.

XII. Rejoinder by Nippon Steel & Sumikin Pipe India Co., Ltd. (NPI) represented by M/s. AZB & Partners

- x. NPI reiterates its arguments contained in its submissions dated 9 November 2015 and 23 November 2015 and requests the Authority to read NPI's rejoinder in conjunction with these submissions
- y. The DI's post hearing submissions do not provide adequate evidence that is necessary for the initiation of a safeguard duty investigation on imports of the subject goods.
- z. The DI does not manufacture the kind of HRC that is identical or alike in all respects to the products imported by NPI.
- aa. The DI had requested exclusion of API Grade Steel based on end-usage substitutability. On similar lines, NPI also requests that the products imported by them are not substitutable with those produced by the DI as these are guided and tailored to meet its end consumer preferences and specifications. Therefore, the type of HRC imported by NPI are not like or directly competitive with the HRCs produced by the DI. The Authority should examine if DI is manufacturing the specific grades of HRC imported by NPI and accordingly, exclude the same from the scope of the product under consideration.
- bb. NPI's customers are original equipment manufacturers and Tier 1 parts makers' who supply parts to automobile manufacturers including ****. NPI's customers require highly customized products, which undergo different levels of testing mainly in Japan before being approved by customers. NPI imports very specific types of HRCs to make automotive pipes and tubes required by its customers in India.
- cc. The products with specifications imported by NPI from Japan are not produced by the Domestic Industry or have not been granted approval from end customers despite of the local availability.
- dd. The HRCs imported by NPI to India differ in "Tensile strength", "Steel cleanness", "Grain size", and "Chemical composition" (especially for the nitrogen, controlled range is much narrower than domestic one), all of which are tailored to meet the specifications prescribed by the end user. Due to the highly specific and specialized nature of each product type imported into India, even minor differences can lead to substantial differences in quality.
- ee. The DI does not manufacture all types of automotive-grade steel and that industrial users must import this steel in order to meet their requirements. Importation of the PUC into India is necessary to meet the needs of the downstream auto industry.
- ff. NPI imports HRCs for use in manufacture of automotive pipes that Indian domestic steel manufacturers (i) are unable to provide with sufficient quality specifications or (ii) have not obtained the approval from the ultimate end users (i.e., the automobile manufacturers). The vast majority of these imported coils are raw materials used in the manufacture of automotive pipes used in automotive parts and which are necessary to ensure automobile safety and fuel efficiency through reduced weight of vehicles. The specifications in relation to the quality of these products are particularly strict.
- gg. These strict specifications pertain to formability, appearance and size of the relevant automotive parts. Nippon Steel & Sumitomo Metal Corporation ("NSSMC"), which is NPI's parent company and a producer and exporter of Hot-rolled Coils, is able to satisfy these specifications by precisely controlling the chemical composition, mechanical characteristics, surface quality and size of the products. Thus, when NPI needs to import these special coils, it imports such coils produced by NSSMC. Other than these special coils, NPI procures its materials for automotive pipe production from Indian domestic steel manufacturers.
- hh. NPI is not able to use all HRCs produced by the Domestic Industry because the Domestic Industry has not secured industrial user approval for their products. In this regard, it is submitted that once a supplier is selected by the end-customer, the supplier cannot be changed during the lifetime of the model to maintain consistency in product quality and the long term nature of supply contracts. If safeguard measures are imposed, the automotive user will continue to import the PUC at higher prices and be forced to pay higher prices which will be passed on to the customers.
- ii. The DI have not furnished any evidence of the actual manufacture of the specific type of hot rolled flat products being imported into India by NPI from Japan. To establish that the products were manufactured by them, the DI ought to have furnished technical information affirming the likeness (in all respects) of their products with the imported hot rolled flat products. The DI's failure on this critical requirement is fatal to the ongoing investigation and for this reason alone the investigation must be terminated.

- jj. Notwithstanding this submission, NPI submits that the HRCs imported by it are distinct from the products manufactured by the Domestic Industry. The products being imported by NPI differ from the products manufactured by the Domestic Industry in terms of their physical characteristics, chemical composition and end usage. Specifically, the HRCs imported by NPI differ in “Tensile strength”, “Steel cleanness”, “Grain size” and “Chemical composition” (especially for the nitrogen, the controlled range is much narrower than domestic one).
- kk. NPI therefore requests the Authority to exclude from the scope of the PUC, imports used for the production of Tortion beam, door impact beams, stabilizers in automobiles, front forks in motorbikes and other products imported by NPI listed in Annexure 1 of the Confidential Version of its post-public hearing written submissions dated 23 November, 2015. These imports are either not produced locally by the Domestic Industry with quality specifications required by the Indian industrial users of the PUC or have not yet been granted approval from OEMs.

XIII. Rejoinder by China Iron and Steel Association; Angang Group Hong Kong Co. Limited; Angang Steel Company Limited; Shanghai Meishan Iron & Steel Co., Limited; Angang Group International Trade Corporation; Baosteel Singapore Pte Ltd; Maanshan Iron & Steel Co., Ltd.; Benxi Iron & Steel (Group) International Economic & Trading Co., Ltd.; Jiangsu Shagang Group; Handan Iron & Steel Group Co., Ltd. and Rizhao Steel Wire Co. Ltd represented by M/s. Athena Law Associates

- a. The submissions made by the above entities in their previous submissions have not been repeated here for the sake of brevity.
- b. Applicant has resorted to excessive confidentiality in the written submissions and also meaningless summaries are provided to other parties. The Applicant has reduced the process of the rejoinder on crucial aspects to a meaningless exercise by restricting even bare minimum information to the opposing interested parties.
- c. Applicant is silent on a viable and creditable adjustment plan. Applicant has stated on page 39 of petition that an adjustment plan has been provided separately along with the producer questionnaire response but the producer specific questionnaire is not part of the petition but rather is a separate document. In addition, the producer specific questionnaires also do not have a creditable adjustment plan. In an application filed by United Phosphorus in 1999 for safeguards duty imposition, the authority refused to impose a safeguard duty on the ground of lack of an adjustment plan.
- d. The preliminary determination did not contain anything to show the urgency and critical circumstances to warrant imposition of preliminary duties.
- e. The product scope consists of a number of specialty grades which are not homogenous items inter se to fall in one basket. Expansion of the product scope to stop evasion of duty is neither the remedy nor the permissible method.
- f. Other producers should also be required to provide injury information considering the disputable position of alleged injury to the Applicant.
- g. Alleged injury is self-inflicted on account of high interest burden, capacity pressures, dumping, FTA, raw material crisis, etc that have caused pressure on the performance of the Applicants as evident in their annual reports.
- h. The points below establish that the Applicant are not suffering serious injury or threat of serious injury:
 - i. Major parameters such as production, sales, capacity, utilization, inventory employment, productivity and ROCE have improved in comparison to the previous year.
 - ii. Indian producers hold 88% of domestic demand and imports are merely 12% which is incapable of inflicting serious injury on the domestic industry.
 - iii. Alleged injury is due to high interest and fixed cost burden on account of excess capacity.
 - iv. No price pressure from imported products as landed price of imports were higher than the selling price.
 - v. Selling price of domestic industry being lower than landed price is a *prima facie* indication of *inter se* competition between the Indian producers.
- i. Applicant has made certain claims on the methodology of calculation of landed price for computation of price undercutting/underselling which has no legal or factual basis. Landed value should be computed as per its consistent practice.
- j. Applicant has cited towards 4 instances for unforeseen developments and 3 of the instances are anti-dumping duties. Applicant has failed to establish unforeseen developments which triggered the alleged situation of injury to the Applicant.

- k. The increase in imports from Russia, Ukraine, China and EU on account of geopolitical tensions, excess capacity and currency depreciation has been cited as unforeseen developments. However, the trend share of imports from the aforesaid countries contradicts submission of the Applicant:

Share of Country	2011-12	2012-13	2013-14	2014-15	2015-16(Q1)
China	18.94%	14.01%	24.06%	28.65%	14.72%
EU-27	15.82	10.38%	1.20%	0.67%	0.74%
Japan	18.34%	29.25%	36.50%	30.79%	35.15%
Korea	14.94%	18.53%	12.97%	25.70%	41.11%
Russia	12.88%	10.56%	3.62%	5.55%	4.56%
Ukraine	7.92%	0.67%	6.34%	3.08%	3.63%

- l. The above data shows that imports from China diminished by almost 50% between FY2014-15 and FY2015-16(Q1). Therefore, there is no sudden and sharp increase in imports from China due to unforeseen developments.
- m. Applicant has not established the reasons for which it was forced to sell at a price less than that of the import price when there was ample room to keep the prices at significantly higher levels.
- n. The Annual Reports of JSW indicate that other reasons have a serious bearing on their performance. The other circumstances must be examined by the Authority under the non-attribution analysis.
- o. Therefore, there is no causal link as the annual reports admit that the cause of injury is duping and issues related to FTA regime, price undercutting has constantly been negative, injury claimed in 2015-16 when imports were declining, imports increased in 2014-15 when domestic industry earned profits. Reasons for any alleged injury is solely other reasons and any such alleged injuries are not driven by any sudden and sharp surge in imports.

XIV. Rejoinder by POSCO, Korea and POSCO Maharashtra Steel Private Limited represented by M/s. Shardul Amarchand Mangaldas & Co.

- d. The parties relied on all their earlier submissions.
- e. The data provided in the petition is not from an authentic source. The petition is based on data from a private agency rather than from JPC data. The JPC data is based on information provided by the Applicants and TATA Steel.
- f. The injury analysis has been done based on information only for the first quarter of 2015-16 and 2013-14 has been selected as the base year as it was the worst period in the history of the steel industry.
- g. The volume of the PUC imported and captively consumed by POSCO must be excluded while calculating the market share of imports.
- h. The Applicants consume almost 34% of the PUC captively for production of downstream goods and therefore the aforesaid quantity of the PUC does not compete in the domestic market and must be excluded from the total demand of PUC in the market. The Authority in the safeguards investigation concerning imports of Sodium di-Chromate terminated the investigation in similar circumstances.

	Domestic Sales	Captive consumption	% of PUC captively consumed
2013-14	10,342,565 MT	4,274,000 MT	30%
2014-15	9,949,214 MT	5,019,741 MT	34%

- i. The Applicants are already enjoying protection in the form of high rate of customs duty applicable on imports of PUC.
- j. The scope of the PUC is very large and the products under sub-headings 7225 and 7208 are not identical and are plural and heterogeneous in nature and this cannot be put together in one basket.

- k. The end-to-end point analysis of the imports of the PUC is not the appropriate methodology for evaluating surge in imports. The findings in *US-Certain Steel Products* makes it clear that examination of increase in imports must not be restricted to mere end points but rather a wider examination of the facts must be done.
- l. The volume of PUC imported by POSCO should be excluded while evaluating a sudden surge in imports of PUC during the POI. POSCO Maharashtra captively consumes 90% of the PUC imported by it and are not competing in the domestic market. The import data must distinguish between imports offered for sale directly in the merchant market from that of the volume used for captive consumption. POSCO Maharashtra imported nearly 427,800 MT from POSCO Korea in 2014 and 118,132 MT during the first quarter of 2015, most of which was captively consumed. If this volume is excluded from total volume of imports, there would be no surge in imports. Evidence of captive use has been provided in the Form ER-1.
- m. The Authority has failed to undertake a uniform method of calculation in deriving a percentage market share of imports and percentage market share of domestic industry in the preliminary findings. Captive consumption of domestic industry and domestic producers has been included while calculating total demand of the PUC in the market but captive consumption of domestic industry has been excluded while calculating its market share. Therefore, total demand is inflated by inclusion of captive consumption and market share has been deflated and distorted by exclusion of captive consumption.
- n. The market share lost by the Applicants has been taken up by other domestic producers.
- o. The alleged injury caused to the Applicants is at best self-inflicted injury. The decrease in sales of the domestic industry is on account of quality issues in the PUC supplied by the Applicants. The PUC supplied by the domestic industry can only be used by POSCO to manufacture for industries which need low quality such as construction and general engineering. Exhibits have been provided relating to the quality issues faced and the grades which do not meet quality requirements.
- p. Reasons for the alleged decrease in sales of domestic industry are due to: (a) underutilization; (b) high debt/finance cost (being a capital intensive industry); (c) PIC when exported by domestic industry are those prevalent in the global market; (d) PUC when sold by domestic industry is much higher than the global/international prices.
- q. The landed price of imports are higher than the prices of the domestic industry as evident from the negative price undercutting. This shows that imports are not offered at lower levels to penetrate into the Indian market.
- r. Safeguard action is a fair trade measure and while imposing such measures countries should take into account its exceptional nature. It should be adopted only in emergency situations.
- s. The claims relied upon by the Applicants for unforeseen developments such as the crisis in the global steel market, geopolitical tension, depreciation in currency, slow-down in China, huge surplus capacities in China and Japan, trade measures by other countries, etc do not establish existence of unforeseen developments. There is no logical connection between the aforesaid circumstances and unforeseen developments.
- t. Imposition of the duty would be in direct contravention of the India-Korea CEPA. Article 22.7 in the CEPA mandates that a party taking a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement may, to the extent consistent with the obligations under the WTO Agreement, exclude imports of an originating good of the other party if such imports are not a substantial injury or threat. Imports of the PUC from Korea fall under this clause.
- u. The imports of PUC have been at global prices as evident from the fact that the Indian HR Coil producers also exported the same product at global prices, well below the domestic prices apparently to retain shortages and high prices in the domestic market.

XV. Rejoinder by Federation of Industries of India (FII) to the submissions of Domestic Industry post public hearing

- a. Import of HR Coil in thickness of 1.2mm, 1.4mm & 1.6mm as these thicknesses are either not produced by the domestic steel producers or are scarcely available, be place under exemption category in the Safeguard Duty Notification.
- b. HR Coils in grades such as SAE 1541, SAE 1020 / 1040 / 1045 / 1050 / 1055, SCM 435, Boron Steel, 16 MnCr5, SAE 1006 / 1010 & ST 52.3 imported for automobiles applications, the domestic availability of which is not only limited but also erratic, be also placed under exemption category in the Safeguard Duty Notification.
- c. HR Coil for which import contracts were signed and for which irrevocable financial arrangements were made long before the date of issue of the SGD Notification and the imported material was

also in transit, should not attract Safeguard Duty.

- d. HR Coil imported for captive consumption should not be included in the import figures shown in the Domestic Producers petition to prove injury.

XVI. Rejoinder by Cold Rolled Steel Manufacturers Association of India (CORSMA)

- a. Prescribed procedure for preliminary investigation and soliciting views of all stakeholders for a rational decision in the matter was not adhered to by D.G. Safeguards and decision to impose the 20% duty taken within 3 days, ignoring even the information available with D.G. Safeguards that in the past 2 Petitions for the imposition of Anti-Dumping duty on imports of HR Coils were rejected by the designated Authority as well as Calcutta and Delhi High courts due to misrepresentation of facts. Besides, safeguard duty Directorate itself had rejected a similar Petition by HR Coil producers, based on the same grounds in 2009, in breach of Articles X and Articles XIX of the GATT Agreement as well as Indian customs Tariff Act.
- b. Apart from the foregoing, D.G. Safeguards while recommending the imposition of Provisional duty of 20% as demanded by the Petitioners has arbitrarily reduced the period of investigation to 2.5 year against the norm of 5 years, which is essential to establish the casual relationship between domestic production and imports, surge in imports and reasons thereof.
- c. The Petition is not based on data published by official data bank i.e. Joint Plant Committee/Ministry of Steel, which is utilized for policy decisions by the Ministries of Steel, Commerce and Industry and Finance but data from a private Agency. Besides, the data has been twisted and manipulated by dividing into groups and subgroups, expressing the variations in percentages rather than the authentic figures.
- d. The Petitioners have mentioned six specifications which may be exempted from the Safeguard duty since the domestic industry is unable to produce the requisite quality and meet the demand. However there are another half a dozen qualities/thicknesses which are not available from the domestic sources
- e. The gap between domestic availability and consumption in April-September 2015 was 1.757 million tonnes as per JPC Report, necessitating imports of 1.852 million tonnes, including qualities, sizes not available from domestic sources and imports for export production.
- f. Allegation of cheap imports of Steel from China flooding the Indian market is also baseless as imports from China constituted only 28% of total imports in April-June 2015 while for HR Coils it was around 30%
- g. The allegation of surge in imports in April-July 2015 is entirely misleading and as it does not explain the reasons for rise in imports in April-July 2015 y.o.y.,
- h. Steel is raw material based industry and raw material account for 70% of the production costs of Steel including HR Coils. The global and domestic prices of basic inputs for steel-making have registered a steep decline in the past one year leading to a decline in the global prices of HR Coils. The imports of HR Coils have been at global prices.
- i. There has been no flood of imports as alleged by the Petitioners and imports for industrial development have not caused any injury to domestic industry.
- j. The Petitioners have alleged that the domestic producers have suffered an injury due to rise in inventories due the high imports but as per data published by JPC there has been no rise in inventories.
- k. It may be clarified that there have been no sudden and unforeseen developments in the global Steel industry in the year 2014-16.
- l. The imports essential for industrial and economic development of the country have not caused an injury to Indian HR Coil producers and injuries are self-inflicted due to factors like neglect of technological up gradation and heavy debt and interest burden.
- m. The Petitioners should explain that why the threat is always confined to only HR Coils and not to other Steel products. In fact the foreign producers in the prevalent recessionary conditions prefer to export cold rolled products to optimize capacity utilization of both Hot Rolling and Cold Rolling Mills and the governments also offer higher incentives on the exports of Cold Rolled products. The Petitioners are also major producers of Cold Rolled products but always petition for hike in duties on HR Coils apparently to exploit monopolistic potential.

- n. Indian HR Coil producers are already over protected by customs duty of 12.5% or USD 40 per MT at the current global price of USD 300 PMT, overage ocean freight of USD 30 PMT, Port, Financial and incidental charges of USD 15 per MT adding up to USD 85 (Rs 5500) PMT.
- o. The impositions of additional 20% Safeguard duty has added another USD 60 PMT and enabled the domestic producers to hike prices based on import parity basis by USD 149 (Rs 10,000) over and above the global prices. It is be disastrous for the manufacturing sector and instead of HR Coils shall lead to imports of value added Cold Rolled products and manufactured goods and sharp reduction in exports. Apart from customs duty of HR Coils are also protected from imports by technical barriers on imports.
- p. The high prices of HR Coils have eroded the global competitiveness of downstream Cold Rolling and the manufacturing sector has led to imports of value added Steel and manufactured products including Engineering goods, Components and Spares, Plant and Equipment, hitting the Indian industry, particularly the SMEs, resulting in retrenchment of workers.
- q. The arbitrary hikes in customs duties after the Union Budget of 2015 and imposition of Provisional Safeguard duty in undue haste have destabilized downstream industries
- r. Indian producers have lagged behind South Korea, China and other countries due to protectionist policies and neglect of R & D, in the past decade. There is ample scope for reduction in production costs through technology to make globally competitive.
- s. The Petitioners have mentioned six grades of HR Coils which may be exempted from Safeguard duty as these are not available from the indigenous sources. However there are should more grades like SAE 1541, SAE 1040/1050/1055 and Steels for the production of Auto Beams etc. which are not available from domestic sources.
- t. Steel is a basic input and raw material for industrial and infrastructure development but it is presently subject to heavy Tax burden starting from levy of Royalty on Iron ore, levy of 12% Excise duty and Taxes by State Govts. and local bodies. It is necessary to reduce the Tax burden to stimulate industrial production and infrastructure development as well as higher consumption Steel and Steel products by the Common man. The Excise duty on all Steel products may be reduced from 12.5% to 10% to stimulate industrial development.

XVII. Rejoinder by Bombay Iron Merchants Association represented by M/s. MV Kini Law Firm

- a. The submissions made by the above party in their previous submissions have not been repeated here for the sake of brevity.
- b. In regard to API Grade exclusion, allegations cannot be made only on media reports. Every user has a choice to use material as permitted by their project authority and importer cannot assert any control over where the material is eventually utilised.
- c. DG Safeguards should not be interfering in customs issue as customs is well equipped to do so.
- d. Petitioner cannot decide the end use of a particular grade. The ultimate decision is of the user. The end use is always indicative in nature and not binding. It is preposterous to suggest that some of India's importers are importing PUC in guise of API.
- e. For the recent surge in imports in Q2 of 2015-16, DG must obtain factual data for the period for which plants of the domestic industry were under maintenance or under restricted production capacity. Reduced availability as well as their own imports has been one of the major causes of increased imports.
- f. Imports in 2015-16 should be considered in light of various other factors such as imports for captive consumption, imports by petitioners and for export and advance licenses and bifurcation of alloy and non-alloy steel etc.
- g. Evaluation period of 2 to 3 years seems short. "Sudden and sharp" surge needs to be evaluated over such periods and not 1 or 2 quarters.
- h. Measures in US and Turkey have been of anti-dumping duty which is completely different from the situations required for safeguard duty.
- i. The Applicants have considered a cluster of products. To ascertain the necessity of the imposition of the safeguard duty, imports undertaken with respect to each of these products have to be confirmed. Furthermore, it is important to segregate the products combined by the Applicants as the production capabilities of the Applicants to produce alloy steel products are negligible.

- j. The problems faced by the Applicants are not related to increased imports but due to the factors such as high debts, oppression and mismanagement issues in case of Bhushan Steel, problems in procurement of raw materials in case of Essar Steel.
- k. Alloy steel is produced in negligible quantities in India, thus question of imposition of safeguard duty does not arise. In respect of non-alloy steel, Applicants cater to about 92-93% of the total market share of domestic demand. Thus, even this category of PUC does not require imposition of safeguard duty.
- l. If imports in 2014-15 are compared with 2011-12, the increase is only about 9% and cannot be regarded as surge. While alleging surge in imports in 2014-15 over 2013-14, a due thought has not been given to abnormal drop of roughly 40% during the period.
- m. If imports by POSCO Maharashtra are excluded, then it would rather show a slump in imports.
- n. The major applicants have shown a rise in turnover, thus the question of any alleged injury does not arise at all. There has been a consistent increase in the employment costs of the applicants.
- o. Raw material imported under advance license is used in manufacturing of the finished goods which are exported. Such imports could not impact the India domestic market.
- p. The applicants have relied on data provided by IBIS, an unrecognized private agency ignoring the official JPC data available.
- q. Despite a drop in international raw materials, the prices in the domestic market have not reduced and are much higher than the export prices.
- r. The Applicants themselves are importing cheaper raw materials.
- s. The alleged surge in imports during July-Sept 2015 is on account of huge imports of the subject PUC by the applicants themselves, specifically, JSW Steel Ltd.
- t. In view of the timelines of events followed in the present case, it clearly shows an undue haste in the imposition of safeguard duty.

XVIII. Federation of Association of Maharashtra (FAM) represented by Advocate Tavinder Sidhu

- a. The submissions made by the above party in their previous submissions have not been repeated here for the sake of brevity.
- b. In regard to API Grade exclusion, allegations cannot be made only on media reports. Every user has a choice to use material as permitted by their project authority and importer cannot assert any control over where the material is eventually utilized.
- c. Petitioner cannot decide the end use of a particular grade. The ultimate decision is of the user. The end use is always indicative in nature and not binding. It is preposterous to suggest that some of India's importers are importing PUC in guise of API.
- d. For the recent surge in imports in Q2 of 2015-16, DG must obtain factual data for the period for which plants of the domestic industry were under maintenance or under restricted production capacity. Reduced availability as well as their own imports has been one of the major causes of increased imports
- e. Imports in 2015-16 should be considered in light of various other factors such as imports for captive consumption, imports by petitioners and for export and advance licenses and bifurcation of alloy and non-alloy steel, etc.
- f. Evaluation period of 2 to 3 years seems short. "Sudden and sharp" surge needs to be evaluated over such periods and not one or two quarters
- g. Measures in US and Turkey have been of anti-dumping duty which is completely different from the situations required for safeguard duty.
- h. The problems faced by the Applicants are not related to increased imports but due to the factors such as high debts, oppression and mismanagement issues in case of Bhushan Steel, problems in procurement of raw materials in case of Essar Steel.
- i. Alloy steel is produced in negligible quantities in India, thus question of imposition of safeguard duty does not arise. In respect of non-alloy steel, Applicants cater to about 92-93% of the total market share of domestic demand. Thus, even this category of PUC does not require imposition of safeguard duty
- j. If imports in 2014-15 are compared with 2011-12, the increase is only about 9% and cannot be regard as surge. While alleging surge in imports in 2014-15 over 2013-14, a due thought has not been given to abnormal drop of roughly 40% during the period.
- k. If imports by POSCO Maharashtra are excluded, then it would rather show a slump in imports.
- l. The major applicants have shown a rise in turnover, thus the question of any alleged injury does not arise at all. There has been a consistent increase in the employment costs of the applicants.

- m. Raw material imported under advance license is used in manufacturing of the finished goods which are exported. Such imports could not impact the Indian domestic market.
- n. The applicants have relied on data provided by IBIS, an unrecognized private agency ignoring the official JPC data available.
- o. Despite a drop in international raw materials, the prices in the domestic market have not reduced and are much higher than the export prices.
- p. The Applicants themselves are importing cheaper raw materials.
- q. The alleged surge in imports during July-Sept 2015 is on account of huge imports of the subject PUC by the applicants themselves specifically JSW Steel Ltd.
- r. In view of the timelines of events followed in the present case, it clearly shows an undue haste in the imposition of safeguard duty.

XIX. Additional submissions by the Domestic Industry after Introduction of Minimum Import Price (MIP) by Ministry of Commerce

After the introduction of MIP on Steel products by the Ministry of Commerce vide Notification No. 38/2015-2020 dated 5th February 2016, Domestic Industry, in response, have made the following additional submissions: -

- a. The domestic industry vide their letter dated 17/02/2016 stated as follows: -

“Recently, DGFT has issued Minimum Import Prices (MIP) on items being imported under Chapter 72 of ITC (HS), 2012 vide Notification No. 38/2015-2020 dated 5 February 2016. It is pertinent to note that MIP is in force for a period of six months or until further orders by DGFT, whichever is earlier. This means that MIP could be revoked at any time before the six months period.

It is worthy to note that the domestic industry has requested for imposition of safeguard duty for a period of 3 years. Though MIP addresses most of the concerns of the domestic industry, but it is in place only for six months or a lesser period. Once MIP expires, the domestic industry would be left without any protection from the surging imports at predatory prices. It is submitted that only safeguard duty is a more efficacious and long term remedy for protection of the domestic industry. In light of this, it is most respectfully requested that the DG Safeguards may be pleased to conclude the captioned investigation and recommend definitive safeguard duty on the subject goods.

To avoid any confusion of the applicable levy, safeguard duty may be levied from the date when MIP expires”

- b. The domestic industry vide their another letter 17/02/2016 further stated as follows:-

“It is respectfully submitted that levy of provisional safeguard duty has not been able to protect the domestic industry as exporters of the subject goods have absorbed the 20% ad valorem duty in their prices. Further, many users in India have also raised concerns that even if they import the subject goods at more than the fair prices (including special grade steels), they are still subject to 20% ad valorem duty. To address the concerns of both the domestic industry and users in India, it is requested that the DG Safeguards may be pleased to levy safeguard duty on reference price basis.”

E. EXAMINATION & FINDINGS OF DIRECTOR GENERAL (SAFEGUARDS)

- 14. I have carefully gone through the case records, the replies filed by the domestic producers, users/importers, exporters and exporting nations. The written submissions and the rejoinder submissions made by them have also been considered appropriately. The submissions made by various parties and the issues arising there from are dealt with at appropriate places in the findings below:
- 15. Section 8B of the Customs Tariff Act, 1975 deals with imposition of Safeguard Duty on imports. Its sub-section (1) provides for imposition of Safeguard duty by the Central Government on an article if the article is being

imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the Domestic Industry.

16. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provides the manner and principles governing investigation.
17. The investigation has been conducted in accordance with the said rules and the Final Findings are recorded through this notification.

A. The Product Under Consideration (PUC):

18. The product under consideration (hereinafter referred to as PUC) in the present case is “Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more” classified under Customs Tariff sub-heading nos. 7208 and 72253090 of Chapter 72 of the Customs Tariff Act, 1975. The applicant has claimed that these products are not further worked than hot-rolled and are flat products of iron, alloy or non-alloy steel, in prime or non-prime condition having ‘as-rolled’ edge or ‘trimmed’ edge or ‘slit’ edge. These products may be pickled or non-pickled (with or without skin-pass or tempering), slit or non-slit and having nominal width of greater than or equal to 600mm. These products may be as-rolled or thermo-mechanically rolled or thermo-mechanically controlled rolled or controlled rolled. These products may have patterns in relief derived directly from rolling. These products may have been subjected to various processing steps like pickling, oiling, rewinding, temper rolling, heat treatment, etc. The following are not included in the scope of the product under consideration:
 - a) Hot-rolled flat products of steel with nominal width less than 600mm;
 - b) API grade steel;
 - c) Silicon electrical steel;
 - d) Hot-rolled flat products of steel of spring steel quality;
 - e) Hot-rolled flat products of steel which are electrolytically plated or coated with zinc;
 - f) Hot-rolled flat products of steel otherwise plated or coated with zinc; and
 - g) Hot-rolled flat products of stainless steel.
19. Domestic Industry has submitted that they have observed from various reports in media that some of the Indian importers / foreign exporters are trying to evade the provisional safeguard duty applicable on commercial / base grade structural steels (meant for conventional structural applications) in the guise of ‘API 5L’ grade. Therefore, Domestic Industry requested that inclusion of the following explanation in the exclusion clause of API Grade Steel will help the customs authorities to effectively enforce the exclusion of API Grade Steel in proper spirit:

“API Grade Steel refers to steel intended for manufacturing welded steel pipes used for pipeline transportation systems in the petroleum and natural gas industries”
20. In this regard, some of the interested parties objected to this and submitted that allegations cannot be made only on media reports. Every user has a choice to use material as permitted by their project authority and importer cannot assert any control over where the material is eventually utilized and also petitioner cannot decide the end use of a particular grade. The ultimate decision is of the user. The end use is always indicative in nature and not binding. It is preposterous to suggest that some of India’s importers are importing PUC in guise of API. I observe that the scope of the PUC can not be enhanced at a later date after the issue of notice of initiation. API grade can be defined only by the published API specifications, not by the type of use to which these are put to. Therefore, the PUC in this case remains the same as described above.
21. Several interested parties have raised issues on the product under consideration. All such issues are addressed below :-
 - i. HR Coil in thickness 2.00 mm and below: M/s Nezone Strips Ltd. and M/s Nezone Tube Ltd. argued that they have been importing HR coil in thickness 2.00 mm and below because their regular supplier M/s Tata Steel Ltd. had stopped supplying due to availability constraints. Therefore, they are forced to import this specific product and such products should be excluded from the product scope. I observe that the interested parties have not stated to have made any efforts to procure the same from the domestic market nor have they

stated anywhere that other Domestic Producers can not supply them the goods. Therefore, their contention is not accepted.

ii. Automotive Grade of HR Coils:

M/s Hyundai Motors India Ltd. submitted that Korean Automotive Grade Steel should be exempted from safeguard duty as even after imposition of safeguard duty, they will have to necessarily import this product as their Nanyang R&D Centre does not allow them to change the specifications for the cars manufactured in India. Applicants in their submission have objected that Automotive Grade of HR Coils is a very generic description and cannot be excluded unless they substantiate that Indian steel producers cannot supply this grade. Just because their R&D centre will not allow them to procure from elsewhere does not mean that the domestic industry should be allowed to suffer serious injury by exempting imports of this grade from safeguard duty. I find no reason to disagree with the contention of the Domestic Industry.

iii. Claims by Tube Investments of India Ltd. (TII):

- a) TII argues that the following grades should be excluded from the product scope due to limited availability, quality issues and because TII has already identified and approved sources of supply which they cannot change now:
- a. SAE 1541
 - b. SAE 1020/1040/1045/1050/1055
 - c. SCM 435
 - d. Boron Steel
 - e. 16 MnCr5
 - f. SAE 1006/1010
 - g. ST 52.3
- b) In this regard the DI submitted that they have not filed any material evidence to substantiate their claim for exclusion from the product scope and hence claims or issues are merely based on conjectures. Therefore, these grades cannot be excluded from the product scope. I observe that merely because the interested party has an approved source of supply, it can not be a reason to exclude them from the Safeguard action. They can also start the process of approving the domestic sources of supply, as well.

iv. Hot-rolled coil with pickling and oiling ("PO"): M/s Hyundai Steel Korea argues that PO products manufactured by them are sold to M/s Hyundai Steel India Limited, which, in turn sells it to M/s Hyundai Motor India Limited. They argue that such imports are inevitable as stopping it would mean risking safety of passengers in automobiles. They argue that PO products should be kept outside the product scope. Domestic Industry strongly object to this contention and submit that Domestic Industry have proven capability to manufacture Auto Grade Steels including steels suitable for higher strength levels. I observe that Indian steel industry is sufficiently advanced to provide the necessary grades of steel and hence the contention of M/s Hyundai Steel Korea is not accepted.

v. Hot-rolled coils based on narrowly defined customer specifications: M/s Nippon Steel & Sumikin Pipe India Co. Ltd. argues that hot-rolled coils based on narrowly defined customer specifications should be excluded from the product scope as these imports differ in tensile strength, steel cleanness, grain size and chemical composition. M/s Nippon Steel & Sumikin Pipe India Co. Ltd. has, however, claimed confidentiality on the description and types of products they have imported but they have requested exclusion of these products from product scope. The domestic industry in reply raised objections that the specific grades or types of products have not been shared with the domestic industry and hence they are not in a position to defend its interest. In this regard I re-iterate my observations that the Indian industry is sufficiently advanced to supply diverse grades of steel.

vi. Grade JSH 270/370 and Grade JSH 590: M/s Maruti Suzuki Ltd. argues that these two grades should be excluded from product scope as these are special grades of steel which are imported to meet requirements of customer safety and meeting emission norms. They argue that domestic manufacturers cannot meet the required quality standards and are inconsistent suppliers of raw material. Petitioners strongly object to the above contentions. I find that the Indian steel industry is sufficiently advanced and capable of supplying different grades of materials.

- vii. Alloy Steel: Federation of Association of Maharashtra (“FAM”) argues that alloy steel is produced in negligible quantities in India, so the question of imposition of safeguard duty on alloy steel does not arise. They further argue that imports of non-alloy steel constitutes only 7-8% of total domestic production and more than 90% market share for non-alloy steel is with domestic units. FAM further argues that such low imports of non-alloy steel do not warrant imposition of safeguard duty. I find that the main determining factor for a decision on imposition of safeguard duty is not the imports as a percentage of domestic production but whether the domestic industry is suffering serious injury because of the increased imports. So far as alloy steel is concerned, the product scope covers only one tariff item 7225.30.90 and not the entire alloy steel heading. It is further noted that domestic industry have already provided detailed reasons in their letter dated 8 August 2015 as to why alloy steel falling under customs classification 7225.30.90 should be included in product scope. The imports classified as alloy steel under tariff item 7225.30.90 can actually have very minute quantities of boron or other alloying elements to circumvent the classification as non-alloy steel. These imports severely affect the domestic industry, as these imports technically and commercially substitute non-alloy flat products of hot-rolled steel in coils produced by the domestic industry. Due to this reason, domestic industry has included imports under the tariff item 7225.30.90 under the product scope. I accept the contention of the DI on this point. China Iron & Steel Association have also questioned why alloy steel falling under customs tariff heading 7225 has been included in product scope. The above analysis also addresses the contentions made by China Iron & Steel Association.
- viii. High Strength Steel (“HSS”): China Steel Corporation, Taiwan argues that HSS grade used in automobile industry should be excluded from product scope. No material evidence to substantiate their claim for exclusion from the product scope has been produced. As discussed previously, the Indian industry is sufficiently advanced to supply such materials.
- ix. Steel produced by Japanese Mills: M/s JFE Steel Corporation, M/s Nisshin Steel Co. Ltd., M/s Nippon Steel & Sumitomo Metal Corporation and M/s Kobe Steel Ltd. together argue that special grades steel produced by them should not be subject to safeguard duty and should be excluded from product scope. However, they have not come out with any evidence to suggest that the same can not be supplied by the Indian industry. Hence the argument advanced by them is not accepted.

22. In view of above, it is confirmed that the product under investigation is “Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more” classified under Customs Tariff sub-heading nos. 7208 and 72253090 of Chapter 72 of the Customs Tariff Act, 1975. These products are not further worked than hot-rolled and are flat products of iron, alloy or non-alloy steel, in prime or non-prime condition having ‘as-rolled’ edge or ‘trimmed’ edge or ‘slit’ edge. These products may be pickled or non-pickled (with or without skin-pass or tempering), slit or non-slit and having nominal width of greater than or equal to 600mm. These products may be as-rolled or thermo-mechanically rolled or thermo-mechanically controlled rolled or controlled rolled. These products may have patterns in relief derived directly from rolling. These products may have been subjected to various processing steps like pickling, oiling, rewinding, temper rolling, heat treatment, etc. The following are not included in the scope of the product under consideration:

- a) Hot-rolled flat products of steel with nominal width less than 600mm;
- b) API grade steel;
- c) Silicon electrical steel;
- d) Hot-rolled flat products of steel of spring steel quality;
- e) Hot-rolled flat products of steel which are electrolytically plated or coated with zinc;
- f) Hot-rolled flat products of steel otherwise plated or coated with zinc; and
- g) Hot-rolled flat products of stainless steel.”

23. Accordingly, it is also held that domestically produced “Hot-rolled flat products of non-alloy Steel in coils of a width of 600 mm or more” falls under the ambit of like or directly competitive article in all respects to the imported product under investigation and that the domestically produced “Hot-rolled flat products of non-alloy Steel in coils of a width of 600 mm or more” is a like article to the imported “Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more” (fully defined as PUC), within the meaning of Rule 2(e) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

B. Domestic Industry (DI):

24. Section 8B(6)(b) of the Customs Tariff Act 1975 defines Domestic Industry as follows:

“(b) “Domestic Industry” means the producers -

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;”

25. Interested parties argue that Applicant do not qualify as domestic industry in this case. Interested parties rely on the table given under paragraph 25(b) of the preliminary findings and argue that market share of the domestic industry was 45% in 2013-14 and for Indian other producers, it was 51%. Similarly, it is argued that in 2014-15 as well as 2015-16 (Annualised), market share of other producers was 51%. In this regard, I find no merit in this objection as in the table under paragraph 25(b), market share given is a ratio of sales of domestic industry vis-à-vis domestic demand. However, this market share is not a measure of standing because domestic demand figures include figures of imports as well and sale of domestic industry does not include captive consumption.

26. The application is filed by M/S Steel Authority of India Limited; M/S Essar Steel India Limited, and M/S JSW Steel Limited and together they account for more than 50% of the Indian production and hence are major producers. It is evident from the table given under Para 13 and Para 25 (a) of the preliminary findings. Accordingly, it is held that the applicant domestic producer constitutes and represents the Domestic Industry (DI) within the definition of DI under Sec 8B(6)(b) of the Customs Tariff Act,1975.

C. Source of information:

27. The product under investigation is imported into India under Custom Tariff Heading 7208 and 72253090 of Chapter 72 of First Schedule to the Customs Tariff Act, 1975. The Safeguard investigation was initiated on the basis of import data of IBIS (International Business Information Services) from 2013-14 to 2015-16 (April to June 2015). The domestic data from 2011-12 to 2015-16 (Till June 2015) has been submitted by the domestic industry and the same has been verified by on-site visit by the departmental officers on the basis of excise records to the extent considered necessary. The import data as well as the domestic data from July, 2015 to Sept., 2015 in respect of various economic parameters has been furnished by the applicant, in their written submissions/rejoinder. Many interested parties have argued that import data from a private agency like IBIS is not authentic and tenable and the Authority should consider only JPC data and that a detailed methodology for determining product under consideration is not provided in the petition. Interested parties also argue that DGCI&S data should be used to verify the authenticity of IBIS data used in the petition.

28. It may be pointed out that IBIS data has earlier also been used in a number of investigations done by DG (Safeguard). IBIS is a known source of information in the trade and mere allegation of data not being authentic is not tenable. Also, the data from Govt. sources has a time lag and it is not available for the latest period. Therefore, at times, it becomes necessary to source data from reliable private sources as well. However, in the analysis done for the final recommendations, the import data from DGCI&S (Ministry of Commerce) has been taken and it is showing similar trends.

29. A few interested parties argue that no additional questionnaire was filed by the constituents of the domestic industry. Therefore, the Authority did not have complete information when preliminary findings were issued. They further argued that no creditable adjustment plan has been provided by the domestic industry and there is no mention of the same in the preliminary findings. In this regard it is observed that the domestic industry had filed their respective questionnaire responses in both confidential and non-confidential versions along with the application itself. Non-confidential versions of the questionnaire responses were also available in the public file. Even though the adjustment plan was not given in the application, all the constituents of the domestic industry had provided a proper adjustment plan in their respective questionnaire responses.

D. Period of Investigation (POI):

30. Some Interested parties argue that 2013-14 should not be considered as base year as it does not take into account the downward trend of imports between 2012-13 and 2013-14. Some interested parties argue that period of analysis should be 5 years and a shorter period is erroneous. In this regard it has been observed that neither the Customs Tariff Act, 1975, nor the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, specifically define ‘period of investigation’ or the minimum period to be considered for a Safeguard investigation. The WTO Agreement on Safeguards does not contain any general or specific provision or guidelines for choosing the investigation period. However the issue of period of investigation has been dealt in detail in Panel findings in US-Line Pipe Case against Korea (Para 7.196,7.199 and 7.201). The Panel in this case ruled that it is up to the discretion of the investigating authority of the importing Country to decide the “length of the period of investigation” and its “breakdown”.

“We note that the Agreement contains no requirements as to how long the period of investigation in a safeguards investigation should be, nor how the period should be broken down for purposes of analysis. Thus, the period of investigation and its breakdown is left to the discretion of the investigating authorities. In the case before us the period selected by the ITC was five years and six months, which is a period similar in length to the one used by the Argentine investigating authority in Argentina — Footwear Safeguard. However, we note that the Appellate Body, in the findings relied upon by Korea to argue the question of the length of the period of investigation, emphasized not the length of the period per se, but that there should be a focus on recent imports and not simply trends over the period examined. In the case of the line pipe investigation the ITC did not merely compare end points, or look at the overall trend over the period of investigation (as Argentina had done in the investigation at issue in Argentina — Footwear Safeguard). It analyzed the data regarding imports on a year-to-year basis for the 5 complete years, and also considered whether there was an increase in interim 1999 as compared with interim 1998. We are of the view that by choosing a period of investigation that extends over 5 years and six months, the ITC did not act inconsistently with Article 2.1 and Article XIX. This conclusion is based on the following considerations: 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.”(paras. 7.196, 7.199 and 7.201)

31. In view of above, considering these facts, and source of information stated above, it is considered appropriate to adopt data for the period 2013-14 to 2015-16(annualized on the basis of Q1) for the purpose of the present investigations.

E. Confidentiality of information submitted:

32. Rule 7 of the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 and Article. 3.2 of WTO Agreement on Safeguards provides for confidentiality treatment to certain information. The rules provide that an Interested Party is not required to disclose such information on actual basis which is confidential information of the company and disclosure of which can cause serious prejudice to the business interests of such party, which is not in public domain and which the petitioner has not disclosed before public at large in the past.
33. Many interested parties have raised objections that several parameters have been considered as confidential in the petition and no reasons have been provided by the domestic industry for treating them as confidential. Interested parties further argue that even the Authority has not recorded any reasons for granting confidentiality in the preliminary findings. I find that the Domestic Industry provided confidential and non-confidential versions of the application for safeguard measure as per the provisions of Safeguard Rules 1997 and Trade Notice No. SG/TN/1/97 dated 06.09.1997. Further, the Domestic Industry claimed confidentiality of financial and costing data by way of hiding them in their non-confidential version, which I find appropriate.

F. Increased Imports:

34. Section 8B of Customs Tariff Act, 1975 deals with the power of the Central Government to impose safeguard duty and provides as follows:

“(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to Domestic Industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article :”

35. The Rules mandate increase in imports as a basic prerequisite for the application of a safeguard measure. Thus, to determine whether imports of the product under consideration have “increased in such quantities” for purposes of applying a safeguard measure, the rules require an analysis of the increase in imports, in absolute terms or in relation to domestic production.

36. Rule 2 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 defines ‘increased quantity’ as follows:

“(c) “increased quantity” includes increase in imports whether in absolute terms or relative to domestic production.”

37. With regard to the nature of the increase in imports, the Appellate Body in *Argentina—Footwear (EC)*, in contrast to the Panel, held that the increase in imports must have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. Relevant extract is as follows:

“131. [T]he determination of whether the requirement of imports ‘in such increased quantities’ is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year — or five years ago. Again, and it bears repeating, not just any increased quantities of imports will suffice. There must be ‘such increased quantities’ as to cause or threaten to cause serious injury to the Domestic Industry in order to fulfill this requirement for applying a Safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause ‘serious injury’.”

38. The *Panel on US — Wheat Gluten*, interpreted the phrase “in such increased quantities” as follows:

“8.31 [Article XIX:1(a) of the GATT 1994 and Article 2.1[of the Agreement on Safeguards (“SA”)] do not speak only of an ‘increase’ in imports. Rather, they contain specific requirements with respect to the quantitative and qualitative nature of the ‘increase’ in imports of the product concerned. Both Article XIX:1(a) of the GATT 1994 and Article 2.1 SA require that a product is being imported into the territory of the Member concerned in such increased quantities (absolute or relative to domestic production) as to cause or threaten serious injury. Thus, not just any increase in imports will suffice. Rather, we agree with the Appellate Body’s finding in Argentina — Footwear Safeguard that the increase must be sufficiently recent, sudden, sharp and significant, both quantitatively and qualitatively, to cause or threaten to cause serious injury.”

39. The analysis of the increased imports of the product under consideration has been conducted in the light of the above mentioned law and WTO jurisprudence.

Increased Import in absolute terms:

40. The analysis of the trend in imports of PUC in the light of the above mentioned provisions has been done. PUC is imported into India from a number of countries including China PR, Russia, Ukraine, Japan and Korea. Interested parties raised objections that imports of the subject goods are not sudden enough, sharp enough, significant enough and recent enough within the meaning of Article XIX of GATT and SA and therefore, safeguard duty is not warranted in this case.

41. In this regard, I find no merit in the objection from the interested parties as the analysis by taking into account DGCI&S import data for the Period of Investigation (up to 15-16 Q1) reveals as under:

Financial Year	Total Imports (MT)	Trend
2013-14	1252441	100
2014-15	2644911	211
2015-16(Q1)	881233	
2015-16(A)	3524932	281

42. It is apparent from the data in the table above that there is a surge in import in absolute terms i.e Import increased from 1252441 MT during the period 2013-14 to 3524932 MT during 2015-16 (Annualised).

Import in relation to Production:

43. The imports of product under consideration in India during the period of investigation have increased in relation to all Indian production. The import with respect to total production increased from 5% in 2013-14 to 13% in 2015-16(A).

Financial Year	Total Imports (MT)	All India Production (MT)	% of import with respect to production
2013-14	1252441	25510777	5
2014-15	2644911	26395795	10
2015-16(Q1)	881233	6646258	
2015-16(A)	3524932	26585032	13

44. It is apparent from the above that there is a sudden, sharp and significant surge in imports during the Period of Investigation, both in absolute terms as well as in relation to total domestic production.

G. Determination of Serious Injury and Threat of Serious Injury:

45. Section 8B subsection 6(c) of Customs Tariff Act, 1975 provides as follows:

“Serious injury” means an injury causing overall impairment in the position of a Domestic Industry;

46. Section 8B sub section 6(d) of Customs Tariff Act, 1975 provides as follows:

“*threat of serious injury*” means a clear and imminent danger of serious injury.

47. The Paragraph 1 of Annex to Rule 8 of the Customs Tariff(Identification and Assessment of Safeguard Duty) Rules’ 1997 provides as follows:

“*In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the article concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.*”

48. With regard to the overall impairment in the position of the industry, the Appellate Body in Argentina—Footwear (EC),in contrast to the Panel, held that an evaluation of each listed factor will not necessarily have to show that each such factor is "declining" to justify a finding of serious injury. Relevant extract is as follows:

“139. In our view, it is only when the overall position of the domestic industry is evaluated, in light of all the relevant factors having a bearing on a situation of that industry, that it can be determined whether there is "a significant overall impairment" in the position of that industry. Although Article 4.2(a) technically requires that certain listed factors must be evaluated, and that all other relevant factors must be evaluated, that provision does not specify what such an evaluation must demonstrate. Obviously, any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant declines in sales, employment and productivity that will show "significant overall impairment" in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of whether the competent authorities in a particular case have evaluated all the listed factors and any other relevant factors, we believe that it is essential for a panel to take the definition of "serious injury" in Article 4.1(a) of the Agreement on Safeguards into account in its review of any determination of "serious injury".

49. Accordingly, in analysing serious injury or threat of serious injury all factors, which are mentioned in the Rules as well as other factors which are relevant for determination of serious injury or threat of serious injury, have been considered. The determination of serious injury or threat of serious injury is based on evaluation of the overall position of the Domestic Industry, in the light of all the relevant factors having a bearing on the situation of that industry which are as under:

- a. **Production:** As seen from the table below, the production of the Domestic Industry marginally decreased from 17881187 MT in 2013-14 to 17827180 MT in 2015-16(A).

YEAR	Production of DI (MT)	Trend
2013-14	17881187	100
2014-15	17836937	100
2015-16(Q1)	4456795	
2015-16(A)	17827180	100

- b. **Changes in the level of Sales:** It is seen from the table below that the sales of the Domestic Industry decreased from 1,03,42,565 MT in 2013-14 to 99,49,214 MT in 2014-15. Further the Sales of the applicant during 2015-16 (A) increased to 1,03,59,716 MT as seen from the table below. There is not much variation in the level of sales.

Financial Year	Total Import (MT)	Sales of DI (MT)	Sales of other Indian Producers (MT)	Captive sale of DI(MT)	Captive sale of Others (MT)	Total Demand (MT)	Market Share (%)	
							DI	Import
2013-14	12,52,441	1,03,42,565	29,94,323	42,74,000	40,00,724	2,28,64,053	45	5
2014-15	26,44,911	99,49,214	32,98,273	50,19,741	46,15,864	2,55,28,003	39	10
2015-16(Q1)	8,81,233	25,89,929	10,65,972	13,21,497	11,80,681	70,39,312		
2015-16(A)	35,24,932	1,03,59,716	42,63,888	52,85,988	47,22,724	2,81,57,248	37	13

- c. **Market Share:** It is seen from the table above that the Imports had a market share of 5% in 2013-14 which increased to 13% during 2015-16(A) whereas the market share of Domestic industry decreased from 45% to 37% during the same period.

- d. **Capacity Utilisation:** Capacity utilization of the Domestic Industry has remained more or less the same, as seen from the table below:

Financial Year	Installed Capacity (MT)	Capacity Utilisation (%)
2013-14	23568996	75.9
2014-15	23568996	75.7
2015-16(Q1)	5884372	
2015-16(A)	23537488	75.7

- e. **Employment & Productivity:** The trend of employment and productivity has remained same over the injury period, as seen from the table below:

Financial Year	No. of Employees (Indexed)	Productivity per employee(MT) (Indexed)
2013-14	100	100
2014-15	100	100
2015-16(Q1)	100	
2015-16(A)	100	100

- f. **Profit & Loss (Indexed):** The profitability of the Domestic Industry has declined sharply during 2015-16 (Q1) and domestic industry recorded losses. This is evident from the table below:-

Financial Year	Profitability (Rs. /MT) (Indexed)
2013-14	100
2014-15	136
2015-16(Q1)	(114)

- g. **Other Important Factors:-**

- (i) **Inventories:** Inventories have marginally increased from 100 Points in 2013-14 to 103 Points in 2015-16 (Q1), as seen from the table below:

Financial Year	Inventory (MT)	Inventory (MT) (Indexed)
2013-14	636879	100
2014-15	648290	102
2015-16 (Q1)	657099	103

- (ii) **Price undercutting, suppression/depression:**

- a. The landed price of imports has been calculated by taking in to consideration the customs duty @7.5% for the period from April, 2013 to March, 2015 & @10% (on average) for rest of the period on assessable value of import and then adding duties to CIF value of import which reveals

that the domestic Industry was always under consistent pressure to either reduce their prices to match the import prices or to hold on to their prices. The penetration of increased imports at an unprecedented high level was such that even after reducing the prices, the domestic industry was not able to keep on to its market share. This has resulted into losses during 2015-16(Q1) for the domestic industry. The variation of landed prices of imports, cost of Sales, selling price are as under:-

Components (Indexed)	Unit	2013-14	2014-15	2015-16 (Q1)
Cost of Sales	Rs./MT	100	97	94
Weighted average sales realisation	Rs./MT	100	99	83
Landed price of imports	Rs./ MT	100	95	78
Profit/ (Loss)	Rs./ MT	100	136	(114)

- b. It is seen from above that while the Index of cost of sales come down from 100 to 94, the landed price of imports declined sharply from 100 to 78 leading to reduction in sales realization which declined from 100 to 83. While comparing the sales realization vis-à-vis cost of sales, it is observed that the sales realization declined much more sharply than the cost of sales. There was a substantial decline in profitability index from 136 in 2014-15 to (114) in 2015-16 (Q1).

50. Examination of all of the above factors shows that while some of the factors such as capacity utilization, inventories, employment etc. remained stable, there was a sharp decline in profitability leading to losses and there was a decline in the market share of DI due to increased imports and decline in imports prices leading to serious injury by way of financial losses.
51. Interested parties have submitted that injury being suffered by the domestic industry is due to their own internal factors including the following:
- High interest cost, depreciation and fixed cost burden
 - High freight cost and poor infrastructure
 - Raw material crisis
 - Under utilised capacities
 - Inability to meet the quality requirements of specific downstream industry
52. These claims are very general and without any facts and figures to support. The fact that injury has been caused due to increased quantities of imports of the PUC in India has already been established above. I find that the domestic industry has been in existence since many years and has been doing well in the past. Infrastructure and capacities are in place with the domestic industry to meet the demand of the PUC. The efficiency of a unit depends on several factors and if their efficiencies were of a higher order, probably there was no need for the DI to ask for safeguard action. Mere existence of inefficiencies in certain areas cannot be a reason to deny safeguard protection to the Domestic Industry. The very reason why safeguard protection is sought and given and is provided for under SA is that the DI is unable to handle competition and can get some time to adjust to the International competition over a period of time. The main determining factor is that there should be a serious injury or threat of serious injury and there is a causal link with the increased imports. I observe that there is a significant increase in imports of the subject goods which have caused serious injury to the domestic industry which has been duly substantiated in the foregoing paras.
53. Further, POSCO Maharashtra has contended that the surge in imports in 2014-15 is mainly because of imports by them for further use in manufacturing activity in India and if the same is excluded, there would be a slump in imports. In this regard it has been observed that imports have surged not only in 2014-15 but also in Q1 of 2015-16. Moreover, POSCO has stated that it has made most of the imports during the first two quarter of 2015-16. HRC by its very nature is a raw material for the downstream industry and mostly has uses only for further manufacturing.

So, POSCO's case is no different from other consumers of HRC and therefore, the imports made by them cannot be excluded from the total while determining the increased imports.

54. Captive consumption of product under consideration: Several interested parties have argued that captive imports by downstream units should be exempt from safeguard duty. Mostly, these claims have been raised by companies like POSCO Korea and POSCO Maharashtra, and Hyundai Steel Korea and its Indian affiliates. In this regard I find that there is no provision under law that exempts goods imported for captive consumption from the purview of safeguard duty.
55. Inconsistency with FTAs and other bilateral agreements: Interested parties argue that import duties on PUC are about to be eliminated in India-Korea CEPA and India-Japan CEPA. Therefore, it is argued that India should not have levied safeguard duty on imports of the subject goods from Korea RP and Japan as these imports have occurred due to low customs duty on imports from these countries. It is also argued that India could have explored bilateral mechanisms with these two countries under the respective FTAs rather than simply imposing general safeguard duty on Korea RP and Japan. Interested parties also argue that India-Korea CEPA provides that in the event imports from Korea RP are not the reason of injury to the domestic industry, such imports should be excluded from imposition of safeguard duty. Domestic industry submitted that imports from both Korea RP and Japan have caused serious injury to the domestic industry. I observe that it is immaterial that imports from Korea RP and Japan increased due to low customs duty under the respective FTAs. Imports from these two countries have occurred in huge quantities in the most recent period and these imports are at very low prices causing serious injury to the domestic industry. Further, it is the discretion of the Government of India to explore bilateral mechanisms under the respective FTAs or adopt a general safeguard measure in this case. Both the FTAs nowhere mention that India is obligated to explore bilateral mechanisms first and only after failure of such mechanisms can adopt a general safeguard measure. The imports from non-FTA countries had also significantly increased, therefore, safeguard action under the FTA would have left the door open for non-FTA countries to further increase their exports. Secondly, the safeguard action on the FTA limits the safeguards duties only to the level not exceeding the MFN rates, which is not by itself sufficient to mitigate the present situation. It may be noted that these FTAs have specific provisions that allow India to impose general safeguard duty. The only exception under SA and Safeguard Duty Rules is exclusion of developing countries whose individual share in imports is below 3% and whose aggregate share in imports is below 9%. Korea RP and Japan do not fall under this exception, as both of them are developed countries.
56. From the above analysis it is seen that the demand for the PUC in India has increased in the injury analysis period. Despite increase in demand, the production, employment and sales of domestic industry have remained stagnant, while inventories have somewhat increased. Imports have taken away most of share of the increase in demand of the subject goods. In 2014-15, while demand excluding captive increased by 13,03,069 MT and imports increased much more by 13,92,470 MT. This shows the aggressive manner in which imports of the PUC are entering the Indian market. The domestic industry had raised its capacities foreseeing the increasing demand in India. However, the domestic industry is unable to increase its capacity utilization, production and sales. The profitability has gone down drastically and even turned to losses during 2015-16(Q1). The major reason for decline in profitability of domestic industry is the increased imports at reduced prices. If the same trend continues, the domestic industry fears that they would be forced to shut down their operations.
57. The imports of the PUC have increased significantly in absolute terms and in relation to production and consumption in India. As a result of the significant surge in imports, the Domestic Industry has suffered serious injury. Domestic Industry has performed inversely to the imports, with deterioration in finances from profits to losses.
58. Thus, an evaluation of the overall position of the DI, in light of all the relevant factors having a bearing on the situation of the DI, shows a 'significant overall impairment'. It is thus concluded that Domestic Industry has suffered serious injury as a result of increased imports of the PUC.
59. There is a serious injury to the domestic industry due to the surge of imports and the most recent trend of import volumes entering India. The volume of imports continues to increase, despite already being at high levels. The market share of imports has also substantially increased over the period. Considering the surplus production

capacities available with the foreign producers, the imports will continue to increase, as is evident from the post POI analysis at Para-100 resulting in further injury to the domestic industry. The likelihood of further increased import leads to a conclusion that there is a threat of further serious injury to the domestic market. In view of the fact, that the domestic industry is unable to make profitable sales in the Indian market, I am of the view that in absence of levy of safeguard duty, the Domestic Industry faces serious injury and a further threat of greater serious injury.

H. Other issues raised by the interested parties:

60. Applicability of safeguard duty on those hot-rolled flat products in coil form for which contracts were entered into before levy of provisional safeguard duty: Some of the interested parties are of the view that for contracts for which LCs were recently opened before the imposition of provisional safeguard duty should be exempted from safeguard duty as they are of the view that imposition of provisional safeguard duty was unforeseen and the impact of additional duty would be harsh. However, I find there is no provision under the law that allows such exemptions.
61. Other procedural issues in the investigation: A number of interested parties have expressed concern that India took time to notify the WTO, about the imposition of provisional safeguard duty. Interested parties have also submitted that provisional safeguard duty was imposed in haste without giving an opportunity to be heard. In this regard it is observed that there was a slight delay, however, it would not mean that imposition of provisional safeguard duty per se is inconsistent with provisions of Article 12.4 of SA. A slight delay in meeting with the procedural requirement such as notifying WTO does not by itself compromise with the substantive merits of the provisional safeguard duty.
62. Rule 9(1) of the Safeguard Duty Rules allows the Authority to proceed expeditiously with the conduct of the investigation and in critical circumstances, record a preliminary finding regarding serious injury or threat of serious injury. As critical circumstances existed in this case, the preliminary findings were issued. Under such circumstances, it is not mandatory for the designated authority to conduct a public hearing or hold any consultations with other interested parties before taking provisional safeguard action. I find that the action is well within the ambit of provisions of SA.

I. Causal Link between Increased Import and Serious Injury or Threat of Serious Injury:

63. As per Rule 8 of the Customs Tariff(Identification and Assessment of Safeguard Duty) Rules' 1997, The Director General(Safeguards) is obligated to "*determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the principles laid down in Annex to the these rules*". Further, paragraph 2 of the Annex requires the establishment of causal link between alleged increased imports and serious injury or threat thereof. The Paragraph 2 of Annex to Rule 8 provides as follows:

The determination referred to in paragraph (1) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the article concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

64. The Panel on Korea — Dairy set forth the basic approach for determining "causation":

"In performing its causal link assessment, it is our view that the national authority needs to analyse and determine whether developments in the industry, considered by the national authority to demonstrate serious injury, have been caused by the increased imports. In its causation assessment, the national authority is obliged to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. In addition, if the national authority has identified factors other than increased imports which have caused injury to the domestic industry, it shall ensure that any injury caused by such factors is not considered to have been caused by the increased imports.

To establish a causal link, Korea has to demonstrate that the injury to its domestic industry results from increased imports. In other words, Korea has to demonstrate that the imports of SMPP cause injury to the domestic industry producing milk powder and raw milk. In addition, having analyzed the situation of the domestic industry, the Korean authority has the obligation not to attribute to the increased imports any injury caused by other factors."

65. For the purpose of determining causation, all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry have been evaluated. A comprehensive evaluation of parameters enumerated in preceding paras demonstrates that serious injury and threat of serious injury is being caused by increased imports. In the instant case, the following are relevant in this regard, when comparing the figures from 2013-14 to 2015-16 (annualized on the basis of Q1): –
- i) The volume of imports has increased significantly from 100 points (1252441MT) to 281 points (3524932MT).
 - ii) Market share of imports has increased from 5% to 13% and, consequently, market share of the Domestic Industry has declined from 45% to 37%;
 - iii) The decreasing import prices are preventing the Domestic Industry from sustaining its prices;
 - iv) Due to increased imports on low prices, the Domestic Industry is unable to increase its production and sales as compared to the rate of increase in demand/consumption of product under consideration in India;
 - v) The profitability of the Domestic Industry has declined sharply during 2015-16 (Q1) and domestic industry recorded losses due to increased imports.
66. In view of the above I find that there is a direct correlation between the increase in imports and serious injury suffered by the domestic industry as import in absolute term increased approximately three times during the year 2015-16(Annualised on the basis of Q1) as compared to base year 2013-14 and domestic industry is losing market share which has declined from 45% to 37%. The landed price of imports per ton has declined sharply. Consequently, the domestic industry has suffered losses. It is, thus, evident that injury to the domestic industry has been caused by the increased imports.

J. Adjustment Plan:

67. Rule 5(2) (b) of the Safeguard Duty Rules requires the DI to submit a statement on “efforts being taken or planned to be taken or both to make positive adjustment to import competition”. Further Article 7.1 of WTO Agreement on Safeguard provides that a member shall apply safeguard measure only to the extent necessary to prevent or remedy serious injury and facilitate adjustment.
68. The purpose of a definitive safeguard measure is to provide the domestic producers a limited period of time to restructure themselves for effectively competing with the imports. Section 8B(4) of the Customs Tariff Act, 1975 and Rule 16(2) of the Safeguard Duty Rules prohibits any possible extension of a measure if there is no evidence that the domestic producers are adjusting.
69. The domestic industry has submitted detailed adjustment plans along with the respective domestic producers’ questionnaire, showing year-wise projected savings. A brief of the adjustment plans laid down is as under:
- a. Steel Authority of India Limited
 - i. Savings in procurement costs of coking coal, iron ore, fluxes and ferro alloys;
 - ii. Optimising the raw material linkages to the plants for minimizing the landed cost and minimizing procurement cost of various items like stores and spares, refractories, rolls, lubricants, etc.
 - iii. Improving the operating efficiency of available assets;
 - iv. Reduction in coal blend cost by increase in usage of imported soft coking coal in each plant as a replacement of imported hard coking coal and maximize production/use of coking coal from captive washeries;
 - v. Reduction in gross metallic input and enhancing concast production

- vi. Reducing the cost of power and other fuels by maximising recovery of gases like CO gas, BF Gas and LD gas to replace boiler coal in captive/JV power plant
- vii. Improvement in the efficiency of different processes by improvement in the yield of blooming mill/slabbing mill etc.
- viii. Modernisation plans in SAIL will lead to increase in volume of production, productivity, improvement in yields, conservation of energy and improvement in product quality.

b. Essar Steel Limited

- i. Commissioning of multi fuel power plant at Hazira will help in reduction in costs by utilisation of surplus Corex gas and coal fines;
- ii. The high quality of iron ore fines from mines acquired under the government auction scheme will provide flexibility to enhance the quality of raw material and thereby improve the productivity and lower the cost;
- iii. Essar plans to acquire mines nearby its established beneficiation and pellet facilities located in Odisha and utilise slurry pipeline to transport the same. Use of slurry pipeline for transport will have significant costs savings;
- iv. Commissioning of pellet plant 2 in Paradeep will increase in-house availability of pellets at lower costs;
- v. Commissioning of captive coke oven will result in reduction in cost of coke and consistent quality;
- vi. Reconfiguring the technological units and installing related facilities to reduce dependence on natural gas and improving steelmaking capacity.

c. JSW Steel Limited

- i. Reduction of fuel consumption by improving hot blast temperature, increasing Eta CO;
- ii. Reduction in logistics cost by reduction in idle freight, extra movement from Goa & reduced movement from Mangalore Port, etc.;
- iii. Savings in LPG consumption by changing flare stack burners at SMS 1 from LPG to coke oven gas;
- iv. Improvement in HSM yield by reduction of cobbles and reduction in scale loss, salvage loss, and crop-end loss;
- v. Commissioning of new line from Steel Melt shop to Corex gas holder for better LD gas recovery;
- vi. Reduction in solid fuel in sinter plants by using CDQ fines in micro pellets;
- vii. Reduction in anthracite consumption at sinter, reduction in aluminum consumption;
- viii. Intense condition monitoring, preventive maintenance and predictive breakdown maintenance.

70. It was further stated by the domestic industry that owing to the above adjustment plans, the companies would be in a fair position to reduce their cost significantly leading to better margins & increase in sales realization. I find that the applicants have provided viable adjustment plans which focuses on cost reduction, optimum utilization and expansion of production capacities which will enable them to adjust to the international competition.

K. Unforeseen developments:

71. The Agreement on Safeguards read with Article XIX of GATT obligates the national authorities to examine the “unforeseen developments” which led to the serious injury to the Domestic Industry. It is, therefore, considered important to examine the unforeseen developments or circumstances which have led to increased imports.

72. The Appellate Body in Argentina – Footwear (EC case) held that the phrase Unforeseen Developments means the developments which were unexpected. ‘Unforeseen developments’ require that the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been ‘unexpected’.

73. The Appellate Body, in Argentina — Footwear (EC), then held that the requirement of “unforeseen developments” did not establish a separate “condition” for the imposition of safeguard measures, but described a certain set of “circumstances”:

74. The panel on US- Steel Safeguards concluded that the confluence of several events can unite to form the basis of an unforeseen development:
- "The United States argues that the robustness of the US dollar was a development which combined with the other developments, namely, the currency crises in Asia and the former USSR and the continued growth in steel demand in the United States' market as other markets declined, lead to increased imports."*
75. The applicant has pointed out that Steel manufacturers in a number of countries including China PR, Russia, Ukraine, Japan and Korea have developed huge capacities to cater to demand of steel by developed countries and rest of the world. Most of the developed countries that were traditionally the biggest importers of steel such as United States and the European Union have reduced their dependence on imported steel. This development adversely affected exports of steel from China PR, Russia, Ukraine etc. to developed countries. Manufacturers in these countries had to think of ways to dispose off their production. India being a growing economy happened to be one of the natural choice for these manufacturers to offload their excess capacity.
76. As per a report by a reputed journal Steel360, Russian steel exporters have been experiencing high realization for their exports due to their currency that has weakened in the recent past. Weakening of currency arising due to drop in oil prices was unforeseen. A weak currency has led to an export push by Russian steel. Further, the Russian exporters have faced, due to conflict in Ukraine, a restricted access to traditional markets like the European Union and Ukraine resulting in export push to India. All these developments are unforeseen.
77. As a result of political unrest in Ukraine due to Russia's intervention, there was a sharp depreciation of about 60% in the currency of Ukraine "Hryvnia" during 2014 alone. This was an unforeseen development. Due to long period of unrest in Ukraine, its economy contracted and its currency sharply depreciated to US dollar. However, depreciation in Ukraine's currency helped its steel producers/exporters to leverage their low priced exports to put further pressure on the global steel market. It is well documented in many leading international newspapers and journals how Ukraine has joined Russia and China PR to drive down steel prices and divert its surplus steel to countries with good demand.
78. China PR is experiencing weak domestic demand after a sustained growth rate for last many decades. This drop in growth rate was sudden and unexpected/ unforeseen. Infrastructure sector, mainly housing, which has been the biggest consumer of steel in China PR is going through a slowdown. Manufacturers in China PR can no longer dispose off their production in the domestic market. As a result China has an excess capacity of a few hundred million tones. This situation is likely to remain unchanged in the short term and Chinese steel use will continue to record a negative growth of -0.5% in 2015 and 2016. As a result, exports to countries like India are a natural choice as demand of steel has been on the rise in India. Such intrinsic factors in China PR led to sudden surge of imports from China PR.
79. Many interested parties are of the view that Petitioners have failed to identify unforeseen developments that led to increase in imports of the subject goods. Some interested parties claim that even the Authority has failed to discuss unforeseen developments in the preliminary findings and a few interested parties also claim that unforeseen developments have been identified but do not correlate with the subject goods. Some interested parties are of the view that depreciation of Indian Rupee and local procurement by users offset unforeseen developments. In this regard I find that the petition explains in detail all the unforeseen developments that led to sudden, sharp, significant and recent increase in imports of the PUC that caused or threaten to cause serious injury to the domestic industry. The preliminary findings and the present findings also discuss these unforeseen developments in sufficient detail which are well reasoned.
80. Some of the interested parties are of the view that the Authority should examine in terms of Article XIX of the GATT how as a result of the effect of obligations incurred by India under GATT, including tariff concessions, imports of the PUC increased in sudden, sharp, significant and recent manner. Though the Safeguard Duty Rules and the Agreement on Safeguards do not mandate the Authority to conduct such analysis, the obligation to do so, however, arises from Article XIX of the GATT. The Appellate Body has observed the following in this respect:

The phrase "of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions" means that it must be demonstrated, as a matter of fact, that the importing Member has incurred obligations under the GATT 1994, including tariff concessions...

(WTO Appellate Body Report in Korea — Dairy)

81. In this regard, I find that India's bound rates on PUC as per its Schedule of Concessions to the WTO is 40% ad valorem. It is further observed that India has been reducing its applied tariff rates on goods across many sectors. The sole purpose of this exercise is to encourage international trade so that India better assimilates into global trade. This is particularly true for the PUC for which India had a reduced applied rate of 7.5% in 2013-14 and 2014-15. It can be seen that due to the effect of such low applied tariffs, there was a chance for the imports of the PUC, under the present circumstances and market conditions to actually increase in sudden, sharp, significant manner into India.
82. It is clear from the above discussion that as a result of unforeseen developments and as an effect of obligations under GATT including tariff concessions, imports of the PUC has increased in a sudden, sharp, significant and recent manner into India.

L. Public Interest:

83. Article 3.1 of the Agreement on Safeguards states 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 competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law."
84. Some interested parties are of the view that downstream industry would be hurt by imposition of safeguard duty. They have also contended that imposition of safeguard duty would result in increase in imports of downstream products.
85. In this regard, I observe that there is a sizable downstream industry in India that processes the HR Coil to produce CR Coil, GP/GC sheets, Pipes & Tubes, Color Coated Sheets etc. Steel is a basic raw material and it is consumed in a large number of products such as automobiles, machinery, infrastructure, construction, oil and gas industry etc. Therefore, any increase in price of HR Coils has an impact on the downstream industries. Safeguard duty imposed on HR Coil without imposing any duty on the downstream products will impact the value adding downstream industry in India. Imposition of safeguard duty will add to the cost of production of these goods. Further, Safeguard duty on raw materials alone, without giving a similar cover to the downstream industry creates an inverted duty structure that makes downstream products expensive and makes it relatively cheaper to import. This would be particularly true in case of industry where HR Coil is a major constituent and cost of the input. Industry such as CR Coil, Pipes and tubes etc that have HR Coil as its major cost would be most affected. Due to these reasons profitability of these downstream industries would be significantly affected.
86. Imposition of safeguard measures would also affect small exporters of engineering goods who source their requirements of HR Coils from local suppliers and importers. With imposition of safeguard duty, HR Coil as a raw material would be more expensive. Also, there is no general rate of duty drawback that takes care of the impact of safeguard duties. This would render these exporters less competitive in the world market.
87. On the other hand, public investments of lakhs of crores in the steel industry is at the risk of becoming Non performing Assets. Therefore, adequate cover of protection to the DI is also desirable. If unattended, both the prices and market share of domestic industry will further decline, resulting in financial losses to the domestic industry to the extent of getting the domestic industry unviable with possible loss of employment as well as loss of strategic and economic interest of the country.

88. Therefore, Imposition of safeguard duty at a reasonable level would be in order as it is in the consumers' long term interest to have a competitive and vibrant Indian domestic industry capable of supplying the product under consideration to the consumers and be able to compete with foreign producers. This is possible only when the domestic industry is able to get some temporary support for the injury suffered due to the increased imports. It is in the interest of the public at large to have a strong, competitive Indian domestic industry.

M. Developing Nations:

89. The percentages of imports from developing nations have also been examined for the period 2013-14, 2014-15 & 2015-16(Q1). Except China PR and Ukraine which constitutes 24% & 4% of total imports into India respectively, other developing nations individually and collectively have less than 3% and 9% share respectively of total imports into India. Therefore, in terms of Notification No.103/98-cus dated 14-12-1998 read with Notification No.19/2016-Customs (N.T.) dated 05-02-2016, imports of the product under consideration originating from developing nations except China PR and Ukraine will not attract Safeguard Duty in terms of proviso to Section 8B (1) of the Customs Tariff Act, 1975.

N. Provisional Measures:

90. In the Preliminary Findings, it was held that increased imports of PUC have caused and threatened to cause serious injury to domestic producers of PUC. It was also observed that critical circumstances existed, where any delay in application for safeguard measures would cause irreparable damage to the industry. Considering the serious injury suffered by domestic industry during the first quarter of 2015-16 in a number of injury parameters as explained in the paragraphs above, it is held that the provisional measures were justified in this case in order to thwart the possibility of irreparable damage. The final findings are now being issued after considering the views of all the interested parties and DI.

O. Reply to the specific objections raised by Foreign Governments/ Embassies which are not discussed in above findings:

Republic of Turkey

91. Turkey contends that it should be excluded from the purview of safeguard duty as it is a developing country. In this regard, I find that India in terms of Notification No. 103/98-Cus dated 14th December 1998 does not recognise Turkey as a developing country. However, vide Notification No.19/2016-Customs (N.T.) dated 05.02.2016, Turkey has been included in the list of developing country and its share being less than 3% of total imports into India during the period 2013-14 to 2015-16(Q1), imports of the product under consideration originating from Turkey will not attract Safeguard Duty in terms of proviso to Section 8B (1) of the Customs Tariff Act, 1975 w.e.f. 05.02.2016.

92. With regard to Turkey's contention that notifications by India to the WTO do not contain a reasonable or adequate explanation/analysis concerning the existence of unforeseen developments is not accepted. I find that in the preliminary findings dated 09/09/2015 in the matter, all the parameters have been clearly examined and discussed including unforeseen developments in this case.

Chinese Taipei

93. Taiwan contended that its name does not feature in the list of developing countries notified vide Notification No. 103/98-Cus dated 14 December 1998 and requested to update the aforesaid notification so that Taiwan's economic status as a developing country is reflected correctly so that exemption available to developing countries is available to them. However, since Taiwan is not recognised as a developing country so far by Government of India under Notification No. 103/98-Cus dated 14-12-1998 read with Notification No.19/2016-Customs (N.T.) dated 05.02.2016, the benefit of exemption to developing countries would not be available to Taiwan.

Embassy of Ukraine

94. Ukraine has examined the parameters on end-to-end basis for the period 2011-12 vis-à-vis 2014-15 and contended that the import is not significant enough to cause or threaten to cause serious injury. Industry indicators show positive trends for domestic sales, production, market share, capacity, capacity utilization and there is no causal link in this case in terms of Articles 2.1 and 4.2(b) of the SA, as injury to the domestic industry is due to loss of market share to other domestic producers. In this regard, the contention of Ukraine is not accepted as the period of investigation has been taken from 2013-14 to 2015-16 (Annualised on the basis of Q1) and during this period the imports of PUC have shown an increasing trend, whereas, the domestic indicators like market share and profitability show negative trends as discussed in the foregoing paras. The question as to what is an acceptable period to consider for determining injury, the issue has been discussed in detail in Para-30. As such there is no bar in taking a particular period of investigation so long as the injury analysis also pertains to that period and the surge in imports is recent and significant.

European Commission

95. The Commission has submitted that safeguard instrument should be used in exceptional circumstances only and the present case is suitable for anti-dumping or anti-subsidy investigation. In this regard, I find, that at present, the Indian steel industry is going through a very critical phase due to sudden, sharp, significant and recent increase in imports of the subject goods. The Indian steel producers are suffering serious injury due to such imports as a result of unforeseen developments as discussed in the foregoing paras. I find that the safeguard duty has been correctly recommended and which has been done in order to protect them from the sudden surge in imports.

96. With regard to the Commission's contention that certain specific grades of the subject goods should be excluded from the product scope as the domestic industry may not be manufacturing them, I observe that the Commission has not identified the specific grades the domestic industry does not produce, for which exclusions are required. In the absence of information on specific grades, the domestic industry is not in a position to respond to their contention and hence no action can be taken on the suggestion of the Commission..

97. The Commission argues that captive sales and sales by other domestic producers should be examined. The Commission further adds that other Indian producers have increased their open market sales by 42%. In this regard, I observe that the market share of other Indian producers has increased by 2% whereas, the market share of domestic industry has decreased by 2% during the period 2014-15 & 2015-16 (Q1). [Para-49(b) of the finding]. Moreover, imports have taken away all the increase in demand of the subject goods. In 2014-15, demand (excluding captive) increased by 1303069 MT and imports increased by 1392470 MT.

Republic of Brazil

98. Brazil contends that since India has failed to notify imposition of provisional safeguard measure prior to its imposition, India failed to satisfy the requirements under Article 12.4 of the SA. In this regard, I am of the opinion that a procedural requirement such as notification to the WTO does not compromise the substantive merits of the provisional safeguard duty. This issue has been discussed in detail in Para-61.

99. Brazil has raised the issue that the share of each exporting country has not been informed by the Authority and a list of developing countries has also not been provided. Brazil also argues that the period taken into account for calculation of the volumes imported from each source has not been specified. Due to lack of such essential information, Brazil argues that it has not been able to exercise its right of defence under Article 3.1 of the SA. In this regard I observe that the country-wise transactions of imports into India provided by the domestic industry alongwith its application were circulated to all interested parties while circulating the Notice of initiation in the matter. The same documents have also been placed in the public file for inspection by the interested parties. There is, thus, no inconsistency in terms of Article 3.1 of the SA. Further, since Brazil's share of imports has been determined to be not more than 3% in total imports during the period 2013-14, 2014-15 & 2015-16 (Q1), imports of PUC from Brazil is excluded from the purview of safeguard duty.

P. Examination of Post POI data:

100. In the given circumstances, an attempt was made to analyse the trend in the period after the POI i.e. upto 2nd quarter of 2015-16 to draw a clear inference about the possibility of accentuation of the injury to the domestic industry. The domestic industry vide their post Public Hearing submissions submitted the domestic data pertaining to certain economic parameters for the subject “product under consideration” imported into India. The data analysis is as under:

	2013-14	2014-15	2015-16 (Annualised on the basis of Q1)	2015-16 (Annualised on the basis of Q1+Q2)
Total Imports (MT)	1252441	2644911	3524932	4587168
Production (MT)	17881187	17836937	17827180	16796006
Domestic Sales(MT)	10342565	9949214	10359716	10504640
Total Demand(MT)	22864053	25528003	28157248	30268388
Market Share of Import(%)	5	10	13	15
Market Share of DI(%)	45	39	37	35
Inventory(MT)	636879	648290	657099	871440
Profit/ (Loss) (Indexed)	100	136	(114)	(120)

101. On scrutiny of the above data it is observed that during the post POI i.e 2015-16(Q1+Q2)(Annualised), between the period Q1 to Q2, there is a increase in the imports by about 30%. The market share of imports have increased by about 2% as against the corresponding decline of the market share of the domestic industry by about 2%. Further, there is a decline of about 6% in production whereas domestic sales increased only by approximately 1% during the post POI. This shows that the industry parameters deteriorated sharply between Q1 and Q2 of 2015-16.

Q. Conclusion:

102. On the basis of the above examination and analysis done, it is concluded that:

- i. There has been a significant increase in imports of the PUC in absolute terms as well as in relation to domestic production over the entire POI. This surge in imports is also quite significant in relation to total demand as well.
- ii. The investigation has indicated that the domestic industry has suffered serious injury, considering overall performance, on the basis of listed economic parameters such as market share, and profitability, which have sharply declined from the base year till 2015-16(Annualised) whereas market share of imports have increased during the same period. This has caused significant overall impairment to the domestic industry. This establishes causal link between the rise in imports and serious injury caused to the domestic industry during the POI.
- iii. The domestic industry has been able to demonstrate that the developments in the market for surge in imports of the PUC were unforeseen.
- iv. There will be a negative impact on the downstream industry as a result of safeguard duty on the PUC which is a raw-material for them.
- v. It is also established that imposition of safeguard duty in this case would be in public interest because it will aid in recovery of the domestic industry and ensure that end users get a stable supply of subject goods from the domestic industry.

- i. From the analysis of post POI data, it has been observed that the position of domestic industry further deteriorated on account of production, sales & market share. Thus, I conclude that serious injury/ threat of serious injury exists and further protection to the domestic industry is required to be extended.

R. Recommendations:

- a. The increased imports of 'PUC' into India, have caused serious injury and are threatening to cause serious injuries to the domestic producers of "PUC" and it will be in the public interest to impose safeguard duty on imports of "PUC" into India in terms of Rule 12 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules '97, for a period of two Years and Six months. This period shall be computed from the date of levy of provisional safeguard duty vide notification no.2/2015-Cus (SG) dated 14.09.2015. Considering the average cost of sales of "PUC" by the domestic producer after allowing a reasonable return on cost of sales, safeguard duty as indicated below, which is considered to be the minimum required to protect the interest of domestic industry on PUC being imported falling under sub-heading 7208 and 72253090 of the First Schedule of the Customs Tariff Act, 1975, is recommended to be imposed.

Year	Safeguard duty recommended	Period
First Year	Safeguard duty @ 20% ad valorem (minus Anti-dumping duty, if any).	14.09.2015 to 13.09.2016
Second Year (For first 6-months)	Safeguard duty @ 18% ad valorem (minus Anti-dumping duty, if any).	14.09.2016 to 13.03.2017
Second Year (For next 6-months)	Safeguard duty @ 15% ad valorem (minus Anti-dumping duty, if any).	14.03.2017 to 13.09.2017
Third Year (For 6-months)	Safeguard duty @ 10% ad valorem (minus Anti-dumping duty, if any).	14.09.2017 to 13.03.2018

- b. As the imports from developing nations except China PR and Ukraine do not exceed 3% individually and 9% collectively, the import of product under consideration originating from developing nations except China PR and Ukraine will not attract Safeguard Duty in terms of proviso to Section 8B (1) of the Customs Tariff Act, 1975. Turkey vide Notification No. 19/2016-Customs (N.T.) dated 05.02.2016 has been recognised as a developing nation. Therefore, Imports of the product under consideration originating from Turkey will not attract Safeguard Duty w.e.f. 05.02.2016.

Sd/ 15.03.2016
(Vinay Chhabra)
Director General

F.No. D-22011/26/2015/Pt-III