

**DIRECTORATE GENERAL OF SAFEGUARDS  
CUSTOMS AND CENTRAL EXCISE  
2ND FLOOR, BHAI VIR SINGH SAHITYA SADAN,  
BHAI VIR SINGH MARG, GOLE MARKET  
NEW DELHI-110001**

NOTIFICATION

**Subject:-Safeguard investigation concerning imports of Hot Rolled Flat products of Stainless Steel of 304 grade into India from China PR – final findings-Reg**

G S R D-22011/06/2012 dated 25<sup>th</sup> May, 2013 having regard to the Customs Tariff Act, 1975 and the Custom Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 thereof;

**A. Procedure**

1. An application had been filed before me under Rule 5 of the Custom Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 by M/s. Jindal Stainless Ltd. 12, Bhikaji Cama Place, New Delhi:-110066 for imposition of Safeguard Duty on imports of “Hot Rolled Flat Products of Stainless Steel of 300 series” to protect the domestic producers of “Hot Rolled Flat Products of Stainless Steel of 300 series” against market disruption and threat of market disruption caused by the increased imports of “Hot Rolled Flat Products of Stainless Steel of 300 series” into India from PR China.
2. Having satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of Hot Rolled Flat Products of Stainless Steel of 300 series from China PR was initiated vide Notice of Initiation dated 26<sup>th</sup> June, 2012 and published in the Gazette of India, Extraordinary on the same day.
3. A copy of the Notice of Initiation dated 26<sup>th</sup> June, 2012 along with copy of non-confidential version of the application filed by the domestic industry was forwarded to the Central Government in the Ministry dealing with Commerce and other Ministries concerned, Govt. of China PR through their embassy in New Delhi and other interested parties listed below in accordance with Rule 6(2) & 6(3) of the Safeguard Rules’02:

**Domestic Producers**

- a. M/s. Jindal Stainless Ltd. 12, Bhikaji Cama Place, New Delhi:-110066
- b. Steel Authority Of India Limited, Ispat Bhawan, Lodi Road, New Delhi - 110003
- c. Shah Alloys , Shah Alloys Corporate House Sola-Kalol road, Santej Ta. Kalol, Dist. Gandhinagar, 382721 Gujarat.

**Importers**

- a. Ratnemani Metals and Tubes & Survey Survey No. 474 Village Bhimasar Taanjar, Nr. Ghandhidham Distt. Kutch Pin-370240
- b. Bhandari Foils & Tubes Ltd Plot No. D1-D4, Phase I INDL, Area AB Road Dewas (M.P)
- c. Prakesh Steelage Ltd. Plot No. 26 Sector KWC, Kalamboli, Navi Mumbai Maharashtra
- d. Rajendra Mechanical Industries Ltd 11, Cama Industrial Estate Goregaon East Mumbai
- e. Phoenix Foils Pvt. Ltd. Plot No. 3, Expansion Area, New GIDC, Umbergao, Distt Valsad, Gujrat
- f. Domet Trading Pvt. Ltd Plot No. 1867, Road No.25, KWC Steel Ware Housing Complex Kalamboli, Maharashtra
- g. Sangeeta Metal (India) 26/24, 68/1, Ground Floor, Sindhi Lane, Mumbai
- h. Ramani Steel House 65/73, CP Tank Road, Mumbai
- i. Nishant Infinn Pvt. Ltd 7, Taldhwaj Bhuvan, 1<sup>st</sup> Floor, Off No.1, 3<sup>rd</sup> Panjrapole Lane, Mumbai
- j. A.C. Steel Sgop Laheri Building Ground Floor 282, S.V Road, Corner of 5<sup>th</sup> Khatwadi Lane , Mumbai
- k. Quality Foils (India) Pvt. Ltd. 3, Industrial Development colony Hisar, Haryana

## **Exporters**

- a. Taiyuan Iron and Steel (Group) Co. Ltd.No.2, Jiancaoping Taiyuan, Shanxi 30003, China.
- b. Lianzhong Stainless Steel Corporation No1, Lianguang Road, East Section,Economic Technology Development Zone Guangzhou, 510760 China
- c. Baosteel Tower,370 Pudian Road,Shanghai, 200122 China.
- d. Jiuquan Iron and Steel (Group) Co. Ltd.No12 Xionguan Dong Road, Jiayuguan, Gansu.
- e. Zhangjiagang Pohang Stainless Steel Co. Ltd.Daxin Riverside Road,Zhangjiagang City Jiangsu Province,China.

## **Associations:-**

- a. Process Plant and Machinery Association of India (PPMA)002 Loha Bhavan, 91/93, PD Mello Road, Masjid (E) Mumbai-400009, India
  - b. All India Stainless Steel Industries Association(AISSIA)302, Arun Chambers, Madan Mohan Malviya Road, Mumbai, Maharashtra,-400034, India
  - c. Stainless Steel Exporters Welfare Association PD-4A, Pritampura, Delhi-110088 India
  - d. M/s The Tamil Nadu Stainless Steel Merchants and Manufacturers Association,13, Raghunayakulu street,2<sup>nd</sup> Floor,Park Town,Chennai:-600003
4. Questionnaires were sent to the known exporters from China PR, known importers/users in India and other interested parties as per the information available including the Govt. of China PR with request to make their views known in writing within 30 days of the notice of Initiation.
  5. The Notice of Initiation dispatched to (a) M/s Sangeeta Metal (India), 26/24, 68/1(F/H) Ground Floor,Sindhi Lane, Mumbai (b) Taiyuan Iron and Steel(Group) Co.Ltd No.2,Jiancaoping Taiyuan,Shanxi 30003,China and (c) Lianzhong Stainless Steel Corporation No.1,Lianguang Road,East Section,Economic Technology Development Zone,Guangzhou,510760 China have been received back as returned undelivered with the remarks incomplete address or left w/o address by the postal authorities. The copies of the returned notices were then placed on the notice board of the Directorate.
  6. Request to consider them as interested parties were received from China Iron and Steel Association (CISA), China, Ministry of Commerce, GOC, China and The Tamil Nadu Stainless Steel Merchants and Manufacturers Association. All the requests were accepted.
  7. The information presented by the applicant was verified to the extent possible, by onsite visits to the plants of the domestic producers. The non confidential version of verification report is kept in the public file.
  8. The following parties have submitted their submission in response to Questionnaires sent by this Directorate.
    - a. M/s Remi Edelstahl Tubulars Ltd.Mumbai
    - b. M/s Ramani Steel House,Mumbai
    - c. M/s Fair Trade Practices,Advocates & legal consultants(on behalf of M/s The Tamil Nadu Stainless Steel Merchants and Manufacturers Association)
    - d. M/s Steel Authority of India Limited
    - e. Shri Rajeev Jain behalf of Bureau of Fair Trade,Ministry of Commerce,Government of People's Republic of China PR and China Iron and Steel Association,China
    - f. Shri A.K.Gupta,TPM Consultants on behalf of M/s JSL Stainless Ltd.
    - g. M/s Lakshmi Kumaran & Sridharan on behalf of M/s All India Stainless Steel Importers Association.
  9. The non-confidential information received or acquired from the interested parties including domestic industry were kept in public file for inspection and filing further comments on the views of one interested party by the other interested parties. All the views have already been taken into account in making appropriate determination in the Preliminary Findings.

10. It is seen that the Notice of Initiation has been issued by considering the product under investigation as “Hot Rolled Flat Products of Stainless Steel of 300 series (of all widths) and encompassing all austenitic grades having minimum Nickel (Ni) content of 6%, compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc.” classified under Customs sub-heading no. 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 722011, 722012 of the Customs Tariff Act, 1975”. In response to this initiation it is found that several interested parties have raised the issue that the scope of the products has been flawed in many aspects of the facts and that to investigate and impose safeguard measures on whole range of 300 series of flat products of hot rolled stainless steel do not reflect the actual situation of the ordinary course of trade in the sector. On scrutiny of the submissions made by the interested parties including Govt. of China, M/s China Iron & Steel Association, M/s Ramani Steel House, Mumbai etc. and the response of the Domestic Industry to the said submissions, it was inferred that the scope of the product under consideration is large and it required modifying/narrowing down to a particular grade for the purpose of adequate and appropriate injury analysis. Considering that each consumer requires a specific grade of Hot Rolled Stainless Steels product, consumers of 304 grade products cannot consume non-304 grade product, the surge in imports is markedly different in 304 grade and non-304 grade products, performance of the domestic industry is markedly different in respect of 304 grade and non-304 grade products, it was considered appropriate to restrict the scope of the product under consideration to include only 304 grade products.
11. Accordingly, based on the available records, submissions of the interested parties and the DI, the scope of the product under consideration was therefore restricted/narrowed and Provisional Specific Safeguard Duty for 200 days at the rate of 20% ad valorem was recommended on import of “Hot Rolled Flat products of Stainless Steel -304 grade and encompassing all austenitic grades having minimum Nickel (Ni) content of 6%, compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc., falling under sub-heading no. 72191111, 72191112, 72191190, 72191200, 72191300, 72191400, 72192111, 72192112, 72192121, 72192122, 72192131, 72192132, 72192141, 72192142, 72192190, 72192211, 72192212, 72192219, 72192291, 72192292, 72192299, 72192310, 72192320, 72192390, 72192411, 72192412, 72192413, 72192419, 72192421, 72192422, 72192423, 72192429, 72192490, 72201110, 72201121, 72201122, 72201129, 72201190, 72201210, 72201221, 72201222, 72201229, 72201290, of the Customs Tariff Act, 1975 from Peoples Republic of China PR vide order F. No.D-22011/06/2012 dated 24.9.2012.
12. A corrigendum was subsequently issued on 12<sup>th</sup> November, 2012 and 23<sup>rd</sup> November, 2012 for rectifying typographical error & restricting the width of the product under consideration to 1605mm respectively. Provisional safeguard duty was imposed vide Min. of Finance Notification No. 1/2013-Customs (SG) dated 4th January, 2013.
13. A public hearing was held on 27<sup>th</sup> December, 2012. Subsequently, due to the change of the Director General and the fact that the prescribed time period of 8 months as per Safeguard Rules was lapsing on 25<sup>th</sup> Feb’13, extension of time for issuing Final Findings was allowed by the Central Government vide Ntn. No. **24 / 2013-Customs (N.T.) dated 26<sup>th</sup> Feb’13**. Thereafter, a second oral hearing was held on 11<sup>th</sup> April, 2013. The following interested parties made oral submissions at the time of Public hearing:
- Petitioners/Domestic Industry.
  - Bureau of Fair Trade, Ministry of Commerce, Government of People’s Republic of China PR
  - China Iron and Steel Association, China
  - China Embassy in India
  - Ramani Steel House
  - Pacific Metal Trading Co.
  - All India Stainless Steel Importers Association
  - Metal and Stainless Steel Merchants Association.
  - Quality Foils (India) Pvt. Ltd.
  - The Tamil Nadu Stainless Steel Merchants and Manufacturers Association (they appeared for Public Hearing, did not give oral submissions but provided written submissions).
14. Although M/s. JSS Steel Italia Ltd. and M/s Indian Stainless Steel Development Association were not an interested party but the representative of both parties were allowed to make oral submissions during the Public Hearing. M/s. JSS Steel Italia Ltd, has subsequently filed written submissions which have been taken note of, in this finding. However, as M/s Indian Stainless Steel Development Association has not filed their written

submissions, their views are not considered at all.

15. In terms of sub rule (6) of rule 6 of the Custom Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002, all the interested parties who participated in the public hearing were requested to file written submission of the views presented orally.
16. 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.
17. All the views expressed by the interested parties in their written submissions in pursuant to the public hearing held on 11<sup>th</sup> April, 2013 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. Viewsof Domestic Producer (Applicant)**

18. The views of the applicant Domestic Industry on various issues are summarized as under:
  - a. The product under consideration in the petition was “Hot Rolled Flat Product of Stainless Steel of 300 Series (of all widths) and encompassing all austenitic grades having minimum Nickel (Ni) content of 6%, compulsorily containing chromium, with or without the presence of other alloying elements like molybdenum, titanium etc.”, hereinafter referred to as Hot Rolled Stainless Steels. The subject goods are classified under Customs sub-heading no. 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 722011, 722012 of the Customs Tariff Act, 1975. However, the DG(S) after examining the views of the interested parties and submissions made by us restricted the product scope to “Hot Rolled Flat products of Stainless Steel -304 grade and encompassing all austenitic grades having minimum Nickel (Ni) content of 6%, compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc., falling under sub-heading no. 72191111, 72191112, 72191190, 72191200, 72191300, 72191400, 72192111, 72192112, 72192121, 72192122, 72192131, 72192132, 72192141, 72192142, 72192190, 72192211, 72192212, 72192219, 72192291, 72192292, 72192299, 72192310, 72192320, 72192390, 72192411, 72192412, 72192413, 72192419, 72192421, 72192422, 72192423, 72192429, 72192490, 72201110, 72201121, 72201122, 72201129, 72201190, 72201210, 72201221, 72201222, 72201229, 72201290, of the Customs Tariff Act, 1975”, hereinafter referred to as Hot Rolled Stainless Steels in the Preliminary Findings, which is, at this stage, the Product under consideration. The subject goods are used for manufacture of process equipments, re-rolling, reactor vessels, material handling equipments, railways, pipes & tubes, automotive components, rolled formed sections, architecture, building & construction, industrial fabrication etc.
  - b. The domestic industry has produced and supplied product of width upto 1230 mm from Hissar, whereas the new production facility set up in Odisha has developed facilities upto 1650 mm.
  - c. The scope of safeguard investigations includes both like and directly competitive article. ‘Directly competitive article’ scope is not restricted to present competition. It extends to potential/future competition as well.
  - d. It is established practice that only that product type shall be excluded from the scope of the domestic industry for which the domestic industry does not offers directly competitive article. The objective of safeguard law is to address injury to the domestic industry from imports. The scope of product under safeguard law includes identical and directly competitive article. Therefore, even if the domestic industry does not produce a particular type of the product under consideration, it is unarguably the directly competitive article to the product under consideration
  - e. Most of the integrated producers globally produce HR products, CR products which are produced by rolling the HR products. Globally the producers can produce different types at the same plant/manufacturing facilities and can interchangeably produce different types. Producers may also first produce ‘higher width’ coils and then the same can be trimmed (either by them or slitters or re-rollers) to ‘small widths’ of size required by the ‘end consumers’. As opposed to coils, producers produce plates of size required by end consumers.
  - f. Plate and coil are merely two different form of the product. Secondly, both plates and coils have been imported from China and supplied by the domestic industry. Thirdly, the responding association itself has relied upon the decision of the Designated Authority on anti-dumping wherein both coil and plates were included within the scope of the product under consideration and yet, the association has sought exclusion of plates. Association

cannot play dual standards. Fourthly, no product is consumed in coil form. Every coil is first cut and then consumed. Exclusion of plates from product scope shall imply continued injury to the domestic industry. Fifthly, the scope of safeguard investigations includes both like and directly competitive article. Directly competitive article scope is not restricted to present competition.

- g. The end users such as milk dairy segments and tank storages use both smaller as well as higher width materials. Product with higher width may be imported and can be slit to be used for equipments requiring lower widths. Thus, if these consumers are allowed to import wider width product without restricting the application, the same shall imply circumvention of proposed safeguard duty. The exemption should therefore be restricted to particular application.
- h. There are two other producers of the goods but the applicant company M/s. Jindal Stainless Ltd account for more than 90% of production and hence is a major producer.
- i. The imports of the product under consideration have increased throughout the injury period in absolute terms with a sharp increase in imports in the recent period. There is a sudden, sharp and significant increase in imports in the recent period. Imports have also increased in relation to production in India throughout the injury period with a significant increase in the most recent period. It would thus be seen that imports of product under consideration have shown recent, sudden, significant and sharp increase. The condition prescribed under the rules in this regard is clearly met.
- j. The import and injury related data for 3 year period has been filed by the applicant.
- k. Unforeseen development which has led to increase in imports is the rapid capacity growth recorded by China at a rate which is far higher as compared to the growth in domestic demand, resulting in excess production and huge surpluses. China was a net importer of stainless steel products until 2009 and thereafter became the exporter of the same.
- l. Cost advantage to Chinese producers: Access to cheap Nickel in the form of Nickel Pig Iron has enabled Chinese Stainless Steel producers to have a lower cost of production as compared to their counterparts in other countries. Development in Nickel Pig Iron facilities has happened over the last 2-3 years. This has allowed the country to ramp up production and dominate the global market in recent years. Nickel pig iron was developed in China specifically for stainless steel production.
- m. Other advantages of Chinese producers: Coke forms the second highest cost item in Ferro Chrome production cost after chrome ore which is an essential element in the manufacture of stainless steel. China, having very large coking coal deposits has a huge advantage over India. Borrowing cost of Chinese companies is below 5%, as credit is regulated by the Chinese government / its agencies.
- n. Demand of the product concerned has increased throughout the injury period, Further, the evidences provided shows that by end of 2015, China's stainless steel products capacity will reach 20 million tons and output will reach 19 million tons and the demand in China will reach 16 million tons, leaving a surplus of 3 million tons. Considering the huge production capacities of the subject goods in subject country and their export orientation and the increasing demand for the subject goods in India, in all likelihood imports will continue to remain high, causing market disruption and grave threat of market disruption to the domestic industry.
- o. Market Share: Increased imports have led to increase in marketshare of imports and reduction in market share of the domestic industry. Decline in market share of the domestic industry has adversely impacted the production and capacity utilization of the domestic industry
- p. Production and sales of the domestic industry declined significantly in 2010-11 with the surge in imports. The domestic sales and production of the domestic industry showed some improvement in 2011-12, however the same were still below the levels recorded in 2009-10
- q. Capacity: Domestic industry substantially enhanced its capacities and set up a fresh new green field plant at Odisha. The production of the domestic industry should have increased whereas the production did not even reach the levels achieved in 2009-10 because of increased imports from China and consequent adverse sales volumes of the domestic industry.
- r. Cost of production: Increase in the Stainless Steel scraps prices and Nickel prices have led to a substantial increase in the cost of production. Domestic industry also increased the prices but the increase was lower to

the cost to make and sell in order to woo the consumers. Despite such adverse and low prices, the volume of imports has surged from China in view of significantly low prices offered by the Chinese producers.

- s. Landed price of imports is significantly lower than the selling price of the domestic industry. Landed price of imports is also lower than the cost of sales. The imports are significantly undercutting the domestic prices.
- t. Capacity utilization of the domestic industry has severely suffered as a result of low production, and the same declined significantly even when the demand for the product under consideration has increased.
- u. Inventory: Petitioner is faced with significant accumulated inventories. The levels of inventories have increased throughout the injury period with a significant increase in the most recent period.
- v. Shut Downs: The petitioner has been forced to undertake too many and too frequent production suspension. It is relevant to note the peculiarities of steel plant in this regard. In case there is a stoppage of about three hours between the batches, the energy consumption after restarting would be higher by 15-20%. Therefore on account of the inherent technical nature of the plant, the furnace has to be run on a continuous basis or in other words at optimum levels of capacity utilization. A lowering of the capacity utilization will not only result in higher fixed overhead cost per unit of production but also in higher variable cost on account of excessive consumption of power. Therefore, any plant shut down is a last resort for any manufacturer.
- w. Profitability of the domestic industry has steeply declined in the recent period. The cost of sales of the product under consideration has increased throughout the injury period. But the domestic industry was unable to increase its selling price in proportion to the cost of sales due to increasing price of raw material and presence of cheap imports. Consequently the profits earned by the domestic industry have declined throughout the injury period.
- x. The return on investments also followed the same trend as that of profits. The return on investments declined due to presence of increased imports.
- y. In addition to the market disruption already inflicted on the domestic industry, increased imports of product under consideration are threatening market disruption to the domestic industry.
- z. There are no other factors that may be attributing to the market disruption to the domestic industry other than the low priced imports. The imports of product under consideration from third countries have declined as a result of imposition of anti dumping duties on these imports. Share of China in total imports has increased significantly and that of other countries declined significantly.
- aa. The present scope in the notification is unambiguous and does not require any further clarification. It may be noted that apart from grade 301 and 304, there is no other grade in 300 series where the minimum nickel content is 6%. All other grades have minimum nickel content starting from 8%.
- bb. Petitioner has also provided information of the domestic industry segregated into 304 grade and other than 304 grade. It has further submitted that
  - i. imports of 304 grades have been increased in much higher volumes as compared to other than 304 grade.
  - ii. the volume of imports of 304 grade and other than 304 grade on one hand and the performance of the domestic industry in these segments on the other hand clearly establishes that the domestic industry is suffering marked disruption due to Chinese imports. The market disruption is higher in case of 304 grades. However, petitioner is also suffering market disruption in other than 304 grades. Further, should the safeguard duty be restricted to only 304 grades, the imports would increase in other than 304 grades
  - iii. Petitioner was advised to provide transaction-wise import data/ production/ sale/ export/inventory data and injury margin statement of Hot Rolled Flat Products of Stainless Steel 304 grade.
- cc. Contrary to what is alleged by the interested parties, the monthly average of 300 series production for the three years is 11,512MT, 11875MT & 15126MT respectively. Similarly, the average monthly inventory of 300 series for the three years is 7236MT, 6175MT and 7658 MT respectively. Further, even going by the incorrect figures,

the inventory as a % of production (for 300 series) has risen from 37% in base year to 71% in 2011-12 and inventory as a % of captive consumption should be ignored as captive consumption is not a relevant factor.

- dd. The petitioner has provided all the required data pertaining to Hot Rolled Flat Products of Stainless Steel 304 grade.
- ee. While an interested party has a right to participate in the investigations and advance its argument, its first obligation is to provide relevant information prescribed by the Director General. The Director General has prescribed a questionnaire for providing relevant information. This prescription cannot be circumvented by putting up a platform of an association, which itself has no locus.
- ff. The threshold of injury may at the least be lower but not higher in a safeguard case. In any case, the issue is entirely irrelevant. The data/information relating to domestic industry and the preliminary findings clearly establishes that surge in imports of the product under consideration has caused injury to the domestic industry as per the requirements of the TPSSM law.
- gg. The petitioner submits that the statements made by the company in the annual report are with regard to company performance and in respect of all the products produced or sold by the company. Further, these statements are meant for shareholder, financial institutions, Govt. of India and public at large and therefore deal with micro and macro situations relating to company's operations both in the context of domestic and international market, covering raw materials, products produced by the company and products produced by downstream industry to any extent.
- hh. Sales have been segregated between domestic merchant sales, captive sales and exports. Impact of increased imports cannot and was not on the captive consumption and therefore segregated performance alone shall show whether injury to the domestic industry is due to increased imports or some other factors.
- ii. The decisions cited by the interested party shows that the Authority should examine all parts of the domestic industry. However, it does not restrict the Authority to base the finding on any one part of a domestic industry after examining all the aspects of domestic industry.
- jj. The Director General has examined injury with regard to the product under consideration and has included captive consumption as well.
- kk. Petitioner has analyzed the data with respect to the restricted width and it was seen that there is only marginal difference in the data, after excluding higher width. Therefore, the restricted width could not have changed the conclusion derived by the Authority.
- ll. All India Stainless Steel Importers Association lacks *locus standi* to make submissions. There does not appear to be any registered association in the name and style of All India Stainless Steel Importers Association. Since association has not established its credentials, the response should not be admitted.

**C. Views of Interested Parties:**

- 19. Following are the submissions on behalf of Bureau of Fair Trade, Ministry of Commerce, Government of People's Republic of China PR and China Iron and Steel Association, China

**Violation of Principle of Natural Justice**

- a. The Preliminary Findings dated 24th Sept. 2012 has been issued in gross violation of the Principles of Natural Justice and Safeguards Agreement as Director General (Safeguards) has unilaterally changed the scope of product under consideration without informing other interested parties and no comments were sought on revised information obtained from the Domestic Industry.
- b. Article 3 of Agreement on Safeguard puts an onus responsibility on the Investigating Authority to give reasonable notice to all interested parties so that the other interested parties may respond to the claims of the Domestic Industry and other interested parties.

### **Product scope**

- c. Product under consideration description needs to be revised as otherwise a lot of non-304 grades will also be covered by Safeguard Duty. Nickel contents in 304 series ranges between 8 to 12 % and not 6% and above. All types of products manufactured under 304 series by Domestic Industry contains Nickel between 8 to 10.50%. It is submitted that the DG Safeguards should define the PUC in accordance with the product specification produced by the Domestic Industry.

### **Injury not due to increased imports:**

- d. FF No 14/12/2010- DGAD dated 11th Oct 2011 issued by the Designated Authority where for all the same Hot Rolled Flat Products of Stainless Steel the Petitioner claimed a capacity of 880000 MT for the period 2007-08. In the present Petition it has been claimed that for Hot Rolled Flat Products of Stainless Steel (same product) the combined capacity for 2009-10 was 720000. This shows that the Petitioner made false claims before the investigating authorities and his information cannot be trusted and relied upon.
- e. In the present investigation, petitioner has claimed that they have enhanced capacity from 78000 Mt to 138000, whereas in the Press release issued by the Company, it has been stated categorically that the plant at Odisha will be operational only in 2012-13. In view of this fact, it is clear that there has been no expansion of capacity at Odisha during the period of investigation and the claim of the Petitioner that they have an installed capacity of 1380000 Mt during period of investigation is totally incorrect.
- f. The Investigating Authority should base its investigation only on the basis of Hissar Plant and not on the basis of Odisha Plant information.
- g. Directorate General (Safeguards)'s finding of increased imports is wrong. Because there cannot be a causal link between increased imports and serious injury or threat thereof caused to the Domestic Industry. Had the Investigating Authority properly considered reasons for the decline in capacity utilization of Indian producers, it could not have found a causal link between other factors and injury. Other factors demonstrate that the Domestic Industry's theory of imports as the cause of the domestic industry's injurious situation is untenable.

### **Losses on account of other factors not examined**

- h. The Preliminary Findings has failed to address and provide a non-attribution analysis for other factors that have caused and threatened to have caused market disruption to the domestic industry at the same time as imports. The Preliminary Findings states that "increased imports have caused market disruption and threat thereof to the domestic industry at the same time. However, this statement is conspicuously wrong.
- i. The applicant fails to demonstrate the existence of causality between increased imports and the decline in its financial performance or the material injury suffered by itself. Some temporary, short-term phenomenon stated by the applicant is not caused surge in imports
- j. Reasons for decline in profitability have been highlighted by the Management of the Company in its Annual Audit Report as well as in the Press statements made by the Management from time to time during the period of investigation.

## **20. China Embassy in India**

In addition to other issues which have already been brought out hereinabove, the Chinese Government has expressed serious concern over flaws in procedural and factual aspects of this investigation, e.g. changing the scope of the investigation without informing all the interested parties, and strongly urged the Indian Authority to ensure justice and terminate the investigation.

## **21. M/s Ramani Steel House, Pacific Metal Trading Co., All India Stainless Steel Importers Association and Metal and Stainless Steel Merchants Association.**



### **Product scope**

- a. Product modified in the corrigendum requires further modification. Definition does not specifically excludes other grades. Elaborate conditions have twisted the product under consideration. Description “encompassing all austenitic grade”. Austenitic grade produced by Electrovek Steel includes grades other than 304.
- b. Production process of plates differs from coils. Due to less rolling and high thickness the physical properties of plates differs from coils. DGAD in AD investigation has held that plate are different from coil. Volume of import of plate is less than 2%. AD investigation also held plate to be different from coil.
- c. Goods not produced nor imported should be excluded. In the case of Oxo Alcohol anti dumping case, CESTAT held that products not manufactured by the domestic industry, the import of the same cannot cause injury to the domestic industry. Products to be excluded are (a) Tear drop/ chequered /Anti slip (b) coil of thickness below 3 mm and above 10mm (c) plate of thickness below 6mm and above 63 mm (D) Hot Rolled black Coil Semi finished.

### **Causal link & Injury**

- d. Article 16(4) of TPSSM as incorporated under section 8C of the Customs Tariff Act defines market disruption. It requires that the article imported should cause market disruption and such imports must be a significant cause of injury to the domestic industry. Threshold of injury is quite high.
- e. Preliminary findings do not establish that imports were a significant cause of injury as mandated under Section 8C of the Customs Tariff Act. Instead finding has been made on lesser threshold criteria under Section 8B. This is due to the fact that imports were in fact not a significant cause of injury.

### **Market disruption & Serious injury**

- f. Following factors cause injury to the domestic industry
  - a. Non availability of chrome core
  - b. Odisha plant was not fully operational
- g. Considering the fact that overall level of utilisation of plant capacity ( based on Annual Report) was only 12%, the max PUC which could have been produced is 14530MT (the level of capacity utilisation could not have been more 12% because of ramp up and stabilisation). The actual PUC production in Odisha is 24000MT which clearly shows that capacity utilisation was 160%.
- h. Petitioner is a habitual user of trade remedy action as and when the capacity is put to use to show high production capacity, low production and low capacity utilization, high cost of production etc.
- i. There are clear discrepancies in the data filed by the domestic industry. The combined trend cannot exceed the individual trend for 304 and non 304 products.

### **Incomplete information in respect of captive as well as merchant market**

- j. The domestic producer has bifurcated the market into two separate segment as (i) the merchant market and (ii) captive consumption market. For merchant market production, dispatches from factory and sales from the depots of the PVC have been shown as above. It is apparent when dispatches from factory and sales from the depots of the PUC is more than the production of the PUC and even thereafter inventory is increasing, then the inventory shown in the last column is being maintained only as raw material for captive consumption.
- k. However, even if consolidated volume of inventory is to be analysed as % of production and captive consumption, it is evident that during the P01 the inventory got stabilized in terms of production as well as captive consumption, though the domestic producer was experiencing high fluctuation in inventory during base year.
- l. Authority cannot bifurcate the market segment into two segment based on captive market and merchant market. Finding based on any one segment is inconsistent and incorrect as has been held by the WTO Appellate Body.

#### **Losses on account of other factors**

- m. There is no injury to the domestic producer in 2011-12. The capacity utilization was 100%, and therefore there was no scope to increase production beyond it.
- n. Whenever production increased there was a corresponding increase in captive consumption of the subject goods.
- o. Whenever a plant commences production, it produces rejects and sub standard quality in the beginning. However, no production has been shown separately which means it has been taken up in inventory.

#### **Non-Injurious Price or Fair Selling Price of the domestic producer**

- p. Director General (Safeguard) should allow only 12% of the depreciation or proportionate depreciation as shown in Balance Sheet as per company law for the subject goods. The Director General (Safeguard) should also allow only 12 % of the standing and fixed costs as the domestic producer only able to achieve such capacity overall.

#### **Other cause of injury**

- q. The Odisha plant was conceived as a SEZ unit and the entry into the domestic market by the new plant was not by choice but by compulsion.

#### **Comments in rejoinder & other submissions**

- a. Applicant domestic producer has not provided complete information on captive markets, which is against WTO Panel and Appellate Authority rulings: US- Anti-dumping measures against Hot-rolled Steel products from Japan (WT/DS184/AB/R) and US – Transitional safeguard measure on combed cotton yarn from Pakistan (WT/DS192/AB/R)
- b. Domestic Industry does not consist of only applicant producers. Therefore authority should collect injury data of total production.
- c. The claim that inventories has increased in not correct.
- d. The facts and reasons leading to width restriction have not been made known to interested parties. Corrigendum regarding width was issued without accounting for changes in injury parameters linked to import volumes.

#### **Violation of Principle of Natural Justice**

- e. Referring to the change in product scope from 300 series to 304, the requirement of hearing cannot be fulfilled unless the relevant facts/evidence/documents necessary for the hearing are made available before the public hearing.
22. M/s. Quality Foils (India) Pvt. Ltd. has argued that their company procures 304 grade stainless steel hot rolled coils from China, from Ningbo Quanxing Company. It found that the chemical composition of the material is not consistent. When complained regarding variation in chemical composition and surface finish, corrective actions were not taken. Due to this, they have incurred heavy losses in the market. It is claimed that they have lost their goodwill and had to decrease the price by 100 USD per MT and sell in the local market.
23. The Tamil Nadu Stainless Steel Merchants and Manufacturers Association) submitted as under:

#### **Violation of Principle of Natural Justice**

- a. Present investigations are in violation of Principles of Natural Justice. Interested parties came to know about the change in scope of product under consideration only after the issuance of interim findings.
- b. Product under consideration has been changed by the Director General (Safeguards) unilaterally in consultation with the Domestic Industry. The process of investigation should not only be fair but should appear to be fair.

- c. On account of non-supply of all the information provided by the Petitioner and no opportunity to comment on the revised information given, the Directorate has committed a grave error.

**Safeguard remedy- In case of emergency situations only:**

- d. The safeguard measures are extraordinary remedies to be taken only in emergency situations. The domestic industry has failed to establish any such emergency.
- e. Petitioner has not provided information with respect to both its the plants individually. Separate information is essential since it is admitted position that Orissa Plant was not commissioned before Aug. 2011. JSL Odisha Plant was SEZ Unit until 2011. The sales from SEZ Unit should be considered as import into India since the same cannot enter into India without payment of applicable duty. Hence its data should not be included in injury information.
- f. Odisha Plant has suffered long and often delays right from its inception and therefore, the Authorities should not take risk of imposing Safeguard Duty on imports made by the domestic user industry as it may directly hurt market competitiveness of Domestic User Industry.

**Product scope**

- g. The authority should analyse whether the domestic industry has started commercial production of product under consideration width of 1520mm/1530 mm and in case of the same, the scope of the product is required to be specified upto width of 1520mm/1530 mm.
- h. Application must be for the product range available and commercially produced by the petitioner. Product under consideration scope should be restricted to coil form (3mm-6mm thickness x 1000mm upto max. upto 1250 mm width) and plate (quarto) (5mm-6mm thickness x 1000 upto max. upto 1250 mm width).
- i. Each grade of 300 Series has different levels of Nickel, Chromium, Molybdenum, Titanium content. Therefore to say that product under consideration encompass 6% or more Nickel, Chromium, Molybdenum, Titanium content would also include products which do not fall under 304 Grade. Hence the Directorate should amend/alter/modify the description of product under consideration as “Hot Rolled Flat Products of Stainless Steel of ASTM Grade 304 with all its variants including products of equivalent specifications in other standards like UNS, IS, Chinese DIN, JIS, BIS, EN, etc.

**Non-Substitutability**

- j. To meet the consumer requirement and specification the user industry has to necessarily use raw material of requisite width and thickness only. For example, Stainless Steel Welded Pipe Manufacturer submitted that the minimum width required of Coils and Plates is important to produce Longitudinal Welded Pipe.
- k. Cutting of higher width coils into smaller sizes is not feasible because (a) Higher width products would cost more as compared to normal width (b) There would be significant wastages which would further increase the cost.

**Injury not due to increased imports**

- l. Imposition of ADD and increased demand has forced users to resort to imports from China as the Domestic Industry cannot supply the requisite sizes and thicknesses.
- m. Imports increased on account of increased demand in Indian market.
- n. Stainless steel products in India were used mainly for utensils and domestic producer may not satisfy demand for high quality stainless steel products.

**Enhanced Capacity**

- o. The decrease of the petitioner's capacity utilization resulted from the sharp expansion of the petitioner's capacity. As the relevant market in India is still yet to digest and absorb such changes in the market, so the production of the petitioner did not increase at the same pace.

**Performance of domestic industry:**

- p. Performance of DI cannot be evaluated without knowing the status of Odisha Plant.
- q. Odisha Plant was de-bonded only in Aug. 2011 (i.e., after lapse of 5 month period in the FY 2011-12).
- r. Production, inventory and other economic data for period prior to Aug. 2011 cannot be loaded as part of D.I. since the plant was deemed to be foreign plant being part of SEZ.
- s. That the performance of the both the plants be separately analyzed.

**Public Interest**

- t. If safeguard duty is imposed on PUC which is the main raw material for the user industry, then products made by the User Industry would become uncompetitive and would result in loss of market to Chinese Producers.
24. **M/s. J.S.S. Steelitalia** submitted that the basic physical and chemical properties of the Stainless Steel Coils of Grade 304 that were imported from P.R. China did not conform to international standards like ASTM & EN. There was lack of consistency in terms of the chemistry of the material being supplied by Chinese mills especially in terms of the percentage of various alloying elements e.g. while the minimum guaranteed nickel content was 8% , the actual nickel content was lower than the minimum level. The surface finish of the material was extremely poor and way below the accepted benchmarks. There was no effort from the supplier to resolve the issue.

**E. Examination and Findings of the Director General (Safeguards):**

25. Submissions made by various interested parties and by the Domestic Industry have been considered in the present order. Rejoinder submissions made by the interested parties have also been considered appropriately. Submissions made by the various parties and the issues arising therefrom, to the extent considered relevant, have been dealt with at appropriate places in the findings below.

**Product under Consideration:**

26. The scope of the product under consideration for which investigations have been initiated includes Hot Rolled Stainless Steel products of 300 series including a number of grades, which includes, inter-alia, 301, 304, 321, 309 , 310, 316, 317, 321, 347, etc. A number of interested parties who have responded to the Notice of Initiation stated that the scope of the product under consideration is too wide and should be restricted ,as the majority of the imports are only of 304 grades. The interested parties also argued that different grades have different applications and non-304 grade products cannot meet the requirements of 304 grade products. Responding to the arguments of the interested parties, the domestic industry also contended that the surge in imports is primarily in 304 grade and the domestic industry has suffered market disruption in respect of 304 grade. While objecting to restricting the scope of the product under consideration to only 304 grade, the domestic industry has stated that in case the safeguard duty is restricted to only “304 grade Hot Rolled Stainless Steels products”, the surge in imports will shift to non-304 grade products and the domestic industry will suffer injury in those products. However, it is noted that the domestic industry has not rebutted the contention of the interested parties that the consumers of 304 grade products cannot use non 304 grade products. Consumers require specific grades of Hot Rolled Stainless Steel products and, therefore, consumers of 304 grade products cannot consume non-304 grade products. Accordingly, the scope of the present investigation is restricted to 304 grade products only.
27. Interested parties also argued that the product under consideration should be restricted to the width produced by the domestic industry. In the Preliminary Findings, it was considered appropriate to restrict the scope of the product under consideration to include only 304 grade products of width upto 1605mm. However, subsequent to the preliminary findings, the domestic industry provided evidence showing production and sale of 1625 mm width also. It may be recalled that the product scope was restricted in the preliminary findings on the basis of the submissions made by various interested parties that the domestic industry produced and sold upto 1605mm product only. Since the evidence on record shows that the domestic industry has produced and sold goods upto 1625 mm, it is considered appropriate to consider the scope of the product under

consideration upto 1625 mm. Accordingly, the scope of the product under consideration is restricted to only 304 grade products of width upto 1625 mm.

28. Domestic industry submitted that the nomenclature 300 series is applied to the group of Austenitic (Chromium-Nickel) grades as per ASTM (American Society for Testing and Materials). Domestic industry further submitted that the grades such as 304 are ASTM grades. Domestic industry provided a table showing variants of 304 and equivalent grades in other standards (other than ASTM).

| USA   | USA               | Europe          | India      | China    | Germany                      | Japan     |
|-------|-------------------|-----------------|------------|----------|------------------------------|-----------|
| ASTM  | UNS               | EN              | BIS        | Chinese  | DIN                          | JIS       |
| 304   | S30400            | 1.4301          | X04Cr19Ni9 | 0Cr18Ni9 | X5CrNi 18-10                 | SUS 304   |
| 304H  | S30409/<br>S30415 | 1.4948          |            |          | X6CrNi 18-10                 |           |
| 304L  | S30403            | 1.4306/<br>4307 |            |          | X2Cr Ni18-9/X2<br>CrNi19 -11 | SUS 304L  |
| 304LN | S30453            | 1.4311          |            |          | X2CrNiN18-10                 | SUS 304LN |
| 304N  | S30451            |                 |            |          |                              |           |
| XM21  | S30452            |                 |            |          |                              |           |
|       |                   |                 |            |          |                              | SUS304N1  |
|       |                   |                 |            |          |                              | SUS304N2  |
|       |                   |                 |            |          |                              | SUS304J1  |
|       |                   |                 |            |          |                              | SUS304J2  |

29. In view of the above, it would be appropriate to specify that the scope of the product under consideration extends to ASTM 304 grades (including all variants of 304 grade) with all its variants and the equivalent specifications in other standards.
30. A number of interested parties have sought exclusion of specific product types within 304 grades. The claims made by the interested parties were examined and the same is dealt herein below.
- a. Exclusion of plates – Some interested parties sought exclusion of plates from the scope of the product under consideration on the grounds that the imports of the product under consideration are only in coil form. The detailed import data was examined, transaction by transaction and it is found that there are imports of plates from China. It is found that if the product under consideration is having width below 600 mm, it is classifiable under 7220 and is normally (almost always) in coil form. Further, if the product under consideration is 600 mm or above, it is classifiable under 7219. Under 7219, coils are classifiable under 721911, 721912, 721913 & 721914; whereas product not in coil form (i.e., sheet/plates) are classifiable under 721921, 721922, 721923 & 721924. The only difference in the product falling under 7219 and 7220 is the width of the product. Similarly, coils being of lesser thickness can be rolled relatively long, whereas plates will have to be of limited length. Plates and coils do not constitute distinctly different articles. Moreover, the domestic industry has produced and supplied both coils and plates. Both coils and plates have been imported from China. Since there is production and import of both types, they are required to be kept within the product scope.
  - b. A number of interested parties have also argued that the product scope should be restricted to products having a width above 600mm only. In this regard, it is noted that it would not be appropriate to exclude

these product types also for the reason that there are imports of HR products below 600mm and the domestic industry has also supplied HR products below 600 mm.

- c. Some interested parties have sought exclusion of 904L/1.4539/UNS 08904, SMO 254/ UNS 3125, 32750, 32760, 321H/1.4878, 347H/1.4961. While disputing the claims for exclusion of these product types, the domestic industry clarified that all these product types are of non-304 grades. It is noted that since the scope of the product under consideration itself has been restricted to include only 304 grade, all these product types are in any case beyond the revised scope of the product under consideration and proposed measures.

31. Considering the above facts and issues, the scope of the product under consideration for the purpose of the present findings is as follows –

“Hot Rolled Flat products of Stainless Steel -304 grade (upto a maximum width of 1625 mm) encompassing all austenitic grades having minimum Nickel (Ni) content of 6%, compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc.”.

These products are classifiable or imported under sub-heading nos. 72191111, 72191112, 72191190, 72191200, 72191300, 72191400, 72192111, 72192112, 72192121, 72192122, 72192131, 72192132, 72192141, 72192142, 72192190, 72192211, 72192212, 72192219, 72192291, 72192292, 72192299, 72192310, 72192320, 72192390, 72192411, 72192412, 72192413, 72192419, 72192421, 72192422, 72192423, 72192490, 72201110, 72201121, 72201122, 72201129, 72201190, 72201210, 72201221, 72201222, 72201229, 72201290 of the Customs Tariff Act, 1975. It is clarified that the HS codes are only indicative and the product description shall prevail in all circumstances.

**Domestic Industry:**

32. Section 8C(7)(a) of the Customs Tariff Act ,1975 defines domestic industry as follows:

(a) “Domestic industry” means 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

33. The application has been filed by M/s JSL Ltd, 12, Bhikaiji Cama Place, New Delhi – 110066. There are two more known producers of Hot Rolled Flat products of Stainless Steel of 304 grade in India namely, Steel Authority of India Limited, Ispat Bhawan, Lodi Road, New Delhi – 110003 and Shah Alloys, Shah Alloys Corporate House Sola-Kalol Road, Santej Taluka: Kalol, District: Gandhinagar 382721, Gujarat. These two producers are not petitioners in the present case. The applicant accounts for more than 90% of the Indian production and hence is a major producer of the product under consideration in India. Production of the applicant constitutes a major share of the total production of the product under consideration in India.

| SN | Year        | Petitioner | Other Indian producers | All Indian producers |
|----|-------------|------------|------------------------|----------------------|
| A  | Volume (MT) |            |                        |                      |
| 1  | 2009-10     | 100,265    | 8,777                  | 109,042              |
| 2  | 2010-11     | 98,448     | 5,645                  | 104,093              |
| 3  | 2011-12     | 129,900    | 5,450                  | 135,351              |
| B  | Share (%)   |            |                        |                      |
| 1  | 2009-10     | 91.95      | 8.05                   | 100.00               |
| 2  | 2010-11     | 94.58      | 5.42                   | 100.00               |
| 3  | 2011-12     | 95.97      | 4.03                   | 100.00               |

After taking into account the information on record, it is determined that the domestic producer filing the petition constitutes a major share of the total production of the said article in India. Accordingly, the petitioner constitutes ‘Domestic industry’ as per Section 8C(7)(a) of the Customs Tariff Act 1975.

**Period of Investigation (POI):**

34. The Customs Tariff Act, 1975, the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002, do not specifically define the Period of Investigation. However the issue of period of investigation has been dealt in detail in Panel findings in US-Line Pipe Case against Korea. The Panel in this case ruled that it is up to the discretion of the investigating authority of the importing Member 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<sup>1</sup>)*

35. The Panel in the same US-Line pipe case ruled that:

*“In a safeguard investigation, the period of investigation for examination of the increased imports tends to be the same as that for the examination of the serious injury to the domestic industry. This contrasts with the situation in an anti-dumping or countervailing duty investigation where the period for evaluating the existence of dumping or subsidization is usually shorter than the period of investigation for a finding of material injury. We are of the view that one of the reasons behind this difference is that, as found by the Appellate Body in Argentina – Footwear Safeguard, “the determination of whether the requirement of imports “in such increased quantities” is met is not a merely mathematical or technical determination.” The Appellate Body noted that when it comes to a determination of increased imports “the competent authorities are required to consider the trends in imports over the period of investigation”. The evaluation of trends in imports, as with the evaluation of trends in the factors relevant for determination of serious injury to the domestic industry, can only be carried out over a period of time. Therefore, we conclude that the considerations that the Appellate Body has expressed with respect to the period relevant to an injury determination also apply to an increased imports determination.” (Para 7.209)<sup>2</sup>*

36. From the above, it is clear that neither the domestic laws on Transitional Safeguard measures nor the Agreement on Safeguards and Article XIX of GATT nor the Accession Protocol of the Peoples Republic of China provide specific guidelines on the selection of the Period of Investigation. However, having regard to the nature and purpose/objective of such investigations, it is important that the investigation period should be sufficiently long to allow conclusions to be drawn with regard to increased imports as well as market disruption and consequent

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<sup>1</sup> WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case

<sup>2</sup> WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case

injury. Considering these facts, it is considered appropriate to adopt the data for the period 2009-10 to 2011-12 for the purpose of the present investigations.

**Source of Information:**

37. Imports of the product under consideration are being reported in a number of customs classifications 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 722011, 722012. Further, these customs classifications are not dedicated to the product under consideration alone. Imports of other types of Hot Rolled products of stainless steel and of different grades are also being reported in these classifications. In view of the same, it is noted that the summary information published by the DGCI&S is not useful in determining volume of imports of the product under consideration in the country because transaction wise data is required in this case. The Domestic Industry has submitted transaction wise import data from IBIS, Mumbai which has been considered.
38. The data on various economic parameters submitted by the domestic industry in their petition have been verified by this Directorate to the extent possible and the non-confidential version of verification report was placed in public file. The verified data based on excise records has been taken into consideration for injury analysis.

**Confidentiality of Information submitted**

39. The domestic industry has provided certain 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 2002 and Trade Notice No. SG/TN/1/97 dated 06.09.1997. Further the domestic industry has submitted reasons for seeking confidentiality at the time of filing the application.
40. Rule 7 of the Customs Tariff (Transitional Product Specific Safeguards Duty) Rules, 2002 and Article. 3.2 of WTO Agreement on Safeguards provides for confidentiality treatment to certain information (there is no provision under Accession Treaty of the People's Republic of China in this regard). 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.

**Increased Imports**

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

*"1. Notwithstanding anything contained in Section 8B, if the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India, from the People's Republic of China, in such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article"*

42. Rule 2(iii) of Transitional Safeguard Duty Rules under the Customs Tariff Act, 1975 provides as follows:

*"Increased quantity" includes increase in imports whether in absolute terms or relative to domestic production.*

43. 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.
44. In its evaluation of whether the investigation by the Argentine authorities demonstrated the required increase in imports under Articles 2.1 and 4.2(a), the Panel in Argentina-Footwear case stated the following:

*... the Agreement requires not just an increase (i.e., any increase) in imports, but an increase in "such...quantities" as to cause or threaten to cause serious injury. The Agreement provides no*



numerical guidance as to how this is to be judged, nor in our view could it do so. But this does not mean that this requirement is meaningless. To the contrary, we believe that it means that the increase in imports must be judged in its full context, in particular with regard to its "rate and amount" as required by Article 4.2(a). Thus, considering the changes in import levels over the entire period of investigation, as discussed above, seems unavoidable when making a determination of whether there has been an increase in imports "in such quantities" in the sense of Article 2.1.

45. The analysis of the increased imports of the product under consideration has been conducted in the light of the above mentioned provisions.

(i) **Increase in Imports from China in absolute terms:**

The imports of the product under consideration have increased throughout the injury period in absolute terms. Imports from China increased from 5264 MT in 2009-10 to 35741MT in 2011-12 which is an increase of 679%. However, it is important to note that while the imports increased sharply from 2009-10 to 2010-11, the increase is also significant in the subsequent period i.e., the Period of Investigation.

| Year    | Imports into India (grade 304 HR SS) |                 |        | Share in imports |                 |
|---------|--------------------------------------|-----------------|--------|------------------|-----------------|
|         | China                                | Third countries | Total  | China            | Third countries |
|         | MT                                   | MT              | MT     | %                | %               |
| 2009-10 | 5,264                                | 28,439          | 33,703 | 15.62%           | 84.38%          |
| 2010-11 | 26,702                               | 19,662          | 46,364 | 57.59%           | 42.41%          |
| 2011-12 | 35,741                               | 19,164          | 54,905 | 65.10%           | 34.90%          |

(ii) **Increase in imports in relation to production of the domestic industry**

The imports of the product under consideration in India during the POI have also increased in relation to production of the domestic industry when compared with the base year, but have remained almost at the same level when compared to the immediately preceding year.

| Financial Year | Imports from China (grade 304) | Domestic industry Production | China imports in relation to production |
|----------------|--------------------------------|------------------------------|---|
|                | MT                             | MT                           | %                                       |
| 2009-10        | 5,264                          | 100,265                      | 5.25                                    |
| 2010-11        | 26,702                         | 98,448                       | 27.12                                   |
| 2011-12        | 35,741                         | 129,900                      | 27.51                                   |

(iii) **Imports in relation to Consumption/Demand**

For the purpose of the present investigations, the consumption or demand for the product under consideration is determined as the imports of the product into India from China and third countries, domestic sales of the domestic industry (DI) and domestic sales of other domestic producers. Changes in demand/consumption so determined over the period has been compared with the changes in the imports from various sources and supplies by the domestic industry in order to determine whether imports of the product under consideration in India have increased significantly in relation to consumption or demand for the product in the country.

| Year | Imports from China (Grade 304) | Indian consumption (grade 304) | China imports in relation to consumption |
|------|--------------------------------|--------------------------------|--|
|      |                                |                                |  |

|         | MT     | MT      | %     |
|---------|--------|---------|-------|
| 2009-10 | 5,264  | 87,281  | 6.03  |
| 2010-11 | 26,702 | 88,781  | 30.07 |
| 2011-12 | 35,741 | 102,002 | 35.03 |

The imports of the Chinese product under consideration in India have increased sharply in relation to the Indian consumption of the product under consideration during 2010-2011 when compared to the base year. However, the increase is less significant during the POI as compared to the immediately preceding year.

46. It is apparent from the above that there is a surge in imports during the Period of Investigation as compared to the year 2009-10 both in absolute terms as well as in relation to domestic production. At the same time, it is important to note that the same trend is not sustained in the following period. While it is true that the authorities are free to consider the imports over longer periods to determine “increased imports”, it must be recognized that safeguard investigations have to give due recognition to the imports and trends in the recent past also. In the facts and circumstances of this case, it is also important to note that the initial increase in imports from China in 2010-11 over the immediately preceding period could be on account of the fact that the imports from China were very low in the base year itself as compared to the high level of imports from other sources. Further, it would not be appropriate to ignore the fact that low priced imports from China appeared to have filled in the gap created by drying up of other sources subsequent to the imposition of anti-dumping duties. This fact is clearly revealed by the fact that the imports from China in the POI 2011-12 rose much less in absolute terms as compared to the previous year. The imports in relation to domestic production also remained constant at around 27%. However, in relation to domestic consumption, the imports have increased marginally. It is recognized that for determining “increased imports”, it is not necessary that such increases should be in absolute as well as in relative terms. However, analysis of increased imports in relation to production and consumption assumes greater significance in the facts and circumstances of the Product under Consideration and the concerned industry.

#### **Unforeseen developments**

47. It has been contended by the domestic industry that there is no express obligation/requirement on the Director General (Safeguards) to analyse unforeseen circumstances as there is no specific requirement either in the Indian Rules or under Accession Treaty of the People’s Republic of China on the methodology that should be followed for analysing unforeseen developments. The Agreement on Safeguards read with Article XIX of GATT, however, obligates the national authorities to examine the “unforeseen developments” which led to the market disruption or serious injury to the Domestic Industry. It is understood that this Directorate has consistently been examining the issue of “unforeseen developments” in its investigations. It is, therefore, considered important to examine the unforeseen developments or circumstances which have led to increased imports.
48. In Argentina — Footwear (EC) and Korea — Dairy, the Appellate Body held that “any safeguard measure imposed after the entry into force of the WTO Agreement must comply with the provisions of both the Agreement on Safeguards and Article XIX of the GATT 1994<sup>3</sup>.”
49. Article XIX of GATT 1994 states as follows:
- 1.(a)If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.*
50. The Appellate Body in Argentina – Footwear (EC case) held that the phrase “Unforeseen Developments” means the developments which were unexpected. ‘Unforeseen developments’ requires that the developments which led

<sup>3</sup> Appellate Body Report on Argentina — Footwear (EC), para. 84 and Appellate Body Report on Korea — Dairy, paras. 76–77.

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'. The Appellate Body in Korea-Dairy case held that unforeseen developments are developments not foreseen or expected when the member incurred that obligation.

51. 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”.
52. The panel on US- Steel Safeguards<sup>4</sup> 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.”*

53. The domestic industry has pointed out the following factors that in their opinion have led to the increased imports of the product from China:

Shift in production from SS 200 series to 300 series in China leading to increased production of 300 series

Global production pattern: - Hot Rolled Stainless Steels production can be broadly categorised into 200, 300 and 400 series. Hot Rolled Stainless Steels having Austenitic Chromium Manganese Alloy with Nickel content less than 6% is classified into 200 series products, whereas products having Austenitic Chromium Nickel Alloy with minimum Nickel content of 6% are classified into 300 series products and products having Ferritic Chromium type with negligible or not more than 0.75% Nickel are classified into 400 series products. Different Hot Rolled Stainless Steels products have different specific end applications. The consumers cannot use the two interchangeably. The Table below shows worldwide consumption of Stainless steel of 200, 300 and 400. It is seen that the 300 series constitutes the majority product in Hot Rolled Stainless Steel production.

| SN | Series | 2007 | 2008 | 2009 | 2010 | 2011 |
|----|--------|------|------|------|------|------|
| 1  | 200    | 13%  | 13%  | 14%  | 13%  | 13%  |
| 2  | 300    | 57%  | 57%  | 57%  | 55%  | 57%  |
| 3  | 400    | 28%  | 29%  | 28%  | 30%  | 28%  |
| 4  | Others | 2%   | 1%   | 1%   | 2%   | 2%   |

Source:-Weekly Fax service-Heinz H. Pariser Report

304 grade product accounts for significant proportion in 300 series product

It is submitted by the Domestic Industry that a number of product types are produced within the 300 series, some of which include 301, 304, 321, 309, 310, 316, 317, 321, 347, etc. It is further submitted that out of these products, production and consumption of 304 grade product is significantly higher and constitutes the majority in production and consumption in the country:

| SN | Description             | 2009-10  | 2010-11  | 2011-12  |
|----|-------------------------|----------|----------|----------|
| 1  | Production(MT)          |          |          |          |
|    | 304 grades              | 1,00,265 | 98,448   | 1,29,900 |
|    | Non 304 grades          | 37,874   | 44,048   | 51,612   |
|    | Total                   | 1,38,139 | 1,42,496 | 1,81,512 |
| 2  | Share in production (%) |          |          |          |
|    | 304 grades              | 72.58    | 69.09    | 71.57    |

<sup>4</sup> Para 86 of Korea Dairy case Appellate Body Report Of WTO 36

|   |                                |          |          |          |
|---|--------------------------------|----------|----------|----------|
|   | Non 304 grades                 | 27.42    | 30.91    | 28.43    |
| 3 | Consumption(MT)                |          |          |          |
|   | 304 grades                     | 87,281   | 88,782   | 1,02,002 |
|   | Non 304 grades                 | 39,429   | 39,684   | 44,083   |
|   | Total                          | 1,26,710 | 1,28,466 | 1,46,085 |
| 4 | Share in consumption(%)        |          |          |          |
|   | 304 grades                     | 68.88    | 69.11    | 69.82    |
|   | Non 304 grades                 | 31.12    | 30.89    | 30.18    |
| 5 | Import from China(MT)          |          |          |          |
|   | 304 grades                     | 5,264    | 26,702   | 35,741   |
|   | Non 304 grades                 | 100      | 607      | 442      |
|   | Total                          | 5,364    | 27,309   | 36,183   |
| 6 | Share in imports from China(%) |          |          |          |
|   | 304 grades                     | 98.14    | 97.78    | 98.78    |
|   | Non 304 grades                 | 1.86     | 2.22     | 1.22     |

54. From the above Tables, it is seen that Series 300 constitutes more than half of the total stainless steel production. It is further noted that as per the submissions of the Domestic Industry, Grade 304 constitutes a majority within the Series 300. It can surely be appreciated that Series 300 as well as Grade 304 are significant in the overall production as well as consumption of stainless steel products. At the same time, it is pertinent to note that as per the information supplied by the Domestic Industry itself, the global production pattern of Series 300 has remained strikingly constant from 2006 to 2011 at around 57%. Moreover, the domestic production as well as consumption pattern in the country has also remained strikingly constant over the injury investigation period. The composition of imports from China has also remained constant at around 98% of the total imports from China. Under the circumstances, it is hard to appreciate as to how the facts brought out by the Domestic Industry itself support their claim of “unforeseen developments”. On the contrary, the constant pattern domestically as well as globally suggests that the share of Series 300 as well as Grade 304 is fairly predictable and certain.

#### The Chinese production pattern

The Domestic Industry has submitted the production and consumption pattern of various types of Hot Rolled Stainless Steel production in China. It is further submitted that there has been a shift in the production and consumption of Stainless Steel from 200 series to 300 series in China over the years.

| Production of Stainless Steel-China % |        |        |        |        |        |        |        |        |
|---------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Series                                | 2004   | 2005   | 2006   | 2007   | 2008   | 2009   | 2010   | 2011   |
| 200                                   | 60.00% | 40.00% | 30.00% | 25.39% | 26.80% | 26.63% | 30.63% | 27.88% |
| 300                                   | 25.00% | 34.85% | 45.00% | 50.41% | 47.76% | 46.73% | 44.62% | 48.70% |
| 400                                   | 15.00% | 25.15% | 25.00% | 24.20% | 25.44% | 26.63% | 24.75% | 23.43% |

Source:-Weekly Fax service-Heinz H. Pariser Report

It is submitted by the domestic industry that while 200 series earlier constituted the majority product amongst the HR Stainless Steel production in China, the consumption pattern has undergone a significant change in the recent years. Consumption of 300 series now constitutes a much larger share in production of Hot Rolled Stainless Steels consumption in China. It has overtaken consumption of 200 series product in both absolute terms and in relation to production of various products. From the above data, what emerges is that the demand in China for the Series 300 is growing significantly, inter alia, for the reason that Series 200 is also getting substituted by Series 300. Under the circumstances, it is hard to appreciate that there is reason to expect any major surge of imports from China at least for the reason canvassed by the Domestic Industry.

55. The Domestic Industry has also submitted various published information on production, consumption and profitability of various products which is as follows;

Source: International Stainless Steel Forum, Media Release, dated 21<sup>st</sup> March, 2012

“.....Over the past few years, the stainless steel market has seen major changes in the grades of stainless produced. Chromium-manganese grades have become increasingly important in this time. More recently, production of chromium grades has also increased. Table 3 shows the market share of the three main categories of stainless steel. The data is based on reports from ISSF’s stainless steel producing members.

*Table 3 Stainless steel production by grade (percent of steel production- preliminary estimates)*

| <i>Grade category</i>                         | <i>Quarter 1</i> | <i>Quarter 2</i> | <i>Quarter 3</i> | <i>Quarter 4</i> | <i>2011(p)</i> |
|---|------------------|------------------|------------------|------------------|----------------|
| <i>Chromium manganese steels (200 series)</i> | <i>13.4</i>      | <i>13.6</i>      | <i>13.7</i>      | <i>14.4</i>      | <i>13.8</i>    |
| <i>Chromium nickel steels (300 series)</i>    | <i>59.5</i>      | <i>57.3</i>      | <i>58.4</i>      | <i>57.6</i>      | <i>58.2</i>    |
| <i>Chromium steels (400 series)</i>           | <i>27.1</i>      | <i>29.1</i>      | <i>28</i>        | <i>28</i>        | <i>28</i>      |

56. It is observed from the information filed by the Domestic Industry that the global production of series 300 has remained constant in relative terms. Under the circumstances, the above information yet again proves that there is nothing unforeseen or sudden about the pattern of consumption of the Series 300 or Grade 304 in India or elsewhere.

Increasingly excessive capacities with Chinese producers leading to rising surplus production:

57. The Domestic Industry has given certain information with regard to their claim of excessive capacities in China. These evidences are in the form of quotations from various journals and news reports. Unfortunately, not much reliance can be placed on such reports for a number of reasons. First, these reports are not specific to the Product under Consideration but refer to the larger segment of the stainless steel industry. Secondly, the information is not complete or comprehensive enough to form any cogent views. Thirdly, even if it is assumed that there is excessive capacity in China, it has not been demonstrated that these capacities are imminently or even likely to find their way into the Indian market. Lastly, the apprehension expressed by the DI is self-contradictory inasmuch as if the Chinese demand pattern is claimed to be shifting from 200 series to 300 series, it cannot be claimed that there would be any pressure on the demand of the 300 series. For the aforesaid reasons, it is considered appropriate to conclude that the Domestic Industry has failed to bring any concrete information which could sustain their claim of unforeseen developments. On the other hand, the information supplied by them and as discussed above, leads to an inescapable conclusion that consumption, production and demand of the Product under Consideration remained highly predictable not only in the context of the global trends but also for China in particular.

**Market Disruption and Threat of Market disruption**

**Market Disruption**

58. Under the Rules, “market disruption” shall be caused whenever an article is imported into India, from the People’s Republic of China, in such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry. “Market disruption” shall be caused whenever imports of a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry. “Threat of market disruption” means a clear and imminent danger of market disruption.
59. Annexure to Rule 8 of the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 requires that certain listed factors as well as other relevant factors must be evaluated to determine market disruption or threat of market disruption. 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.
60. Accordingly, while analyzing market disruption or threat of market disruption, all factors which are mentioned in the rules as well as other factors which are relevant for determination of market disruption or threat of market disruption, have been considered. The determination of market disruption or threat of market disruption 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.

- (a) **Market share:** For the purposes of determining market share, the sales volume of the domestic industry considered is as per excise records maintained by the domestic industry. Market share has been determined considering dispatches by the Indian industry and imports into India. It is seen that the market share of the domestic industry has declined from 51.33% in 2009-10 to 40.88% in 2011-12. This was the period when the imports entered the Indian market at a significant rate capturing the Indian market. However, the market share has remained constant at around 40% in the POI as compared to the preceding financial year.

The Domestic Industry has submitted that the decline in the market share of the domestic industry was despite increase in demand and imposition of anti-dumping duty on imports from various sources. The domestic industry has contended that it had expected increase in its market share with the imposition of anti dumping duty for two reasons - (i) the domestic industry should have gained market share with fair market conditions being restored in the Indian market by imposing anti dumping duty, (ii) the domestic industry significantly augmented its capacity by undertaking green field expansion of the plant and wider product size (including PUC of width 1250 mm and above). This expansion of capacity & product size/type should have enabled the domestic industry to meet the increasing share of the demand of the product in the market.

|   | 2009-10 | 2010-11 | 2011-12 |
|---|---------|---------|---------|
| <b>Total Imports (MT)</b>                 | 33,703  | 46,364  | 54,906  |
| Imports from China (MT)                   | 5,264   | 26,702  | 35,742  |
| Non China Imports(MT)                     | 28439   | 19662   | 19164   |
| <b>Domestic Sales by Industry (MT)</b>    | 44802   | 36772   | 41646   |
| Sales of other Domestic Producers         | 8777    | 5645    | 5450    |
| <b>Total Demand (MT)</b>                  | 87,282  | 88,781  | 102,002 |
| Market Share of Imports from China(%)     | 6.03    | 30.08   | 35.04   |
| Market Share of Imports from Non-China(%) | 32.58   | 22.15   | 18.79   |
| Market Share of Domestic Industry (%)     | 51.33   | 41.42   | 40.83   |
| Market Share of other Producers (%)       | 10.06   | 6.36    | 5.34    |

It can be appreciated that with the imposition of anti-dumping duties on certain sources of supply, the Domestic Industry would expect to increase its prices due to the protective cover of anti-dumping duties or to improve its market share. However, it cannot be overlooked that after the initial drop in the market share of the Domestic Industry in the year 2010-11 as compared to the preceding financial year, the market share of the Domestic Industry stabilized at around 41% during the POI. It may also be seen that the production from the Odisha plant was not available in the domestic market until around July-August of 2011.

- (b) **Production:-** The production of the domestic industry has been determined on the basis of production reported by the domestic industry in its excise records. It is submitted by the Domestic Industry that due to the increasing demand for the product under consideration, the domestic industry increased its capacity. The domestic industry has set up a 0.6 million MT green field plant at Odisha for production of various hot and cold rolled steel products, including the product under consideration. The Domestic Industry has further submitted that it has three broad market segments – (a) merchant domestic market; (b) captive consumption for various cold drawn steel products, and; (c) exports. It is claimed by the Domestic Industry that capacities have been set up by them considering the domestic and global demand for the product under consideration.

| Year    | Available capacity for 304 grade | Total Production | Total Demand |
|---------|----------------------------------|------------------|--------------|
|         | MT                               | MT               | MT           |
| 2009-10 | 109,189                          | 100,265          | 87,281       |
| 2010-11 | 114,258                          | 98,448           | 88,782       |
| 2011-12 | 235,347                          | 129,900          | 102,002      |

The domestic industry contended that domestic sales declined despite increase in production due to surge in imports. The domestic industry further contended that the increase in production in 2011-12 as compared to 2010-11 is because of the enhancement of the production facility in July 2011. Given commencement of production at new production facilities and imposition of anti dumping duty, the petitioner contended that the domestic industry had a legitimate expectation to significantly increase its production.

It is seen that the overall production of the domestic industry increased over the period with significant increase in 2011-12 after commencement of production at the new plant in July, 2011. It is also seen that the production of the domestic industry for the product under consideration is more than the demand in the country. Thus, it is obvious that the production by the Domestic Industry is not only a function of the domestic demand of the Product under Consideration but is significantly dependent upon the movements in the export market and the level of captive consumption. Thus, it cannot be conclusively said that there has been any negative effect on the production for domestic consumption on account of the increased imports from China.

- (c) **Capacity Utilization:** The domestic industry enhanced its capacities by setting up a fresh new green field plant at Odisha, which commenced commercial production in July 2011. The domestic industry contended that the addition to capacity was in view of present and potential demand of the product in the domestic and international market. However, capacity utilization of the domestic industry declined significantly in 2011-12 despite increase in the demand for the product under consideration. Capacity utilization fell from 91.82% in 2009-10 to 55.19% in 2011-12. The domestic industry contended that the production process demands that the producers should continuously produce in order to keep the furnace running. The rate of production is regulated based on the ability of the company to store the product and the potential market situation. The domestic industry contended that low capacity utilization is a horrid situation for any producer of the product under consideration.

| Financial Year | Production | Available capacity for 304 grade | Capacity Utilisation |
|----------------|------------|----------------------------------|----------------------|
|                | MT         | MT                               | %                    |
| 2009-10        | 100,265    | 109,189                          | 91.82                |
| 2010-11        | 98,448     | 114,258                          | 86.16                |
| 2011-12        | 129,900    | 235,347                          | 55.19                |

While a cursory look at the capacity utilization figures would suggest a fall, the fall in the capacity utilization of the Domestic Industry does not decisively show any kind of market disruption. First, the available capacity is clearly a function of the demand and profitability situation for other series and grades. Secondly, it has been contended by the interested parties that it was the green field project at Odisha which was operating at lower levels of capacity utilization.

- (d) **Inventories:** The level of inventories is considered as per excise records maintained by the domestic industry. The levels of inventories have increased significantly throughout the injury period. The table below depicts the inventory levels which have witnessed a massive surge from 2120 MT in 2009-10 to 13663 MT in 2011-12, almost six times in 2011-12 from the 2009-10 level, reflecting the plight of the domestic industry.

| Year    | Inventory |
|---------|-----------|
|         | MT        |
| 2009-10 | 2,120     |
| 2010-11 | 2,876     |
| 2011-12 | 13663     |

- (e) **Sales:** The sales of the Domestic Industry, as verified from their excise records, are as under:

| Year | Production | Sales | Total Demand |
|------|------------|-------|--------------|
|      | MT         | MT    | MT           |

|         |         |        |         |
|---------|---------|--------|---------|
| 2009-10 | 100,265 | 44,802 | 87,281  |
| 2010-11 | 98,448  | 36,772 | 88,782  |
| 2011-12 | 129,900 | 41,646 | 102,002 |

(i) It is noted that domestic sales of the domestic industry declined in 2010-11 with the surge in Chinese imports. The domestic sales of the domestic industry improved in 2011-12 in view of the enhanced capacity and imposition of anti-dumping duties against certain sources of supply. However, the same were still below the levels achieved in 2009-10, even when demand for the product increased significantly. It is noted that whereas the demand for the product under consideration increased by 1501 MT in 2010-11 as compared to 2009-10, the domestic industry lost sales by 8030 MT over this period. Thereafter, in 2011-12, whereas the demand increased by 14720, the increase in sales of the domestic industry was merely 4874 MT, i.e., even less than the volume of 8030 MT lost by the domestic industry in 2010-11.

(ii) It is also noted in relative terms, sales as percent of demand declined from 51.33% of demand in 2009-10 to 41.42% in 2010-11 and then marginally to 40.82% of demand in 2011-12. This shows possible adverse impact on the sales volumes of the domestic industry due to surge in Chinese imports.

| Year    | Sales  | Demand  | Sales as % of demand |
|---------|--------|---------|----------------------|
|         | MT     | MT      | %                    |
| 2009-10 | 44,802 | 87,281  | 51.33                |
| 2010-11 | 36772  | 88,782  | 41.42                |
| 2011-12 | 41,646 | 102,002 | 40.82                |

(iii) The domestic industry claimed that the rising imports of product under consideration have prevented the domestic industry from selling its production in the domestic market in proportion to the increase in demand.

(iv) Whereas the demand of the product increased by 14720 MT in 2011-12 as compared to 2009-10, the Chinese imports increased by 30477 MT and the sales of the domestic industry declined by 3156 MT over the period. This clearly shows that increase in Chinese imports was far more than increase in demand of the product in India and consequently the Chinese imports have captured significant market share affecting the sales of the domestic industry.

- (f) **Employment and Productivity:** The Domestic Industry itself has admitted that the overall productivity has deteriorated during the year 2011-12 despite the fact that the employment increased during 2011-12 due to the setting up of the new unit in Odisha which started functioning from July, 2011.

| Financial Year | Production | Employment | Productivity |
|----------------|------------|------------|--------------|
|                | MT         | No.        | MT/No.       |
| 2009-10        | 100,265    | 511        | 196          |
| 2010-11        | 98,448     | 526        | 187          |
| 2011-12        | 129,900    | 802        | 162          |

Thus, the lower level of productivity, which appears primarily on account of the new facility, cannot be attributed to the increased imports from China.

- (g) **Profit/loss:** The domestic industry has reported profit before tax, duly certified by a practicing Chartered Accountant, which shows as follows:-



| SN | Particulars              | Units   | 2009-10 | 2010-11 | 2011-12 |
|----|--------------------------|---------|---------|---------|---------|
| 1  | Profit/loss              | Indexed | 100     | (222)   | (726)   |
| 2  | Profit in domestic sales | Indexed | 100     | (182)   | (675)   |

The profit reported by the domestic industry has been considered in respect of the product under consideration relating to its domestic operations only. It is claimed by the Domestic Industry that the landed price of the imports is significantly below the selling price of the domestic industry. As a result of the significant price difference between the domestic and the Chinese product, the consumers resorted to significantly higher sourcing from China. It is claimed that the domestic industry has been prevented from increasing its prices in proportion to the increase in the cost of production. Thus, whereas the costs have increased due to the increase in the input costs, the domestic industry was unable to increase its selling price in proportion to the increase in costs. It is further claimed that whereas the selling price was above the cost of the production earlier in 2009-10, it was below the cost of the production in 2010-11. The extent of the difference increased significantly in 2011-12. According to the Domestic Industry, the profit per unit of the domestic sales declined significantly with the increase in imports to an extent that the domestic industry suffered significant financial losses in 2010-11 and 2011-12.

It is seen that there has been a significant decline in the profitability of the Domestic Industry since 2009-10.

- (h) **Price undercutting, suppression/depression:** It is observed that the weighted average landed price of the imports of PUC from China is significantly lower than the selling price of the domestic industry. There is a significant price difference between the domestic and imported product.

| SN | Particulars                  | Units    | 2009-10 | 2010-11 | 2011-12 |
|----|------------------------------|----------|---------|---------|---------|
| 1  | Import Volume                | MT       | 5,264   | 26,702  | 35,741  |
| 2  | Import Value                 | Rs. Lacs | 5,960   | 37,812  | 52,793  |
| 3  | CIF                          | Rs/MT    | 112,099 | 140,203 | 146,245 |
| 4  | Assessable Value             | Rs/MT    | 113,220 | 141,605 | 147,708 |
| 5  | Landed Value                 | Rs/MT    | 119,051 | 148,897 | 155,315 |
| 6  | Landed Value(indexed)        |          | 100     | 125     | 130     |
| 7  | Selling Price of DI(indexed) |          | 103     | 131     | 135     |
| 8  | Cost of Sales(indexed)       |          | 101     | 136     | 151     |

It is seen from the above table that whereas the cost of the sale and the selling price both increased, the increase in the cost of sale is far higher than the increase in the selling price of the domestic industry. The imports were thus suppressing the domestic industry prices in the market. It is found that the prices of major inputs increased very significantly over the period.

- (i) **Return on investment:** The domestic industry has reported its return on investment considering profit before interest and taxes earned in the domestic operations relating to the product under consideration. It is seen that the return on investments showed the same trend as that of the profitability. The return on investment declined significantly over the period.

| Financial Year | Return on investments(Indexed) |
|----------------|--------------------------------|
|                | %                              |
| 2009-10        | 100                            |
| 2010-11        | (97)                           |
| 2011-12        | (161)                          |

## 61. **Threat of Market Disruption**

(i) The rules provides as follows –

*(1) In the investigation to determine whether increased imports have caused or are threatening to cause “market disruption” 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.*

7a. “threat of market disruption” means a clear and imminent danger of market disruption.

(ii) The Panel on US — Lamb<sup>5</sup> considered that a focus on the recent data available pertaining to the end of an investigation period was logical in view of the future-oriented nature of a threat of serious injury analysis. The relevant extracts are as follows:

*“In our view, due to the future-oriented nature of a threat analysis, it would seem logical that occurrences at the beginning of an investigation period are less relevant than those at the end of that period. While the SG Agreement does not specify the appropriate duration of the time-period to be considered in an investigation, the Panel and Appellate Body in Argentina — Footwear both considered this issue to some extent. Both concluded that (for an actual serious injury finding) the most recent data were clearly the most relevant. In particular, the Appellate Body stated that ‘the relevant investigation period should not only end in the very recent past, the investigation period should be the recent past’.*

*Given that a threat of serious injury pertains to imminent significant overall impairment, i.e., an event to take place in the immediate future, the same principle should hold true a fortiori for threat determinations compared with present serious injury determinations. This supports the view that the USITC was correct to focus on the most recent data available from the end of the investigation period. We also consider that data from 1997 and interim-1998 cover an adequate and reasonable time-period if complemented by projections extrapolating existing trends into the imminent future so as to ensure the prospective analysis which a threat determination requires.*

*Therefore, we consider that, by basing its determination on events at the end of the investigation period (i.e., one year and nine months) rather than over the course of the entire investigation period, the USITC analyzed sufficiently recent data for making a valid evaluation of whether significant overall impairment was “imminent” in the near future. By the same token, we also consider that, by basing its determination at all on data about events from the recent past, rather than relying exclusively on projections for the various industry indicators into the future, the USITC made its threat determination on the basis of objective and quantifiable facts, and ‘not merely on allegation, conjecture or remote possibility’*

(iii) The Panel Report on US — Lamb, in a finding subsequently not reviewed by the Appellate Body, addressed the question whether once imports have increased to already cause some degree of injury, there is no requirement of additional increased imports in order to legitimately determine the existence of a threat of serious injury. The relevant extracts are as follows:

*“The complainants further claim that the US reference to projections of future increases in imports in defending its threat analysis amounts to equating a ‘threat of increased imports’ with a ‘threat of serious injury’, which the Argentina — Footwear panel found not to be permissible. ...*

*We agree in general with the complainants’ argument that a threat of increased imports as such cannot be equated with threat of serious injury. However, in our view, this is not what the USITC has done in this case. Moreover, we also deem it possible that imports continuing on an elevated level for a longer period without further increasing at the end of the investigation period may, if unchecked, go on to cause serious injury (i.e., may threaten to cause serious injury). That is, if increased imports at a certain point in time cause less than serious injury, it is not necessarily true that a threat of serious injury can only be*

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<sup>5</sup> . [Panel Report on US — Lamb](#), paras. 7.192-7.194

*caused by a further increase, i.e., additional increased imports. In our view, in the particular circumstances of a case, a continuation of imports at an already recently increased level may suffice to cause such threat.*

62. It has been argued by the Domestic Industry that there is a significant shift in the imports from the third countries to China. Import from countries other than China has decreased from 84.38% in 2009-10 to 34.90% in 2011-12, whereas the imports from China increased from 15.62% to 65.10% during the same period. According to the Domestic Industry, the threat of serious market disruption is established by the following factors:-

a) The price difference between the domestic and imported product is quite significant, thus making Chinese product significantly attractive vis-à-vis domestic industry product.

b) The Chinese producers are holding significant unutilized capacities. Resultantly, they are continuously looking for additional markets to the extent possible.

c) The advantages of having lower cost of production owing to the availability cheap nickel, abundant coke, low borrowing rate etc. is likely to lead the Chinese producers to intensify its activities in the Indian market.

d) The demand of the product is growing and the Indian market is large and price sensitive.

e) The domestic industry is faced with significantly high level of inventories, which increased from 2120 MT to 13663 MT.

f) The nature of production process is such that the producers tend to optimize the same. Resultantly, both the Chinese producers and domestic industry are trying to increase production. Increased imports are threatening market disruption under the circumstances.

g) Chinese producers have significantly increased production of 300 series products (304 grade products forms significant proportion in 300 series production) both in absolute and relative terms. Chinese production of 300 series products increased significantly from 0.7 million MT in 2004 to 6.935 million MT in 2011.

63. It is seen that the threat perception expressed by the Domestic Industry is based on the reports showing production-consumption gap of almost 1.4 million tonnes in 2011, which was essentially a result of capacity and production growing at a higher pace as compared to consumption in the domestic market of China. They claimed that the huge growth in volumes in China has forced Chinese producers to sell their products at lower prices as compared to Indian producer prices. It has been held by the Appellate Body in the decision cited above that it is the recent period which is of greater significance while carrying out a threat analysis. The figures of the POI when compared to the immediately preceding period do not support the claim of any serious threat of market disruption. Domestic Industry's reliance on the figures of 2009-10 as the base year is misplaced also for the purpose of threat analysis. However, it can be seen that some of the difficulties being faced by the Domestic Industry could be on account of the low prices from China.

**64. Other Factors of Injury:**

(i) Annexure to the Rules 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 "market disruption" or threat thereof. When factors other than increased imports are causing "market disruption" to the domestic industry at the same time, such "market disruption" shall not be attributed to increased imports. In such case, the Director General may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.*

(ii) According to the Appellate Body's decision concerning US-Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, the injurious effects of the import should be separated and distinguished from all the other factors which affected the local industry.

(iii) In the light of the above, other factors that may possibly be attributed to the injury to domestic industry have been examined as follows –

- a) Demand of the product: There is no contraction in demand of the product under consideration in India. Demand of the product in India has shown significant increase over the years.
- b) Changes in the patterns of consumption: It is claimed by the Domestic Industry that there is no evidence on record that the pattern of consumption with regard to the product under consideration has undergone any material change as far as the Indian market is concerned. None of the interested parties has also brought out any evidence to dispute this claim of the Domestic Industry.
- c) Trade restrictive practices of and competition between the foreign and domestic producers: There is no evidence on record that trade restrictive practices or competition between the foreign and domestic producers could have contributed to the injury to the domestic industry.
- d) Developments in Technology: There is no evidence on record that technology for production of the product has undergone any such significant change and that the same could have caused injury to the domestic industry.
- e) Export performance: The claimed injury to the domestic industry is on account of domestic operations. Domestic industry has provided injury information for domestic operations. It is noted that the exports made by the domestic industry have significantly increased. It would be seen that (a) the export volumes of the domestic industry have increased, and (b) profitability of the domestic industry in exports is worse than the domestic market.

| Particulars              | Units | 2009-10 | 2010-11 | 2011-12 |
|--------------------------|-------|---------|---------|---------|
| Exports (Qty.)           | MT    | 2,776   | 6,045   | 13,098  |
| Exports (value)-indexed  |       | 100     | 252     | 550     |
| Export Profits (indexed) |       | 100     | 22      | (81)    |

- (iv) With regard to the contention that the ramp up of recently operationalised facility at Odisha caused injury to the domestic industry, the Domestic Industry has claimed that the Annual Report does make a reference to Odisha ramp up as a reason for the lower performance of the product under consideration, but the same has to be read in the context of the fact that the Annual Report refers to the ramp-up of the finishing facilities and not the Hot Rolling facilities. The petitioner is producing a number of products at Odisha plant. The petitioner is producing hot rolled products and thereafter cold rolled products. The petitioner has clarified that it has referred to ramp-up of production facilities in the context of cold rolled facilities.
- (v) With regard to the contention that adverse exchange fluctuations arising on account of sharp depreciation of Indian Rupee has caused injury to the domestic industry, it is noted that the information provided by the domestic industry with regard to the injury does not include the injury suffered by the domestic industry because of exchange fluctuations.
- (vi) With regard to the contention that the entry of Odisha plant into domestic market has caused injury, it is noted that the domestic industry has furnished the information of both the plants separately. It shows that both the plants individually are suffering injury.

Table below shows separate performance of the two plants

Both Plants

| SN | Description | UOM | 2009-10 | 2010-11 | 2011-12 |
|----|-------------|-----|---------|---------|---------|
| 1  | Capacity    | MT  | 109,189 | 114,258 | 235,347 |
| 2  | Production  | MT  | 100,265 | 98,448  | 129,900 |

|   |                          |       |        |        |        |
|---|--------------------------|-------|--------|--------|--------|
| 3 | Capacity Utilisation     | %     | 92     | 86     | 55     |
| 4 | Domestic Sales           | MT    | 44,801 | 36,772 | 41,646 |
| 5 | Export                   | MT    | 3,598  | 9,944  | 13,098 |
| 6 | Inventories              | MT    | 2,120  | 2,876  | 13,663 |
| 7 | Cost Of sales(indexed)   | Rs/MT | 100    | 135    | 150    |
| 8 | Selling Price(indexed)   | Rs/MT | 100    | 128    | 131    |
| 9 | Profit and loss(indexed) | Rs/MT | 100    | (222)  | (726)  |

Hissar Plant

| SN | Description              | UOM   | 2009-10 | 2010-11 | 2011-12 |
|----|--------------------------|-------|---------|---------|---------|
| 1  | Capacity                 | MT    | 109189  | 114258  | 117,119 |
| 2  | Production               | MT    | 100265  | 98448   | 105,937 |
| 3  | Capacity Utilisation     | %     | 92      | 86      | 90      |
| 4  | Domestic Sales           | MT    | 44,801  | 36,772  | 36355   |
| 5  | Export                   | MT    | 3,598   | 9,944   | 6,397   |
| 6  | Inventories              | MT    | 2,120   | 2,876   | 1,692   |
| 7  | Cost Of sales(indexed)   | Rs/MT | 100     | 135     | 147     |
| 8  | Selling Price(indexed)   | Rs/MT | 100     | 128     | 130     |
| 9  | Profit and loss(indexed) | Rs/MT | 100     | (222)   | (662)   |

Oddisa Plant

| SN | Description          | UOM   | 2011-12 |
|----|----------------------|-------|---------|
| 1  | Capacity             | MT    | 118,227 |
| 2  | Production           | MT    | 23,964  |
| 3  | Capacity Utilisation | %     | 20      |
| 4  | Domestic Sales       | MT    | 5,291   |
| 5  | Export               | MT    | 6,701   |
| 6  | Inventories          | MT    | 11,971  |
| 7  | Cost Of sales        | Rs/MT | ****    |
| 8  | Selling Price        | Rs/MT | ***     |
| 9  | Profit and loss      | Rs/MT | -ve     |

(vii) With regard to the contention that the lack of availability of chrome ore which forms 16-20% of the raw material used, it is noted that production records do not show disruption of production due to the non availability of the raw materials.

**65. Causal Link between Increased Import and Market disruption or Threat of Market disruption:**

(i)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.”<sup>6</sup>*

(ii) 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. The product is largely sold in competition with imports. The landed price of imports is significantly lower than the selling prices of the domestic industry. It has been claimed that the domestic industry is compelled to offer non-remunerative prices. It is seen that the cost of production for the product under consideration increased. Even when the domestic industry increased its prices, the rate of increase in the cost of production was higher than the rate of increase in the selling price. Thus, there are indications that the Domestic Industry is suffering on account of lower prices being offered by the Chinese exporters. The domestic industry has suffered decline in profits and return on investment to such an extent that the domestic industry suffered financial losses from a situation of profits and negative return on investment from a situation of positive return on investment.

#### 66. **Public Interest:**

(i) Article 3 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.”*

(ii) In an economy there are varying and sometime competing interests of different economic players. The imposition of safeguard duty can affect different players differently and the impacts may not always be most suitable for all the different economic players when they have competing interests. Therefore interests of various economic player groups have been analyzed based on the available information.

(iii) Some interested parties have argued that imposition of safeguard duty would not be in public interest. The issue has been examined. In this respect, it is important to keep the prime objective of transitional safeguard laws in mind, which is to address injury to the domestic industry because of increased Chinese imports. It is in the interest of all to keep a healthy and competitive Industry. It is apparent that if the safeguard measures are not taken, 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 and consequent loss of employment as well as loss of strategic and economic interest to keep the domestic market competitive. The imposition of safeguard duty would allow the domestic industry to remain competitive and, at the same time, users/buyers will have a wider choice to source their material requirements, that too at competitive prices.

(iv) The domestic industry has argued that public interest should be examined in light of the interests of the producers, consumers and public at large. The measure would prevent injury to the domestic industry from increased imports from China. Domestic industry is suffering significant injury and imposition of safeguard duty would prevent this injury to the domestic producers of the product under consideration. Imposition of safeguard duty would be in the interest of domestic consumers, as it is in the consumers’ long term interest to have a competitive Indian domestic industry capable of supplying the product under consideration to the consumers and compete with foreign producers. This is possible only when the domestic industry is able to recover from the injury suffered due to the increased imports. It is in the interest of the public at large to

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<sup>6</sup> [Panel Report on Korea – Dairy](#), paras. 7.89-7.90

have a strong, competitive Indian domestic industry. This will not be possible if injury to the domestic industry as a result of increased imports is allowed to be continued.

- (v) Domestic industry has also submitted that if increased imports are allowed unchecked, injury to domestic industry will continue and worsen. If domestic industry is allowed to deteriorate to a condition in which it can no longer operate, Indian consumers will be almost completely dependent on foreign producers.
- (vi) Domestic industry further contended that imposition of safeguard duty shall be in public interest on the basis of its quantified claim on the downstream industry. The domestic industry concluded that the imposed of the proposed safeguard duty on the consumers shall not be significant. It is noted that these quantified claims of the domestic industry have not been refuted by opposing interested parties.
- (vii) It is noted that while arguing that the imposition of the safeguard duty shall not be in public interest, none of the interested parties has provided any quantified claim in this regard.
- (viii) It is also noted that already anti dumping duty has been imposed on the imports of the product under consideration from other sources. It has not been established by any interested party that imposition of these anti dumping duties has caused any significant distortion in the market. It has not been demonstrated by the consumers either that the impact of safeguard duty on the consumers will be unbearable. At the same time, the domestic industry has argued that given the market share of China, the impact of proposed safeguard duty on the consumer industry shall be insignificant. The domestic industry has further stated that it shall not increase its prices as a result of imposition of the proposed safeguard duty. Even in the Public Hearing, none of the interested parties raised any concern whatsoever of the coercive/excessive impact of the 20% ad-valorem provisional safeguard duty already in vogue or that this imposition has caused any market distortion or has impacted the user industries significantly. On the contrary, complete absence of any reference to the possible adverse impact of provisional safeguard duty imposed on interested/user parties confirms that the overall incidence of the current safeguard duty is very minimal.
- (ix) According to the claim of the Domestic Industry, the consumer profile and the impact of the proposed safeguard duty on each of the consumer industry and eventual impact on the cost of the end products is insignificant as can be seen from the following Table:

| SN | Application Sector                                  | % Share in total sales of 304 series |
|----|---|--------------------------------------|
| 1  | Power Sector  | 43%                                  |
| a  | Coal Based  |                                      |
| b  | Nuclear Installations                               |                                      |
| 2  | ABC Sector  | 1.50%                                |
| a  | Elevator/Escalator                                  |                                      |
| b  | Architecture, Building and Construction sector      |                                      |
| 3  | Process   | 43%                                  |
| a  | Petroleum & Petrochemicals                          |                                      |
| b  | Paint Shop  |                                      |
| c  | Fertilizer  |                                      |
| D  | Other Process & Chemical( including Pharma & Paper) |                                      |
| 4  | Food Processing                                     | 6%                                   |
| 5  | Biofuel   | 2.50%                                |

|    |   |                    |
|----|---|--------------------|
| 6  | Dairy   | 2.50%              |
| 7  | Transportation(Auto, Railways etc)                | 1.50%              |
| SN | Application Sector                                | Impact on consumer |
| 1  | Power Sector                                      |                    |
| A  | Coal Based  | 0.01%              |
| B  | Nuclear Installations                             | 0.02%              |
| 2  | ABC Sector  |                    |
| A  | Elevator/Escalator                                | 0.24%              |
| B  | Architecture, Building and Construction sector    | 0.04%              |
| 3  | Process   |                    |
| A  | Petroleum & Petrochemicals                        | 0.20%              |
| B  | Paint Shop  | 0.20%              |
| C  | Fertilizer  | 0.20%              |
| D  | Other Process & Chemical( including Pharma&Paper) | 0.20%              |
| 4  | Food Processing                                   | 0.08%              |
| 5  | Biofuel   | 0.08%              |
| 6  | Dairy   | 0.32%              |
| 7  | Transportation(Auto, Railways etc)                | 0.08%              |

**67. Other Issues:**

- a. Principles of natural justice Violated: As regards the contention that scope of product under consideration was modified without intimating the interested parties violating the principles of natural justice, it is noted that the Notice of Initiation issued considered the product under investigation as “Hot Rolled Flat Products of Stainless Steel of 300 series (of all widths) and encompassing all austenitic grades having minimum Nickel (Ni) content of 6%,compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc.” classified under Customs sub-heading no. 721911, 721912, 721913, 721914, 721921, 721922,721923, 721924,722011,722012 of the Customs Tariff Act, 1975”. In response to this initiation it was found that several interested parties have raised the issue that the scope of the products was flawed in many aspects of the facts and that to investigate and impose safeguard measures on whole range of 300 series of flat products of hot rolled stainless steel do not reflect the actual situation of the ordinary course of trade in the sector. On scrutiny of the submissions made by the interested parties including Govt. of China, M/s China Iron & Steel Association, M/s Ramani Steel House, Mumbai etc. and the response of the Domestic Industry to the said submissions, it was noted that the scope of the product under consideration is large and it requires modifying/narrowing down to a particular grade for the purpose of adequate and appropriate injury analysis. Therefore, based on the available records, submissions of the interested parties and the domestic industry, the



scope of the product under consideration was restricted/narrowed from 300 series to grade 304. Hence it is seen that the scope of product under consideration was altered in view of the submissions made by the interested parties and there is no violation of the principles of natural justice in any manner whatsoever.

- b. Opportunity of hearing before changing product scope: As regards the contention of the interested parties that no opportunity was given to comment on the data of 304 grade, it is noted that the domestic industry was asked to submit data for 304 grade separately which was furnished by the domestic industry and was kept in the public file much prior to the issuance of preliminary finding. However, none of the interested parties filed comments on the same. Further, the preliminary findings were issued based on data only for 304 grade. The Director General held two oral hearings and wherein submissions were made by domestic industry based solely on data for 304 grade. Further, the interested parties got a number of opportunities to comment on the data relating to revised scope of the product under consideration and defend their interests.
- c. Further modification in product scope: With regard to the argument that product under consideration should be further modified as a lot of non-304 grades will also be covered by safeguard Duty, it is noted that the product under consideration is well defined. It is seen that preliminary finding categorically mentions that the scope of the product under consideration covers ASTM 304 grades (including all variants of 304 grade) with all its variants and equivalent specifications in other standards. If products sought to be imported do not satisfy any of the criteria mentioned in the product description, safeguard duty in any case shall not apply.
- d. With regard to the argument that the preliminary finding does not deal with the emergency situation for the imposition of provisional duty, it is noted that paragraph 2, 3 and paragraph 50 of the Preliminary findings earlier issued, brings out the specific circumstances establishing need for and justifying the imposition of provisional duty. The recommendations of the Director General were accepted by the Board on Safeguards and the Central Government had imposed interim measures.
- e. Circumvention by importing larger sizes: As regards the submission of the interested parties that cutting of higher width coils into smaller sizes is not feasible, it is noted that the evidence provided by the domestic industry clearly shows that there are stand alone companies who are engaged in cutting and slitting operations only. Further, it is noted that the domestic industry has not reported significant difference in cost of production for products having different width. It is also noted that product is cut to desired size and width for eventual use. In any case, the product scope has been restricted to the widths produced by the domestic industry and the argument of the petitioner to extend the scope of the product under consideration to widths not produced by the petitioner has not been accepted.
- f. Quality of Products: As regards the argument that domestic producer may not satisfy demand for high quality stainless steel products, it is noted that the capacity for production of product under consideration with the domestic industry is far higher than demand for the product under consideration in the country. Goods are produced conforming to national and international standards. The goods produced by the domestic industry and imported from China are like articles and conform to the same standards required by the consumers. It is factually not correct that the Indian industry cannot meet the demand for high quality stainless steel products. Further, the domestic industry has been producing and supplying these goods from its Hissar plant for past several years.
- g. Installed Capacity: As regards the argument on false claims made by domestic industry with regard to the different capacity claims before different investigating authorities, it is to be noted that in the present case, this Directorate has considered melting capacity and production as per Excise records. There is no occasion for this Directorate to get into the issue of the treatment given to capacities by the Designated Authority for Anti-dumping.
- h. As regards the statement on annual reports that enhanced capacity has not stabilized, it is noted that the domestic industry has clarified that the statements in annual report of published documents are in respect of finishing lines, i.e., cold rolling facilities and the same does not pertain to hot rolling facilities. The product under consideration is produced from hot rolling facilities. Moreover, production records as per excise have been considered, which clearly show production of the product under consideration.
- i. Figures of Major parameters subsequent to the change in product scope: With regard to the contention that major parameters have not been revisited while issuing the corrigendum, it was noted that imports for the width above 1605 are negligible and there are only marginal differences in the data after considering data for the

restricted width, as is elaborated under the relevant heading hereunder. Therefore, it was concluded that it was not necessary to modify the figures in the preliminary findings. The eventual conclusion would have, in any case, remained the same.

- j. With regard to the argument that only 12% of the depreciation or proportionate depreciation as shown in Balance sheet should be allowed, it is noted that the figures of sales and cost are taken from the Balance Sheet prepared as per the Companies Act and records that are consistent with GAAP.
- k. Dual trade remedy: As regards the argument that petitioner is a habitual user of trade remedy action, it is noted that the petition has been examined in accordance with the safeguard law. There is no restriction for any industry from seeking relief under the Rules so long as the conditions laid down under the law are met with.

**68. Examination of Post POI data:**

In the given circumstances, an attempt was made to analyse the trend in the period after the POI i.e. 2012-13 (from 01-04-2012 till 31-12-2012) to draw a clear inference about the possibility of accentuation of the injury to the domestic industry. The domestic industry vide their letter dated 24<sup>th</sup> May' 13 submitted the data pertaining to certain economic parameters which they have filed with their petition before the DGAD for initiating anti dumping investigation for the subject "product under consideration" imported from China. On scrutiny of the said data it is noted that during the post POI period, there is a decline in the overall imports as well as imports from China so much so that the market share of imports have declined by about 4% as against the corresponding rise of the market share of the domestic industry by about 9%. There is a significant improvement in the production, exports and inventory position with a very sharp increase in domestic sales. Even though there appears to be a fall in profitability for the domestic industry, in all fairness, in view of the above, it cannot at least be attributed to the surge in the imports from China.

**69. Conclusion:**

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

- a. There has been a significant increase in imports from China in absolute terms in the POI as compared to the base year. However, this increase is not as sharp as compared to the immediately preceding year. Even though this increase is significant, it is important to note that in this case, the increase as compared to the domestic production has remained almost constant and there has been less significant increase when the comparisons are made in relation to the total consumption. Thus, even if it cannot be concluded that there is a rapid or recent surge in imports from China over the entire POI, it is noted that there has been significant increase in imports from China so as to cause or threaten to cause market disruption.
- b. The Domestic Industry has not been able to demonstrate that the developments in the market for the Product under Consideration were unforeseen. On the contrary, even the information supplied by them does not support their case, as examined in detail in the relevant paragraphs above.
- c. The Domestic Industry has not been able to show market disruption or serious injury on account of factors of market share, production, sales and capacity utilization. However, the Domestic Industry is indeed suffering losses with a negative return on capital employed. As the rising imports have affected the demand in the country considerably, the domestic industry has faced problems in sales and rising inventory levels. It establishes the causal link between the rise in imports from China and market disruption caused to this extent during the POI.
- d. On analysis of the data for the post POI period to arrive at a fair conclusion, it is observed that the position of the domestic industry has improved on account of factors of market share, production, sales, export and inventory. Even the imports have declined. Thus, there exists no cause of concern for any form of market disruption or threat of market disruption to the domestic industry in the post POI period to the extent that no further protection is required.
- e. The basic problem of the Domestic Industry is in the context of low price realization which could be on account of the low prices offered by the Chinese exporters. The Domestic Industry has, however, not given enough details on the price front so as to carry out a conclusive comparative analysis perhaps due to the fact that this is an investigation under Section 8C of the Customs Tariff Act.

#### **70. Recommendations:**

In view of the discussions detailed above and the conclusions reached, it is recommended that there are no strong grounds to recommend any further duty beyond the period already covered by the provisional duty in terms of Section 8C of the Customs Tariff Act. The duty imposed provisionally is therefore confirmed and the final duty as per the detailed calculations for the period of 200 days starting from 4<sup>th</sup> January, 2013 till 22<sup>nd</sup> July'2013 (both days inclusive) is recommended to be imposed at a level of 20% ad valorem on all imports of the product under consideration (same as in provisional findings/corrigendum) from China.

Sd/-  
(G. S. SARNA)  
Director General