

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

**NOTIFICATION**

**F.No. D-22011/17/2012**

**New Delhi, the, 11<sup>th</sup> March, 2014**

**Subject: Safeguard investigation concerning imports of Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) into India**

**Final Findings**

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

**PROCEDURE**

1. An application was filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as "Safeguard Rules"] by M/s. Jindal Saw Ltd, Jindal Centre, 12 Bhikaji Cama Place, New Delhi -110066 and M/s ISMT Ltd, Lunkad Towers, Viman Nagar, Pune 411014 seeking imposition of Safeguard Duty on imports of Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) into India claiming that increased imports of Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) is causing and/or threatening to cause serious injury to the domestic producers of Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) in India. The petition is also supported by M/s Maharashtra Seamless Ltd (MSL), Jindal Corporate Centre, Plot No.30, Institutional Sector - 44, Gurgaon -122001.
2. In order to satisfy the requirements under Rule 5 of the said Safeguard Rules, the information presented by the applicant was verified by on-site visit to the plants of the domestic producers to the extent considered necessary. The non-confidential version of verification report is kept in the public file. On being satisfied that the requirements of Rule 5 were satisfied, the Notice of Initiation of Safeguard investigation concerning imports of Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) into India was issued under Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 22<sup>nd</sup> April 2013 and was published in the Gazette of India Extraordinary on the same day.
3. A copy of the Notice of Initiation dated 22<sup>nd</sup> April 2013 along with copy of non-confidential version of the application filed by the Domestic Industry were forwarded to the Central Government, in the Ministry of Commerce, and other Ministries concerned, Governments of major exporting countries through their Embassies in India, and the Interested Parties listed below, in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997:

**A. Domestic Producers**

- (i) M/s ISMT Limited, Lunkad Towers, Viman Nagar, Pune 411014 (Applicant)
- (ii) M/s Jindal SAW Ltd, Jindal Centre, 12 Bhikaji Cama Place, New Delhi -110066 (Applicant)

- (iii) M/s Maharashtra Seamless Ltd, Jindal Corporate Centre, Plot No.30, Institutional Sector-44 Gurgaon -122001 (Supporter)
- (iv) M/s Indian Sugar and General Engineering Corporation (ISGEC), Radaur Road Yamuna Nagar
- (v) M/s Ratnadeep Metal & Tubes Ltd, Survey No. 1015/2, Village Rajpur Mehsana Highway, Tal. Kadi Pin: 382715
- (vi) M/s PTC Alliance Precision Products (Asia) Pvt. Ltd, 77 Chamiers Road Raja Annamalaipuram, Chennai
- (vii) M/s Tamilnadu Boilers and Components Manufacturers' and Users Association, D-99 Developed plots Estate, Thuvakudy Trichirapalli, Tamilnadu 620015
- (viii) M/s. Remi Metals Gujarat Limited, Welspun House, 4th Floor Kamala Mills Compound, Senapati Bapat Marg, Lower Parel (West), Mumbai
- (ix) M/s Oil Country Tubular Ltd, KAMINENI', 3rd Floor, King Kothi Hyderabad

## **B. Importers/User Industry**

- (i) M/s Maruti Koatsu Cylinders Ltd, 307, Swastik Chamber, 3rd Floor, Chembur, C S T Road, Chembur, Mumbai-400071
- (ii) M/s Bharat Heavy Electricals Ltd. BHEL House, Siri Fort, New Delhi
- (iii) M/s ONGC, Tel Bhavan, Dehradun, Utrakhnad
- (iv) M/s Metal & Stainless Steel Merchant's Association, 63, Jamnadas Building, 10<sup>th</sup> Khetwadi Lane, Mumbai- 400004
- (v) M/s National Engineering Industries Ltd, 9/1 R.N Mukherjee Road, Kolkata
- (vi) M/s Evergreen Seamless Pipes & Tubes, Evergreen House, No.77/78.II Main, Chikkalaxmaiah Layout, DRC Post, Hosur Road, Bangalore
- (vii) M/s Walchandnagar Industries Ltd, 3 Walchand Terraces, Tardeo Road, Mumbai-400034

## **C. Exporters**

- (i) M/s Pangang Group Chengdu Steel & Vanadium Company Limited, No. 268 Tuanjie South Rd, Qingbaijiang Dist. 610303 Chengdu, China
- (ii) M/s Xigang Seamless Steel Pipe Company Limited, 124 Tangnan Road, Wuxi City, Jiangsu Province, China,
- (iii) M/s Yantai Lubao Steel Pipe Co, No.185, Xingfu Middle Road, Yantai, China, China
- (iv) M/s Tubos, Barrio de Sagarríbai, 201470 Amurrio (Alava), Spain Spain
- (v) M/s. Marcegaglia, Via Bresciani, 16, Gazoldo degli Ippoliti Mantova, Italy
- (vi) M/s Arcelor Mittal, 20, Velyka Zhytomirskaya Str, Kiev, 01025, Ukraine
- (vii) M/s Tenaris, 29, Avenue De La Porte-Neuve, 3rd Floor, L-2227, Luxembourg
- (viii) M/s Timken, 1835, Dueber Avenue, S. W. Canton, Ohio
- (ix) M/s Ovako AB, SE-194 05, Upplands Vasby, Sweden
- (x) M/s Benteler, 2650B N. Opdyke Road, 48326 Auburn Hills, Michigan, USA
- (xi) M/s Tenaris Silcotub, 93, Mihai Viteazul Blvd, 450131 Zalău (Sălaj County), Romania
- (xii) Delegation of the European Union of India, 65, Golf Links, New Delhi
- (xiii) M/s. Arcelor Mital, Stefan cel Mare 15A/1, Roman 611038 NT, Romania
- (xiv) M/s. Tenaris, Pasaje Ma. Della Paolera 299, Piso 18. CP 1001, Buenos Aires, Argentina
- (xv) Arab Republic of Egypt, Ministry of Industry & Foreign Trade, Al-Maleya Towers, Tower 6, Floor 9, Ramsis St, Extension, Nasr City
- (xvi) M/s Vallourec & Mannesmann, Cedex, 27, Avenue de General Leclerc, 92660 Boulogne Billancourt Cedex, France France
- (xvii) M/s Ovako AB, SE-194 05, Upplands Vasby, Sweden
- (xviii) M/s Mertex UK LTD,
- (xix) European Steel Tube Association, 79, bis Rue Marcel Dassault, F-92 100 Boulogne – Billancourt, France
- (xx) M/s OAO TMK, 40 Bldg. 2a, Pokrovka Street, Moscow

- (xxi) M/s. Dalmine SPA, PiazzaCaduti 6 luglio 1944,n 1, 24044 Dalmine (BG),Italy
- (xxii) China Iron & Steel Association, represented by Lakshmi Kumaran&Sridharan, 5, Jangpura Extension, link Road, New Delhi-110014
- (xxiii) Japan Iron and Steel Federation, 3-2-10, Nihonbashi –Kayabacho, Chuo-ku, Tokyo, 103-0025,Japan
- (xxiv) M/s. Baosteel Group Corp China, Room 2005,Baosteel Tower, 370 Pudain Road, Shanghai , P.R.C
- (xxv) M/s. JFE Steel Corporation, Japan, Represented by Luthra&luthra, 9<sup>th</sup> Floor & 103, Ashoka Estate, Barakhamba Road, New Delhi- 110001
- (xxvi) M/s. Nippon Steel and Sumintomo Metal Corp, Japan, Represented by Luthra&luthra, 9<sup>th</sup> Floor & 103, Ashoka Estate, Barakhamba Road, New Delhi- 110001
- (xxvii) M/s. Sanyo Special Steel Co, ltd, Represented by Luthra&luthra, 9<sup>th</sup> Floor & 103, Ashoka Estate, Barakhamba Road, New Delhi- 110001
- (xxviii) M/s Salzgitter Mannesmann Precision, Germany.

**D. Exporting country Government**

- (i) The Embassy of People's Republic of China
  - (ii) The Embassy of Italy
  - (iii) The Embassy of Egypt
  - (iv) The Embassy of Germany
  - (v) The Embassy of Germany United Arab Emirates
  - (vi) The Embassy of Indonesia
  - (vii) The U.S. Embassy
  - (viii) The British High Commission
  - (ix) The Embassy of Japan
  - (x) Deputy Trade Commissioner, The Trade Representation of the Russian Federation,
  - (xi) Arab Republic of Egypt, Ministry of Industry & Foreign Trade
  - (xii) Delegation of the European Union of India
4. Questionnaires were also sent, on the same day, to all known domestic producers and importers and exporters and they were asked to submit their response within 30 days.
5. Request to consider them as an interested parties were received from the following parties:
- (i) M/s OAO TMK, Moscow
  - (ii) M/s Mertex UK LTD, Represented by AmarchandMangaldas, New Delhi
  - (iii) M/s DalmineSPA, Italy
  - (iv) European Steel Tube Association, France
  - (v) M/s. Tenaris, Argentina
  - (vi) China Iron & Steel Association, Represented by Lakshmi Kumaran&Sridharan,
  - (vii) (a) M/s. Salzgitter Mannesmann Precision GmbH (b) M/s. Salzgitter Mannesmann Precision Etirage SAS, c/o Dr. Ulrike Hopping, Head of Legal Department, Mulheim, Germany
  - (viii) Japan Iron and Steel Federation, Japan
  - (ix) Director of Trade Defense, Jakarta
  - (x) Baosteel Group Corp China, Shanghai
  - (xi) Deputy Trade Commissioner, The Trade Representation of the Russian Federation, New Delhi
  - (xii) M/s Vallourec& Mannesmann
  - (xiii) JFE Steel Corporation, Japan, Represented by Luthra&Luthra
  - (xiv) Nippon Steel and Sumintomo Metal Corp, Japan, Represented by Luthra&Luthra
  - (xv) Sanyo Special Steel Co ltd, Represented by Luthra&Luthra

(xvi) National Engineering Industries Ltd, Kolkata

All the requests were accepted.

6. Request to consider them as an interested parties were also received from the following parties, but after stipulated 21 days of issue of Notice of Initiation:

- (i) M/s SKF India Ltd., Mahatma Gandhi Road, Pune
- (ii) M/s Reliance Industries, Thane-Belapur Road, Navi Mumbai
- (iii) M/s Kirtanlal International PMCC, Dubai
- (iv) Ball & Roller Bearing Manufacturers Association of India, Connaught Place, New Delhi
- (v) M/s Yangzhou Lontrin Steel Tube Co. Ltd., Jiangsu Province, China PR

Since these were not received within the stipulated time limit, all of these requests were rejected.

7. Besides these, representations from the following were received without any specific request to become interested parties:

- i. M/s Anand Tubes Pvt, Ltd., Mithakhali Six Roads, Ahmedabad
- ii. M/ Allied Tubes,, HauzQazi, Delhi
- iii. M/s Punjab Distribution Pvt. Ltd, HauzQazi, Delhi
- iv. M/s Aniraj Distributors Pvt. Ltd, HauzQazi, Delhi
- v. Bali Steel Tubes, Carnac Bunder, Mumbai
- vi. Tubes India, Kumbharwada 5 th Lane, Mumbai
- vii. All India Transporters Welfare Association. Jhandewalan, New Delhi
- viii. Patel Airflow Ltd, Vatva, Ahmedabad
- ix. M/s SNTubesPvt Ltd, Mehsana, Gujrat
- x. M/s Jet Roadlines Corp, Pharganj, New Delhi
- xi. M/s Vinayak Tubes, Boat Club Road, Pune
- xii. M/s Vijay Sales Corp, HauzQazi, Delhi
- xiii. M/s Standard Tubes, HauzQazi, Delhi
- xiv. M/s Shib Das & Sons , HauzQazi, Delhi
- xv. M/s Rasi Traders, Salem
- xvi. M/s Pipes House, Pratap Nagar Road , Vadodra
- xvii. M/s Tube Product Incorporate, Vadodra
- xviii. M/s Nimitta Trading, Vashi, Navi Mumbai
- xix. M/s Heavy Metals & Tubes Ltd, Mehsana, Gujrat
- xx. M/s Raigarh Plastic Pvt Ltd, Kharghar, Navi Mumbai
- xxi. M/s Vibhor Steel Tubes PVT Ltd, Raigargh, Maharashtra
- xxii. M/s Bombay Hardware PvtLtd, Mumbai
- xxiii. M/s R R Roadways Pvt. Ltd, Kalyan Street Mumbai
- xxiv. M/s Steel Tubes Company, Sembudoss Street, Chennai
- xxv. M/s Shree Mahaveer Co, Sembudoss Street, Chennai
- xxvi. M/s Salasar Industries India Ltd, Raniganj, Secundrabad
- xxvii. M/s Bhushan Tubes Pvt Ltd, ManjidBunder (E), Mumbai
- xxviii. M/s Gajanan Tubes, Carnic Bunder, Mumbai
- xxix. M/s Gratik Tubes Pvt, Ltd, Ahmedabad, Gujrat
- xxx. M/s Mahalaxmi Seamless Ltd, Goregaon (E), Mumbai
- xxxi. M/s Everest Kanto Cylinder Ltd, Nariman Point Mumbai
- xxxii. M/s Sarvika , Tubular Concepts Pvt, Ltd, Alwar pet, Chennai

8. Most of the issues raised by them are similar to the submissions raised by other interested parties. These have accordingly been considered at appropriate places.

9. Post-Initiation submissions, as follows, were received prior to the Public Hearing:

**A. China Iron & Steel Association (CISA)**

- (i) The scope of the product under consideration is very wide. Seamless pipes, Tubes and Hollow profiles of iron or non —alloy steel (SPTH) do not form a single homogenous product group
- (ii) The Petitioners are unable to manufacture certain products, or are not even qualified to manufacture certain grades of the PUC.
- (iii) The Petitioners have neither placed trial and development orders on ONGC (one of the largest customers of Seamless Pipes in India) nor haven't bid at all on tenders floated by ONGC.
- (iv) Tubes and pipes used for manufacturing of high-pressure seamless steel cylinders are not produced in India at all and that Indian users must rely on imports from, inter alia, China.
- (v) None of the Indian seamless pipe mills have yet succeeded in obtaining the Chief Controller of Explosives (CCOE) of the Petroleum Explosive and Safety Organization (PESO) approval indicating that no Indian domestic seamless pipe manufacturer can supply SPT suitable for high-pressure gas cylinders.
- (vi) The applicants do not satisfy the major proportion criteria and as a result, the initiation of the investigation is violation of Article 4.1(c) of AOS and section 8B (6)(b) of the Customs ACT.
- (vii) The initiation notice as well as the petition filed by the domestic industry is completely silent with regard to the fact that there existed 'unforeseen circumstances.
- (viii) CISA placed reliance on WTO dispute concerning DS 178 US –Lamb wherein Appellate Body observed that the existence of "unforeseen development" is a pertinent issue of fact and law under Article 3.1 of the Agreement on Safeguards.
- (ix) There is no increase in imports. The apparent increase in imports in 2012-13 compared to 2009-10 cannot be considered as surge in imports.
- (x) The domestic industry seems to have provided a confidential version of adjustment plan to Authority, yet it has not made available a non-confidential version of adjustment plan under the pretext that it contains business sensitive data.
- (xi) When the imports increased from 3,44,829 MT in 2010-11 to 4,25,194 MT in 2011-12 ,the profitability of the domestic industry improved from 76 indexed points to 102 indexed points whereas when the imports decreased from 4,25,194 MT in 2011-12 to 2,80,333 MT in 2012-13 (Dec),the profitability of the domestic industry also declined from 102 to 23. The causal link between the imports and profits of domestic industry is clearly absent.

- (xii) Negative correlation is visible between imports and production and sales of domestic industry. When the imports increased from 3,44,829 MT in 2010-11 to 4,25,194 MT in 2011-12, the production and sales of the domestic industry improved from 126 indexed points to 142 indexed points and 118 to 120 indexed points respectively. Whereas when the imports decreased from 4,25,194 MT in 2011-12 to 2,80,333 MT in 2012-13 (Dec), the production and sales of the domestic industry also declined from 142 indexed points to 87 indexed points and 120 indexed points to 71 indexed points respectively. The causal link is clearly absent.
- (xiii) M/s ISMT's annual report of 2011 – 2012, CISA stated that the capacity of its tube division was almost tripled from the financial year 2009 -2010 (158000 tons) to the next year 2010 – 2011 (465000 tons). While the company's production of tubes remained relatively stable, this has an immediate effect of dragging down the capacity utilization from 85.9% to 38.5%.

**B. M/s Vallource& Mannesmann Tubes, France**

- (i) Seamless steel pipes used for offshore applications (project line pipes) be excluded from the scope of the investigation because these pipes are only imported in India temporarily being laid offshore and should not be subject to trade defense instrument.
- (ii) The Indian customers are ordering the high grades only from foreign qualified suppliers.
- (iii) Vallource has not brought any damage in price nor in quantity to the Indian industry and that the use of a safeguard not the proper tool to control Chinese overcapacities and imports.
- (iv) Vallource supports the comments made by the European Steel Tube Association.

**C. M/s Tubos Reunidos Industrial, SLU, Spain**

- (i) Total exports from Spanish market share are 0.13% to 1.14% and its average of last four years is 0.53%. However, the data for the Indian Customs for Spanish supply, include 3 different mills namely; TubosReunidos, ProductorsTubulares, Tuaces, plus different traders with piping out of the scope(square,profile---).Hence, Tubos share will be much lower than above level.
- (ii) Petition is covering various types of tubes & pipes including OCTG tube, production tubing and many other OCTG products which are not within our production program.
- (iii) Real justification of serious damage to Indian pipe & tube industry cannot be done unless grade wise, size wise, product wise clarification and identification is available.
- (iv) Financial year 2008 June to Sept. was peak period economically and all over world several economy were on the peak of their capacity and sales. Due to peak economy situation in mid-2008, several Indian pipe & tube producers went for substantial expansions of their capacity with probably in-correct assessment of market demand, which ultimately caused a situation of excessive capacities & limited demand.
- (v) Due to lack of demand their capacity are underutilized. Hence Spanish tubes & pipes industry have not caused any serious damage to the Indian producers.
- (vi) As a basic sales policy TubosReunidos never sell product with loss or under cost price as TubosReunidos are not assisted either by Spanish government or European Union.

- (vii) If overseas supplier have seriously under quoted below cost price and this has caused serious damage to the industry which ultimately cause serious losses & bad debts to the whole industry they are obliged to either close down their plant or stop selling or reduce production or make losses by selling at prevailing market price but it is not so.
- (viii) M/s ISMT Ltd has increased in sales turnover in 4 years. They have increased their production of tubes division quantity in 4 years. They have been showing profit figures during the said 4 years period. Same is the case of MSL & Others. This all facts & figures are going against the Principal of serious damage to the Pipes & Tubes Industry in India.
- (ix) No case of any serious damage to Indian Tubes & pipe industry by negligible percentage supply of Spanish Origin Material by TubosReunidos Spain.

**D. M/s Mertex U.K Ltd, U.K**

- (i) A safeguard measure may be imposed only in special and exceptional circumstances, as an emergency action. The petition or the Notice of Initiation fails to disclose any grounds which warrant the imposition of safeguard duty on the PUC.
- (ii) From the import statistics as provided by the petitioners, the percentage increase per year in relation to the previous year is as follows: 7.65%, 20.14% & 3.365%. The import due for 2012-13, will merely register a mere 3.65% increase compared to 2011-12. Similarly, for the FY 2010-11, the growth in import was a mere 7.65% compared to FY2009-10.
- (iii) The import statistics of PUC for the year 2005-06 (140032 MT), 2006-07 (147638 MT), 2007-08 (132696 MT) and 2008-09 (262432 MT) in conjunction with the data for the time period would show that imports of the PUC have increased progressively and cannot be said to be sudden and unforeseen.
- (iv) For FY 2005-06, 2006-07, 2007-2008, the same petitioners while filing a petition seeking imposition of anti-dumping on PUC had stated in their petition that imports apart from China are either *de minimis* or at higher prices. The petition was consequently terminated by the DGAD, Ministry of Commerce and Industry. In light of the admission/concession made by the same petitioners before the DGAD, it is incomprehensible as to how subsequently the petitioners are claiming imposition of safeguard measures on the import of the PUC.
- (v) Product under consideration has been defined very broadly so as to include even those products which are not manufactured by the petitioners.
- (vi) It is submitted that the petitioners have not offered certain grades as they do not manufacture the same and even if they have offered, the same appears to be only for development order apart from few actual offers for supply.
- (vii) The petitioners even while bidding for Tenders floated by ONGC stands disqualified for not being able to meet the requirements as prescribed by the Tenderer.
- (viii) In the absence of the capacity of the petitioners to produce grades of PUC as per requirements of ONGC cannot be a ground to seek levy of safeguard duty which would have the detrimental effect of eroding fair competition in the market.
- (ix) Positive adjustment plan has not been provided at all and has been claimed as confidential. The purpose to furnish meaningful non –confidential summaries is to provide and to inform

other interested parties with information and/or data to enable them to obtain basic understanding of the allegations and supporting data contained in the petition with a view to presenting useful arguments.

- (x) Petitioners have severely curtailed the list of the known producers/exporters.
- (xi) Domestic sales have increased over by 100-106-112-96 for the FY's 2009-10, 2010-11, 2011-12 & 2012-13. The decline in sales for the FY 2012-13 is in consonance with the decline in imports for the said F.Y.
- (xii) Market share in demand for the petitioners has remained more or less the same over FY's 2009-10, 2010-11, 2011-12 & 2012-13 as 47-46-43-38.
- (xiii) Minute dip in market share is on account of the fact that the Petitioners are unable to meet the demands for certain grades of PUC and it is natural that for the requirements, imports will have to fill in vacuum.
- (xiv) Accumulation of inventories are on account of the fact that developmental orders are being placed and further that the petitioners are manufacturing substandard products which fail to meet the requirements of the Tenderers like ONGC and others.
- (xv) Petitioners have installed capacity in excess of the demand of the domestic market and thus factoring in the exports made by them, it is but natural that there would be accumulation of inventories.
- (xvi) Employment of the petitioners have increased in the following sequence for the FY'S 2009-10,2010-11,2011-12 & 2012-13 (3588-4010-4380-4884). It is submitted that recruitment of new employees is one of the vital indications that petitioners are doing well.
- (xvii) Perusal of Annual Report of Maharashtra Seamless Ltd reveals that the company achieved arecord net profit of Rs.341.66 Crores.
- (xviii) Regarding low export price to India, export sales were made to the Indian market through the process of International Competitive bidding.The overseas supplier and the domestic producers do not really enjoy much discretion to fix their process in an open competitive system but are primarily impelled by the buyer to offer low process independently of any pricing policy that may be pursued by the supplier in the free market.
- (xix) Reading of the petition suggests that it is case being made out for dumping rather than imposition of safeguard measures.
- (xx) Annual reports for ISMT & MSL suggest that dumping from China is the cause of injury to domestic Industry for which the petitioners have remedies available under law.
- (xxi) The Global recession was further a factor for the drop in the petitioners sales as admitted by ISMT in their annual report for FY2009-10
- (xxii) The factors that domestic industry claimed are responsible for the alleged injuries are to be considered by the DGAD in the ambit of anti- dumping investigation.
- (xxiii) From the year 2000 till 2004 there were Anti-Dumping duties levied for seamless pipes/tubes and for the said period the Domestic Industry enjoyed artificial protection and

failed to expand their product range as they were getting orders very easily due to lack of competition.

- (xxiv) Injury caused to the petitioners is self-inflicted on account of the internal price war between the constituents of the domestic industries during bidding for various tenders floated by companies like ONGC.
- (xxv) It is submitted that the allegations leveled that the Petitioners are not able to meet the price offered by foreign manufacturers/exporters do not hold good in as much as it has been a trend wherein Jindal SAW has often reduced price to match the price quoted by MSL or ISMT and vice versa.
- (xxvi) Oil and gas companies like ONGC have been given special license by Director General of Hydrocarbons to import seamless pipes and tubes on which "nil" custom duty is applicable when imported into specific areas.
- (xxvii) If safeguard duty is levied on tubes and pipes imported by ONGC and other oil and gas exploration companies, then it would have the effect of increasing the cost of such products to end users and will lead to shortage of such products.
- (xxviii) Since oil and gas exploration companies are serving the needs of the public at large, imposition of safeguard duty will only be against public interest.

**E M/s National Engineering Industries Ltd, Kolkata**

- (i) The company is a domestic manufacturer of Bearings and an importer of seamless tubes (upto 114.03 mm dia)
- (ii) The company imports SAE 52100, SAE 8720 and SUJ3 bearing grade alloy steel tubes or manufacture of ball and roller bearings
- (iii) Initiation of investigation is on broad definition of products and scope of investigation should be restricted to only those products which pertains to the Applicants
- (iv) SAE52100, SAE8720 and SUJ3 bearing grade SPT are NON-API grade being presently imported by NEIL and therefore, if this grade, being NON-API, is excluded from the present investigation, the company would no longer be an interested party in the present investigation.
- (v) The application has grouped together all kinds of SPTs as a single article. Bearing tubes are not 'like articles' to SPTs of other applications. OCTG tubes cannot be used as bearing tubes and vice versa.
- (vi) Bearing tubes are significantly more expensive. Even if it is assumed that bearing tubes and OCTG/boiler tubes have same chemical and physical properties, cost of bearing tubes is much higher than the average cost of tubes under the investigation, and therefore, these tubes are not interchangeable with OCTG/Boiler tubes.
- (vii) M/s JindalSaw is an interested party for OCTG only. It is not a domestic manufacturer for bearing tubes.
- (viii) M/s ISMT manufacturers seamless tubes of a large number of grades API 5L Grade B/X42/X46/X52/X65/X70, NACE MR01-75, SRL/DRL/EL ASTM A106 Grade A/B/C, ASTM A53 Grade Low Temperature ASTM a 333 Grade 6, including that of SAE 52100

- (ix) It is submitted that although M/s MSL manufacturers SAE 52100 grades, it is not known or established supplier of bearing tubes.
- (x) As per information available in public domain, customers of M/s JindalSaw and M/s MSL belong to oil & gas structural, civil construction, water utility and engineering sector and don't have any clients in the bearings industry.
- (xi) As per the Technology Study Report on Bearing Industry prepared by MSME- Development Institute, Government of India none of the major manufacturers of bearing in India is figuring in the list of Customers of M/s JindalSaw and M/s MSL. It is also reported in the said report that domestic supplier of bearing tubes is only M/s ISMT.
- (xii) Out of the two Applicants and one supporter, only one applicant is engaged in manufacture of bearing tubes and therefore, the instant Application cannot be said to have been filed by the domestic industry of bearing tubes.
- (xiii) The company submitted complaints have provided inaccurate and misleading data to the authorities about installed capacity.
- (xiv) As per the Notice, the domestic production of SPT during the year 2011-12 was 318968 MT which is lower than the reported production of SPT during the same period of the production figures determined on the basis of sales (both domestic and exports) adjusted with change of inventory.
- (xv) As information available in the Notice reveals that there is decline in the volume of import, in absolute terms, during the year 2012-13.
- (xvi) M/s ISMT is the only domestic manufacturer complaint of the product namely SAE 52100 bearing grade SPT.
- (xvii) The quantity of bearing grade SAE 52100 imported is negligible compared to import of products for which the Applicants have sought the levy of safeguard duty.
- (xviii) SPT segment of ISMT is profitable for last three years including 2011-12. Massive increase in the installed capacity has not dented the profitability of the company.
- (xix) Exports as percentage of total sales have increased. While these manufacturers have been able to export in the overseas market competing with countries from where Indian imports have been sourced, they are seeking protection in domestic market.
- (xx) Both the applicants import considerable quantities of raw materials from offshore vendors. Due to the volatile forex environment during the investigation period, both applicants have suffered an increase in costs.
- (xxi) As the pipe and seamless tubes industry is extremely energy intensive, increase in energy costs have also impacted the margins.
- (xxii) A comparison between the increase in sales with respect to the energy costs would signify that while net sales increased by 16.45% between FY 2010-11 and FY 2011-12, the power cost rose by 22.29% in comparison.

- (xxiii) Both the applicants in their Annual report for FY 2011-12 have indicated that they have invested significantly in capital assets. This has had a noticeable impact on its financial costs.
- (xxiv) Decline in profitability , if any, of the complainants is not linked to increase in the quantum of import but due to factors like massive increase in the capacity leading to higher depreciation and financial charges, increase in fuel costs etc.

**F. Dalmine SPA, Italy**

- (i) Present in the India seamless tubes market since many years with their highly qualified products.
- (ii) The real problem in the market is given by the Chinese seamless tubes exporters that massively increased sales in India with low prices.
- (iii) Chinese seamless tubes exporters sell almost exclusively in India to the stockholder channel badly influencing the general level of prices.
- (iv) In last three years Dalmine SPA decreased its sales of the product involved in India from 7.000 ton to 2.900 with a decrease of 59%.
- (v) Indian seamless tubes producers are not yet capable to guarantee the required quality level of the high quality hydraulic cylinders supplied by them.
- (vi) Sales are linked to the trend of the market and the decrease of the last year is in line with the reduction of the demand.
- (vii) In the boiler sector, Dalmine SPA never caused any type of injury to the Indian seamless tubes industry, but on the contrary suffered the competition of Chinese import.
- (viii) Chinese imports should have been restricted before by a strong anti-dumping action than now by a safeguard action involving all exporting countries

**G. Nippon Steel & Sumitomo Metal Corp, Japan (b) JFE Steel Corp, Japan (c) Sanyo Special Steel Co., Japan**

- (i) Neither the initiation notification nor the petition of the DI provides any information with respect to the unforeseen circumstances or events which has led to increase in imports in such quantities so as to cause or threaten to cause serious injury to the domestic industry.
- (ii) A non-confidential version ("NCV") of such adjustment plan has not been provided to the other interested parties to comment
- (iii) Some of the products under consideration such as Crane Tube, Mechanical Tube for Needle Roller Bearing (NRB Tube), and Mechanical Tube for Bearing (Bearing Tube) are not manufactured by the domestic industry. Thus if the product is not manufactured by the DI, the same cannot be part of the product under consideration as the domestic industry cannot claim injury on products not manufactured by them due to any alleged increase in imports.
- (iv) The Indian end user for some of these products which are used in highly technological sensitive sectors, such as NRB tube used in automotive industry, Boiler Tube used in

power plants and Line pipe used in transportation of oil and gas have not approved the purchase of these products from Indian manufacturers and have only approved the foreign manufacturers including exporters from Japan.

- (v) There is no sudden, sharp & significant increase in imports.
- (vi) The sales of the applicants have increased in 2012- 13 as compared to the 2009-10 while the sale of the supported company has shown a minor decline.
- (vii) A decline in sale of supporters while increase in sales of the applicants clearly illustrate that any decline in sales cannot be attributed to the alleged increase in imports as both the applicants as well as the supporter companies are competing in the same market.
- (viii) There has been an increase in import prices. Thus the import prices have increased by 11% in the POI.
- (ix) The market share of the applicants has seen a marginal decline of 0.87% in 2012-13 as compared to 2011-12 which cannot be termed as serious injury to the applicants.
- (x) The imports have declined on absolute basis and have seen a marginal increase of 1% on relative terms. Further there has been an increase in domestic sales of the applicants in 2012-13 as compared to 2009-10. The market share of the applicants has seen a decline of mere 0.87 in 2012-13 as compared to 2011-12. All these factors do not indicate that the DI is suffering any serious injury
- (xi) DI has not provided any evidence that the loss in the tenders was on account of increased imports. Further DI has not provided any evidence with respect to massive capacities of the foreign producers.

#### **H. European Commission**

- (i) Commission noted some important discrepancies between the application and the notice of initiation in respect of import, sales, production & capacity.
- (ii) Import increased significantly in the financial year 2011-12, but decreased in the subsequent period.
- (iii) Safeguard measures can only be taken if there has been, amongst other elements, a recent, sudden, sharp and significant increase of imports.
- (iv) The increase of imports is mainly attributed to one single country i.e China. The Section III of the complaint which concerns the factors causing increased imports also clearly refers exclusively to the exports from China.
- (v) There are no indications that the domestic injury is suffering from an injury that can be considered as serious. During the overall period considered, the sales volume of the domestic industry decreased only by 5%, correspondingly to a negligible market share loss of not even 3%, production increased by 16%, employment increased by 10% and productivity by 5%.
- (vi) India decided to initiate a safeguard investigation which may lead measures against all countries of origin, while the source of the problem have been clearly identified as being one single source of imports.

- (vii) The decrease in capacity utilization is due to the fact that the installed capacity almost doubled in 2010-2011, from 375000 MT to 685000 MT.
- (viii) The level of the installed capacity actually exceeds the total demand on the Indian Market.
- (ix) Despite significant investments the domestic industry managed to increase its profits by 25% in the period 2011-12 and this took place exactly when import increased. It is only in the subsequent period that the profitability significantly dropped. But the imports also dropped significantly during the same period.
- (x) Data suggests that if the domestic industry was suffering from any serious injury, this was caused by reasons other than imports.
- (xi) Low capacity utilization rate is caused by the conjunction of the two factors i.e excess in capacity and decrease in demand rather than any increase of imports.
- (xii) If the production capacity had remained stable at the 2009-10 level (i.e 375000 MT), the utilization rate would have increased from 60% to 70% in 2012-13.
- (xiii) Imports decreased in the most recent period, there is no indication of serious injury and it is obvious that the domestic industry has been affected by problems of over capacity created by the industry itself, in the context of a decreasing demand.

**I. M/s Ratandeeep Metals and Tubes Ltd.**

- (i) Manufacturer (Redrawers) of seamless cold drawn carbon steel/Alloy steel tubes in SME sector.
- (ii) Their product size range between 6mm OD to 168 OD
- (iii) Deliveries for their sizes from petitioners is completely uncertain
- (iv) If safeguard duty is considered on sizes even below 42 mm OD, supply of raw material to their type of industries will be severely blocked causing much more injury and threat to them.
- (v) If they depend on Indian source (ISMT, JINDAL SAW, and MSL) for their raw material, their inventory will shoot up because of higher delivery time.
- (vi) All sizes below 42 mm OD in all HS codes specified in application should be excluded from the purview of examination.

**J. European Steel Tube Association (ESTA)**

- (i) The imports originating in the EU cannot be causally linked to the injury referred in the petition.
- (ii) Imports from EU may have grown last year however this increase is mainly due to steel pipes delivered for offshore pipelines, product which is ordered mainly by ONGC from qualified foreign suppliers only.
- (iii) Product which is ordered by ONGC from qualified foreign suppliers only should be excluded from PUC.

- (iv) Imports from EU are not undercutting domestic prices.
- (v) China is undercutting domestic prices. EU import prices are superior to all other actors of the market.
- (vi) EU imports cannot be qualified of practicing predatory pricing, as there is no undercutting margin. The hardship for Indian producers to increase prices to match their costs or loss of business/projects cannot be attributed to EU imports which are actually the highest priced in the market.
- (vii) In Annexure 12 to petitioner, list of lost tenders only mentioning Chinese competitors and importers.
- (viii) Normally goods delivered for offshore applications are not subject to trade defense instrument.
- (ix) Offshore application pipes mainly ordered by ONGC are only of foreign qualified pipes.

**K. ISGEC Heavy Engineering Ltd.**

- (i) There are serious problems in quality of tubes supplied by domestic industry.
- (ii) No manufacturer in India is having long/rich experience in manufacture of High Alloy Steels like SA213 T91/92, SA213T92 &P92, SA213 T13, SA213 TP 347 H. Therefore alloy steel tubes should be excluded from this investigation.
- (iii) Indian manufacturer are unable to supply large bore and heavy thickness pipes.
- (iv) Variation in sizes is very high in case of Indian manufactured tubes and pipes which creates problem in manufacturing of the components.
- (v) There are delays in delivery of tubes beyond the contracted delivery dates which should not happen if the domestic industry is short of orders.

**L. EEPC INDIA (Engineering Export Promotion Council)**

One of their members M/s Everest Kanto Cylinder Ltd, has informed that they are importing the seamless pipes and tubes which is completely different from General Steel Tubes, This category is not available in India. Engineering Export Promotion Council requested to take an appropriate action in the investigation in a manner which does not hamper the user industry for manufacturing the High pressure Seamless Gas Cylinders.

**M. M/s TMK, Russia**

- (i) The Petition is deficient of the analysis of the market situation prior to 2009 and therefore the DG Safeguards cannot adequately and objectively examine the allegation on the part of the Indian industry with regard to increased imports, gauged to have been caused injury to the Petitioners.
- (ii) The Petitioners also did not provide evidence showing that as a result of unforeseen developments the product under investigation was imported in such increased quantities as to cause or threaten to cause "serious" injury to the Indian industry

- (iii) The Petitioners in the current proceedings are not suffering serious injury nor are they under any threat of suffering serious injury from allegedly increased imports.
- (iv) The Petitioners' convenient choice of a reference period from 2009 to 2013 is inherently biased and was chosen to show a particular result. As such, analysis of the factors and conditions for imposition of safeguard measures during the proposed period of investigation, including whether or not there was an increase in imports, could not be objective because it ignores critical circumstances of that period, specifically the global financial crisis of 2008-2009.
- (v) The petitioners also did not provide credible evidence showing that the product under investigation was imported in such increased quantities in absolute terms that the surge in imports was sudden, significant and sharp.
- (vi) The production volumes of the Indian domestic industry have increased during the reference period.
- (vii) Highly successful export performing industry, and not an industry suffering from serious injury.
- (viii) A sizeable capacity increase took place between 2009-2010 and 2010-2011. Whatever the industry and production, this kind of change, i.e., a change to near double capacity, would necessarily involve considerable additional costs and would always have a bearing on the industry's injury indicators
- (ix) Sales volumes of the domestic industry have increased during the reference period. This significant increase in sales could not possibly be occurring if the industry were suffering serious injury or threat thereof
- (x) There was no significant change in the level of employment and wages over the reference period.
- (xi) Both, workforce number and wages have gone up during the reference on the year-on-year basis. The industry and the Petitioners would not be increasing employment if the industry were suffering serious injury or threat of serious injury.
- (xii) The Petitioners as well as the domestic industry as a whole increased their installed capacity to near double level in 2010-2011, which, in turn, led to accumulation of stocks.
- (xiii) Regarding decline in profitability, an objective assessment of the industry's profitability cannot ignore the business decisions of that industry, especially if one such decision to double production capacity would inevitably affect the industry's fixed costs.
- (xiv) The Petitioner and the industry suffering serious injury or threatened to suffer serious injury, they would not have increasing their installed capacity during the reference period.
- (xv) The Petitioners incorrectly stated that the prices of imports have not increased in proportion to the increased input prices. On the contrary, in 2011-2012 average prices of all imports of the product under consideration have increased by over 10 per cent as compared to 2010-2011. The Petition contains no credible evidence of price suppression/depression on account of imports of the product
- (xvi) It is not clear how large production capacity elsewhere is capable of showing serious injury to Indian industry, when Indian industry itself has been

increasing its capacity in response to an increase in demand on its domestic market. The nexus between the two is especially doubtful in light of the dominant presence on the Indian market of Chinese, as well as the geographical proximity of China to India.

- (xvii) The global steel market is characterized by a certain degree of volatility. If volatility of the market were a true concern, Indian industry's efforts would likely be directed at reducing stock and improving producers' overall efficiency, rather than embarking on a major cost increasing activity such as capacity increase by 50 per cent.
- (xviii) An increase in capacity necessarily results in a self-inflicted rise of fixed costs of the Indian industry, and consequently, in losses of profitability, small return on investments, etc
- (xix) Had the Indian industry, at the time of reference period, maintained capacity at least at the initial capacity level of 100, it might not have had adverse injury factors with any of the injury indices which it now blames on increased imports.
- (xx) The share of Chinese imports in all imports of the product under consideration in 2009- 2010 was 51 per cent, while in 2010-2011 this share increased to 58 per cent. The next year the share of Chinese imports increased to 61 per cent. The prices of Chinese imports have decreased as compared to all imports and that on average, Chinese prices are USD 1000 lower on per ton basis. The only possible source of grievance for the Petitioners may stem from the presence on the Indian market of imports of certain seamless pipes and tubes from China.
- (xxi) From the figures in the Injury statement at Annexure 10 that the Indian industry has not suffered any injury from imports during the reference period. The Petitioners simply failed to take into account the fact that the domestic industry doubled its production at the beginning of the reference period, which had over-spilling effects on the industry's productivity, market share, wages and salaries.
- (xxii) Any injury aspects of decline during the reference period appear inconsistent with overall situation during the period, which indicates that they are only due to increase in capacity and therefore fixed costs, but will pick up very fast. Thus, there is no threat of serious injury to Indian domestic industry.
- (xxiii) Imposing safeguard measures on the product under investigation would dramatically affect down-stream products produced by the Indian user industry to the benefit of non-Indian producers of these products. This is because it would erode the cost effectiveness and the competitiveness of the Indian user industry against importation of finished products.

**N. SilcotubS.A ,Romania**

- (i) Silcotub has not exported a significant amount (less than 3% of the total imports in India) during the period of investigation.
- (ii) Romania's share of Indian imports is well below 3%, so as a developing country it should be excluded from the safeguard measure.

**O. TAMSA, Mexico**

- (i) TAMSA has not exported a significant amount (less than 3% of the total imports in India) during the period of investigation.

- (ii) Mexico's share of Indian imports is well below 3%, so as a developing country it should be excluded from the safeguard measure.

**P. Siderca (Tenaris S A), Argentina**

- (i) Siderca has not exported a significant amount (less than 3% of the total imports in India) during the period of investigation.
- (ii) Argentina's share of Indian imports is well below 3%, so as a developing country it should be excluded from the safeguard measure.

**Q. Timken, U.S A**

- (i) Sales are made to bearing companies and to the automotive and truck, forging, construction equipment, industrial equipment, aircraft and oil and gas drilling industries as well as to steel service centers
- (ii) Timken have no current orders for seamless mechanical tube in India However, they desire to continue to serve BEML and other customers in India for niche seamless tubular needs not produced by the domestic steel industry.

**R. M/s ONGC Ltd.**

- (i) ONGC is engaged in exploration and exploitation of hydrocarbons with the objective of achieving energy security of Nation.
- (ii) To meet its operational requirement, ONGC is procuring Seamless Pipes and tubes through International Competitive bidding process as limited sources of supply are available domestically
- (iii) It is not true that Indian manufacturers of Seamless Line Pipes and tubes are disqualified from bidding for not being able to meet the requirements as prescribed by ONGC and that ONGC has been ordering the high grades seamless pipes and tubes only from foreign qualified suppliers.
- (iv) ONGC procures its seamless line pipes and tubes on international competitive bidding and there is no restriction on domestic as well as overseas bidders. In almost all the tenders floated by ONGC, some or the other domestic bidders have qualified. These bidders were short listed as TA/CA hence they could not win the contract due to price competitiveness. Therefore, there is no merit in the claim of domestic industry.
- (v) Many a times domestic bidders are not quoting for the entire quantity of any item or groups of ONGC tender and they are evaluated and considered only for the particular items/ groups they have quoted The reason for not quoting in all the items/groups or requirements of ONGC would be best known to the domestic industry but certainly it is not related to any restriction imposed by ONGC.
- (vi) Goods imported for use under eligible Petroleum Exploration licence/Mining lease(PEL/ML) areas attract Zero rate of Custom duty as per the guidelines of Government of India.

- (vii) Levy of safeguard duty on seamless pipes and tubes shall adversely affect competition in their tenders, as participation by foreign bidder in ONGC's tenders would reduce considerably and in some case, may even deprive ONGC of the foreign bidder's reference price for comparison with the prices quoted by domestic bidder.
- (viii) Levy of safeguard duty on seamless pipes and tubes etc would result in extra financial burden to ONGC which may adversely affect ONGC's operations.

**S. EMBASSY OF JAPAN, NEW DELHI**

Should safeguard duty be introduced on the imports of seamless pipes and tubes, Indian as well as Japanese manufacturing industry, which uses those high quality products in their processes, would be adversely affected on a large scale.

**T. EMBASSY OF MEXICO, NEW DELHI**

It was requested to exclude the Mexican exports of seamless pipes and tubes and hollow profiles of iron or non-alloy steel to India from application of any safeguard measures, since the imports of the PUC from Mexico do not exceed 3% of India's total imports, in accordance with Article 9.1 of the Agreement on Safeguards of the World Trade Organization.

**U. MINISTRY OF ECONOMY, UNITED ARAB EMIRATES**

Requested to determine whether the United Arab Emirates exports of the PUC to India are under or above de-minimis level set out in Article 9.1 of the Agreement on Safeguards.

**V. TAIPEI ECONOMIC AND CULTURE CENTER, NEW DELHI**

The total amount of importation from Taiwan (Chinese Taipei) is less than 3%. Therefore, requested to exclude imports from Taiwan (Chinese Taipei).

**W. GOVERNMENT OF ROMANIA**

**De Minimis imports:**

- (i) Silcotub SA is a steel pipes manufacturer based in Romania, controlled by Tenaris Group.
- (ii) Silcotub SA has exported to India seamless pipes not on a regular basis and not in significant amount, much less than 3% of total imports in India.
- (iii) As per the WTO regulation, Art.9.1 of the Safeguard Agreement a measure shall not be applied against a product originating in a developing country member, as long as its share of imports does not exceed 3 percent.
- (iv) Romania is a developing country; therefore the imports from the Romania Company should be exempted from the safeguard measures.

**X. EMBASSY OF EGYPT.**

***De Minimis imports:***

Exports from Egypt account for less than 3% of total imports into India during POI. Therefore, the Egyptian exports should be excluded from any safeguard measures.

10. A public hearing was held on 02.09.2013, notice for which was sent to all interested parties on 14-08-2013. In response to this notice, interested parties attended the public hearing and made their written submissions, which was circulated amongst all different interested parties in order to enable them to file rejoinders, if any. However, on their own volition, the petitioners had filed additional submissions on 21.10.2013. These additional submissions were then circulated to all interested parties and they were asked to file their comments by 27.10.2013. The comments received from the interested parties were forwarded to the domestic industry for their rejoinder by 04.11.2013, all of which was taken on record and the non-confidential version had been kept in the Public File.

However, due to change in the Designated Authority, i.e., the Director General (Safeguards) and in order to fulfill the requirements of natural justice and legal propriety, a second Public Hearing was held before the new DG (Safeguards) on 12-12-2013, notice for which was sent to all interested parties on 02-12-2013. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 and also file submissions on the updated data submitted by Domestic Industry by 20.12.2013. Copies of written submission filed by all interested party were made available to all other interested parties. Interested parties were also given an opportunity to file the rejoinder, if any, to the written submissions of other interested parties by 31.12.2013.

The individual submissions made by the domestic Industry and interested parties after 1<sup>st</sup> Public hearing are recorded in a consolidated manner along with the submissions made during the 2<sup>nd</sup> Public Hearing in the Final Findings, individually, in brief. However, written submission of those interested parties who had filed written submissions during the first and/or second Public Hearing have been taken on record and are being dealt with herein below:

11. **Views of exporting country governments during 1st public hearing:**

A. **Government of China**

(i) **Scope of the product:**

The scope of the product under consideration is overbroad. The petitioners are unable to manufacture certain products, or are not even qualified to manufacture certain grades of the PUC.

(ii) **Increased Imports:**

As per the total imports between 2011-2012 and 2012-2013, the more recent statistics even show a decreasing trend in absolute terms.

(iii) **Unforeseen Developments:**

Neither the Petition nor the Notice of Initiation offers any explanation or evidence demonstrating that certain "unforeseen developments" resulted in increased imports of the PUC.

(iv) **Interest of User Industry:**

The safeguard measures will impose extra burden on the Indian downstream users.

**B. EUROPEAN COMMISSION**

**Discrepancy in Data:**

- (i) Significant differences between the figures in the complaint and in the notice of initiation.
- (ii) With respect to the production, installed capacity, profitability, employment or inventory figure, the notice of initiation takes into account only data for the two applicants companies disregarding figures of the supporting company.

**Increased Imports:**

- (iii) Imports increased significantly in the financial year 2011-12, but decreased in the subsequent and most recent period. Thus increase in imports is not recent enough, sudden enough, sharp enough and significant enough to fulfill the most essential WTO standard.
- (iv) Increase in import until 2011-12 can be mainly attributed to one single country, which in 2011-12 represented the 73% of the share of imports into India.
- (v) No indication to conclude that the domestic industry is in a position of significant overall impairment.

**Injury & Causality:**

- (vi) During overall period considered, the sales volume of the domestic industry decreased only by 5%, corresponding to a negligible market share loss of not even 3%, production increased by 16%, employment raised by 10% and productivity by 5% .
- (vii) Even after having done with considerable investments to almost double the production capacity the domestic industry managed to increase profitability in 2011-12 by more than 25% as compared to the previous year.
- (viii) Significant increase in profitability took place exactly when imports increased. Profitability dropped in the subsequent period, but this took place when imports dropped as well.
- (ix) It appears that the significant decrease of the domestic demand (-25%) and excessive capacity building, which exceeds the domestic demand, is the factors and not the increase of imports influenced in the industry's situation in the financial year 2012-13.
- (x) The low capacity utilization rate is caused by the conjunction of an excess capacity when demand is decreasing rather than any increase of imports.
- (xi) If the production capacity had remained stable at the 2009-10 level, the utilization rate would have increased from 60% to 70% in 2012-13.

**C. EMBASSY OF ITALY**

They would submit the written submission by 06.09.2013. However, they failed to make any submission.

**D. Director of Trade Defense, Indonesia.**

**De Minimis imports:**

Indonesia as developing country's member of the WTO has privileges to be excluded from the imposition of safeguard measure if the export shares does not exceeds 3% of the India's total import share of the investigated products.

**E. DEPARTMENT FOR CO-ORDINATION, DEVELOPMENT AND REGULATION OF FOREIGN ECONOMIC ACTIVITY, MOSCOW.**

**Import Volume:**

- (i) Under Article 2.1 of the WTO Safeguards Agreement special safeguard measure may be implemented only under such conditions when the product is being imported into its territory in such increased quantities as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
- (ii) The Notification shows decline in the import volume. The decision of the Appellate body in Argentina-Footwear argument (EC) says that "even if in the course of the year, under the investigation, there is a decline in import, not the increase, it necessarily means decline in import despite its primary growth.

**Import mainly from China:**

- (iii) Country-wise import of seamless tubes, pipes and hollows shows that the major and significant share of import accounts for the goods from China. It is clear that in the specified period, there is a significant growth of import of goods, under investigation, only in case of Chinese importers. Whereas, the import from other countries cannot be characterized as suddenly increased or as increased at all. Besides, it needs to be noted that progressive increase of import volumes cannot be treated as "sharp" or "sudden".
- (iv) The loss of market by Indian national manufacturers can be explained by the high volume of import from China that not only took away the part of the market from the national manufacturers but also occupied the part of the market that earlier belonged to the importers from other countries.

**No proof of Serious Injury:**

- (v) In the course of special safeguard investigation, it is the serious damage to the branch of the national industry that needs to be proved as contrasted with the antidumping investigation where the financial damage needs to be proved. The Russian side has not seen any sufficient prove to the serious damage to the branch of the national industry.
- (vi) Russia has noticed a significant positive dynamics in the development of the national branch of India in manufacture of seamless tubes, pipes and hollows. It can be seen in the growth

of volume of sales (2010-2011 by 18%, 2011-2012 by 1,2%), employment (in 2012-2013 it increased by 10% to compare with 2009-2010) and profit (in 2011-2012 it increased by 25% in comparison with the previous year).

- (vii) In the situation of decline of some financial indicators of the national brunch and the production level in 2012-2013, the import volume (under investigation) also decreased by 12% in 2012-2013. Hence, the conclusion that the increased import causes damage to the national brunch is not fully correct

#### **Injury due to Excess capacity:**

- (viii) The Russian side is of the view that the reason for the loss suffered by the Indian national industry is not caused by the increased import but by the excessive capacity. That is why the production capacity of the national manufacturers cannot be used to the full extent.

12. The following interested parties have made the following written submissions during the 2<sup>nd</sup> Public Hearing, which are being discussed herein below:

#### **Domestic Industry:**

- A. **M/s ISMT Ltd and M/s Jindal SAW (Domestic industry) and M/sMaharashtra Seamless Limited (Supporter) (Represented by M/s ELP)**

#### **Import Data Methodology**

- i) The import quantities and values considered in the Petition were on the basis of the transaction-wise import data collected from the Directorate General of Commercial Intelligence & Statistics (DGCI&S) located in Kolkata. The data was firstly identified on the basis of parameters of ITC-HS Classification, Description and Outer diameter (O.D) size. The following descriptions were excluded from the import data and the remaining transactions were held to be Product under Consideration.
- a. OD diameter sizes above 273.1mm (Including ITC-HS
  - b. Stainless Steel, ASTM A213/ASME SA 213 and ASTM A335/ ASME SA 335 (or equivalent BIS/DIN/BS/EN or any other equivalent specifications)
  - c. Drill Collars,
  - d. 13 Chromium Grade and Premium casings/tubing
- (ii) Imports made under units such as Nos, Pcs, Bgs were excluded from being considered for the relevant import data. For those entries, where the O.D Size were provided in the Item Description, the following methodology was applied to ascertain the Volume in MT:  $((OD-THK)*THK*0.02467)*quantity\ in\ meters /1000 = MT$
- (iii) The Petitioners had provided complete disclosure of the methodology along with sample transactions to explain the process of consideration of transactions as part of the import data of the product under consideration at Annexure 5 of the Application.

- (iv) M/s. NEI and the CISA at the Public Hearing claimed that import data submitted by the Domestic Industry contains extraneous data under chapter headings 73.04, 73.06 and 98.01. It is respectfully submitted that the entries of the imports of the subject goods were observed under the other alleged extraneous chapters of 73.04, 73.06 and 98.01 which were collated in the manner prescribed above from the DGCI&S data. The same have been provided in Annexure 6 of the Petition

**Product under Consideration and ‘Like Article’**

- (v) The opposing Interested Parties have claimed that the scope of the product under consideration is too broad. In the case of *Dominican Republic - Bag and Fabric Safeguards* (WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R dated 31 January, 2012) the WTO Panel held that there is no provision in the Agreement on Safeguards that governs or mandates the selection, description, analysis or determination of the product under consideration.
- (vi) In the recently initiated investigation by the *United States International Trade Commission (USITC) into imports of Certain Oil Country Tubular Goods* (includes certain subject goods) (Inv. Nos. 701-TA-499-500 and 731-TA-1215-1223) the product under consideration is defined as

*“The merchandise covered by the investigations is certain oil country tubular goods (“OCTG”), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (“API”) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigations also covers OCTG coupling stock. Excluded from the scope of the investigations are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.*

*The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive”*

The product under consideration was defined as “oil country tubular goods” which are not classified under a single specific HS-Classification.

- (vii) The scope of the product under consideration has been specifically defined to include those products and their “like articles” specifically manufactured by the Petitioners and is not vague in any manner and adequately covers the range of the products sought to be included in the investigation.
- (viii) The Notice of Initiation as well as the Petition clearly and definitively provide the scope of the product under consideration and the various chapter headings provided in the Notice of Initiation are only indicative of the different headings under which the goods can be imported, however, it does not tantamount to being a distinct or different product merely on the ground of different types and uses, as claimed by the opposing Interested Parties.
- (ix) The other Interested Parties have not placed on record any evidence to establish that the subject goods are not capable of being imported simultaneously under different chapter headings noted in the Notice of Initiation.

**Allegation on Wider Scope Definition leading to incorrect Product Definition**

- (x) The Domestic Industry not only has the capacity to manufacture and sell the complete range of the product under consideration, it has actually manufactured and sold all the goods for which the Interested Parties have unfairly sought exclusion from the scope of the product under consideration. The petitioner relied on the following cases on the issue of like or directly competitive article:
- (a) *United States- Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan* (WT/DS192/AB/R)
- (b) *US – Lamb Safeguards*, (WT/DS177/AB/R and WT/DS178/AB/R)
- (c) *Safeguard Investigation Concerning Imports of Electrical Insulators into India from Peoples Republic of China* - Final Findings dated 27<sup>th</sup> September, 2012,
- (xi) The details of the capacity, production and sales have been verified by the Director General (Safeguards) and the production process followed for the manufacture of the different types and grades is similar and the subject goods are manufactured in the same plant.
- (xii) The product produced by the Domestic Industry and imported products are like in all essential aspects. The standards prescribed for the imports and the subject goods manufactured by the Domestic Industry are the same.
- (xiii) The petitioners have provided the manufacturing process of the Domestic Industry and claimed it is similar to the manufacturing process of the exporters. The API Licenses of the Domestic Industry were also provided to establish that all the grades manufactured by the Exporters are manufactured by the Domestic Industry.
- (xiv) The Domestic Industry and the foreign exporters from other countries compete for a common customer base in India such as ONGC, BHEL, NEI. The technology and equipment utilized by the Domestic Industry is state of the art and regarded to be of high global standards. The Domestic Industry has been at the forefront of providing the latest technology and the highest quality output to the Indian user industry. Hence, the claims of inferior quality made by the Interested Parties is baseless and unsubstantiated and is liable to be ignored.
- (xv) The imports are technically and commercially substitutable with subject goods manufactured by the Domestic Industry and are directly competitive with subject goods manufactured by the Domestic Industry.

**Claim of Exclusion of certain grades from scope of investigation**

- (xvi) The Domestic Industry outrightly denied the claims made for the exclusion of certain grades and respectfully submits that the Domestic Industry is engaged in and can manufacture all the grades and types impugned by the Interested Parties.
- (xvii) The Domestic Industry has provided information relating to production and sales of the following grades mentioned below along with relevant evidence in the form of invoices for sample sales to examine the production and sales capacity of the Domestic Industry.
- 34CrMo4
  - SAE52100
  - SAE8720
  - SUJ3
  - C-95
  - J-55 / K-55
  - L-80
  - N-80
  - P-110

- Q-125
- 9-5/8" OD Casing
- Higher Grades of 9-5/8" Casing Pipes
- Onshore and Offshore Applications
- Mechanical Tube for Needle Roller Bearings(NRB Tube) with grade JISG-3441, SCM 415TK having OD 20 mm to 50 mm
- 42 mm OD
- OCTG Tubes
- 4-1/2 Tubing
- Drill Pipes
- OCTG Grade with N80Q and L80 having an OD of 9-5/8" or 7inches
- Line Pipe of OD not exceeding 273.1 mm
- Boiler Tube of OD not exceeding 273.1 mm
- Mechanical Tube for Crane (Crane Tube)
- Mechanical Tube for Needle Roller Bearings (NRB Tube)
- Mechanical Tube for bearing tubes
- Rifle Tube
- High Pressure Cylinder Tubes

#### **Manufacture of High Pressure Cylinders**

- (xviii) The Domestic Industry has submitted that the Indian Industry have the capability to manufacture the high pressure seamless steel gas cylinder pipes and tubes. The standard sizes of seamless tubes used for manufacturing high pressure gas cylinders (OD x THK): 108 x 3.2, 139.8 x 4.2, 165.1 x 4.4, 232 x 5.4, 267 x 6/7.5, 273 x 7.6
- (xix) The Domestic Industry has provided evidence, such as the purchase order placed on one of the constituents of Indian Industry for supply of High Pressure Cylinder Tubes to establish that production capability of the Indian Industry to manufacture the said high pressure cylinders.
- (xx) The Domestic Industry reiterated that the import prices of the said high pressure seamless steel gas cylinder pipes and tubes are much lower than the reasonably expected selling price of the Indian industry and the Industry is not even able to recover its costs because of pressure from low import prices.
- (xxi) The Domestic Industry submitted that owing to under-cutting by the low priced imports of the high pressure seamless steel gas cylinder pipes and tubes into India, the imported prices have prohibited the Petitioners from making any commercial sales to gas cylinder manufacturers of the high pressure seamless steel gas cylinder pipes and tubes at reasonable prices including profits.
- (xxii) It is submitted by Domestic Industry that as producing high pressure seamless steel gas cylinder pipes and tubes is commercially unviable, it would be imprudent on the part of Petitioners to seek required approvals from Chief Controller Of Explosives and Petroleum and Explosive Safety Organisation and once the same have been obtained to hold the same for future orders. Once the safeguard duty is levied, the Petitioners will be in a position to supply at profitable prices to the gas cylinder manufacturers and obtain the necessary approvals.

#### **Exclusion of Rifled Tubes**

- (xxiii) The Domestic Industry denied that M/s ISMT Ltd. is not engaged in the manufacture of *Rifled Tubes*.

(xxiv) The Domestic Industry submitted that *Rifled tubes* are a type of boiler tubes, itself manufactured and sold by the Domestic Industry. M/s BHEL has not only bought but also, used rifled tubes manufactured and sold by M/s ISMT close to the tune of 1200 tonnes in 2010-11 and about 2741 tonnes in the entire injury period from 2009-10 till the Q1-2013-14. It had merely temporarily put on hold further procurement for some techno-commercial reasons. The domestic Industry has submitted the Invoices of purchases made by M/s BHEL of *Rifle tubes* from M/s ISMT Ltd.

(xxv) The Domestic Industry submitted that credible boiler manufacturers in the country have continued buying rifled tubes from the Domestic Industry. M/s ISMT has sold about 3354 tonnes of Rifled Tubes in India in the entire Injury period from 2009-10 till Q1-2013-14 which includes sales to Indian users apart from M/s BHEL.

(xxvi) The Domestic Industry submitted the recent invoices for sale made to other boiler manufacturers

#### **Supply to NEI Ltd**

(xxvii) As regards the claim made by M/s NEI Ltd concerning alleged supply and quality constraints the Domestic Industry denied that there is any regular supply or quality constraints with the subject goods supplied by the Domestic Industry.

(xxviii) M/s NEI Ltd. has been regularly procuring the subject goods from the Domestic Industry and in 2012-13 has procured about 219 MT for a total value of about Rs. lacs 190 and in Q1-2013-14 has procured about 175MT for a total value of about Rs. lacs 144

(xxix) There are several other domestic manufacturers of bearings which have larger domestic share of production than M/s NEI and M/s NEI cannot claim to be a representative of the entire Indian Bearings Industry. The Domestic Industry submitted the recent invoices for sale made to other bearing manufacturers.

(xxx) As regards the allegations concerning quality issues with the supply of the subject goods. M/s NEI has not provided an iota of evidence, in the form of a test report concerning the defective quality of the subject goods supplied by the Domestic Industry. No evidence has been placed on record by M/s NEI to establish any such regular or continuous defective supply by the Domestic Industry. The Domestic Industry submitted that M/s NEI presently continues to procure the subject goods from the Domestic Industry, despite all the alleged defective supply constraints, which clearly establishes that the claim made by M/s NEI is misconceived and fallacious.

#### **Submissions made on behalf of Exporters from Japan**

(xxxi) The Exporters from Japan have also submitted that the subject goods being imported by them to India are not *like articles* and are liable to be excluded. The Domestic Industry submitted that there is no evidence placed on record to establish that the subject goods exported to India by the Japanese Exporters are of superior quality or are dissimilar from the subject goods manufactured by the Domestic Industry.

(xxxii) No disclosure has been made by the Exporters on the precise standards or the manufacturing process and the absence of such disclosure clearly establishes that there is no real difference and the claim of the Japanese Exporters to the contrary is false and uncorroborated.

(xxxiii) The Domestic Industry submitted that the instant case is that of safeguards investigation and not an anti-dumping investigation, whereby the duties are levied on imports of all products, the exclusion of exports from Japan on the alleged grounds of quality as claimed by the Exporters is contrary to the basic principles of non-discrimination enshrined in the WTO law on Safeguards.

- (xxxiv) The Japanese Exporters have merely made claims of some alleged “cutting edge technology”. In the case of *Safeguard investigation concerning imports of Carbon Black – Final Findings* dated 31<sup>st</sup> July, 2012, while examining the production process in China for the manufacture of carbon black, which depended upon Coal Tar Oil was different and even less costly as compared to the production process of the Indian industry, which relied upon Carbon Black Feed Stock, the Director General (Safeguards) considered the same as like articles and imposed the safeguard duties.
- (xxxv) The Domestic Industry submitted that the mere fact of higher price cannot be the sole determinant factor for exclusion of the articles, and the alleged higher prices can be on the basis of varied reasons included favourable contracts or high freight costs for transport.
- (xxxvi) The Domestic Industry manufactures the entire range of products in the scope of the Product under Consideration and the imports from Japan are technically and commercially substitutable with the subject goods manufactured by the Domestic Industry, and are directly competing with the customers of the Domestic Industry.
- (xxxvii) As regards the submission that price injury can be addressed only in an anti-dumping investigation. It is reiterated by the Domestic Industry that such a claim is baseless and against the basic tenet that anti-dumping and safeguards remedies can be applied without prejudice to each other and there is no restriction on even the simultaneous application of safeguard and anti-dumping duty.
- (xxxviii) The exporters from Japan have also claimed that the data concerning the subject goods was liable to be segregated in accordance with end uses or grades and hence have questioned the manner in which the Domestic Industry has submitted the data. Pertinently, the Exporters have not segregated the data pertaining to their exports to India in accordance with end uses or grades in the Exporters Questionnaire.

#### **Inclusion of Non-Seamless Pipes and Tubes**

- (xxxix) As regards the claim of the opposing Interested Parties concerning inclusion of welded pipes and tubes using electrical resistance welding (“ERW pipes”) to be included within the scope of the investigation as ‘like articles’. The Domestic Industry submitted that these Interested Parties have themselves submitted that the product scope is too wide, hence, inclusion of ERW pipes would definitely amount to widening the scope of the product under consideration and the same is contradictory to the submission of the opposing Interested Parties themselves.
- (xl) The Domestic Industry submitted that the claim of the opposing Interested Parties is based on the Finding of the USITC concerning “oil country tubular goods” wherein the product scope specifically included ERW Pipes and Tubes as “Oil Country Tubular Goods”. Further, the USITC held that Welded and Seamless products are interchangeable for oil exploration applications. The opposing Interested Parties have also admitted to the limited common inter-changeability of ERW and Seamless Pipes and have not been held to be *like articles* otherwise. The finding of the USITC for ERW Pipes and Seamless Pipes to be *like articles* in the said investigation is on account of the goods being specifically included in the scope of the product under consideration, which in the instant case is limited to Seamless pipes and Tubes and cannot include the ERW pipes or tubes. Hence, the expansion sought by the opposing Interested Parties at such a belated stage is ill-founded and unjustified. Relied upon following cases (a) United States – final dumping determination on Softwood Lumber from Canada (WT/DS264/R) (b) Korea- Taxes on Alcoholic Beverages [WT/DS75/AB/R, WT/DS84/AB/R dated 18 January 1999],

- (xli) It is submitted by the domestic industry that all tenders by Indian Users clearly specify the requirement of “Seamless Pipes” or “ERW Pipes” *separately*. Tenders and Bids floated by all Indian users such as ONGC,GAIL, IOCL, BPCL do not permit alternative supply of “ERW” pipes in place of “Seamless” pipes and the application in India are clearly defined as “only” seamless or “only” ERW which is different from the other jurisdictions.
- (xlii) A copy of a recent tender floated by M/s ONGC submitted by the Domestic Industry shows that the tender specifications clearly and unambiguously provide for procurement of “Seamless pipes only” and there is no permission to alternatively supply welded or ERW pipes.
- (xliii) The Indian User Industry does not permit the use of seamless pipes and ERW pipes interchangeably and they are not ‘like articles’ Hence, the inclusion of “ERW” pipes within the scope of the investigation is erroneous.

### **Confidentiality and Violation of Principles of Natural Justice**

- (xliv) The Petitioners denied that the Domestic Industry had not filed the Adjustment Plan and the Questionnaire Response till after the Public Hearing. The Domestic Industry has filed the individual Adjustment Plan for each company prior to the public hearing vide communication dated 29<sup>th</sup> August, 2013.
- (xlv) These Interested Parties appear to be relying upon the decision of the Hon’ble Supreme Court in the case of *Automotive Tyre Manufacturers Association vs. Designated Authority* reported at 2011 (263) ELT 481 (SC), which is reference to the Hon’ble Designated Authority of the Directorate General of Anti-dumping and Allied Duties, which is concerned with the imposition of anti-dumping duties and has no significant, in fact not even a passing reference to the Director General (Safeguards).
- (xlvi) As per the provisions of confidentiality the parties providing information on confidential basis are required to furnish non confidential summary thereof and if, in the opinion of the party providing such information, such information cannot be summarized, such party may submit a statement of reasons why summarization is not possible. The Petitioners submitted that the Domestic Industry has provided the complete information to the Director General (Safeguards) and has requested proprietary information that is not available in the public domain to be kept confidential, as the disclosure will be harmful to the interests of the company. The Domestic Industry has, *suomoto*, provided all the mandated as well additional information to the Director General (Safeguards) with reasonable non-confidential summaries.

### **Non-Provision of Data of the Supporter**

- (xlvii) M/s. Maharashtra Seamless Limited, who is a producer of the subject goods has expressly supported the petition. In “Annexure 10” of the Petition clearly provides the injury data for the supporter which has been provided at the time of initiation itself.
- (xlviii) M/s. ISMT Limited, M/s. Jindal SAW Limited are held to be majority under the definition of the Domestic Industry and therefore have complied with the Section 8B(6)(b) of the Act.
- (xlix) M/s. Maharashtra Seamless Ltd. has chosen to be a “Supporter” and therefore under the consistent practice of the office of the Director General (Safeguards) they have filed also the requisite data which they ought to provide i.e. production and sales data etc.
- (l) M/s. Maharashtra Seamless Ltd. has fully co-operated with the DirectorGeneral(Safeguards) and has also filed the post-initiation Domestic Producer Questionnaire Response with the Director

General (Safeguards) within the prescribed time limit. The Petition, the written submissions as well as the rejoinder filed by the Domestic Industry also provides an analysis of the data for the industry as a whole, including the data of the supporter.

- (li) The submission of the Interested Parties that in case the relevant costing data of M/s Maharashtra Seamless Ltd. is also considered, there would be no injury is fallacious, misconceived and unsubstantiated. It is reiterated by the Domestic Industry that the injurious effects of increased imports is not only felt by the Domestic Industry but also by the other major producer of the Product under Consideration as well.

#### **Increased Imports of Subject Goods into India**

- (lii) The imports have increased in absolute terms as well as in relation to the production, sales and demand, during the injury period:

- a. On an end-point to end point-basis, the imports have increased by 19% in Apr'12-Jun'13 as compared to 2009-10, with highest increase by 38% intermittently in 2011-12.
- b. Further the imports have increased in proportion to the production and sales of the Domestic Industry as well as the demand in the country.
- c. The percentage of imports as compared to the production of the Domestic Industry has increased by 8% in Apr'12-Jun'13 and,

- (liii) The imports indicate an increasing trend from 2009-10 to 2011-12 which increased by 38% and thereafter marginally declined owing to the initiation of the safeguard investigation. The domestic Industry placed reliance on the following cases (a)Argentina – Footwear (WT/DS121/AB/R dated 14<sup>th</sup> December, 1999) (b)US — Line Pipe(WT/DS202/R dated 29 October 2001)(c) Argentina — Footwear (EC)(WT/DS121/R dated25 June 1999) to establish a significant surge in imports and the imports have increased suddenly enough, sharply enough, recently enough to not just cause serious injury to the Domestic Industry but also threaten to continue causing such injury

- (liv) The Domestic Industry had filed the application in November, 2012, which coincided with the period that reflects the highest surge in the increase in imports. It is submitted by the Domestic Industry that it was only after the filing of the application by the Domestic Industry that the imports have marginally reduced, but have yet remained at very high levels, in absolute terms as well as in relation to the production, sales and demand in India. The Domestic Industry submitted that it is apparent that exporters are resorting to delay their shipments to India to mislead the investigation.

#### **Imports from Other Sources**

- (lv) The imports from the European Union in Apr'12-Jun'13(annualized) have shown a sharper increase than Chinese imports and have been constantly on a rise. Imports from European Union have increased by 51% in Apr'12-Jun'13 as compared to 2009-10 whereas imports from China PR have increased by 25% in Apr'12-Jun'13 as compared to 2009-10.
- (lvi) The Indian market will also be susceptible to imports from various other sources in light of various trade remedial actions resorted by major user countries around the world such as EU, US, Indonesia, Mexico.

#### **Unforeseen Developments**

(lvii) The Domestic Industry submitted the list of several of trade remedial actions by various countries, which are either under investigation or whereby measures are in force.

Trade Remedies Instruments	Imposing Countries	Affected Countries	Range of Duties
Anti-Dumping	US	China	48.99% – 98.74%
Subsidies	US	China	13.66% – 53.65%
Anti-Dumping	Canada	China	39.00% – 166.9%
		USA	13.85%
Subsidies	Canada	China	91.26 – 4,070.00 RMB/Metric Ton
Anti-Dumping	EU	China(Now terminated)	48.3% – 71.9%
Anti-Dumping	China	EU and Japan	9.2% – 14.4%
Safeguard (4 years)	Indonesia	Global Measure (excluding developing country exceptions)	Rp 28,429 per kg –Rp 27,126 per kg (on a reducing scale year on year)
Anti-Dumping	US	India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam	Ongoing Investigation
Subsidies	US	India and Turkey	Ongoing Investigation

(lviii) As a result of the unforeseen trade remedial actions on imports by major consuming sources such as US and EU, especially against imports from China, resulted in diversion of these imports to India, leading to a surge in imports into India.

- a. Chinese exports to USA have decreased by 65% and at the same time the Chinese exports to India have increased by about 60%. This is clearly attributable to the imposition of trade remedial measures on exports from China PR
- b. Owing to trade remedial actions by EU against China, the exports to India have increased by 46%.

**China exports to USA**

Period	Net Weight (MT)	Indexed Quantity	Increase/ (Decrease) in MT
2009	4,06,502	100.00	
2010	1,09,362	26.90	(2,97,140)
2011	1,52,576	37.53	(2,53,927)

2012	1,41,026	34.69	(2,65,477)
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**China exports to India**

Period	Net Weight (MT)	Indexed Quantity	Increase/ (Decrease) in MT
2009	2,73,612	100.00	
2010	4,48,586	163.95	1,74,974
2011	5,35,140	195.58	2,61,528
2012	4,32,113	157.93	1,58,501

**EU exports to China**

Period	Net Weight (MT)	Indexed Quantity	Increase/ (Decrease) in MT
2009	1,20,301	100.00	
2010	86,411	71.83	(33,890)
2011	1,03,499	86.03	(16,802)
2012	78,159	64.97	(42,142)

**EU exports to India**

Period	Net Weight (MT)	Indexed Quantity	Increase/ (Decrease) in MT
2009	49,230	100.00	
2010	60,005	121.89	10,775
2011	63,153	128.28	13,923
2012	71,988	146.23	22,758

(lix)

The Domestic Industry submitted that trade remedial actions in various markets have been considered as a determinant of 'Unforeseen Development' by the Indonesian Safeguards Authority. The relevant excerpt in Notification of a *Proposal to Impose a Measure Under Article 12.1(B) of The Agreement on Safeguards* on a similar product under consideration (G/SG/N/8/IDN/14; G/SG/N/10/IDN/14) on finding a Serious Injury or Threat thereof caused by Increased Imports dated 19<sup>th</sup> March 2013 reproduced below:

*“According to World Steel Association-Statistical Year Book 2011, global production of the Subject Good has increased in line with demand underpinned by oil and gas exploration. However, trade measures taken in several major markets, that could not have been foreseen, has resulted in trade deflection accounting for the significant increase in imports to Indonesia.”*

### **Unexpected drop in consumption in European Markets**

- (Ix) The European markets have reported an unexpected drop in demand as a result of the massive capacities of the subject goods in foreign countries and the foreign producers have resorted to increased exports to India.

*“On the basis of those data, it was found that the Union consumption decreased by 34 % from 2,597,110 tonnes to 1,724,743 tonnes between 2008 and the RIP (April 10-March 11).”*

- (Ixi) The Domestic Industry quoted the *PRWeb Report* dated December, 16, 2013 and *MetalBulletin Research Report - January 2012* to indicate the slowdown in the EU market

- (Ixi) Eurozone was in a state of recession throughout 2012 and first quarter of 2013:

#### **EUROZONE GDP (Source:Eurostat)**



- (Ixi) The Domestic Industry submitted that as a result of the unexpected slow-down in the EU markets, the consumption in EU declined and producers from EU became export-centric and have resorted to focus on large-scale exports to growing markets such as India and China.

### **Additional Capacities in China PR and new capacities planned in United States**

- (Ixiv) It is submitted by the Domestic Industry that the Chinese have been increasing capacities despite sanctions from various major markets which is leading to further diversion of imports to India. M/s SMS Meer Germany had delivered the world’s largest PQF plant for seamless tubes with diameters up to 20 to a Chinese consortium consisting of the M/s Tianjin Pipe Corporation and the M/s Jiangsu Shagang Group, M/s Huaigang Special Steel Company and production was due to start in the beginning of 2012. The capacity of the new PQF plant in China was 500,000 tonnes of seamless tubes per year and the project was said to represent the largest production facility for seamless tubes in China.

- (Ixv) There have also been new plants set up in United States by M/s Vallourec with initial capacities as high as 350,000 MT (expected to go upto 500,0000 MT), which have started producing pipes since November 2012.

- (lxvi) In Saudi Arabia, M/s Vallourec has completed the acquisition of M/s Zamil Pipes in 2011 which provides M/s Vallourec with ready-to-run heat treatment capacity and threading facilities of up to 100 kt of pipe per year.
- (lxvii) German company M/s Benteler Steel Tube has invested \$900 million to set up a new steel tube plant in the United States which is expected to be running by 2015.

**Unforeseeably low pricing of imports despite increase in raw material costs**

- (lxviii) It is submitted that the raw material prices were increasing throughout the course of the Period of Investigation, however, despite the global increase in raw material prices, the import prices do not commensurate with the increase in cost of to make and sell product under consideration in India.

	2009-10	2010-11	2011-12	2012-13	Apr 12- Jun13(Ann)
Indexed cost of sales	100.0	107.2	116.8	122.5	124.0
Indexed import price	100.0	90.0	99.1	104.4	104.5

**Serious Injury and Threat of Serious Injury**

**Production:**

- (lix) The production of the Domestic Industry has been severely impacted by imports of the subject goods in the due to increasing imports. The production of Domestic Industry in 2009-10 was 224216 MT and increased upto 318968 MT in 2011-12. However, it has significantly declined in 2012-13 to 254316 MT and in Apr'12-Jun'13 (Annualised) to 2,47,827 MT by more than 20% as compared to 2011-12

**Capacity Utilisation:**

- (lxx) The Capacity Utilisation shows a significant decline due to increased imports. The capacity utilisation of Domestic Industry. In 2009-10, it was 60% and in 2012-13 it is dropped to 37%. Idle Capacity of the Domestic Industry has significantly increased despite increase in demand.

**Domestic Sales:**

- (lxxi) The domestic sales of the Domestic Industry have been grossly affected due to imports of the subject goods into India. The Domestic Industry sales in 2009-10 were 143,017 MT and increased up to 170,826 MT in 2011-12, however, it has declined steeply in 2012-13 to 141,588 MT and 1,38,726 MT for Apr 12-Jun 13 (Annualised).

**Demand and Market Share:**

- (lxxii) The demand of the subject goods has increased over the period of investigation upto 24%. However, the sales of the Domestic Industry have increased only by 16%, whereas the imports have increased by 28%. Hence, the increase in imports is at a greater rate than the increase in demand. On a year-on-year basis, in 2012-13, the demand increased by 13%, however, the sales of the Domestic Industry declined by 24% and the imports increased by 42%.

**Injury to Domestic Industry including Supporter:**

(Ixxiii) All the vital parameters including production, capacity utilization, sales of Domestic Industry including supporter have also been undertaken and clearly reveal similar trends as that of the Domestic Industry.

**Profit and Loss:**

(Ixxiv) The increased imports at significantly low prices into India has caused a decline in profits of the Domestic Industry, so much so that it has not recovered a reasonable margin based on capital employed. Although the cost of sales of the Domestic Industry increased by 22% in 2012-13, the selling price of the Domestic Industry increased by merely 17%. This situation is bound to get worse in 2013-14 as recent tenders have been awarded to foreign suppliers at extremely low prices, which are even lower than the cost of Domestic Industry.

Particulars	2009-10	2010-11	2011-12	2012-13	Apr 12--- Jun13(Ann.)
Applicant Selling Price (Rs./MT)	****	****	****	****	****
Trend in Applicant Selling Price	100	106	114	118	117
Cost of Sales (Rs./MT)	****	****	****	****	****
Trend in Cost of Sales (Rs./MT)	100	107	117	123	124
Landed Price of Imports(Rs./MT)	66,580	59,934	65,964	69,503	69,632
Index of Landed Price	100	90	99	104	105
Landed Price of Imports (USD/MT)	1378	1297	1369	1271	1262
Trend in Landed Price	100	94	99	92	92
Profit/(Loss) (Rs./MT)	****	****	****	****	****
Trend in Profit/(Loss) (Rs./MT)	100	86	64	43	51
Underselling %					25-35%

**Price Effect:**

(Ixxv) The cost of sales has increased by 24% in the period of investigation, in line with the increase in raw material prices, In order to compete with the suppressed landed price of the imports, the Domestic Industry could increase the selling prices by only 17%. The analysis of the landed values in USD terms, clearly delineates that the prices of imports have drastically declined by about 10% despite the 24% increase in costs.

- (lxxvi) Although there is minimal under-cutting, there is significant under-selling and the Domestic Industry is being forced to sell even below the cost of sales.

**Annual Reports of Domestic Producers:**

- (lxxvii) ISMT Ltd. & Maharashtra Seamless Ltd Annual Reports for FY 2012-13 indicated that their operations were adversely affected due to voluminous imports at lower prices from China and other countries

**Threat of Serious Injury:**

**Trade Remedial Measures in Major Consuming Markets:**

- (lxxviii) It is submitted by the Domestic Industry there are various trade remedial actions taken by major markets across the globe including China, EU, US, Mexico and Indonesia to protect its domestic industry. This has led to closure of markets for exporting countries such as China, EU, US and Russia, whereas India remains to be a price-attractive market. Hence, there is a clear and imminent threat of continuation of imports of the subject goods into India.
- (lxxix) The market share of the Domestic Industry has already been retarded by the increased imports of the subject goods. In light of the unabated imports of the subject goods, it is likely to lead to a further decline in the market share of the Domestic Industry.

**Recent Initiation of Anti-dumping and Countervailing Duty Investigation by USITC:**

- (lxxx) The USITC has initiated an antidumping investigation into imports of Certain Oil Country Tubular Goods(which includes certain subject goods) and the subject countries of the USTIC investigation are India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam. It is submitted by the Domestic Industry that in the absence of any safeguard duty protection to the Domestic Industry it is certain that exports from these sources would be diverted to India, thereby further aggravating injury to the Domestic Industry.

**Loss of Recent Tenders:**

- (lxxxi) The Domestic Industry has lost the substantial quantities in recent ONGC and OIL India tenders to foreign suppliers, which have been granted more than 80% of ONGC tenders and more than 57% OIL India tenders. Such unabated imports of the subject goods are causes and threaten to cause serious injury to the Domestic Industry and Indian Industry as a whole.

**Addition of New Capacities:**

- (lxxxii) New capacities have been installed in China PR as well as US and Brazil. Further, there is significant idle capacity in EU. Hence, in the absence of any safeguard duty protection to the Domestic Industry, there is a clear threat of further exports from these sources into India leading to continued injury to the Domestic Industry.

**Causal link:**

- (lxxxiii) There is a direct causal nexus between the increased imports and the serious injury to the Domestic Industry. The landed price of imports is significantly lower than reasonable costs and the selling prices of the Domestic Industry are determined by the import prices. Consequently, production, capacity utilization, sales, profits, return on investment and cash flow is declining due to continued presence of low price imports.

- (lxxxiv) Given the low prices offered by the foreign producers, the imports are surging further despite low prices offered by the Domestic Industry. The Domestic Industry is forced to reduce its prices at lower than cost of sales. As a result of the increased imports, there is a substantial increase in the market share of imports and reduction in market share of the Domestic Industry.
- (lxxxv) Decline in market share of the Domestic Industry has adversely impacted the production and capacity utilization of the Domestic Industry. It is thus evident that injury to the Domestic Industry has been caused by the increased imports.
- (lxxxvi) The Domestic Industry relied on the WTO Panel in Argentina – Footwear (EC) and the WTO Appellate Body in its Report in Wheat Gluten (WT/DS166/AB/R dated 22 December 2000)

**Adjustment Plan:**

- (lxxxvii) The Domestic Industry had submitted an adjustment plan along with the Petition, detailing the efforts planned to be taken to make a positive adjustment to import competition, which the Domestic Industry plans to effectuate over a period of 2-3 years. The Domestic Industry has provided specific steps regarding particular cost-reduction measures that it plans to undertake to facilitate the positive adjustment and has duly complied with the requirement under the Act and the Safeguard Duty Rules.

**Public Interest:**

- (lxxxviii) The Domestic Industry have over the years, developed the capability to support the domestic user sector and this has been made possible through huge investments in technology up-gradation and human resource development. The Domestic Industry is at a critical stage and requires immediate relief to prevent deterioration due to aggressive marketing and low priced imports by foreign producers as India is a price attractive market.
- (lxxxix) The surge in low priced imports will lead to irreparable damage to the industry in the form of:
- a. Loss of employment: The Domestic Producers provide much larger employment, both direct and indirect, as compared to the exports. In case no safeguard duty protection is granted to the Domestic Industry, the Domestic Industry would have no option but to resort to wide-scale retrenchment to reduce the losses.
  - b. Loss of revenue to the Government on account of taxes: The poor financial performance and decline in profitability of the domestic producers, caused by the increased imports of the subject goods has impacted the taxes paid by the companies, which has resulted in a loss of revenue to the Government.
  - c. Increased outflow of precious Foreign Exchange: Loss of revenue to the Government and outflow of Foreign Exchange is a double edged sword which is ought to hurt the public interest of India in a longer run.
- (xc) The domestic industry is a vital pillar for India's strategic growth in power and oil exploration and indigenously caters to the demand.

**Impact on ONGC:**

- (xci) imports of seamless products on an annualized basis is only about 2.3% of total imports of ONGC and its overall impact on its operations will be negligible, especially its profitability which is Rs. 209 billion.

Particulars	Value in Million Rs.	Source
Regular Casing	4890.08	RTI Reply
EUE Tubing	1789.51	RTI Reply
Total Procurement for 18 months (Apr 11 - Sept 12)	6679.59	RTI Reply
Annualised Imports of Seamless Products	4453.06	Computed
Total Imports by ONGC (2012-13 Annual Report)	193863.19	Page 104 of Annual Report
	%	
% of Seamless products in overall imports by ONGC	2.30	Computed

#### Impact on Bearings Industry:

- (xcii) There is minimal impact on the bearing industry – SKF is taken as sample being one of the largest companies in India. It should be noted that the bearing industry is profitable (SKF's pre-tax net profitability was about 13% in 2012) and can absorb the incremental cost on account of Safeguard Duty – which does not affect all its products anyways – without burdening its customers.

Bearing Symbol	Ring Type	Input Weight	Current Tube Price	Ring Price	Bearing Price*	Difference as a % of Bearing Price @ 35% Safeguard Duty (Year 1)	Difference as a % of Bearing Price @ 25% Safeguard Duty (Year 2)	Difference as a % of Bearing Price @ 15% Safeguard Duty (Year 3)
		Kgs	Rs/Kg	Rs/No	Rs/No	%	%	%
6205	Outer	0.103	91.85	9.46				
	Inner	0.074	91.85	6.80				
	Total			16.26	294.00	1.94	1.38	0.83

6206	Outer	0.17	91.85	15.71				
	Inner	0.11	91.85	9.92				
	Total			25.63	441.00	2.03	1.45	0.87
6304	Outer	0.13	91.85	11.48				
	Inner	0.07	100.67	6.85				
	Total			18.33	295.00	2.17	1.55	0.93
6305	Outer	0.18	91.85	16.81				
	Inner	0.10	91.85	9.37				
	Total			26.18	336.00	2.73	1.95	1.17

- (xciii) It is in larger public interest to impose safeguard duty on the imports of the subject goods into India and afford immediate protection to the nascent Domestic Industry and protect the safeguard the growth and direct and indirect employment opportunities created by the Domestic Industry.

**B. M/s Vallourec Tubes, M/sTubosReunidos Industrial SLU, Spain and M/s Mertex U.K Limited.(Represented by Amarchand&Mangaldas& Suresh A. Shroff & Co)**

**Petitioners are trying to abuse the provisions of Safeguard Measures**

- (i) It is submitted that recourse to imposition of safeguard measures may be taken only as an emergency action, in special and exceptional circumstances, as it is intended to give the domestic industry temporary and short term protection against the imports, in order to enable it to adjust itself to the increased imports. Respondents relied upon the ruling of the Appellate Body in the case of Argentina – Safeguard measures on imports of footwear
- (ii) There has to be increased imports of the Seamless Pipes, Tubes and Hollow profile of iron or non alloy steel into India under such conditions so as to cause serious injury i.e. to have an overall impairment in the position of the domestic industry or threaten to cause serious injury i.e. a clear and imminent danger posed by the imports.
- (iii) It is submitted that contrary to the levy of anti dumping duty that is imposed to rectify the trade distortive effect of dumping and re-establish fair trade, a safeguard measure amounts to restriction of fair trade and thus should be used as a temporary measure only in very rare and extraordinary circumstances.
- (iv) From the import statistics as provided by the Petitioners in the Petition as well as the updated statistics till June, 2013 in pursuance of the instructions of the DGS after the public hearing, the % increase or decrease per year in relation to the previous year is as follows: 7.65%, 20.14% & (-20.23%). Therefore, a perusal of the aforesaid analysis would reveal that though imports had increased by merely 20.14% and 7.65% in the FY 2011-12 as compared to 2010-11 and in the FY 2010-11 as compared to 2009-10 respectively, imports due for FY 2012-13 in fact registers a decrease of 20.23% as compared to FY 2011-12. An analysis of the data reveals a trend of decrease in imports for current year let alone an increase, or a drastic or serious increase in imports.

- (v) It is further submitted that for the FYs 2005-06, 2006-07 and 2007-08, the same Petitioners filed a petition seeking imposition of anti dumping duties on the PUC stating that imports of the PUC from countries apart from China P.R. were either de minimus or at higher prices. The said investigation was terminated by the DGAD.
- (vi) It is submitted that had the Petitioners not been aware of the progressive increase in imports, they would have preferred to file a petition seeking imposition of safeguard duties earlier itself, instead of first filing a petition seeking imposition of anti dumping duty. Therefore it is maintained that the imports have neither been sudden nor has it been unforeseen.
- (vii) The Domestic Industry's own averment show that in most of the countries wherein the PUC is being subject to trade remedy action concerns either anti dumping actions or subsidy actions which are source specific and not against the world at large like a safeguard investigation.
- (viii) With regards to unforeseen trade remedial measures in the communication dated 21.10.2013 by the Petitioner it is submitted that the data presented by the Petitioner gives a complete different presentation of the facts as it can be noted that in most of the cases mentioned, a very narrow scope of welded and seamless OCTG are concerned and further that most of the subsidy cases are linked to an AD investigation and should not be looked at separately. It is further stated that but for the exception of two cases, it is only concerning AD and CVD investigation against China.
- (ix) The products involved in the following referenced investigation has little bearing on the present investigation pending before the DGS.

Trade Remedies Instruments	Imposing Countries	Affected Countries	Range of Duties	Product scope	Comments
Anti-Dumping	United States (US)	China	48.99% – 98.74%	Case from 2009 Standard line and pressure pipe	Old case only partial identical scope as this investigation
Subsidies	US	China	13.66% – 53.65%		
Anti-Dumping	Canada	China	39.00% – 166.9%	Case from 2009 Welded and seamless carbon and alloy OCTG cases	Old case only very limited identical scope as this investigation
Subsidies	Canada	China	91.26 – 4,070.00 RMB/Metric Ton		
Anti-Dumping	European Union (EU)	China	48.3% – 71.9%	Case from 2011 Stainless seamless pipe	Scope fully different from the one of investigation
Anti-Dumping	EU	Russia, Ukraine	12.3% – 35.8%	Case from 2006 reviewed Pipe with OD up to 406,4mm	Very old case with different scope

Anti-Dumping	China	EU and Japan	9.2% – 14.4%	High performance stainless pipe	Scope fully different from the one of investigation
Safeguard (4 years)	Indonesia	Global Measure (excluding developing country exceptions)	Rp 28,429 per kg –Rp 27,126 per kg (on a reducing scale year on year)	Case from 2012 OCTG up to 14" with a yield strength equal or above 750000psi	Very limited identical scope as this investigation
Anti-Dumping	US	India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam	Ongoing Investigation	New case from July 2013 welded and seamless OCTG	Case started after opening of the present investigation and very limited identical scope as this investigation
Subsidies	US	India and Turkey	Ongoing Investigation		

- (x) The very thrust of the Petitioner’s argument regarding “*Unforeseen Trade Remedial Actions*” is also misleading as most measures are in force since 2008-2009. It is further submitted that only the Indonesia- Safeguard measures are new and the US antidumping investigations against nine countries (India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam) as well as countervailing investigations against two countries (India and Turkey) have been opened in August 2013 after start of the present investigation.
- (xi) The data on exports from EU to India is grossly erroneous.

Errors in Volume: According to the annex “*Import data - Jan to Mar 2013 (DGCIS).xls*” provided by the Petitioner 30% of imported volumes would come from line 52 of Tab PUC cat. 73041910 tubes originating from Spain (27.315 kt out of 93.515kt). But according to statistics from the European Customs database, total exports to India of the cat. 73041910 for Q4 2012 and Q1 2013 reach only 109t;

Errors in Prices: The unit price of this 27.3kt of couplings would be 655Rs/t (which would be equivalent to ~ 10\$/t). For imports of cat. 73041990 tubes originating from the European Union, the file reports a volume of 4.3kt at a price between 900 and 1300 \$/t (depending on the exchange rate used). But according to statistics from the European Customs database, exports to India of the cat. 73041990 for Q4 2012 + Q1 2013 have an average price of 5500\$/t.

Errors regarding Classification: The Petitioner appears to have wrongly classified certain heads under the PUC. In this regard, Vallourec states that Cat.7341910 and cat. 7341990 should cover only Line Pipes. But in the data presented by the Domestic Industry, descriptions of some items from those categories are not at all related to Line Pipes (example: Drill tube, Alloy Steel, Tubes for Bearings).

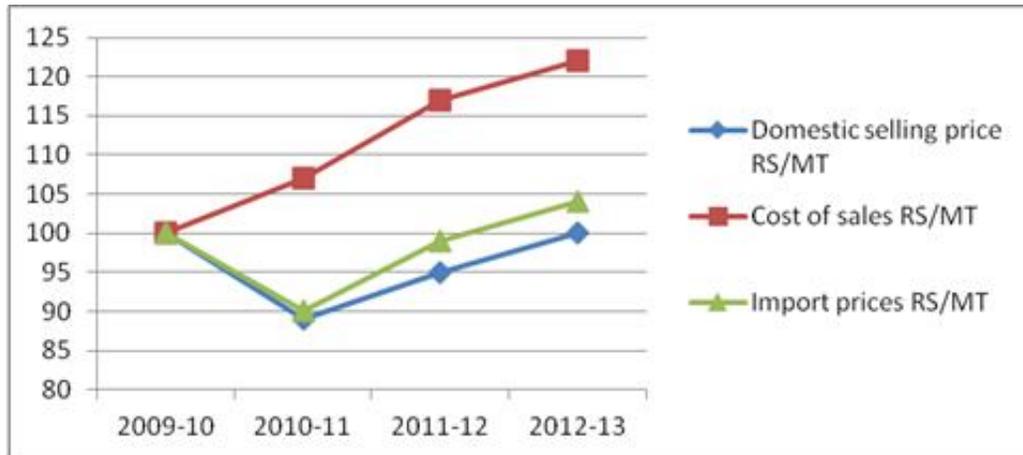
- (xii) The Petitioner have presented information to solely suit their needs and present a make believe fact scenario in seeking levy of duties. The referenced year of 2009 by the Petitioner was the time of the global recession which itself belies any claim of injury.
- (xiii) If the reference year was taken to be 2008 to 2010, it would be evident that there is absolutely no increase in exports from the EU to India. The anti dumping measures levied by China concerns only certain products of high performance stainless tube which concerns a very limited tonnage (Chrome above 16%). It is submitted that the product subject to duties in China are not even included in the scope of the present investigation before the DGS and thus the averment of the Petitioner that exports have been diverted from the Chinese market to India on account of anti dumping duties is also misplaced
- (xiv) The total imports from the EU are decreasing continuously according the Eurostat statistics and even reach a very low level over the first 6 months 2013. it is submitted that without the PLP (Vallourec claims that pipeline offshore should be excluded from the PUC) the exports to India from EU has decreased constantly since 2010 after the “crisis year” contrary to what it is being indicated by the Domestic Industry.

**Export EU-India**

in metric tons	2008	2009	2010	2011	2012	2013 (Jan. To May.)	2013 annualized
Total export UE-India	130132	86079	136665	120435	98510	21593	51823
Without line pipe	84286	53840	107598	96977	66812	15817	37961

Source  
Eurostat

- (xv) The Petitioner submission that new capacities planned in USA have a bearing on the present investigation is without any merit because those investments are only made for the US market for the development of the shale gas. In relation to the plans of expansion in USA, the same is towards meeting the demand of the US Market. Regarding the Chinese over capacities Vallourec reiterated that the said concern of the domestic industry also shows that at best a case for dumping can be made out against China for which DGS is not the appropriate authority. Furthermore, Zamil Pipes already existed before its acquisition by Vallourec and thus it is incorrect for the Petitioner to submit that there has been creation of additional capacities from this transaction as the objective of the transaction was to strengthen the local offer to the Saudi Arabian Companies.
- (xvi) As the allegation regarding low prices of import despite the rising raw material prices is concerned, Vallourec/ Tubos submitted that putting together the figures provided by the Petitioner in their original submission and the graphic representation provided in their communication dated 21.10.2013, the following graph can be drawn



- (xvii) The Indian industry even if its costs have been going higher has reduced its prices in 2010-11 more than the pricing of the imports. Furthermore the Petitioner has less increased in 2011-12 and 2012-13 its prices in index compared with the imports showing once again that injury if any is a self inflicted one.
- (xviii) The decrease of the prices by the importers shown by the Domestic Industry is in consonance with the world wide decrease in the raw material costs up to the 3<sup>rd</sup> quarter 2009 which has had an effect of the costs of the pipes produced in the year 2010-2011. There is consequently no reason as to why the Indian cost have increased in the same period and further that it is not a consequence of the raw material evolution.

**Product under consideration has been defined very broadly so as to include even those products which are not manufactured by the Petitioners**

- (xix) It is submitted that the PUC has defined very broadly for the purposes of the present investigation and certain products below mentioned ought to be excluded from the scope of the investigation as the Petitioners are unable to manufacture and/or the manufactured products do not meet the technical specifications of the Indian customers of such PUC/tenders:
- Oil Country Tubular Goods like Line Pipes, Casing Pipes, Production tubing, etc. as the Domestic Industry has qualified to supply the same to ONGC.
  - High pressure cylinder pipes because they are not approved by the Director of Explosives.
  - Quantity of PUC that is imported by BHEL for power plant where the Indian producers have either not been qualified, or have been put on hold due to problems with the quality of the Rifle tubes for Boilers.
- (xx) Vallourec/ Tubos stated that seamless steel pipes used for offshore application (project line pipes) should be excluded from the scope of the investigation because the product is either not manufactured by the Petitioners or they cannot meet the requirement of the tenderers.
- (xxi) The Indian customers are ordering these pipes only from foreign qualified suppliers because no local suppliers can meet these products specifications technically and they are not listed in the customers vendor list.

- (xxii) Jindal SAW can supply only SAW pipes, and Man Industries do not have any seamless pipes producing plants. The annexed vendor list states as follows:

*“SAW pipes means Submerged Arc Welded and this means that the only two Indian producers noted in the list of approved producers of Linepipe (NACE & Non-NACE)-(API Monogram) Jindal and Man Industry are only qualified for welded pipes and not seamless pipes.*

*The Indian producers are qualified for seamless piping carbon steel non NACE (not resistant to sour gas) see page 5 item 13 and they are also not qualified for seamless piping carbon steel NACE (see Page 3 item 7)”.*

- (xxiii) Indian producers are not qualified for supplying premium pipes like X52Q and they cannot produce higher grades such as X60Q and which grade is the most required in the offshore line pipe business and thus the aforesaid product should be excluded from the scope of the present investigation.
- (xxiv) It is also submitted that line pipes for offshore application must further be excluded as they are usually delivered outside the Indian territorial waters.
- (xxv) If Safeguard duty is levied on tubes and pipes imported by Indian companies, then it would have the effect of increasing the cost of such products to the end users and will lead to shortage of such products. Therefore it is submitted that since companies such as Oil and Gas Exploration Companies are serving the needs of the public at large, imposition of safeguard duty will only be against public interest.
- (xxvi) Tubos stated that import of cold drawn boilers for heat exchangers pipes and petrochemical tubes (carbon and alloy material) should be excluded from the purview of the present investigation as import of the said product does not impact the Indian manufacturers as the European market share is minimal or negligible.
- (xxvii) Mertex has submitted that out of the product which have been included in the scope of the PUC for the present investigation, the petitioners are unable to manufacture the following:

4-1/2” tubing: Tubing is a pipe of a smaller diameter than a casing and ranges between 1.050 and 4.500 inches in O.D. Tubing is installed inside the casing and is used to conduct oil or gas to the surface either through natural flow or through pumping. Tubing must be strong enough to support its own weight, that of the oil or gas and that of any equipment suspended on the string. For tubing ONGC had invited bids specifically for L-80, N80, and P110 etc. to be supplied with API certification. Tubing is supplied with a particular type of threading—EUE or NUR, Premium Connection. None of the Indian companies including ISMT are technically qualified for manufacturing of this product.

Drill pipes: None of the petitioners/supporters including ISMT are technically qualified for manufacturing of this product.

Higher Grades of 9-5/8” Casing Pipes other than grades N-80 & J-55: ISMT is not capable of producing higher grades. Furthermore ISMT also cannot produce L80, P110, C95, Q125 Grade and casing tube with premium grade.

Tubings: ISMT Ltd had requested for development/trial order and post supply there has been rejection of the same.

- (xxviii) The items which are covered under the scope of PUC and as mentioned below in the following table appear to have been placed as development order by ISMT Tender No. ZNCRC12004 dated 18.12.2012 issued by ONGC.

Item No..	Description
09	9-5/8",L-8047#,BTC
10	9-5/8",P-110, 47PPFBTC
11	9-5/8",Q-125, 53.5 PPF BTC
12	7",L-80,26PPF BTC
13	7" 29PPF L-80 BTC
14	7"P-110,29PPF BTC
17	5-1/2"20PPF P-110 BTC
18	5-1/2"17PPF L-80 BTC
24	9-5/8" L-8047# BTC
26	9-5/8" P-110, 47 PPF BTC
27	7" L-80,26 PPF BTC
28	7" 29PPF L-80 BTC
31	5-1/2" 20PPF P-110 BTC

- (xxix) Mertex submitted that in the aforesaid Tender, ISMT, one of the Petitioners appears to have placed 31248.56 MT as development /trial order. When the petitioners are placing development orders as late as 2013, it is indeed beyond the comprehension of Mertex as to how they can allege and claim to suffer injury.
- (xxx) It is submitted that the petitioners have not offered certain grades as they do not manufacture the same and even if they have offered, the same appears to be only for development order apart from few actual offers for supply.
- (xxxi) The petitioners even while bidding for Tenders floated by ONGC stands disqualified for not being able to meet the requirements as prescribed by the Tenderer. In the absence of the capacity of the petitioners to produces grades of PUC as per requirements of ONGC cannot be a ground to seek levy of safeguard duty which would have the detrimental effect of eroding fair completion in the market.

**Procedural Issues Relating to Insufficient Evidence, Information and Non-Confidential Summary of the Petition**

- (xxxii) The Petitioners had failed to disclose in their Petition any information in relation to the efforts and measures being taken by the Domestic Industry to make positive adjustments with details of progressive liberalization claiming it to be "business proprietary information and not amenable to summarization.
- (xxxiii) The difference in the facts and figures in relation to imports, domestic production, domestic sales and market share in the Petition and the Notice of Initiation questions the credibility and accuracy of the information furnished by the Petitioners.
- (xxxiv) The failure to disclose information in relation to the efforts and measures being taken by the Domestic Industry to make positive adjustments with details of progressive liberalization is in violation of Rule 5(2)(b) of the Safeguard Duty Rules which state as under:

*"a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to import competition."*

- (xxxv) In absence of provision of such information and upon representations made before the DGS at the public hearing, the DGS instructed the Petitioners to provide non-confidential versions of the information to all interested parties by 06.09.2013. In furtherance of the said instruction of the DGS, the Petitioners have provided non-confidential versions of the restructuring plans for their respective companies.
- (xxxvi) Vallourec, Tubos and Mertex submitted that , the restructuring plans dealing with the steps being taken for positive readjustment do not disclose any data or statistics, claiming the same to be “Business Proprietary information, not amenable to summarisation”. It is thus submitted that the Petitioners have failed to effectively disclose any information regarding the steps being taken for positive adjustment.
- (xxxvii) Vallourec, Tubos and Mertex relied upon the holding of the Hon’ble Supreme Court of India in the case of Sterlite Industries (India) Ltd. v. Designated Authority & Ors wherein while dealing with the provisions of Section 9A of the Act and the related Anti Dumping Rules, the Hon’ble Apex Court expressly ruled that confidential information should be accompanied by the non-confidential summary of the same.
- (xxxviii) In absence of any effective disclosure of the data by the Petitioners even after the express instructions of the DGS, the capabilities of Vallourec, Tubos and Mertex to properly defend its interests in a legal proceeding have been substantially diminished.

**Petitioners’ have not disclosed a viable adjustment plan**

- (xxxix) The limited disclosure of the proposed restructuring plan submitted by the Domestic Industry, shows that the same is based on efficient management of resources by the Domestic Industry, such as better utilization of raw materials, power and energy, and personnel, as well as better inventory management, reduction of production and processing costs, etc., rather than ensuring any real structural adjustments.
- (xl) The proposed restructuring plan does not disclose the methods that will be used by the Petitioners in order to achieve the goals stated therein. In absence of disclosure of such methodology, it is incomprehensible how such plans for increasing efficiencies would practically translate into ground realities. Moreover, by claiming the data corresponding to the proposed readjustment and also not disclosing the abovementioned methodology, the Petitioners have impaired Vallourec and Tubos ability to effectively defend itself in the present investigation. It is submitted that the restructuring plan cannot be adjudged to be viable.

**Petitioners have not suffered any serious injury and injury (if any) is on account of other factors**

- (xli) As per the information submitted by the Petitioners themselves, domestic sales have increased over by 100-106-112-96 for the FY’s 2009-10, 2010-11, 2011-12 & 2012-13. The decline in sale for the FY 2012-13 is in consonance with the decline in imports for the said FY. Therefore, in light of the fact that the sales have been increasing, the Petitioners cannot claim injury.
- (xlii) As regards market share in demand for the Petitioners, the same has actually remained more or less the same over the FY’s 2009-10, 2010-11, 2011-12 & 2012-13 as 47-46-43-38.
- (xliii) The minute dip in market share is on account of the fact that the Petitioners are unable to meet the demands for certain grades of PUC as has been detailed above and it is but

natural that for such requirements, imports will have to fill in the vacuum. The analysis of the import figures should be adapted in order to exclude these products and will lead to a different conclusion.

- (xliv) Employment of the Petitioners have increased in the following sequence for the FY's 2009-10, 2010-11, 2011-12 & 2012-13 (3588-4010-4380-4884). It is submitted that recruitment of new employees is one of the vital indications that the Petitioners are doing well.
- (xliv) Mertex Submitted that Accumulation of inventories are on account of the fact that developmental orders are being placed and further that the petitioners are manufacturing substandard products which fail to meet the requirements of the Tenderers like ONGC and others.
- (xlvi) Petitioners have installed capacity in excess of the demand of the domestic market and thus factoring in the exports made by them, it is but natural that there would be accumulation of inventories.
- (xlvii) Maharashtra Seamless Ltd.'s ("MSL") Annual Report for the FY 2010-11 which stated that the Company achieved a record net profit of Rs. 341.66 Crores belied any claim of Injury
- (xlviii) As regards to the issue of allegedly low export price to India, the export transactions to the Indian market operate through the process of International Competitive Bidding ("ICB"). This means that all the participants bid for the projects in accordance with strict terms and conditions that are specified in the Tender Bidding Documents.
- (xlix) The price determination for any given product for which tenders / offers are invited through an ICB process is dictated by the logic of competing price bids being offered by suppliers through sealed tenders. The prospective suppliers file their respective price bids on the basis of their own costing and reasonable margins and the authority inviting the tenders accepts the lowest price (called the 'L1 price'). This is a methodology which is designed to drive prices down by inducing the bidders to quote their lowest price without knowing the prices of the other bidders.
- (l) The ICB process caters to the interest of the buyer and establishes what may be called a "buyer's market" in which a buyer occupies the position of a monopolistic buyer who is able to extract the lowest/best price from prospective bidders. Thus, buyers use the ICB methodology to get the best price and the successful bidder is one who in such a market offers the lowest among the competing price bids. In such a market, the bidders are driven by the buyer to offer the lowest price.
- (li) A conjoint reading of the Petition suggests that a case is being made out for dumping rather than imposition of safeguard measures. In this regard, the attention of the DGS is drawn to the following extracts from the Petition:
  - *"the global prices of the raw materials have been increasing throughout the period under investigation, which has led to a global increase in the prices of the product under consideration. However, the foreign producers have not increased to the extent of rise in raw material, thus resulting in the subject goods being cheaper as compared to the Domestic Industry and other countries."*
  - *"The price difference between the imports and the sales of the domestic industry is very high and is likely to increase. Thus, the imports of the subject goods from are likely to remain lucrative."*

- (lii) Respondents quoted the following from the Annual Report of ISMT for the FY 2011-12.
- “any slowdown in the consuming sectors and increased level of dumping from Chinese manufacturers do pose a threat on your Company’s margins. Your Company continues to actively lobby the Indian Government to take action to protect the domestic market from Chinese dumping”*
- (liii) The Annual Report of ISMT for the FY 2009-10 stated the following:
- “--Faced with mounting duties in the developed markets China is now dumping seamless tubes in the remaining parts of the world including the Middle East, North Africa, South-East, and India with renewed, unbridled aggression—“*
- (liv) Respondents also quoted the Annual Report of MSL for the FY 2009-10 and 2010-11 to suggest that a case is being made out for dumping rather than imposition of safeguard measures.
- (lv) According to The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (“Safeguard Rules”) Annexure to Rule 8, when factors other than increased imports are causing injury (for instance, dumping), then such injury is not to be attributed to increased imports and accordingly the Director General should refer the matter to the Authority of anti dumping or countervailing duties.
- (lvi) The alleged injuries claimed by the Petitioners within the Petition seeking imposition of a safeguard duty are as under:
- Share of the domestic industry has allegedly decreased.
  - The prices of the imported products are allegedly lower than the prices of the local industry.
  - The capacity utilization of the domestic industry has allegedly deteriorated.
  - The profitability of the domestic industry allegedly declined.
  - The inventories of the domestic industry allegedly increased
- (lvii) Respondents submitted that these are factors that are to be considered by the DGAD in the ambit of anti dumping investigations as can be inferred from Annexure to Rule 8.
- (lviii) The injury caused by the alleged dumping as is evident from the Annual Reports and admissions in the Petition cannot be separated and singled out from the injuries allegedly caused by the increase in the imports, and therefore this application for safeguard measure cannot be sustained
- (lix) Safeguard Investigation on Styrene Butadiene Rubber which was suspended on 26.02.1998 and finally terminated on 01.05.1998 due to the anti dumping investigation initiated by the DGAD on 07.04.1998.
- (lx) Respondents submitted that injury caused to the Petitioners is self inflicted and that the injury occasioned (if any) is on account of the internal price war between the constituents of the Domestic Industry during the bidding for various tenders floated by companies like ONGC.

- (Ixi) The Petitioners are not able to meet the price offered by foreign manufacturers/exporters do not hold good in as much as it has been a trend wherein Jindal Saw has often reduced price to match the price quoted by MSL or ISMT and vice versa.
- (Ixii) During the bidding process, it was found that the petitioners and the domestic industry offered prices lowers than the most of the foreign producers/exporters which negates the claim of injury. For example, with respect to Tender No. NOZNCJC07008 Casing with BTC dated 01.02.2008 invited by ONGC, it is seen that the prices offered byMertex UK was Rs.276 over and above the prices offered by L1 andL2, wherein ISMT was the second bidder.

#### **No evidence of Causation**

- (Ixiii) No safeguard duty may be imposed or extended, unless there is evidence that the increased quantities of imports “cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.”
- (Ixiv) Respondents submitted a distinct causal link must be present between the alleged increased imports and serious injury caused to the domestic industry. In the present investigation the indicators of alleged injury pertain to alleged decrease in the share of domestic industry, alleged lower prices of the imported products as compared to the local industry, alleged deterioration of the capacity utilization of the domestic industry, alleged decline in the profitability of the domestic industry and alleged increased in the inventories of the domestic industry. It is submitted that the causal link between increased imports and injury to the domestic industry has been broken in the instant case as the abovementioned reasons for alleged injury can be linked to dumping for which proper investigation by the DGAD should be undertaken.

#### **Standing of the Domestic Industry**

- (Ixv) The Petitioners do not satisfy the requirement of representing a ‘major proportion’ of the domestic industry. In a trade remedy investigation such as safeguard investigation or dumping investigation, merely having more than 50% of the total production is not sufficient to claim ‘major proportion’ of the total production thereby entitling the petitioners to file as the domestic industry. Vallourec and Tubos relied upon the Appellate Body decision in DS 397 – EC Steel Fasteners wherein while interpreting Article 4.1 of the WTO Agreement on Anti-Dumping which is pari-materia with Article 4.1(c) of the WTO Agreement on Safeguards

#### **C. National Engineering Industries Ltd, Kolkata**

- (i) National Engineering Industries Ltd. (NBC) is a leading manufacturer of ball & roller bearings and Produces over 100 million bearings each year in more than 1000 sizes to serve a host of varied customers across India and 21 other countries in 5 continents.
- (ii) For bearing industry, a main raw material is bearing grade seamless steel tubes of Tariff Item 73045110 (SAE 52100, SAE8720 and SUJ3) and steel balls.
- (iii) Company imports almost entire requirement of bearing grade seamless steel tubes.
- (iv) ISMT is unable to supply tubes to our specification (wall thickness) leading to excessive wastages upto7%(in our production) and increasing our additional processing cost on account of effort spent to reduce the thickness.

- (v) There are serious delivery issues with ISMT. Delay in fulfillment of orders within stipulated time is hampering our production schedule.
- (vi) Recently, ISMT has supplied TMB 6007 Outer & TMB6306/25 Inner bearing tubes vide Invoice No. DAL 1304509 dated 30 September 2013. Tubes failed to meet stringent quality norms and the Company has lodged quality complaint No. CMPL001929 dated 30 October 2013.
- (vii) Due to the sub-standard quality of products from ISMT, we are unable to source bearing grade tubes from ISMT and have to rely on imports.
- (viii) During Public hearing domestic industry has portrayed quality issue as commercial disputes and therefore irrelevant for the present investigation. It is submitted by NEI that 'customer perception' is one of the recognized criteria to determine 'like article or directly competitive article' and if in the customer's perception, quality of the domestic goods is not up to the prescribed standards, same could not be considered as like article or directly competitive article to imported goods.
- (ix) Levy of safeguard duty on the bearing grade steel tubes would have a significant adverse impact on the bearing industry.
- (x) Complainants have defined the product under consideration ("PUC") to include all types of seamless steel tubes of all grades for all applications.
- (xi) Prima facie, bearing grade seamless steel tubes (SAE 52100, SAE8720 and SUJ3) is included within the scope of PUC.
- (xii) DGS laid down following parameters to evaluate like article or 'directly competitive article' in Aluminum Flat Rolled Products and Aluminum Foil - PRC:
  - In case of 'like' article, whether the two articles under comparison are identical or alike in all respects
  - Technical Characteristics
  - Interchangeability & Uses
  - Potential uses
  - Marketing Channel
  - Price etc.
- (xiii) DGS has refused to impose safeguard duty where claim of 'like or directly competitive' was disputed based on facts and law. NEI placed on following finds of Director General (Safeguards) and WTO Appellate findings:
  - Plain Particle Board (para 57-60)
  - Hot Rolled Coils / Sheets / Strips (Para 66-69)
  - Oxo Alcohols
  - Carbon black
  - USA-Lamb
  - USA - Steel products (Para 319)
  - Korea- Alcoholic Beverage (Para 142-145)
- (xiv) All seamless tubes are not same. There is huge difference in price between different classifications which clearly establishes that tubes of different headings are not

substitutable. The same logic continues during the financial year 2013-14 for imports made for the period of first five months.

HS 73045110 (April –August,2013)			
Year	Imports (MT)	Value of imports (Rs. In lacs)	Rate per MT(Rs)
China PRP	3630.10	2547.2998	70172
Finland	5500	8.75982	159269
Germany	9.949	15.75368	158344
Italy	4.14	19.55856	472429
Japan	3.862	16.52759	427954
Spain	34.269	82.39855	240446
Sweden	1.871	19.25848	1029315
Taiwan	5.440	13.78522	253405
Thailand	6.116	25.05924	409733
U.S.A	0.520	0.55026	105819
Total	3701.770	2748.9512	74260

- (xv) The end-user of complainants are mainly customers in the energy sector using OCTG, construction & engineering customers which use structural and boiler pipes. Loss of tenders cited by the complaints pertains to ONGC, OIL, and BHEL who uses OCTG and boiler pipes.
- (xvi) Bearing grade tubes have different physical and chemical properties in comparison to line, boiler and other tubes. These tubes are not used as conduits of liquid or gas and therefore, cannot be substituted for OCTG or Boiler pipes or vice versa.
- (xvii) DI has not been able to establish any threat of injury on account of import of bearing grade steel tubes.
- (xviii) All three complainants have sizable presence in OCTG and boiler segment. ISMT is the only known and established domestic manufacturer but is suffering with some serious quality issues.
- (xix) Individual product examination would produce a totally different outcome, and therefore, present investigation based on flawed grouping of products will result in flawed result severely hurting the bearing industry.
- (xx) The analysis of trend on the basis of year 2009-10 vis-a- vis 2010-11 provided contradictory results. The year 210-11 should be adopted as base year for indexing and not the year 2009-10 which was taken at the time of initiation of notice. The year 2009-10 is now too remote to be discarded.

The product of the company viz bearings requiring quality tubes is covered by HS73045110 and therefore , details are furnished based on HS73045110 separately and for HS 73.04 on total basis.

Based on imports in 2009-10, annualized current imports during the year 2013-14 is only 77.31%, a negative annual compounded growth of 6.23%

Based on imports in 2010-11, annualized current imports during the year 2013-14 is only 64.15%, a negative annual compounded growth of 13.76%. Imports of all years are lower than base year of 2010-11

HS 7304			
Year	Imports (MT)	Indexed Base 2009-10	Indexed Base 2010-11
2009-10	329606	100	
2010-11	354821	107.65	100
2011-12	426290	129.33	1201.14
2012-13	408324	123.88	115.08
2013-14			
April-Aug, 2013	107876.275		
Annualised	258903.06	78.55	72.97

Based on imports in 2009-10, annualized current imports during the year 2013-14 is only 78.55%, a negative annual compounded growth of 5.86%

Based on imports in 2010-11, annualized current imports during the year 2013-14 is only 72.97%, a negative annual compounded growth of 9.97%.

- (xxi) Complainants are engaged in manufacture and sale of unlike seamless steel pipes and welded pipes, ductile pipes, steel ingots, bars & profiles.
- (xxii) Audited performance & financial data for Bearing grade seamless steel tubes is not available, and therefore, any analysis of import trends, and causal injury, if any, on account of surge in the import of bearing grade seamless steel tubes is not possible.
- (xxiii) It is mandatory to examine each product to as held by Hon'ble Tribunal in Andhra Petrochemicals Ltd. vs Designated Authority.
- (xxiv) Details of import furnished by DI contain imports of welded and other than seamless tubes also, therefore the information is unreliable.
- (xxv) There is no surge in import of seamless tubes and pipes. Quantitative increase is commensurate with the increase in the domestic production. Increase is gradual and not sudden enough, sharp enough, and significant enough warranting imposition of safeguard duty. Also safeguard duty can be imposed only there is surge in the import due to unforeseen developments. NEI placed reliance on Argentina – Footwear and US – Fur Felt Hats cases.
- (xxvi) There is no recent surge in import of the Bearing grades tubes, rather there is sharp decline in the import due to rupee depreciation.
- (xxvii) Imposition of anti-dumping duty or safeguard duty has been cited as the reasons for surge in imports as a result of unforeseen developments. Anti-dumping duty was imposed by EU on import of seamless steel pipes and tubes since 1997 and therefore same cannot be considered as unforeseen development.
- (xxviii) No country in the world imposes any kind of protective duty on bearing tubes.
- (xxix) Massive loss on account of FOREX loss cannot be attributed to the injury caused by the imaginary surge in import.

- (xxx) Safeguard duty is not a tool to provide protection to the domestic industry manufacturing sub-standard goods, or processing loss.
- (xxxi) During the course of public hearing, the Domestic Industry has brought as a if impact of levy of safeguard duty of 35% in the first year, 25% in second year and 15% in third year will have negligible effect on the price on bearings.
- (xxxii) Prices taken by Domestic Industry are not a price prevailing for the product. Source of such price has not been explained and therefore, it is not possible to verify the figures.
- (xxxiii) 98% of the products of the company are sold to original equipment manufacturers and sale in replacement market is only about 2%
- (xxxiv) Prices charged by the Company to its customers and the effect of imposition of safeguard duty shall be as follows:

Bearing symbol	Ring Price (Rs./No.)	Customers Bearing Price (Rs./No)	Difference of Safeguard duty (Year1)	Difference of Safeguard duty (Year2)	Difference of Safeguard duty (Year3)
			35%	25%	15%
6205	14.28	67.00	7.46%	5.33%	3.20%
6206	22.22	94.00	8.27%	5.91%	3.55%
6304	15.47	41.53	13.04%	9.31%	5.59%
6305	25.41	69.00	12.89%	9.21%	5.52%

The impact of safeguard duty as aforesaid ranges between 7.5% to 13.1%

The impact difference as percentage of selling price of bearings is mainly arising because of vast difference in the price of the product shown by the domestic industry as compared to actual price.

Bearing symbol	Customer Bearing Price as per D I (Rs./No.)	Customers Bearing Price of NEI (Rs./No)
6205	294.00	67.00
6206	441.00	94.00
6304	295.00	41.53
6305	336.00	69.00

NEI has submitted invoices in support of their prices and stated that the source of information of the prices of domestic industry has not been communicated and therefore, it is not possible for them to discuss the same.

- (xxxv) Imposition of safeguard duty on bearing grade tubes would be against public interest. Domestic Industry justifies levy of Safeguard duty on bearing tubes saying that imposition of duty will fractionally increase the cost of bearing. Any increase in cost of bearing would render our operation commercially unviable and will lead to a serious injury to us.
- (xxxvi) Till such time as quality issues, which are basic for a highly precision product are full resolved, the question of granting protection to unsuitable product by safeguard measure does not arise.

## **D. EUROPEAN UNION**

- (i) The safeguard instrument should be reserved to truly exceptional circumstances as it affects fairly traded imports, irrespective of their country of origin and whether or not they individually cause any injury to the domestic industry. For these reasons the WTO jurisprudence has clearly set very high standards for the application of the measures.
- (ii) There are significant differences between the figures in the complaint and in the notice of initiation. For example import data for the year 2012-2013 differ by almost 20% (441 kilotons in the complaint, 373 kilotons in the notice of initiation). Furthermore sales of domestic industry in the notice of initiation do not match at all with sales given by the industry (a difference for 2012-2013 of more than 100%). With respect to the production, installed capacity, profitability, employment or inventory figures, the notice of initiation takes into account only data for the two applicant companies (representing the 53% of the total production) disregarding figures of the supporting company also given in the industry application (which covers at least 87% of the national production) without any explanation.
- (iii) Given the -unexplained- discrepancies, the analysis below is based on the notice of initiation.

### **Increased imports**

- (iv) According to the notice of initiation, imports increased significantly in the financial year 2011-2012, but decreased in the subsequent and most recent period. Consequently, the Commission strongly questions the fulfillment of the most essential WTO standard by this case.
- (v) The increase in imports until 2011-2012 can be mainly attributed to one single country, which in 2011-2012 represented the 73% of the share of imports into India. Furthermore, the industry application exclusively mentions the exports from that specific country as a factor that may have caused increase imports and provides examples of other countries which have applied anti-dumping/countervailing against these exports. Under these circumstances, the initiation of an anti-dumping investigation would have been appropriate

### **Injury and causality**

- (vi) The Commission would like to recall to the investigating authority that in safeguards it is required to demonstrate a serious injury (or threat thereof) which, as confirmed by WTO jurisprudence [Appellate Body Report, US - Lamb, paras. 124] should be higher than the level of "material injury" necessary to impose an anti-dumping measure. Hence it needs to be proven through the evaluation of different injury factors that the domestic industry is in a situation of a significant overall impairment due to any surge of imports.
- (vii) No indication to conclude that the domestic industry is in a position of "significant overall impairment" (nor that such situation is clearly imminent), hence not finding itself in a situation of serious injury or threat thereof. During the overall period considered, the sales volume of the domestic industry decreased by only 5%, corresponding to a negligible market share loss of not even 3%, production increased by 16%, employment raised by 10% and productivity by 5%. Even after having done considerable investments to almost double the production capacity the domestic industry managed to increase profitability in 2011-2012 by more than 25% as compared to the previous year.

- (viii) The significant increase in profitability took place exactly when imports increased. Profitability indeed dropped in the subsequent period, but this took place when imports dropped as well. In other words, all seems to suggest that there is no causality between the any eventual serious injury to the domestic injury -which is more than contestable- and the increase of imports.
- (ix) It appears to be more than likely that the following factors and not the increase of imports influenced in the industry's situation in the financial year 2012-2013:
  - The significant decrease of the domestic demand (-25%), and
  - Excessive capacity building, which even exceeds the domestic demand.

As far as the second element is concerned, the petitioner is claiming that the main purpose of seeking the imposition of safeguard duty is to enable the industry to improve its capacity utilisation. It is however obvious clear that the low capacity utilisation rate is caused by the conjunction of an excess in capacity when demand is decreasing rather than any increase of imports (which actually decreased in the most recent period). If the production capacity had remained stable at the 2009-2010 level (i.e. 375.000 MT) the utilisation rate would have increased from 60% to 70% in 2012-2013. Under these circumstances it is clear that safeguard measures cannot be justified.

## **E. Trade Representation of the Russian Federation in India**

### **Application of Unforeseen measures of market's protection.**

- (i) EU began to apply anti- dumping measures concerning tube production from 1979 and the USA –from 1981. In the present situation these measures apply to several countries therefore the submission of argument about “unforeseen measures of trade protection” is not correct.

### **Unforeseen additional capacities in China and planned capacities in USA.**

- (ii) Internet site which was used for reference by the Indian producers informs that the new plant in China oriented at production of tubes with external diameter of 508 mm, though the subject of the special safeguard investigation are tubes with external diameter not more than 273.1mm. Such plant cannot compete with production which is the subject of safeguard investigation because the diameter of these tubes is different.
- (iii) In respect of the American plant, the Indian producers did not submit any evidence that American plants launched production of tubes in November 2012 are going to export of this products to India.
- (iv) In the petition of the Indian national producers (clause 4.d) the growth capacities in China and EU is given as a factor for increasing import but there is no mentioning of the USA.

### **Change of source of import statistics.**

- (v) When presenting import statistics, the national Indian manufactures use the data from different statistics agencies. In the petition data of DGCIS was used whereas in additional comments data of UNCOMTRADE was used.

- (vi) Export data of the two statistics recourses from China to India are significantly different. According to one statistics seamless pipes' delivery from China to India is growing but according to another it is decreasing.
- (vii) Data presented in additional comments, the Chinese export to India in 2012 fell by 19.3% as compared with 2011, and was below the level of 2010. Concerning imports of European production, it increased by 5.2% in 2011 and by 14% in 2012. Such deliveries from the two countries could not be considered as threatening to damage to the national tubes industry of India.
- (viii) Russian Federation cited the decision of the Appellate body in dispute of Argentina –Footwear on interpretation of Article 2.1 of the Agreement on special protective measures of WTO to examine “recent imports”.
- (ix) Neither Chinese, nor European, nor a total import to India meets any criterion specified by the Appellate body. The requirement of Article 2.1 of the Agreement on special protective measures of WTO, which is necessary for application of the special protective measures, is not fulfilled.

**Unforeseen low prices on import.**

- (x) The low price competitiveness of the Indian production is considered to be caused by the recent investments in development of the new technologies and personnel management. Such decisions, as a rule, affect the increase of the costs of the sales of the production and as a result the national production is becoming less attractive from the point of price criterion.
- (xi) If the Indian industry insists on the facts of understating of the prices by the importers, such case should be considered in the frame of anti-dumping or compensation investigation.

**F. JFE STEEL CORPORATION; NIPPON STEEL & SUMITOMO METAL CORPORATION; AND SANYO SPECIAL STEEL CO., LTD. (Represented by Luthra and Luthra)**

**The petition is not maintainable**

- (i) Section 8B of Custom Tariff Act, 1975 ('Act') provides that a SG duty can only be imposed, if pursuant to an investigation, the Central Government is satisfied that an article is being imported in such increased quantities which is causing or threatens to cause serious injury to the “Domestic Industry”. However both the initiation notification and the petition of the “Domestic Industry” clearly provide that there has a decline in imports in 2012-13.
- (ii) At the public hearing it was stated that price undercutting is also an issue which is considered in a SG investigation. While the issue of price undercutting is indeed analyzed under the broader context of serious injury to the “Domestic Industry”, the issue of price undercutting is not the threshold issue based upon which a SG investigation can be initiated.
- (iii) The contention made by the “Domestic Industry” is relevant in an anti dumping investigation wherein the threshold issue is low priced imports and not the volume of imports.
- (iv) This investigation does not meet the threshold criteria of a SG investigation and thus should be terminated

**The case presented by the DI is based on low priced imports and not volume of imports**

- (v) “Domestic Industry” till date and even in the public hearing has clearly stated that it is the increase in low priced imports which is the cause of concern for them. This is further reflected in their statement wherein they have argued that several tenders which have been awarded by the end users in India are to the foreign manufacturers on account of low pricing and which the “Domestic Industry” cannot match.
- (vi) The issue before the Hon’ble DGS is of low priced imports and not increase in volume of imports. However it is the submission of the Exporters that in such a scenario, the appropriate forum is the DGAD and not DGS.
- (vii) The “Domestic Industry” has constantly argued that it is the low priced imports especially from China PR and EU which is the cause of concern for them. However, they filed a SG investigation targeting import of seamless pipes and tubes from all countries when the issue is of low priced imports only from China PR and EU.
- (viii) The fact that the DI had filed an anti dumping investigation before DGAD for the same PUC against import from China PR which was initiated in 2010. However the investigation was subsequently terminated by DGAD on account of non submission of data by the applicants. Thus after failing to get a favorable order from DGAD, the same DI has now filed this petition before the Hon’ble DGS even though the ground is of low priced imports.

**Imports from Japan are a miniscule part of overall import and therefore should be excluded from scope of the present investigation.**

- (ix) The Exporters submitted that import of products which are part of PUC from Japan constitutes only 1.19% of the total imports of PUC into India and is therefore has a miniscule share in the overall import of these products into India and the prices at which these products are being imported from Japan are much higher than the DI prices and the same has been the case since 2011.
- (x) The Hon’ble DGS is authorized to exclude products imported from a country from the scope of the SG investigation. Section 8B(1) provides as follows:  
*Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from **any country or territory into India** , from payment of the whole or part of the safeguard duty leviable thereon.*
- (xi) The Exporters believe that the import of the products from Japan does not compete with the products of the DI and neither is the same injuring the DI. Further these products form a miniscule part of the overall import data and are priced much higher than the DI prices and thus should be excluded from the scope of the present investigation.
- (xii) The statement made by the DI at the 2<sup>nd</sup> public hearing stating that import volumes have decreased and import prices have increased post the filing of the petition of the DI is nothing but complete misrepresentation of facts.
- (xiii) The DI filed this application in November 2012. It is to be noted that interested parties were not aware of the filing of the petition till its initiation. Even assuming that the interested parties become aware of the filing of the petition in November 2012, the Hon’ble DGS should note that as per Annexure 4 of the DI petition, the import volumes started decreasing and import prices started increasing from April 2012 onwards.

- (xiv) Annexure 4 clearly establishes that the decline in import volumes started from April 2012 onwards which was at least 7 months before the DI filed its petition. Further table 2 in previous submission by the Exporters clearly establishes that import prices from Japan have been higher than the DI prices since 2011 onwards and which was more than 2 years before the DI filed its petition. Therefore the question of decrease in import volumes and increase in import prices taking place as a result of DI's filing its petition does not arise at all.

**Injury analysis has to be done for each category of the product**

- (xv) The PUC contains various types of seamless pipes and tubes, the function of usage of which differs from each other and none can substitute for the other product. Since each product included in the PUC has different usage and cannot be substituted, the Exporters request to establish serious injury for each of product included within the scope of the PUC.
- (xvi) The Exporters placed reliance on the final findings in *anti-Dumping duty investigation concerning imports of Cold Rolled Flat Products of Stainless Steel from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA* wherein each category of cold rolled steel was separately analyzed for the purpose of establishing material injury.
- (xvii) In the recent initiation of *Sunset Review investigation against import of certain rubber chemicals, namely MBT, CBS, TDQ, PVI and TMT imported from China PR and PX 13 (6PPD) imported from China PR and Korea R*, the DGAD is conducting separate material injury analysis for all the products. Therefore the requirement of volume and value impact as per the AD rules is being made for all the products.

**Domestic Industry does not have the capability to manufacture certain products**

- (xviii) The Exporters have submitted that the DI is not able to manufacture several product grades and sizes and for many of the products covered within the scope of the PUC, the DI has not been approved as a vendor by the end user.
- (xix) The Exporters have highlighted the submission by NBC bearing and BHEL which are user industry for the PUC. NBC bearing very categorically stated at the public hearing that the PUC supplied by the DI was full of defects and none of the Indian manufacturers has the ability to manufacture goods as per the thickness requirement of NBC Bearing. Similarly BHEL also stated that the domestic manufacturers do not have the ability to manufacture several products and therefore BHEL procures nearly 90% of its requirement from foreign producers.
- (xx) In view of the claim by the DI at the public hearing that they have sold some of the products contested by other interested parties, the Exporters have requested to conduct an on-site verification of the production facilities of the DI. The verification is critical as this will establish whether the DI can manufacture products contested by other interested parties and whether it can cater to the product specific requirements of the Indian user industry. Based upon the verification, such products can be excluded from the scope of the PUC which are not manufactured by the DI but which at present have been wrongly included within the scope of the PUC.
- (xxi) The list of the products which are excluded from the scope of the PUC should be clearly specified in the final findings. Given the fact that the PUC contains a number of distinct products which are imported under the same tariff classification, if the final finding does not

explicitly mention products which have been excluded from the scope of the PUC, the same could likely lead to confusion and wrongful imposition of SG duty by customs.

**The requirement of unforeseen circumstances has not been fulfilled**

- (xxii) The requirement of Article XIX of GATT 1994 is a prerequisite before initiating a SG investigation and the same has not been fulfilled while initiating this SG investigation. The Appellate Body (“**AB**”) has observed in this respect 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*”.
- (xxiii) The DI has not been able to fulfill this requirement. Firstly neither the initiation notification and nor the DI petition contained any information with respect to unforeseen circumstances. Thus there was no explanation by the DI the basis on which there was alleged increase in imports. However when the issue was raised by the interested parties, the DI for the first time made a statement at the public hearing dated 02 September 2013 which was again countered by the other interested parties.
- (xxiv) In the final findings issued *against imports of Methyl Acetoacetate* the Hon’ble DGS rejected the DI argument with respect to unforeseen development and public interest and therefore did not recommended imposition of SG duty even though the Hon’ble DGS found increases in imports and serious injury.
- (xxv) The new submission is nothing but a post facto realization on part of the DI that their petition does not fulfills the requirement of unforeseen development and is an attempt by the DI to justify their petition which cannot be permitted. Furthermore the reasons provided by the DI in this new submission also does not hold any ground and the same has been effectively rebutted by the submission made by the Exporters.
- (xxvi) The DI till date has not even provided any arguments with respect to fulfilling requirement of unforeseen development for each of the product covered within the PUC. This argument is supported by the ruling of the AB in the matter of *US Steel Products* wherein the AB observed “unforeseen developments” must be performed for each product subject to a safeguard measure.

**There is a break in of causal link**

- (xxvii) The causal link between import of the PUC and the claim of serious injury (if any) is broken due to the following factors:
  - a) As per the data provided by the DI the DI performed exceedingly well on almost all of the economic parameters when there was an increase in imports but the slight decline in production and domestic sales took place in 2012-13 when the imports declined and there was an increase in the import price. Thus the slight decline in production and domestic sales in 2012-13 cannot be attributed to imports as the same has decreased in volume with a simultaneous increase in import price.
  - b) Secondly the causal link between imports and serious injury (if any) to the DI is broken on account of injury suffered by the DI due to dumping from China PR. The same has also been admitted by the DI.
- (xxviii) As per the Annexure to the Indian SG Rules, when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports. Thus if the DI has suffered injury on account of dumping, it is the

responsibility of the DI to segregate the injury suffered on account of dumping and injury suffered on account of injury, However the DI has not fulfilled this obligation.

- (xxix) The final finding in the *Safeguard Investigation against import of Front Axle Beam from China* dated 23 September 2009 wherein the Hon'ble DGS refused to levy SG duty on the ground that there was no segregation of injury by the DI caused due to dumped imports and one caused due to surged imports. As per the Hon'ble DGS, the non segregation of the injury led to the break in of the causal link between surged imports and market disruption.
- (xxx) The DI has not provided any segregation of injury caused due to the dumped imports and injury caused due to increase in imports. In view of this non segregation, the non attribution requirement under Annexure to the Indian SG Rules cannot be fulfilled and therefore no SG duty can be imposed.

#### **The requirement of public interest has not been fulfilled**

- (xxxi) Article 3(1) of the Agreement on Safeguard provides that a safeguard measure should be in public interest. In this respect, it is the submission of the Exporters that the levy of a SG duty in the present investigation against export of products from Japan would not be in the public interest.
- (xxxii) In the Methyl Acetoacetate investigation, the Authority deliberated upon the issue of public interest and noted that the pharmaceutical industry was an important user of the subject product. In concluding that levy of duty would not be in public interest it was observed that "*DI has not been able to give evidence as to how imposition of safeguard duty on the PUC will not affect these consumers, a few of whom are in sensitive pharma sector, and that the impact would be minimal so as to be in public interest.*"
- (xxxiii) The PUC in this investigation is the backbone of several sectors which are critical and sensitive for purposes of India's energy security. The DI has not established that imposition of SG duty would have minimal impact on these sectors and would not lead to escalation in project costs.
- (xxxiv) The Exporters submitted that the SG duties would also not be in public interest because specialized grades of the PUC are not manufactured by the DI, and even if they are manufactured the DI has been found lacking in quality, leaving the users with no choice but to import from countries which have the ability to manufacture high end specialized products.

#### **G. TMK Group, Russia (Represented By Advocate Mr. M.N Jha)**

- (i) The Petition does not meet the standard imposed by GATT Article XIX and the WTO Agreement on Safeguards as it falls short of meeting the requirements in Articles 2, 4 and 6 thereof:
  - a) The Petitioners did not provide evidence showing that as a result of *unforeseen developments* the product under investigation was imported in *such increased quantities* as to cause or threaten to cause "serious" injury to the Indian industry.
  - b) The purported evidence addressed in the Petitioners' additional submission on the matter are irrelevant to showing of "unforeseen developments", factually inaccurate and altogether misleading.

- c) The Petitioners are not suffering *serious* injury nor are they under any *threat of suffering serious injury* from allegedly increased imports. If the Petitioners are suffering injury then their problems are evidently caused by reasons other than the existence of imports;
  - d) It would not be in the wider public interests of India to introduce and maintain the measures for the above reasons and others.
- (ii) Countries are divided into developed or developing according to their Gross National Income (GNI) per capita per year. Countries with a GNI of US\$ 11,905 and less , such as the Russian Federation, are defined as developing by the World Bank
  - (iii) By virtue of Article 9 of the WTO Agreement on Safeguards and in light of the low volume of imports, the Russian Federation as a developing country has to be excluded from the scope of application of the safeguard measure, should such a measure be imposed, because imports from Russia account for no more than 3 percent of the total imports of the product concerned and the imports from developing countries collectively do not exceed 9 percent of all imports.

#### **Assessment of increased imports**

- (iv) There is no credible evidence showing increased import in absolute terms that the surge in imports was *sudden, significant and sharp*. The increase in imports if at all was gradual and measured
- (v) There is also no correlation whatsoever in the dynamics of the EU trade flows to China, on one hand, and India, on the other. While in their additional submission the Petitioners suggest that “it is clear from the table that exports from EU to China have been diverted to India”, the figures do not support this assertion. Most notably, a 25,340 Mt decrease in EU exports to China in 2012 does not correlate with an 8,835 Mt increase in EU exports to India.
- (vi) The Petitioners do not explain how the alleged drop in supply from the EU to China by 35% between 2009 and 2012 has led to a decrease in sales value by 78%. There isn't any correlation between these figures, the sources for which (incidentally) remain unknown. Furthermore, the anti-dumping duties applied by China to imports from the EU ranging between 9.2% -14.4% could not have displaced 25,340 Mt of the EU products on the Chinese market.
- (vii) As regards the imports from China, the figures provided by the Petitioners also do not support their assertion of the existence of a sudden increase in imports. Specifically, China's exports to India in 2012 have in fact dropped by 19.3% as compared to 2011. Also, the 2012 exports were lower than they were in 2010.

#### **Assessment of injury**

- (viii) The Indian domestic industry as a whole enjoyed a solid increase in their production volumes. Volume of sales on the domestic and export markets have increased during the reference period, too. Furthermore, the data also indicates that during the reference period the size of the domestic market of the product concerned in India has increased.
- (ix) There was a sizeable capacity increase of 42.8 per cent between 2009- 2010 and 2010-2011 and which would have necessarily had a bearing on the industry's injury indicators.

- (x) The remarkable feature of inventories as an injury indicator is that it cannot be considered in isolation from other injury factors, specifically from the installed capacity and the production figures.
- (xi) The Petitioners attempted to divert attention to an increase in export sales because of excess stock.
- (xii) The low inventories levels at the beginning of the reference period could not have remained as such because the Petitioners as well as the domestic industry as a whole increased their installed capacity to near double level in 2010-2011, which, in turn, led to accumulation of stocks.
- (xiii) There has been no loss of employment and that there is no credible evidence of price suppression/depression on account of imports of the product under consideration.
- (xiv) The Petitioners offer a slew of anecdotal evidence and arguments like loss of Government tenders in India, anti-dumping and countervailing measures in place elsewhere, massive capacities of the subject goods in foreign countries, price difference, alleged undercutting and profitability, as showing threat of serious injury. In fact the Petitioners also lost their market share to their domestic competitors

#### **Unforeseen developments**

- (xv) In Appellate Body Report, *Korea — Dairy*, para. 88, the provisions of GATT Article XIX:1(a) read cumulatively with the Agreement on Safeguards has been interpreted to mean that a safeguard measure may not be applied unless the injury to a domestic industry was caused by developments that were not foreseen at the time of the latest trade negotiations.
- (xvi) The Appellate Body in *United States- Lamb Safeguard* (para.72) interpreted “unforeseen developments” to be part of circumstances in which a sharp increase of imports occurs in such a way as to cause a serious injury to a domestic industry. It was further concluded that it is necessary for investigating authorities to make findings that *unforeseen developments* exist and that a logical connection exists between the conditions set forth in Article XIX:1(a) and the circumstances such as “unforeseen developments”
- (xvii) M/s TMK submitted that even if there was an increase in imports, such an increase in imports was not caused by “unforeseen developments”.
- (xviii) The additional submission of the Petitioners failed to meet the WTO standard for establishing “unforeseen developments on the following ground:
  - The Petitioners provided no explanation as to why and how the cited trade remedy measures have been unforeseen;
  - The Petitioners have demonstrated no “resulting increase in imports”;
  - The Petitioners have failed to demonstrate that each of the products subject to the present safeguards investigation have been affected by the “unforeseen developments”;
  - The Petitioners made deliberately erroneous conclusions about the consumptions in the European market;
  - The Petitioners provided no explanation as to why and how additional capacities in China and planned new capacities in the United States (“US”) have been unexpected; and
  - The Petitioners mischaracterize their argument about “unforeseeably low pricing of imports despite increase in raw material costs” as relating to “unforeseen developments”.
- (xix) The cited trade remedy measures confirm their “foreseeability. Some of the anti-dumping and countervailing measures referenced by the Petitioners have been in place for 20 years. This

circumstance creates a global regulatory milieu in the market, characterised by predictability and regularity. Thus, no “unforeseen developments” could ensue therefrom.

- (xx) Certain trade defence measures by Indonesia and Canada referred by petitioner do not support an argument about the existence of “unforeseen developments” because the Indonesian and Canadian investigations dealt with one and three product codes respectively, while the scope of the present investigation covers some 26 product codes.
- (xxi) TMK Group fails to see how the EU trade remedies for example against Ukraine or Russia which have effectively been in place since 1990s, could have caused a sudden increase of imports in India in 2013. Similarly, the Canadian measures have been in place already since 2008, while the Petitioners only refer to a later-in day investigation of 2010. Likewise, the measures in the EU have been in place since 2009, while the Petitioners conveniently refer to the 2011 investigation only. Lastly in the US, measures have been in place since 2009, while the Petitioners refer to the 2010 investigation only.
- (xxii) The Petitioners in the case fail to explain if there is a link between the alleged “unforeseen developments” and the purportedly existing sudden increase of imports of the subject product into India.
- (xxiii) The Petitioners referred to the trade remedy actions and to the resulting increase in imports from China and EU to India. These investigations safeguard domestic competitiveness of the EU products in question, and improve Chinese and EU producers’ competitive position in the EU and US markets. That could be a reason why import statistics indicates that fewer imports are entering India as compared last year. Similarly a one 10 digit code, which was subject to the safeguard investigation in Indonesia, cannot have a meaningful effect on Indian imports reported on 4 digit bases.
- (xxiv) As regards the imports from the EU, the Petitioners appear to be making erroneous conclusions from the statistics they provided:
  - There seems to be no correlation whatsoever in the dynamics of the EU trade flows to China, on one hand, and India, on the other. While the Petitioners suggested that exports from EU to China have been diverted to India, the figures do not support this assertion. Most notably, a 25,340 Mt decrease in EU exports to China in 2012 does not correlate with a 8,835 Mt increase in EU exports to India.
  - The Petitioners do not explain what the basis for their allegation is, nor do they provide references for the sources of information alleging, that the EU exports to China fell from 90 million to 20 million EUR at the end of 2012. A purported drop in supply by 35% between 2009 and 2012 couldn’t have led to a decrease in sales value by 78%;
  - The anti-dumping duties applied by China to imports from the EU range between 9.2% - 14.4%. It goes without saying that these values are marginal and could not have displaced 25,340 Mt of the EU products on the Chinese market.
- (xxv) As regards the imports from China, the figures provided by the Petitioners do not support their assertion of the existence of a sudden increase in imports. Specifically, China’s exports to India in 2012 have in fact dropped by 19.3% as compared to 2011. Moreover, the 2012 exports were lower than they were in 2010.
- (xxvi) The Petition is deficient of the evidence showing that all of the products subject to the present safeguards investigation have been affected by the “unforeseen developments”.
- (xxvii) Given that a broad range of seamless pipes and tubes falls within the scope of the present investigation, WTO jurisprudence requires DG Safeguards to not merely demonstrate that “unforeseen developments” resulted in increased imports of broad range of seamless pipes

and tubes, but that “unforeseen developments” resulted in increased imports of specific products covered by product defined by the Petitioners in the current investigation.

(xxviii) The Petitioners listed some 10 trade remedy actions to demonstrate diversion of the imports of the subject product to India. However, the product scope of the listed trade remedy actions does not correlate with that in the present safeguards investigation.

(xxix) Review of all the cases referred to by the Petitioners indicates that:

- The US anti-dumping and CVD investigation covered 5 out of 8 product codes at the 6 digit level mentioned by the Petitioners in the case at hand.
- The US OCTG case (mentioned in the text but not referred to in the Petitioners’ table) covered 1-3 out of 8 product codes at the 6 digit level mentioned by the Petitioners in the case at hand.
- The Canadian case covered 3 (with 2 having only one 10 digit code) out of 8 product codes at the 6 digit level mentioned by the Petitioners in the case at hand.
- One of the EU investigations covered 1 out of 8 product codes at the 6 digit level mentioned by the Petitioners in the case at hand, while another investigation covered 7 out of 8 product codes at the 6 digit level mentioned by the Petitioners.
- Indonesian investigation covered only 1 code.

(xxx) The EU Regulation No 585/2012 imposed a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine. In its analysis of a temporary increase in consumption in 2008, the EU investigating authority confirmed a cyclical nature of the market and regular fluctuation of consumption in the EU.

(xxxi) The Petitioners do not discuss or offer any explanation as to why or how fluctuation of consumption in the EU is linked and correlates with an increase of imports of the subject product into India.

(xxxii) The Petitioners’ reference to new capacities in China and in the US is irrelevant for three reasons: *first*, there is no evidence that output of the plant in China would compete with products subject to the present investigation; *second*, the US press release cited by the Petitioners suggests that the new capacities will serve the domestic market and sales in the US; and, *third*, increasing capacity in a competitive market over time is ‘business as usual’ and cannot be regarded as an “unforeseen development” within the meaning of the WTO disciplines on a safeguard measures.

(xxxiii) The Petitioners mischaracterize their argument about “unforeseeably low pricing of imports despite increase in raw material costs”. The data provided by the Petitioners in section D appears to indicate that the Indian costs of sales increased by 5 index points in 2012-2013 while the costs of scrap dropped by 13.5.

(xxxiv) In their additional submission, the Petitioners argued that the imports are cheaper and are therefore being purchased more. However, the Petitioners do not explain what is the unexpected event, which seemingly allows all other importers to be unaffected by global raw material prices while Indian producers are.

#### **National interest**

(xxxv) Imposing safeguard measures in this case would dramatically affect down-stream products produced by the Indian user industry to the benefit of non-Indian producers of these products. It would erode the cost effectiveness and the competitiveness of the Indian user industry

against importation of finished products. Thus, imposition of measures is not in national interests.

### **Causal link**

- (xxxvi) Indian domestic industry, apart from any allegedly increased imports, has been subject to the combined, parallel and interdependent effect of the following relevant factors: (a) the effect of the capacity increase and increase in wages by the Indian industry; (b) imports from China; (c) the rise of raw material and production costs of the Indian industry. These factors would have caused, either in isolation, or taken together, inability to win a larger market share, or the loss of profitability of the Indian industry, which our client does not observe.

### **Procedural rights**

- (xxxvii) Our client would like to repeat its protest that DG Safeguards had given the parties only four working days to comment on the Petitioners' additional submission filed after the post-hearing briefs. This constitutes a clear breach of due procedure. TMK Group reserves all rights on this issue.
- (xxxviii) Comments submitted on 29 May 2013 in response to the notice of initiation of the safeguard investigation, as well as to the comments made during the oral hearings in New Delhi on 2 September and 12 December 2013, and our client's post-hearing brief dated 13 September 2013 and comments on the Petitioners' additional submission. All comments made in these documents, as regards injury and public interest, remain equally valid for the purposes of the present document. Similarly, all comments herein as regards injury and public interest are equally valid for all of the submissions made to date in the present proceedings.

## **H. Chemical & Petrochemical Manufacturers Association (CPMA) (Represented by Advocate Ms. ReenaKhair)**

### **Pre-requisites for initiation or levy of duties absent**

- (i) In terms of Section 8B of the Act, the imports must be in increased quantities, the conditions of import should be such that serious injury is caused or threatened to be caused to domestic industry as a consequence of the imports.
- (ii) The initiation notification itself reflects that there is no increase in the imports in the financial year 2012-13 as compared to the previous year. The so called increase in imports is not of recent origin, but gradual over a period of 3 to 4 years. The increase is neither sudden, sharp nor significant. In absolute terms, there is absolutely no increase in imports.
- (iii) It is stated in the notice of initiation that the imports have increased based on a comparison of 2012-13 with 2009-10. It is submitted that the increase, is marginal and has taken place over a period of 4 years. It is submitted that the increase in imports should not be judged merely on an "end point to end point" comparison, ignoring the most recent trends, which reflects a decline in imports, in absolute terms.
- (iv) CPMA placed reliance on the case of Argentina – Footwear (EC) "If an increase in imports in fact is present, this should be evident both in an end-point-to-end-point comparison and in an analysis of intervening trends over the period. That is, the two analyses should be mutually reinforcing."

### **No significant increase in imports relative to consumption**

- (v) The imports relative to consumption do not also reflect an increase in imports, having a certain degree of recentness, suddenness, sharpness and significance.
- (vi) In terms of the figures provided in the Notice of Initiation, the market share of imports was 55% in 2009-10, which increased to 64% in 2012-13. The increase of 9% in the market share over a period of 4 years is neither sudden nor sharp nor significant. It merely reflects a very gradual shift in the market shares. This may have occurred for other reasons such as non availability of specialized grades for special applications in India or inconsistent quality of the domestic product.
- (vii) The change in market shares in 2012 -13 as compared to the immediately preceding year reflects a mere increase of 2% i.e., from 62% to 64%, which is not significant.
- (viii) The most recent period reflects a decline in imports in absolute terms and a negligible increase in market shares.

#### **Absence of injury to Domestic Industry**

- (ix) The Sections and the Rules require that there must be serious injury or threat of serious injury to “domestic industry”, as a consequence of increased import of an article into India.
- (x) One of the major producers of the subject goods has not provided data to the DG Safeguards, due to which the injury analysis cannot be carried out in a meaningful manner.
- (xi) The definition of “domestic industry” under the Anti-Dumping law is para materia to that in the safeguard provisions. In relation to the Anti-Dumping investigations concerning seamless tubes and hollow profiles imported from China. The Designated Authority has considered Maharashtra Seamless Limited (MSL) a ‘major producer’ and in the absence of complete information from MSL, it has held that the injury analysis cannot be carried out for purposes of levy of anti-dumping duty. In the present investigation, MSL has not provided complete information nor has filed a questionnaire response for domestic producers. Analysis of injury parameters based on incomplete information would not reflect the true condition of Indian Industry. The findings of the Designated Authority, have been affirmed by the Hon’ble Bombay High Court.
- (xii) If for purposes of evaluation of injury in an anti-dumping investigation, data of MSL is critical, and without which determination of injury is not possible, no similar determinations can be made, unless complete information is provided by MSL.

#### **MSL data does not reflect injury**

- (xiii) The Annual report of MSL, mentions that the total capacity for manufacture of the subject goods has been increased by 2,00,000 metric tonnes per annum, indicating that MSL envisages bright outlook for the seamless pipes and has adequate surplus funds to invest in growth.
- (xiv) The Chairman’s statement indicates that injury, if any, is on account of delay in infrastructure projects and dumping by Chinese companies. CPMA submitted that more than 70% of the imports are from China and the prices at which such imports are being made, is lower than that from other countries. In such a scenario, it is for the petitioner to approach the Anti-Dumping Directorate to examine whether there is a case for levy of anti dumping duties.
- (xv) The domestic producers are consciously withholding the information relating to MSL, since it reflects an improvement in the conditions of MSL and the injury, claimed by the other producers, is on account of factors other than the imports, including the competition, inter se between the different producers due to creation of excess capacities.

### **No injury faced by either ISMT or Jindal SAW Ltd**

- (xvi) The Annual report of ISMT which reflects that ISMT's production has increased significantly i.e., from 145429 metric tonnes per annum in 2008-09 to 185976 MT in 2011-12. The sales have also shown a substantial increase over the same period. In the statement of the CEO, it is mentioned that there is a 17% increase in the sales of the company and the tubes sales have also increased by 21.5%.
- (xvii) The Annual report of Jindal SAW highlights various factors due to which, the company is facing difficulty. The Company's financial position has been affected adversely due to various factors including increase in input prices, slow domestic demand and bleak global economic and not on account of the imports

### **Causation**

- (xviii) During the period when the imports were increasing, the injury factors reflected an improvement this shows that there is no causation between the quantum of imports and injury, if any to the domestic producers.
  - a) **Increase in capacity.** If there would have been injury, capacity would not have increased.
    - i. Capacity of petitioner almost doubled from just 3.75 Lac MT to 6.85 Lac MT
    - ii. Capacity of MSL increased from just 3.5 Lac MT to 5.5 Lac MT
  - b) **Production** of petitioner increased from 2.24 Lac MT to 2.93 Lac MT showing increase of almost 25%.
    - i. Production of supporters also increased from 1.41 Lac MT to 1.5 Lac MT
  - c) **Capacity utilization** declined
    - i. The decline was due to abnormal increase in the capacity. Demand increased by just 2%, whereas capacity was increased by 80% by the petitioners.
    - ii. Even MSL's capacity has increased by 55% against 2% increase in demand
    - iii. In fact, the applicants and supporters were not able to utilize their earlier capacity, hence addition made in capacity was not required.
    - iv. The decline in capacity utilization is due to unwarranted increase in capacity.
  - d) **Domestic sales** increased from 1.97 Lac MT to 2.2 Lac MT in line with the increase in the demand. Demand increased by 2% and sales by 11%. Hence, there is no injury.
    - i. Regarding possible claim of applicant that sales declined compared to 2011-12, is because there was a decline in demand in 2012-13 over 2011-12.
    - ii. There is a decline in sales of supporters, however, considering that the capacity of supporters in base year was 3.5 Lac MT, production was just 1.4 Lac MT, domestic sales was less than 1 LAC MT. There are other reasons for injury to MSL.
  - e) There is no decline in sale price
  - f) **Inventory** increased, however, inventory position is to be seen having regard to the fact that the product has a lot of grades, sizes, types and one grade, size type cannot replace other grades. Further, if the producer is selling in various market segments, it has to keep minimum inventory levels.
  - g) **Employment** level increased

- h) **Market share** of applicant is almost the same – decline of less than 1% can not be said to be a decline.
- i) Injury is due to recession in US and Europe
- j) **Excess capacity:** Petitioner claimed idle capacity of 7.91 Lac MT. Capacity in India is claimed to be 12.35 Lac MT against a demand of 7.7 Lac MT. There is excess capacity of 5 Lac MT in India. Clearly capacity has been created considering export markets. It is a well known fact that since last year, US and European economy is in a very bad situation (which are their main markets – which is evident from the fact that in these two regions, one of the petitioner has a subsidiary to cater to that market), hence they were not able to export the product for selling idle capacity utilization.
- k) **No undercutting**
  - i. Undercutting is determined for seamless pipes/tubes as a whole which leads as nowhere. The product is produced in various grades, size, types. Price differences from one grade to another can be huge. Further, there can be drill pipes, line pipe, casing, tubing (used in oil exploration), bearing grade pipe, Automobile grade pipe, high precision pipes etc. There would be significant difference in the price of the different grades.
  - ii. This is also important in view of the fact that most of the imports are in the oil exploration sector.
- l) **No loss** It is stated that companies are making significant financial losses. Which is wrong. Petitioners are in profits which is evident from the injury statement.
- m) There are different figures in different tables
  - i. Imports in table 5 do not match with injury statement given
  - ii. Demand in table 5 is 741117, it is 767398 in injury statement
  - iii. Market share do not match in different tables
  - iv. Imports in table 5 and price undercutting table enclosed

**Decline in imports contemporaneous to worsening of condition of the petitioners**

- (xix) In the first quarter of 2012 -13, the imports have declined. The injury parameters also show a worsening. The conclusion which follows is that, when the imports increased the performance of the domestic industry improved, whereas when the imports declined their performance also declined.
- (xx) The injury is mainly a result of creation of excess capacities in India, far in excess of the demand for the product in India resulting in significant internal competition

**Rehabilitation Plan**

- (xxi) In terms of the Safeguard Rules, duties can be imposed for a period in excess of one year, if the domestic producers have a restructuring plan As regards the proposed restructuring plan, we submit that the non confidential version suggests that at present raw materials are not being sourced at competitive price by ISMT, which it will endeavour to do in the future. The other measures also seem to suggest that the company is operating inefficiently and the rehabilitation plan is to basically reduce inefficiencies. The restructuring plan of Jindal SAW Ltd also reflects a similar position. It is submitted that if the domestic producers are operating inefficiently, there is certainly no cause to impose duties to subside the effect of such inefficiencies and the costs should be normatted for a fair analysis.

**I. China Iron & Steel Association(CISA) & M/s Rama Cylinders. (Represented by Lakshmi Kumaran&Sridharan)**

**Failure to provide mandated information:**

- (i) Domestic Industry neither provided complete, accurate and adequate information at the time of initiation of investigation but it desisted from filing the necessary information (including adjustment plan) during the course of investigation as well.
- (ii) The non-confidential version of information provided contains virtually nothing for interested parties to make comments upon. Without having sufficient information at perusal, Respondent has been denied its right to defend its interests in an effective manner. Such an act violates the principles of natural justice.

**Incorrect definition of product under consideration and like article:**

- (iii) DG Safeguards has failed to define a precise product under investigation and like article by considering the whole basket of seamless tubes as one single product. DG Safeguards has not even ventured into an examination of whether the grades included in the product under investigation are manufactured by the domestic producers, whether among different grades, there was similarity in terms of usage, characteristics and prices. Further no examination has been made at the time of initiation, whether ERW Tubes and Pipes are like articles when such tubes and pipes are like or competing with the seamless tubes and pipes.

**Non-examination of unforeseen circumstances and surge in imports:**

- (iv) Neither the initiation notice nor the petition of the Domestic Industry makes a mention of 'unforeseen developments' existing, which lead to an increase in imports. The imports data provided in the application as well as in the initiation notice does not indicate increased imports, leave alone sudden, significant, recent and sharp increase in imports due to such unforeseen developments.

**Non-Identification of an Obligation under GATT 1994**

- (v) There is an additional obligation under Article XIX:1(a) of GATT 1994 to identify an "obligation incurred under GATT 1994" and further link such an obligation to the increase in imports as alleged by the Domestic Industry. In the present investigation, no such obligation has been identified by the petitioners and no link has also been drawn.
- (vi) The "bound rate" of import duty (Basic Customs Duty) is the obligation incurred by India in 1994. Any increase in imports due to further reduction in import duty on its own volition to the present level at the rate of 10% should be considered separately and that increase cannot be attributed towards increase in imports due to India's obligation incurred in 1994.

**Standing of Domestic Industry:**

- (vii) Only two producers out of many producers in India have filed the petition for safeguard duty. Supporters to the petition have failed to provide relevant information as mandated in the prescribed questionnaire. Injury determination by DG Safeguards should be made for the domestic producers as a whole.

### **Significant inaccuracies and inconsistencies in the petition**

- (viii) Import statistics as provided by the petitioners were only updated until the first quarter of the financial year 2012-2013, namely June 2012. However, the current investigation was initiated in April 2013. It is obvious that the data provided in the Petition is significantly outdated.
- (ix) There are serious discrepancies, inaccuracies and inconsistencies between the Petition and the notice of initiation in relation to the import statistics.
- (x) Analysis of the updated import statistics covering the period APR.2012 – DEC.2012 revealed significant discrepancies. When comparing the data of the original statistics with the updated version, it appears that for the overlapping period APR.2012-JUN.2012 the data is not consistent. The new statistics show that the total imports from China of the product concerned into India are lower by some 20% in quantity.

### **No Unforeseen Development**

- (xi) The initiation notice as well as the petition filed by the Domestic Industry is completely silent with regard to the fact that there existed 'unforeseen developments', which resulted in increase in imports.

### **It is mandatory to show 'Unforeseen Developments'**

- (xii) The Appellate Body in WTO dispute concerning *DS 178 US – Lamb* observed that the existence of "unforeseen developments" is a "pertinent issue of fact and law" under Article 3.1 of the Agreement on Safeguards.
- (xiii) Unforeseen developments describe a circumstance or a set of circumstances which must be demonstrated as a matter of fact which resulted into increase in imports for justifying the imposition of safeguard measure.
- (xiv) Increased quantities of imports should not be equated with unforeseen developments. Respondent placed Reliance on the panel report in *DS-238 Argentina — Preserved Peaches*.
- (xv) The Applicant Domestic Producer subsequently filed a letter enumerating some events as unforeseen developments. It is submitted that mere enumeration of some events as "unforeseen developments" is insufficient in light of the requirement in Article XIX: 1(a). The correct requirement is that it must be explained *as to why the developments in question were unforeseeable and how it led to an increase in imports*.

### **It is mandatory to articulate the "effect of obligations incurred" on increase in imports:**

- (xvi) Article XIX: 1(a) of GATT 1994 places a two-fold requirement on the investigating authority. The requirements are as follows:
  - a) identify as a matter of fact, the specific obligation incurred including tariff concessions under GATT 1994 related to the subject product; and
  - b) establish the link of that obligation to increase in imports of the subject product
- (xvii) The Panel in *Dominican Republic - Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric*, WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R (23 February 2012)

held that the meaning of the phrase "of the effect of obligations incurred by a Member under this Agreement, including tariff concessions" is that "as a matter of fact the importing Member must have incurred obligations under the GATT 1994, for example, tariff concessions, with respect to the product in question."

- (xviii) In Appellate Body Report, Korea - Definitive Safeguard Measure on Imports of Certain Dairy Products, WT/DS98/AB/R (12 January 2000) and Appellate Body Report, Argentina - Safeguard Measures on Imports of Footwear, WT/DS121/AB/R (12 January 2000) it has also been articulated that the Member is required to demonstrate, in addition to "unforeseen developments", an obligation incurred under GATT 1994 as well as establish a "link" between the obligation incurred and the increase in imports.
- (xix) Any claim without establishing the "effect of obligations incurred under GATT 1994 and the imposition of safeguard measure by an investigating authority without due consideration to the requirement in Article XIX:1(a) is a clear violation of Article XIX:1(a).

#### **Increase in imports due to reduction of import duty (BCD) in own volition**

- (xx) The Members incurred an obligation by way of concession in Tariff, i.e., the particular member takes an obligation that it will not increase the import duty (BCD) beyond a particular rate. Such rate is termed as "Bound Rate". For the product under investigation, India agreed 40% as bound rate in 1994. Thereafter, India reduced the import duty rate below bound rate on its own volition and present import duty rate is 10%. The safeguard duty can be imposed only when imports increased due to reduction of import duty upto bound rate only. Safeguard duty cannot be imposed on account of increase in imports due to reduction of import duty below bound rate. Therefore, any increase in imports due to further reduction in import duty on its own volition to the present level at the rate of 10% should be considered separately and that increase cannot be attributed towards increase in imports due to India's obligation incurred in 1994.

#### **Excessive Confidentiality and violation of principles of natural justice**

- (xxi) There was no individual response to questionnaire and adjustment plan (non-confidential version) filed by the Domestic Industry till public hearing held on September 2, 2013. Only after the first public hearing was over did the Applicant Domestic producers file the non-confidential version of the individual response to questionnaire and adjustment plan.
- (xxii) The quantitative data is required to be disclosed whether it is total or monthly. Though total for quantitative data has been disclosed for many parameters, however, monthly figures have been kept confidential. Such a claim is incorrect and is required to be rejected.
- (xxiii) In response to questionnaire for domestic producers filed, installed capacity and capacity utilisation has been claimed as confidential without giving any reason for the claim of confidentiality. It is submitted that there is no reason for claiming confidentiality of installed capacity and capacity utilization.
- (xxiv) No shut down details (annex-5) have been provided by them. If they are claiming that they had to shut down plants during the reference period, then they shall provide shut down details for the last three years.
- (xxv) No detail of subsidy has been provided by them claiming it to be business proprietary information not available in the public domain.

#### **Incorrect Product Definition**

##### **Products covered are not homogeneous**

- (xxvi) The scope of the product under consideration is very wide. Seamless pipes, Tubes and Hollow profiles of iron or non –alloy steel (SPTH) do not form a single homogenous product group. It is submitted that there are a large number of types and/or grades of SPTH that significantly differ from one another.

**Significant differences in usages**

- (xxvii) Significantly different usage of seamless pipes and tubes-Seamless pipes and tubes is used in various user industries.
- i. Oil and Gas Exploration
  - ii. Refineries and Petrochemicals
  - iii. Fertilizer Plants
  - iv. Steel Plants
  - v. Bearing Industry
  - vi. Automobile Industry
  - vii. Railways Sector
  - viii. Defence Sector
  - ix. Power Sector
- (xxviii) The DGAD in its final findings dated 19th May 2000 concerning same product under investigation held that PUC grades to be analyzed by examining the following:
- Basic manufacturing process
  - Physical Characteristics
  - Chemical composition
  - Tensile strength
  - Yield resistance
  - Special operations (viz.,heat treatment)
  - End-usage
  - Interchangeability of the products
  - Perception of customers
  - Tariff classifications.
- (xxix) Respondent submitted that there is a substantial difference in the cost, selling price, usage, markets etc. of various grades of the product concerned. Because of such vast differences in product scope the determination of effect of import on Applicant Domestic Producers would be incorrect.

**Bundling of Products in product scope is incorrect:**

- (xxx) Product under investigation is required to be an article i.e. a single product. Similarly like article shall also be a single product. While conducting a comparison of the product under consideration with the Like Article, one should do so on a product to product basis and not from a basket of products to another basket of products. Respondent has placed reliance on WTO: DSB Panel Report in DS-54/55/59/64 Indonesia-Certain Measures Affecting the Automobile Industry, wherein WTO: Dispute Settlement Body interpreted the meaning of the term 'like article'

**Product scope cannot include those products like article to which is not produced by the Applicant Domestic producers**

- (xxxi) The Applicant Domestic producers admitted during public hearing that for many of the products included in the product scope are not manufactured by them or for some of them, they are not qualified to participate in bids as per standard fixed by ONGC. Therefore, those products should be excluded from the product scope.
- (xxxii) In the letter dated 23.05.2013 of the Petroleum and Explosives Safety Organization to M/s Rama Cylinders Pvt. Ltd, an importer of the subject goods, it is stated that "as per office records so far no Indian seamless steel pipes/tubes manufacturer for manufacture of high pressure seamless steel gas cylinders is approved under the Gas Cylinders Rules, 2004
- (xxxiii) The Applicant Domestic Producers during public hearing admitted that one of the Applicant Domestic Producers has moved an application for testing its goods to check its eligibility. It proves the point that the Applicant Domestic Producers were prohibited under law to manufacture such products and because of that the manufacturers of cylinders were forced to import such products into India from manufacturers approved by the Government of India. When the Applicant Domestic Producers were not manufacturing such product, then import of the same during the period under investigation could not cause any injury to them.

**Significant differences in prices or alternatively incorrect import data and value**

- (xxxiv) The import statistics provided by the Applicant Domestic Producers shows a significant difference in prices of various grades of the PUC

CN Code	Average Price (Rs/MT)
73069011	24,376
73043129	29,416
73045930	169,841
73041120	170,318

The minimum average price per ton of CN code 73069011 is Rs.24,376/- and maximum average price per ton of CN code 73041120 is Rs 170,318/-, so the maximum average price is 7 times the minimum average price. This is clear that there is significant difference in prices of various product grades. Alternatively, it is submitted that the product codes mentioned above like 73069011 or 73041120 though do not exist were representing some different product but were incorrectly included in import statistics to inflate the data.

**Like Article and standing of the Applicant Domestic Producers as Domestic Industry: Welded Tubes and Pipes (ERW)**

- (xxxv) World over Welded tubes and Pipes manufactured using Electrical resistance welding are used interchangeably with the Seamless tubes and pipes for the same use, i.e., in oil and gas exploration and transportation.
- (xxxvi) In investigation initiated by United States against India alongwith other countries [Investigation Nos. 701-TA-428 and 731-TA-992-994 and 996-1105 (preliminary)], US treated welded tubes and pipes as like article to seamless tubes and pipes. Respondent has attached the copy of initiation notice.
- (xxxvii) The argument that only initial stages of production process makes the two products shall not make any difference as both are serving the same end-use. Therefore, Welded tubes and pipes

(ERW) is not only a competing product but also a like product on each and every criterion with the seamless tubes and pipes.

- (xxxviii) Respondent has submitted list of some of the known producers not included in the present investigation and stated that in India various domestic producers other than the Applicant Domestic Producers manufacture welded tubes and pipes used for the same end use world over. Therefore, production of these Domestic Producers shall be included to determine the standing of the Applicant Domestic Producers who moved the application on behalf of the Domestic Industry producing the likeproduct which includes welded tubes and pipes also.
- (xxxix) In the Safeguard Duty Investigation against imports of Aluminium Flat Rolled Products and Aluminium Foil into India from People's Republic of India-Final Findings dated 29<sup>th</sup> May, 2009, DG Safeguards examined the below listed factors, to exclude products which were not manufactured by the domestic industry:
- i) Technical Characteristics
  - ii) Interchangeability and uses
  - iii) Potential uses
  - iv) Marketing Channel
  - v) Price etc.
- (xi) Considering the total production of all the Domestic Producers (including those who produce Welded tubes and pipes by ERW method) and the Applicant Domestic Producers, it is apparent that the Applicant Domestic Producers do not produce major proportion of the total production of the like article and therefore, the Applicant Domestic Producers do not have standing to apply on behalf as Domestic Industry.

**Petitioner- Whether representative of Entire Indian Domestic Industry?**

- (xli) In a trade remedy investigation such as safeguard investigation or dumping investigation, merely having more than 50% of total production is not sufficient to claim 'major proportion' of total production. Article 4.1(c) of AoS,
- (xlii) Respondents have attached details of more than 50 domestic producers of the seamless tubes and pipes in India and while relying upon WTO: Appellate Body Report in DS 397 – EC Steel Fasteners for definition of domestic industry stated that DG Safeguards is duty bound to collect information from other domestic producers and seek information with respect to injury from them as well. It would also be incorrect, if DG Safeguards relies only upon one other domestic producer (Maharashtra Seamless Ltd), who has also not provided complete information, to make its determination.
- (xlili) In the Safeguard Duty Investigation against imports of Aluminium Flat Rolled Products and Aluminium Foil into India from People's Republic of India-Final Findings dated 29<sup>th</sup> May, 2009, DG Safeguards held that the definition of the domestic industry must be product-oriented and not producer-oriented, and that the definition must be based on the products produced by the domestic industry which are to be compared with the imported product in terms of their being like or directly competitive.
- (xliv) The Applicant Domestic Producers in para 19 of its written submission pursuant to first public hearing tried to justify the exclusion of BHEL and OCTL on the ground that these producers imported the products.
- (xlv) The Respondents submitted that domestic industry is defined differently in Anti-dumping agreement as well as Indian Rules in comparison to in AoS and Indian Safeguards legal

provisions. Whereas Anti-dumping provision provides discretion to the Authority to exclude such producers who imports or related to exporters or importers, no such discretion has been granted to the DG Safeguards.

(xlvi) The following producers have not been considered in the present investigation, who are known producers of the product under consideration. These producers should have been included in the present investigation:

- Mahalaxmi seamless limited
- Ratnadeep Metal & Tubes Pvt Ltd
- Heavy Metals & Tubes Ltd
- Gandhi Special Tubes Ltd
- Anand Seamless Tubes Pvt Ltd
- Sainest Tubes Pvt Ltd
- Patels Airflow Ltd
- Bhatia Steel Tubes

(xlvii) If these producers are considered in the present investigation by the authority, then percentage share of total production held by Domestic Industry will fall significantly. It will affect the standing of Domestic Industry.

#### **No Surge in Imports**

(xlviii) The facts of the present case indicate that compared to previous year, there is no increase in imports. Imports have declined from 425194 MT in 2011-12 to 373777 MT in 2012-13(Annualized). Respondent relied upon WTO Dispute in DS121-Argentina Safeguards measures on imports of Footwear.

(xlix) Authority is required to investigate whether imports came into the country in 'such increased quantities' by examining whether imports were recent enough, sudden enough, sharp enough and significant enough. Examination of increase in imports and resultant imports without having regard to above determination would be in violation of Article 2.1 of AoS as well as Section 8B(1) of Customs Tariff Act 1975.

#### **Injury Analysis**

(i) At the outset the Respondent wishes to reiterate all submissions relating to injury factors in its Injury Submissions. In terms of production and sales of domestic industry, there is a marginal drop in both production and sales during 2012-13 in comparison to 2011-12. Such drop in performance is not visible throughout the injury period of last 4 years but is a one-off incident during POI. Even then, compared to base year, the production of domestic industry has gone up by 13 percent points, whereas sales have declined just by 1 indexed point. Therefore, there is no significant decline in the level of domestic sales over the reference period.

(ii) It would be incorrect to blame foreign suppliers for domestic industry's inability to effectively bid in tenders and compete with foreign suppliers. The basic premise of a safeguard investigation is the fact that the imports come into India at fair prices.

(iii) It is conceded by the domestic industry at the time of making the application that it is suffering due to its own inherent problems. This is evidenced by its failure to compete with foreign suppliers in bidding process, wherein its bids got rejected either on the ground of non-production or on other technical reason.

- (liii) In terms of the alleged loss of employment, Respondent notices that there was no significant loss in the level of employment and wages over the reference period. To the contrary, both workforce number and wages have gone up during the reference period by an average of 6 per cent on a year-on-year basis. Indian Domestic Industry and the petitioners would not be increasing employment if the industry were suffering any injury.
- (liv) Certain excluded products such as STP of specifications SA 335, SA 213, L-80 etc are included in injury analysis. These excluded products consists approximately 6 % of total imports. The authority has to exclude these excluded products from injury analysis.

#### **Absence of Causal Link**

- (lv) As per the facts presented in the application by the Domestic Industry, there does not seem to be any causal link between the imports and performance of Domestic Industry.
- (lvi) When the imports increased from 3,44,829 MT in 2010-11 to 4,25,194 MT in 2011-12 ,the profitability of the Domestic Industry improved from 76 indexed points to 102 indexed points whereas when the imports decreased from 4,25,194 MT in 2011-12 to 2,80,333 MT in 2012-13 (Dec) the profitability of the Domestic Industry also declined from 102 to 23. The causal link between the imports and profits of Domestic Industry is clearly absent.
- (lvii) Negative correlation is visible between imports and production and sales of Domestic Industry. When the imports increased from 3,44,829 MT in 2010-11 to 4,25,194 MT in 2011-12 ,the production and sales of the Domestic Industry improved from 126 indexed points to 142 indexed points and 118 to 120 indexed points respectively. Whereas when the imports decreased from 4,25,194 MT in 2011-12 to 2,80,333 MT in 2012-13 (Dec) the production and sales of the Domestic Industry also declined from 142 indexed points to 87 indexed points and 120 indexed points to 71 indexed points respectively. The causal link is clearly absent.
- (lviii) As per Annual report 2011-12.The capacity of M/s. ISMT tube division was almost tripled from the financial year 2009 -2010 (158000 tons) to the next year 2010 – 2011 (465000 tons). While the company's production of tubes remained relatively stable, this has an immediate effect of dragging down the capacity utilization from 85.9% to 38.5%. This is more than obvious that the real reason to cause the alleged injury is the sudden increase of ISMT production capacity. This further breaks the causal link between the alleged injury and the imports.
- (lix) The Panel report on *Korea — Dairy*, WT/DS98/R read with facts of the present case submitted clearly shows that there is no link between the imports and the performance of Domestic Industry. Thus, it is submitted that there does not exist any causal link and any recommendation of duty, without establishing causal relationship between imports and its adverse effect on Domestic Industry would tantamount to violation of Article 4.2(b) of AoS and also Section 8B(1) of the Customs Tariff Act.
- (lx) Applicant Domestic Producers admitted during public hearing that for many of the products included in the product scope are not manufactured by them or for some of them they are not qualified to participate in bids as per standard fixed by ONGC. The most important reasons cited for disqualification is that the Applicant Domestic Producers were not treated as supplied the products because they supply it in other countries in name of some other entities. If because of this reason they could not supply the material and it is imported it cannot be argued that the Applicant Domestic Producers suffered injury due to imported goods.
- (lxi) The Applicant Domestic Producers in their adjustment plan in brief stated that they are adopting the methods which will reduce the cost of production such as (i) improve efficiency of raw materials, (ii) planned to reduce its power and fuel costs through the efficient use of energy, (iii)

working on rationalization of steel grades to achieve higher prime grade production and improve product yield, (iv) aggressive cost cutting is adopted, etc. The adjustment plan of the Applicant Domestic Producers shows that the cause of injury, if any, is the inefficiency in the production method, which is evident from the adjustment plan. Therefore, the cause of injury is not the imported products.

### **Adjustment Plan**

- (Ixii) Respondent submitted that safeguard duties are only a temporary relief to a non-competitive Domestic Industry and trade remedy under safeguards is a mechanism to protect the Domestic Industry for a temporary period in order for it to adjust and become competitive with foreign producers. Article 5 of AoS also provides that a member may apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.
- (Ixiii) Structural adjustment forms the core of safeguard investigations under AoS as has been recognized in the preamble of AoS. The measure which the Applicant Domestic Producers projecting as adjustment plan cannot be called at any standard as structural changes. For example, ISMT stated that "sourcing of the key material from multiple viable sources to ensure competitive pricing". This means that ISMT is currently procuring raw material from unviable sources which is adding to its raw material cost and consequently an injury, if any, is caused to it is by its own reasons. This proposed plan cannot be termed as a structural change and satisfy the requirement of adjustment plan. Since, the Applicant Domestic Producers failed to provide any viable adjustment plan which may result into making them competitive with imports, therefore, the investigation may be terminated with immediate effect.

### **Public Interest**

- (Ixiv) BHEL, one of the domestic producers and importer of the subject goods, appeared and opposed the imposition of safeguard duty. It was submitted by BHEL that the total annual requirement of BHEL is 50,000-60,000(MT), out of which 40-50% is met by in house production. Balance 50-60 % is quantity being procured through competitive route from the registered suppliers of BHEL. Foreign suppliers are getting orders approx. 23,000 MT (Rs. 160Cr) and for 8,500 MT (Rs. 50 Cr.).
- (Ixv) It has been specifically held by BHEL that foreign suppliers are getting more orders due to entire range available vis-à-vis Indian suppliers who have limited range available with them.
- (Ixvi) It has also been pointed by user industry –BHEL that two of the indigenous suppliers had serious quality issues including leakage of tubes in hydraulic testing. Such kind of leakage may lead to some misfortune which may affect the public at large.
- (Ixvii) As per BHEL, one Indian supplier is still kept at 'hold' for the subject items. With limited quality and quantity being supplied by domestic industry, there is a possibility that any safeguard duties will erode its competitiveness and severely affect utilization of its installed manufacturing capacity.
- (Ixviii) It has also been stated by the domestic industry at para 72(b) of its written submission that there may be a loss of revenue to the government on account of taxes because of decline in profitability of the domestic industry.
- (Ixix) Respondent submitted that the purpose of safeguard duty or any trade remedy measure for that matter is not to increase the revenue of a Government. Instead the purpose is to create a level playing field for the domestic industry, so that it is in a position to compete with foreign suppliers. In any case, Government would still be earning revenues on account of custom duties being paid

upon imports of subject goods, which according to domestic industry is increasing. Thus, revenue of government is secure.

- (lxx) At para 74 of the first written submission, wherein domestic industry has claimed itself to be a 'nascent' industry. Respondents submitted that in the present case, domestic industry is represented by M/s ISMT, which came into existence in 1977 and M/s JSW Ltd, which came into existence in 1984
- (lxxi) The domestic industry has further stated at para 72(c) of its first written submission that the increased outflow of precious foreign exchange hurt the public interest of India in a longer run. Respondents submitted that the claim of domestic industry regarding increased outflow of foreign exchange is completely vague and without any justification.

## **J. M/s BHEL**

M/s BHEL presented their oral submissions during public hearing wherein they have repeated their earlier submissions made during 1<sup>st</sup> Public Hearing.

- (i) M/s BHEL requirements are highly critical as these Tubes & Pipes are used for High Pressure boiler applications.
- (ii) Quality and testing requirements very stringent as safety of power plant is prime concern.
- (iii) Total average annual requirement of BHEL in this category of the order of 50-60,000MT.40-50% requirement being met by in-house production. Balance 50- 60% quantity being procured through competitive route from the registered suppliers of BHEL.
- (iv) Foreign Suppliers are getting more orders due to entire range available vis-à-vis Indian Suppliers who have limited range.
- (v) M/s BHEL procures from registered suppliers meeting its quality requirements.
- (vi) M/s BHEL has total 23 registered suppliers (including 4 indigenous suppliers) in this category.
- (vii) Only one indigenous supplier can meet the full range. Thus not enough competition for Indian production. Most of the foreign suppliers can supply full range.
- (viii) Two of the indigenous suppliers had serious quality issues including leakage of tubes in hydraulic testing. One Indigenous supplier still under 'HOLD' for the subject items.
- (ix) No indigenous supplier for 'Rifled' tubes other than M/s ISMT Ltd which is under 'HOLD' for this item. For 'Rifled' tubes entire dependence on imports at present.
- (x) Sample study of one indigenous supplier shows proportionate movement in raw material cost vis-à-vis realization per metric ton.
- (xi) Power & fuel, employee cost, manufacturing expenses of the indigenous supplier has gone up. Need to enhance productivity and cost control measures.
- (xii) Thus quality issues coupled with low productivity leading to erosion of competitiveness of indigenous suppliers.

- (xiii) Indigenous suppliers to improve quality and benchmark productivity and efficiency vis-à-vis overseas suppliers.
- (xiv) Companies like M/s BHEL have to compete against stiff international competition with no domestic preference. Hence any safeguard duties will erode its competitiveness and severely affect utilization of its installed manufacturing capacity.
- (xv) With average annual import of Rs.160cr (approx.) any safeguard duty on these items will cause a serious injury to M/s BHEL's operations.
- (xvi) Any safeguard duty on these products will go against Power Equipment Manufacturers mainly M/s BHEL, causing serious negative impact in terms of competitiveness and hence business prospects.

**K. Dalmine SPA, Italy (Reprented by Seth &Dua Associates)**

Dalmine SPA presented their oral submission during public hearing but they failed to submit their written submission.

**L. The Japan Iron and Steel Federation.**

They did not attend the second Public Hearings but submitted their written submissions, which is as follows:

- (i) The scope of the PUC is very broad as the products exported by the Japanese steel manufacturers are not like or competitive article to the products manufactured by the Indian steel manufacturers.
- (ii) The products manufactured by the Japanese steel manufactured are technologically much superior to those of the DI
- (iii) The Japanese steel manufacturers maintain both upstream and downstream manufacturing processes, an area in which the Indian steel manufacturers are still lacking and which allows the Japanese steel manufacturer to maintain quality control over their production process.
- (iv) The products manufactured by the Japanese steel manufacturers should not be included within the scope of the PUC.
- (v) Due to the superior quality of the products, the Indian end users have approved the products manufactured by the Japanese steel manufacturers in technological sensitive sectors such as automobile, oil and gas exploration, transportation of oil and gas, thermal power plants and chemical industry.
- (vi) Import of the PUC from Japan has been in the range of 1.19%-3% of the overall demand. This clearly establishes that import of PUC from Japan caters to a market which requires application of high technology and quality control.
- (vii) As per the DI petition itself, imports from Japan are not leading to price undercutting at all.
- (viii) Import price from Japan has been consistently higher than the domestic selling price at least by 27% to 84%.
- (ix) Article 3.1 of the Agreement on safeguards requires assessing as to whether imposition of a safeguard measure would be in Public interest or not.

- (x) Japan Iron and Steel Federation submit that initiation of this safeguard investigation is not in public interest as imposition of a safeguard investigation would be prejudicial to the interest of the end users in India.
- (xi) The Indian end users would be impacted as Japanese steel manufacturers have been approved by such Indian end user as a supplier in various sensitive sectors. Since technological sensitive sectors are such where the end users cannot compromise on the quality and the technology of the input product, if the safeguard duty is imposed these products would not be available to the Indian end user at a competitive price and would be forced to bear the brunt of the high cost of import.
- (xii) The causal link is broken. When there was a marginal increase in import in 2011-12, the DI performed exceedingly well on the economic parameters. However, when there has been a decline in imports and increase in import price in 2012-13, the production and profit of DI declined slightly.
- (xiii) There has been a decline in demand. This decline in demand and the above factors severs the causal link between the claim of serious injury (if any) and the imports. Even in case DGS decides to take a safeguard measure, DSG will not apply a safeguard measure against PUC imported from Japan

**13. Following rejoinders have been received wherein the interested parties have interalia stated that:**

**(A) TMK Group, Russia (Represent by Advocate Shri M.N Jha)**

- (i) TMK comments dated 29 May 2013 made in response to the Notice of Initiation of the safeguard investigation, as well as to the comments made during the oral hearings on 2 September and 12 December 2013, to TMK's post-hearing briefs dated 13 September and 16 December 2013, as well as to the submission on unforeseen development made on 27 October 2013. All comments made in these documents, as regards the injury and public interest remain equally valid for the purposes of the present document.

**Increase in Imports**

- (ii) In the most recent period of 2012-2013 level of imports saw a decline by 16 points. This was likely in response to the drop in demand by 19 points. The Petitioners perceived a 16 per cent decline in imports as a 42 per cent increase in imports. A 16 per cent decline in imports contradicts the very requirement for initiating a safeguard proceeding, i.e. that imports are 'being imported---in such increased quantities'

**Absence of Serious Injury or Threat of Serious Injury to the domestic industry**

**Petitioners' production has increased**

- (iii) The domestic industry's production increased by 42 per cent in the period of 2009-2010 and of 2011-2012, incurring a much smaller decrease of 20 per cent in 2012-13, finally leading up to a noticeable stabilisation in the domestic production. The fluctuating trend is attributable to factors other than imports. During the investigation period the domestic industry's production increased by some 13 per cent.

***Petitioners increased their installed capacity during the reference period***

- (iv) There is no nexus between the drop in capacity utilization and presence of imports on the Indian market. The capacity utilization dropped from 60 per cent to 41 per cent in 2010-2011 only as a result of the capacity increase by 83 per cent during the same period. While Petitioners capacity utilization decreased by 19 per cent in one year (2010-2011), their production increased by 26 per cent during the same year. As for imports, during the same year imports increased by 12 per cent.

***Petitioners' assessment of domestic sales trends is incomplete and inaccurate***

- (v) The Petitioners observed that their domestic sales have steeply declined between 2012-2013 from 170,826 MT to 141,588 MT. However, TMK submitted that the domestic sales in 2012-2013 were essentially at the level of domestic sales in 2009-2010. Moreover, domestic sales post 2012-2013 period remain stable. TMK Group submitted that 1 per cent decline in domestic sales over the period of 4 years period certainly didn't justify imposition of safeguard measures in the case at hand.

***Erroneous analysis of the level of demand and the market shares by the Petitioners***

- (vi) With respect to the level of demand and the market share during the reference period, the Petitioners submitted that sales of the domestic industry have increased by only 16 per cent. Which is more, in the periods of 2009-2010 and 2011-2012, domestic sales have in fact increased by 19 per cent.

The Petitioners relied on the figures that cannot be derived from the table the Petitioners themselves supply. For example, the Petitioners submitted that "in 2012-2013, the demand increased by 13 per cent, however, sales of the domestic industry declined by 24 per cent and imports increased by 42 per cent". In fact, according to the Petitioners' own data in the table, the demand increased in 2011-2012 by 13 per cent when the sales of the domestic industry also increased. Thus, there was no drop by 24 per cent, which the Petitioners asserted.

As for imports, they also increased (by 26 per cent), but not by 42 per cent as the Petitioners suggested. In the following period of 2012-2013, however, the demand fell by 19 points and so did the imports, which actually saw a decline by 16 points. The fact that the Petitioner perceived a 16 per cent decline in imports as a 42 per cent increase in imports would explain why the Petitioner continue to request that the safeguard measures be imposed.

The data referred to by the Petitioners also indicates that in 2012-2013 the imports as a share of domestic sales have increased over the period of four years with an annual increase rate of 2.1 per cent per year, which - by any measure - constitutes a gradual increase.

The market share of the domestic industry has decreased only marginally, by 2 per cent lower as compared to their share 4 years earlier. Furthermore, the domestic industry's market share in 2012-2013 was only 3 per cent lower than it has ever been during the investigation period. Between 2011-2012 and 2012-2013 the domestic industry lost a market share of 1 per cent.

The level of injury is conceivable for the purposes of a material injury analysis in the context of an anti-dumping investigation, it falls drastically short of meeting the serious injury standard in a safeguards investigation.

**Absence of causation**

**Alleged correlation between imports and sales of domestic industry does not exist**

- (vii) The submission of petitioners confirmed that there is no correlation between increased imports and decreased domestic sales. The data shows that imports and domestic sales are responding to the same market signals and are moving in a synchronised fashion. Instead of showing a sharp increase in imports coupled with a sharp decline in domestic sales, the data shows that imports and domestic sales increase and decline in parallel, following the same market trends. The difficulties, if any, experienced by the domestic industry are attributable to factors other than increase in imports.

**Argument about the other Indian producers of the product concerned has not been addressed**

- (viii) The data of the two Petitioners representing only 54 per cent of the total industry is not representative of the domestic industry as a whole as it doesn't take into consideration the data of other Indian producers that did not support the investigation

***Petitioners' arguments with respect to profits of the domestic industry and price effects are inaccurate***

- (ix) The Petitioners' submission refers to profit and loss data that is inconsistent with the information contained in the Notice of Initiation.
- (x) The profit index reported for 2011-2012 is 64 index points, while the Notice of Initiation reports 102 index points. This discrepancy cannot go unexplained.
- (xi) The Petitioners have been able to increase their selling price by 4 points in 2012-2013, the increase of the landed price of the imports in Rs. has been even greater, i.e. by 5 points. A similar trend continues post 2012-2013 period showing that the price charged by the Petitioner did not fall on account of the ever-decreasing price of imports. In other words, import prices do not drive domestic prices of product concerned downwards.
- (xii) If the import prices were indeed responsible for driving down the Petitioners' domestic selling price, it would have been outright impossible for the Petitioners to increase their domestic prices.
- (xiii) A remarkable 18 per cent increase in the Petitioners' selling price within the period of 4 years suggests that competition with imports is not at all a problem for the Petitioners and that their prices are not affected by imports.
- (xiv) The Petitioners' cost of sales increased by 23 per cent within the period of 4 years could explain some of the Petitioners' grievances.
- (xv) TMK submitted that the Petitioners assertion that there is an existence of threat of serious injury is in fact based on mere allegation and conjecture in violation of Article 4(1) (b) of the Safeguards Agreement. Given the stability of the domestic sales in the later periods and decline in imports, there are no facts that are capable of supporting Petitioners' assertions.
- (xvi) TMK observed that in their Second Brief, the Petitioners failed to make any further progress with argument that trade defence measures in other countries have led to significant increase in imports (or will lead in the case of threat of serious injury),. An abstract reference to cited trade remedy investigations, some of which may well reach their completion without imposition of measures and which, in turn, hardly relate to the product scope in the present proceeding, does not give strength to the Petitioners' case, but weakens it even further confirming the counter-arguments made by the interested parties and TMK group.
- (xvii) The Petitioners reference to recently lost tenders claiming that there is evidence of sudden increase of imports due to unforeseen development causing serious injury to the Indian

domestic industry. Moreover, it is clear from the data provided that at least one of the tenders lost, was lost to another Indian producer.

- (xviii) TMK Group submitted that the Petitioners failed to explain how the increased capacities in China, United States and elsewhere will affect the Indian domestic industry or how these capacities are capable of contributing to the Petitioners' threat of serious injury argument. TMK added that some of the referenced capacity increases will cater to domestic markets in the foreign countries and/ or will not produce product under investigation.

#### **Causation**

- (ix) There is no causal link between the level of imports and the domestic industry's performance. The domestic industry's performance is affected by a sharp increase in capacity, investments and employment, as well as an increase in sales costs and fall in demand. Against the background of these injury factors, domestic industry's market share remained virtually unchanged, while their prices have increased by 18 per cent. The Petitioners have failed to explain why these factors have no bearing on the state of industry, nor have they explained a decline in imports and how this decline caused serious injury to the Indian domestic industry, which feels so badly injured that it managed to double its installed capacity, increase prices and costs of sales, while losing only 1 per cent of their market share during the reference period. Thus, the Indian domestic industry represented by the Petitioners failed to demonstrate that it experiences "significant overall impairment" that could warrant imposition of safeguards measures on imports of seamless pipes and tubes into India.
- (xx) Given that the Petitioners have increased their capacity by 83 per cent, while making 'huge investments in technology up-gradation and human resource development', and sourcing their materials at non-competitive prices as follows from the Rehabilitation plan's (for ISMT), the injury, if any, that the Petitioners alleged to exist is self-inflicted

#### **B. JFE Steel Corporation; Nippon Steel & Sumitomo Metal Corporation; and Sanyo Special Steel Co Ltd. (Represented by Luthra&luthra)**

##### **The Petition is not maintainable**

- (i) The Domestic Industry in their Post Public Hearing written submission did not address the issues raised by the Exporters that Domestic Industry has not met the threshold issue of *recent, sudden, sharp and significant* increase in imports.
- (ii) The submission of Domestic Industry that the 'Japanese Exporters have argued that the price effect is not relevant in a safeguard investigation and price injury can only be addressed in an anti dumping investigation is incorrect and misleading.
- (iii) The Exporters had argued that while price undercutting is an issue to be analyzed in the context of serious injury to the Domestic Industry, price undercutting *per se* does not lead to initiation of a SG investigation as the threshold issue in a SG investigation is of *recent, sudden, sharp and significant* increase in imports. This issue has not been addressed by the Domestic Industry in their Post Public Hearing written submission.
- (iv) The import of the PUC in the most recent period of the POI, i.e. 2012-13 has decreased by 51,346 MT as compared to the previous year. This significant decline in import clearly rebuts the presumption of *recent, sudden, sharp and significant* increase in imports.
- (v) The Domestic Industry argument that imports have declined after the filing of the petition by the Domestic Industry is rebutted by the exporters. The Exporters submitted that the DI petition was filed in November 2012. The import data established that at the time of the filing of the petition itself there was a decline in import of the PUC. Thus the argument of the

Domestic Industry that there was a decline in import after filing the petition is incorrect and misleading and should be rejected.

- (vi) The Exporters argued that based upon the representations made by the Domestic Industry, the injury to the Domestic Industry seems to be on account of import of the PUC from the European Union and China PR and not from any other country.
- (vii) The issue of the Domestic Industry getting injured (if any) on account of import from the European Union and China PR has to be examined in light of the submission made by the Domestic Industry that it is the increase in low priced imports which is the cause of concern for them. Thus it would mean that the Domestic Industry is getting injured due to low priced imports which are mainly from the European Union and China PR. Therefore the appropriate remedy in such circumstances lies before DGAD and not before the DGS.
- (viii) The Exporters had argued that in view of the fact that import from Japan are not injuring the Domestic Industry as import share from Japan is miniscule and import price from Japan is 84% higher than the price of the Domestic Industry, the DGS is empowered under Section 8(B) to exclude the import of the PUC from Japan from the scope of the Safeguard duty.
- (ix) The Domestic Industry in response has not contested the scope provided to the DGS under Section 8B but instead has simply stated that the mere fact that the import price is higher cannot be the reason for excluding import of the PUC from the scope of the SG duty.
- (x) The Exporters in their Post Public Hearing written submission have stated that in view of the broad range of the PUC and wherein the function and usage differs from each other and none can substitute for the other product, the serious injury should be established for each of product included within the scope of the PUC. The Exporters had also provided past investigations wherein a similar analysis was done.
- (xi) The Domestic Industry in its response has not countered the argument of the Exporters but has instead simply stated that since the Exporters have not segregated the goods as per the usage in their questionnaire response, they cannot seek such segregation from the Domestic Industry This argument is without any basis and should be rejected. It is the Domestic Industry which has formulated the scope of the PUC and is also claiming serious injury. Thus the Domestic Industry is liable to establish serious injury for each of the product included within the scope of the PUC.

**DI has not rebutted the arguments of the other interested parties with respect to the wide scope of the PUC**

- (xii) The Exporters have upstream manufacturing process for raw materials such as billets which is used in the manufacturing of the PUC and which ensures that the Exporters have total quality control and management over their own upstream and downstream manufacturing process.
- (xiii) The DI till the 2<sup>nd</sup> public hearing did not contest the above claim of the Exporters. Even the exhibit 1A produced for the first time after the 2<sup>nd</sup> public hearing which provides the manufacturing process employed by the DI does not establish that the DI has complete control over the upstream and downstream manufacturing process of the Exporters.
- (xiv) The lack of complete quality control over the upstream and the downstream manufacturing process of the Domestic Industry clearly establish the difference in the manufacturing process of the Exporters and the Domestic Industry which explains the reason behind the non inclusion of the Domestic Industry in the vendor list of the Indian user industry while at the same, the Exporters have been included within the list.

- (xv) The Exporters in their previous submissions have also highlighted the broad scope of the PUC and the fact that the DI was not able to manufacture products of certain grades and sizes. The contention of the Domestic Industry in their Post Public Hearing written submission that the Exporters have not provided any evidence to support their arguments is incorrect and should be rejected.
- (xvi) The Exporters had also provided evidence that certain products as manufactured by the Domestic Industry are not accepted by the user industry in India. The user industry in India also stated in their submission that the Domestic Industry is not able to manufacture products of certain grades, sizes and thickness.
- (xvii) The Domestic Industry in their Post Public Hearing written submission with respect to the PUC have not provided any evidence to establish that the products covered under the scope of the PUC are like articles to the products manufactured by the Domestic Industry.
- (xviii) The Domestic Industry has not produced any evidence to support its claim that it has manufactured and supplied in commercial quantities to the products to the user industry in India.
- (xix) The Domestic Industry has tried to circumvent the issue by arguing that there is no restriction under the law with respect to the definition of the scope of the PUC. The argument is misleading as the real issue which is whether the products covered under the scope of the PUC are like article to the products manufactured by the Domestic Industry.
- (xx) The past rulings of the Hon'ble DGS as well as of the Hon'ble Directorate General of Anti Dumping outline the factors which need to be taken into consideration while making the determination with respect to 'like article'.
- (xxi) The Exporters submitted that given the fact that the PUC contains a number of distinct products which are imported under the same tariff classification, if the final finding does not explicitly mention products which have been excluded from the scope of the PUC, the same could likely lead to confusion and wrongful imposition of SG duty by customs.
- The criteria of unforeseen circumstances has not been fulfilled**
- (xxii) The Domestic Industry has not been able to fulfill the requirement to establish that the increase in imports was as a result of some unforeseen circumstances.
- (xxiii) The Domestic Industry till the first hearing did not present any arguments and evidence with respect to unforeseen circumstances.
- (xxiv) The final findings in *Safeguard investigation against imports of Methyl Acetoacetate* wherein the Hon'ble DGS rejected the Domestic Industry argument with respect to unforeseen development and public interest prompted the Domestic Industry to make additional submission with respect to unforeseen development and public interest which is nothing but a post facto realization on part of the Domestic Industry.
- (xxv) The Exporters have already effectively rebutted the additional submission made by the Domestic Industry with respect to unforeseen development in their comments dated 29 October 2013 to the Domestic Industry's letter and relied on the same as the Domestic Industry has not presented any new arguments in its Post Public Hearing written submission dated 20 December 2013.

- (xxvi) The Domestic Industry till date has not even provided any arguments with respect to fulfilling requirement of unforeseen development for each of the product covered within the PUC. This argument is supported by the ruling of the Appellate Body in the matter of US Steel Products WT/DS248/AB/R, paragraph 319 of the report wherein the AB observed as follows:

*For this reason, when an importing Member wishes to apply safeguard measures on imports of several products, it is not sufficient merely to demonstrate that "unforeseen developments" resulted in increased imports of a broad category of products that included the specific products subject to the respective determinations by the competent authority. If that could be done, a Member could make a determination and apply a safeguard measure to a broad category of products even if imports of one or more of those products did not increase and did not result from the "unforeseen developments" at issue. Accordingly, we agree with the Panel that such an approach does not meet the requirements of Article XIX: 1(a), and that the demonstration of "unforeseen developments" must be performed for each product subject to a safeguard measure.*

#### **No serious injury or threat of serious injury to the Domestic Industry**

- (xxvii) **Production and domestic sale** of the Applicants increased in 2011-12 as compared to 2010-11. However for the same period and under the same market conditions, the domestic sales of the Supporters declined in 2011-12 as compared to 2010-11. Thus a decline in domestic sales of Supporter company in 2010-11 while increase in production and domestic sales of the Applicants for the same period clearly illustrate that any decline in domestic sales of the Supporter cannot be attributed to the alleged increase in imports as both the Applicants as well as the Supporter companies are competing in the same market.
- (xxviii) Production and domestic sales of Applicants declined marginally in 2012-13 as compared to 2011-12 while the domestic sales of the Supporter continue to decline in 2012-13 as well. It should however be noted that there has been an increase in production and domestic sales of the Applicants in 2012-13 as compared to 2011-12. In this case even if the Applicant may have suffered an injury in 2012-13, the same cannot be attributed to imports as requirement under Article 2.1 of the AOS has not been fulfilled
- (xxix) **Increase in import price-** The above submission of the Exporters stating that the DI has not suffered any injury on account of increase in imports is further substantiated by the fact that there has been an increase in import prices. Thus while the import prices have increased by 11% in the POI and in the same corresponding period, there has been a decline in imports in absolute terms. In view of the above, the claim of the domestic industry with respect to the serious injury due to imports cannot be sustained.
- (xxx) **Market Share-** The market share of the Applicants has seen a marginal decline of 0.87% in 2009-10 as compared to 2012-13 which cannot be termed as serious injury to the Applicants. The imports have declined on absolute basis and have seen a marginal increase of 1% on relative terms. Further there has been an increase in domestic sales of the Applicants in 2012-13 as compared to 2009-10. The market share of the Applicants has seen a decline of mere 0.87 in 2012-13 as compared to 2009-10. All these factors do not indicate that the DI is suffering any serious injury, the requirements for which are very stringent and have been explained above.
- (xxxi) **DI is in profit –** The DI in their petition has stated that their profitability has declined in 2012-13. However, an analysis of EBITDA figures of the DI reveals that there is a slight decline in profit which is on account of volatility in the FOREX markets.

- (xxxii) The annual report of ISMT for 2012-13 provides information that the EBITDA of the company is INR 172 crore in 2012-13 as compared to 265 crore in 2011-12. Thus ISMT is still in profit. However the decline in profit is on account of a FOREX loss of INR 77 crore and which cannot be attributed to imports.
- (xxxiii) The finance cost of ISMT has also increased. As per the annual report 2012-13, *the increase in Interest cost was partially attributable to capitalisation of 40 MW Captive Power Plant which does not add up to the topline, since being captive*
- (xxxiv) The decrease in profit on account of FOREX loss is not limited to 2012-13 but is also responsible for decrease in profit for previous years. The annual report of ISMT for 2011-12 provides as follows: *'Despite the challenging economic environment, the Company was able to sustain EBITDA which dropped marginally to Rs. 265 Crore. However, Profitability was impacted largely on account of FCCB redemption premium provisioning and foreign exchange volatility.*
- (xxxv) The same situation is applicable with respect to the other Applicant, i.e. Jindal Saw. As per the annual report for 2012-13, the profit before tax was INR 264.92 crore as compared to INR 322.97 crore in 2011-12. Thus there is a decline in profit by 18%. However the annual report also provides us the information that payment of the interest by the company has increased from INR 113.93 crore in 2011-12 to INR 150.08 crore in 2012-13 and which is an increase of 31%.
- (xxxvi) The Exporters has also submitted that as per the available financial result for 2012-13 the Jindal has suffered losses on account of FOREX and long term borrowings of the company has increased from INR 969 crore in 2011-12 to INR 1481 crore which is an increase of 33%. Thus it is clear that factors other than imports are attributable only to the slight decline in profits of the applicants and the same cannot be attributed to imports.

**There is a break in of causal link and public interest has not been established by the Domestic Industry**

- (xxxvii) The exporters submitted that the grounds taken by the Domestic Industry with respect to causal link in its Post Public Hearing written submission is same as it was in their previous submission and therefore for the sake of brevity did not repeat their arguments and relied upon the submission made in their Post Public Hearing written submission of Exporters dated 13 September 2013, page 24-26 and Post PH WS of Exporters dated 20 December 2013, page 09-10.
- (xxxviii) The DI has not suffered any injury on account of increase in imports. Thus the DI performed exceedingly well when there was an increase in imports but the slight decline in production and domestic sales took place in 2012-13 when the imports declined and there was an increase in the import price. Thus injury suffered by the DI is not on account of imports
- (xxxix) The causal link between imports and injury (if any) to the DI is broken because injury suffered by the DI is on account of dumping from China
- (xl) The above Annual reports of ISMT for last 4 years has reiterated that it is the dumping of the PUC from China which is causing injury to the DI and not any sudden increase in import of the PUC.

- (xli) The grounds taken by the Domestic Industry with respect public interest in its Post Public Hearing written submission is same as it was in their previous submission and therefore the Exporters for the sake of brevity did not repeat their arguments and relied upon their previous submission dated 29 October 2013 and Post Public Hearing written submission of Exporters dated 20 December 2013, page 10-11.

**C. M/s VALLOUREC TUBES, M/s MERTEX UK AND M/s TUBOS REUNIDOS INDUSTRIAL SLU, SPAIN (REPRESENTED BY AMARCHAND MANGALDAS)**

- (i) Repeated and relied upon all the arguments detailed in their response to exporter's questionnaire previously submitted by them, their Written Submissions filed on 13.09.2013, Rejoinder Submissions filed on 20.09.2013, additional submissions dated 29.10.2013 and Written Submissions dated 20.12.2013 which are to be treated as a part and parcel of the present submissions including the annexures thereto.
- (ii) Most of the issues dealt with by the Domestic Industry in their 2<sup>nd</sup> Written Submissions have been analyzed by Vallourec, Mertex and Tubos in their Written Submissions and Rejoinder Submissions dated 13.09.2013 & 20.09.2013 respectively and therefore such issues do not require any additional response save as indicated hereinafter. However, Vallourec, Mertex and Tubos sought to refer and relied upon their earlier submissions which are to be read as a part and parcel of the present Rejoinder Submissions.

**Preliminary Objection**

- (iii) Vallourec, Mertex and Tubos submitted that neither they nor their legal representatives in India have received any communication from the Hon'ble DGS regarding any extension provided by the Central Government
- (iv) Respondents submitted that in the absence of any extension for the time period of 8 months within the 8 months period by the Central Government, the present investigation is time barred as per the law and ought to be terminated on this sole count alone.
- (v) The legislature being aware of the importance of time bound investigations in relation to safeguard measures has used the word '*shall*' which indicates beyond any doubt that the provision for rendering a time bound final finding within 8 months from the date of initiation is a mandatory requirement and cannot be waived.

**Rejoinder on merits to the Written Submission filed by the Petitioners**

- (vi) Without prejudice to the preliminary objections and without adverting to a repetition of what has been earlier submitted by them, the present rejoinder submissions would touch upon the required headings in the Written Submissions filed by the Petitioners.

**Product under Consideration and Like Article**

- (vii) Respondents maintained that the Product under Consideration ("**PUC**") and Like Article has been defined very broadly for the purposes of the present investigation and ought to be redefined to exclude those products which are not being manufactured by the Domestic Industry. In this regard, respondents reiterated the submissions made previously and which is not repeated herein for the sake of brevity.
- (viii) Respondents submitted that certain products which have been mentioned in greater detail of the Written Submissions filed by them on 20.12.2013 ought to be excluded from the scope of the investigation as the Domestic Industry are unable to manufacture and/or the manufactured products do not meet the technical specifications of the Indian customers of such PUC/tenderers.

- (ix) Respondents relied upon United States- Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan (WT/DS192/AB/R), wherein the Appellate Body held that the definition of the domestic industry must be product-oriented and not producer oriented, and that the definition must be based on the products produced by the domestic industry which are to be compared with the imported products in terms of their being alike or directly competitive.
- (x) The Domestic Industry has failed to place on record any data to rebut the submissions made by respondents regarding the exclusion of certain products from the ambit of the PUC. Therefore, such products may be excluded from the scope of the PUC.
- (xi) The Domestic Industry's reliance on USITC Investigation regarding *Certain Oil Country Tubular Goods* is misplaced in as much as it fails to appreciate that the said investigation is no way connected to the investigation being carried by the DGS in India.
- (xii) The reliance of the Domestic Industry on the Panel Report in the case of *Dominican Republic – Bag and Fabric Safeguards* supports the pleadings of respondents in as much as the said Panel Report also maintains that the competent authority must define the product under consideration.
- (xiii) It is submitted that when the Domestic Industry is unable to manufacture a product that is being imported or even if it is manufactured, they differ in technical specifications, such products cannot be said to be like or competitive products and hence the same will have to be excluded from the purview of the PUC.
- (xiv) The Petitioners submission that they have led cogent and clear evidence regarding their ability to produce products as named in Page 13 of its written submissions is unfounded and misplaced as no evidence is provided to the interested parties.
- (xv) The manufacturing process has been disclosed in the Annexure 1A (confidential) to the Written Submissions filed by the Petitioners. In view of the contrary pleadings being made by the Petitioners, respondents doubted the integrity of the data being furnished by the Petitioners.
- (xvi) Respondents disagreed with the submission of the Petitioners that the manufacturing process employed by it is similar in nature to those of the Exporters same as being incorrect. The Petitioner's attempt to use this process to justify a wide scope of products as being under investigation does not warrant consideration in as much as quality control and installations, rejection rate, data evaluation, references, qualification of the personnel are also important parts which are evaluated by customers of seamless pipes and tubes in the oil and gas business, in particular for offshore application.
- (xvii) The Petitioner's reference to the API license also does not support the plea of the Petitioner. Respondents have mentioned that customers establish and maintain their own list of qualified suppliers depending on the usage of the pipes therefore the Petitioners are not qualified and/or unable to deliver the quality requested for the product described in Paras. 36-39 of the Written Submissions dated 20.12.2013.

#### **Constitution of the Domestic Industry**

- (xviii) In the present investigation the Petitioners do not satisfy the requirement of representing a '*major proportion*' of the domestic industry. In a trade remedy investigation such as safeguard investigation or dumping investigation, merely having more than 50% of the total

production is not sufficient to claim '*major proportion*' of the total production thereby entitling the petitioners to file as the domestic industry.

- (xix) Respondents relied upon their earlier submissions made in its Written Submissions and which are not repeated herein for the sake of brevity.
- (xx) Respondents relied upon the Appellate Body decision in DS 397 – EC Steel Fasteners wherein while interpreting Article 4.1 of the WTO Agreement on Anti-Dumping which is parimateria with Article 4.1(c) of the WTO Agreement on Safeguards held that "*The absence of a specific proportion does not mean, however, that any percentage, no matter how low, could automatically qualify as "a major proportion". Rather, the context in which the term "a major proportion" is situated indicated that "a major proportion" should be properly understood as a relatively high proportion of the total domestic production. Specifically, when read in the light of the phrase "the domestic producers as a whole", the term "those of them" in the second method for defining the domestic industry clearly refers to those producers among "domestic producers as a whole".*"
- (xxi) The ruling in the case of *European Communities – Definitive Anti Dumping Measures on certain Iron or Steel Fasteners from China* relied upon by the Domestic Industry is in favour of the submissions advanced by respondents. The quoted portion by the Domestic Industry reveals that major proportion should be properly understood as a relatively high proportion of the total domestic production.

#### **Confidentiality and violation of Principles of Natural Justice**

- (xxii) Respondents submitted that pursuant to the judgment of Hon'ble Supreme Court of India in *Automotive Tyre Manufacturer's Association v Designated Authority*, relevant authorities for anti dumping and safeguard investigations provides for fresh public hearings with the change in the authority. Therefore submissions of the petitioner that the judgment has no applicability in relation to the present investigation in itself contrary to the fact that a second public hearing has been held and therefore deserves no consideration whatsoever.

#### **Increased Imports to India**

- (xxiii) Respondents reiterated the submissions made in their Written Submissions dated 13.09.2013 & 20.12.2013 and also referred to their additional submissions dated 29.10.2013 regarding the trend of decrease in imports for current year.
- (xxiv) As per the indexation provided by the Petitioners, it is absolutely clear that for the years (2009-10::2010-11::2011-12::2012-13::Ann. Apr,12-Jun 13), the figures for imports are (100-112-138-122-119). Therefore, the Petitioner's own data as put forth in the written submissions shows a decrease in imports in absolute terms.
- (xxv) The Domestic Industry's own averment regarding Imports as percentage of demand shows an increase from 62% to 64% i.e. a mere 2% increase which definitely cannot be a condition for imposition of a safeguard duty.
- (xxvi) The annualized figure for the FY 2013-14 would show that imports are further expected to decrease. It is submitted that as imports show a decrease in trend, the very basis of seeking a safeguard measure falls flat.
- (xxvii) Respondents submitted that the figures presented by the Petitioners as the Indian production figures are only that of the complainant and the supporter not the Indian

production. Reference is drawn to Para. 6 (page 21) and Para. 5 (page 44) of the Written Submissions filed by the Petitioners. The total figures when taken into account would reveal a different picture and would show that imports as percentage of Indian Production has also shown a decrease.

- (xxviii) It is submitted by the respondents that even for Import as percentage production there is a drop in the same when compared for the years 2011-12 & 2012-13. Given the fact that imports (annualized) for the year 2013-14 is also showing a drop, the import as percentage of production will further drop.
- (xxix) The Domestic Industry's allegation regarding increase in imports from EU is grossly erroneous. Respondents pointed out the error in data in respect to volume, price and classification in their written submission.
- (xxx) Respondents submitted that total imports from the EU are decreasing continuously according the Eurostat statistics and even reach a very low level over the first 6 months 2013.
- (xxxi) Respondents noted that the Petitioners continued to use the reference to the same statistics even after the claim of respondents regarding the incoherence between the Indian and European statistics.
- (xxxii) Vallourec and Tubos stated that as per the claim of the Petitioner as constituting the domestic industry in India and having major proportion, the Petitioners ought to have considered the data provided by them as facts and they should have admitted that the tonnage and prices could not be possible for such quantities. In the absence of any consideration or response to the data presented by them shows that the Petitioners are not keen to address the facts as it evident.

#### **Low pricing of imports despite increase in raw material prices**

- (xxxiii) As regards to low prices of import despite the rising raw material prices is concerned, respondents reiterated their post hearing submissions and additional submission dated 29.10.2013
- (xxxiv) Respondents submitted that there is no reason as to why the Indian cost have increased in the same period and further that it is not a consequence of the raw material evolution.
- (xxxv) As regard to low export price to India is concerned, export sales were made to the Indian market through the process of International Competitive Bidding ("ICB"). This means that under bidding all the participants bid for the projects in accordance with strict terms and conditions that are specified in the Tender Bidding Documents. The overseas suppliers and the domestic producers do not really enjoy much discretion to fix their prices in an open competitive system, but are primarily impelled by the buyer to offer low prices independently of any pricing policy that may be pursued by the suppliers in a free market. Therefore the supply and export product for consumers like ONGC and the volumes are driven by the demand for the subject goods by ONGC only.

#### **Unforeseen Developments**

- (xxxvi) Respondents maintained that the Domestic Industry has failed to show any unforeseen developments that necessitate the levy of a safeguard measure. They relied upon their earlier written submissions.

### **Serious Injury and Threat of Serious Injury**

- (xxxvii) Respondents submitted that the Petitioners not suffered any serious injury and relied upon their earlier submissions which address the claims of injury and threat of injury of the Domestic Industry under each of the heads stated by the Petitioners.
- (xxxviii) As per the information submitted by the Petitioners themselves, domestic sales have increased over by 100-106-112-96 for the FY's 2009-10, 2010-11, 2011-12 & 2012-13. The decline in sale for the FY 2012-13 is in consonance with the decline in imports for the said FY.
- (xxxix) As regards market share in demand for the Petitioners, the same has actually remained more or less the same over the FY's 2009-10, 2010-11, 2011-12 & 2012-13 as 47-46-43-38. The minute dip in market share is on account of the fact that the Petitioners are unable to meet the demands for certain grades of PUC and it is but natural that for such requirements, imports will have to fill in the vacuum.
- (xl) Perusal of Annexure 10 reveals that employment of the Petitioners have increased in the following sequence for the FY's 2009-10, 2010-11, 2011-12 & 2012-13 (3588-4010-4380-4884). It is submitted that recruitment of new employees is one of the vital indications that the Petitioners are doing well.
- (xli) Maharashtra Seamless Ltd.'s ("MSL") Annual Report for the FY 2010-11 reveals that *the Company achieved a record net profit of Rs. 341.66 Crores*
- (xlii) A conjoint reading of the Petition suggests that a case is being made out for dumping rather than imposition of safeguard measures.
- (xlili) Annual Report of ISMT and MSL for the FY2009-10 and 2011-12 revealed dumping of the goods from China at low price.
- (xliv) According to the Annexure to Rule 8 of Safeguard Rules, when factors other than increased imports are causing injury (for instance, dumping), then such injury is not to be attributed to increased imports and accordingly the Director General should refer the matter to the Authority of anti dumping or countervailing duties.

### **Causal Link**

- (xlv) Respondents reiterated their post public hearing written submissions.

### **Adjustment plan**

- (xlvi) The Petitioners have failed to disclose in their Petition any information in relation to the efforts and measures being taken by the Domestic Industry to make positive adjustments with details of progressive liberalization claiming it to be "business proprietary information and not amenable to summarization".
- (xlvii) The failure to disclose information in relation to the efforts and measures being taken by the Domestic Industry to make positive adjustments with details of progressive liberalization is in violation of Rule 5(2)(b) of the Safeguard Duty Rules.
- (xlviii) On instruction of Director General of Safeguard the petitioners provided the restructuring plan. The said restructuring plan does not disclose any data or statistics, claiming the same to be "Business Proprietary information, not amenable to summarisation.

- (xlix) The limited disclosure of the proposed restructuring plan submitted by the Domestic Industry, shows that the same is based on efficient management of resources by the Domestic Industry, such as better utilization of raw materials, power and energy, and personnel, as well as better inventory management, reduction of production and processing costs, etc., rather than ensuring any real structural adjustments.
- (l) The proposed restructuring plan does not disclose the methods that will be used by the Petitioners in order to achieve the goals stated therein. In absence of disclosure of such methodology, it is incomprehensible how such plans for increasing efficiencies would practically translate into ground realities.

**Public Interest**

- (li) The Petitioner admitted that low price of imports as being a cause of alleged injury and thus Director General Safeguards is not the competent body.
- (lii) The claim regarding drop in employment is also misplaced in as much as the Petitioner's own data in the Petition show substantial rise in employment levels.
- (liii) The repetitive averments made under in respect of public interest had been earlier addressed in the submissions and the Petitioners have not provided new fact or figures that can possibly support its claim for levy of duties

**D. CHINA IRON AND STEEL ASSOCIATION (CISA) &M/S RAMA CYLINDERS PRIVATE LTD (REPRESENTED BY LAKSHMI KUMARAN&SRIDHARAN)**

- (i) The submissions made earlier in preliminary injury submissions, additional injury submission, written submission pursuant to first or second public hearing or rejoinder are reiterated and not reproduced for the sake for brevity.
- (ii) Respondents submitted that even after getting so many opportunities the Applicant Domestic Producers have failed to clarify why the specific instances cited by respondents have been included in the import statistics though those were relating to excluded grades.
- (iii) Despite exclusion of some of the grades by the Applicant Domestic Producers, same are appearing in the revised import statistics so filed. List of some of the product grades are listed below:
  - i. ASME SA 213,
  - ii. ASME A 213
  - iii. L-80

Inclusion of such excluded product types has marred the entire injury analysis. Unless correct import data and revised injury factors are made available to the interested parties including Respondents, it would not be possible to file an effective rejoinder and make comments.

**Product under consideration” and ‘like article’**

- (iv) Product under Consideration” (“PUC”) and “Like Article” are two different aspects of a safeguard investigation though linked with each other. No explanation has been given by the Applicant Domestic Producers with respect to items excluded from the product under investigation so defined. Reasons for exclusions are not known such as whether the exclusion of such grades was due to the fact that these were not manufactured by the domestic industry or because the same products were imported by the Applicant Domestic Producers or no import of such grade is taking place. To oppose the exclusion where valid reasons are provided is not only unwarranted but also illogical.

- (v) Respondents submitted that merely because domestic industry has the capacity to produce wide range of dissimilar products does not mean that all such products can be bundled together.
- (vi) Applicant Domestic Producers have sought to cover pipes used in oil and gas exploration and pipes used in ball bearing industry together. It is an undisputed fact that such products cannot be used interchangeably. There exists a lot of difference with respect to tensile strength, special operation, end usage, perception of customers between the two products. Thus, bundling of such dissimilar products is unwarranted.
- (vii) Respondents have relied upon the WTO: DSB Panel Report in DS-54/55/59/64 Indonesia-Certain Measures affecting the Automobile Industry, wherein Panel refused to accept lumping of all such products together where the differences among the products are so dramatic.
- (viii) The safeguards measures can be applied only in respect of those products which are imported and causing injury to the Domestic Industry. Appellate Body Report in the US-Lamb Safeguards investigation, which was also relied upon by domestic industry in its written submission it was held that the legal basis for imposing a safeguard measure existsonly when imports of a specific product have prejudicial effects on domestic producers of products that are like or directly competitive with that imported product.
- (ix) Safeguard measure may be resorted to only in situations where imports of a specific product have prejudicial effects on domestic producers of like articles Respondents reiterated that in the present investigation, domestic industry is incapable of producing certain products or cannot compete for such products due to technical reasons (as admitted by domestic industry during oral hearing), which rendered them disqualified from ONGC Tender process.
- (x) Letter from Petroleum and Explosives Safety Organization Letter No. G.3(42)515/VI dated 23.05.2013 dated 23.05.2013 proves that there are no Indian producers for high pressure seamless steel gas cylinders.
- (xi) Once the Government of India confirmed this fact, no contrary finding can be made. Therefore, it must be deemed under the law that no Indian manufacturer can manufacture and supply such goods in India.
- (xii) The Applicant Domestic Producers have admitted that they do not have the required approval to manufacture tubes and pipes for high pressure gas cylinders. It is further stated by them that due to low priced imports it was imprudent for them to obtain the required approval. It is an illogical submission by the Applicant Domestic Producers.
- (xiii) The approval from the concerned government agency is not dependent on the pricing of the goods; it is dependent on the capacity and capabilities of the producer to manufacture such tubes and pipes. Because of incapability, the Applicant Domestic Producers have not sought and got the approval to manufacture such goods.
- (xiv) Wherever any product is excluded from the PUC, the volume and value of the same must also be excluded from the total import volume and value to arrive at correct volume and value of the PUC.

**Like Article**

- (xv) The Domestic industry has submitted that the finding of the United States International Trade Commission (USITC) with regard to the investigation into imports of Certain Oil Country Goods(Inv. Nos. 701-TA-499-500 and 731-TA-1215-1223) that ERW Pipes and Seamless Pipes were like articles was on account of the goods being specifically included in the scope of the

product under consideration. This is an incorrect claim. The USITC has specifically carried out an examination whether ERW pipes and tubes are “like” article to the Seamless pipes and tubes. The examination was not based on the fact that ERW pipes and Seamless pipes were included in the PUC, but this examination was an independent examination for determining the like article.

- (xvi) An article may be included in the “like” article even if the same article is not included by the Domestic Industry in the “product under consideration” for one or other reasons such as no import of that article. “PUC” and “like article” are two different aspects of an investigation. “PUC” and “like article” are not co-extensive.
- (xvii) The Designated Authority in Final Findings No. 14/1/96/Anti-dumping Duty dated March 19, 1998 held that though PUC is only Pure Terephthalic Acid (PTA), however, like article included DMT also.
- (xviii) The claim that at such belated stage the scope of the product and investigation cannot be enlarged. It is submitted that the interested parties have not claimed any enlargement of the product scope. The product scope has been defined based on the volume and prices of the import of such product. Based on such product scope, interested parties such as importers/exporter/users participated in the investigation.
- (xix) It is never necessary that like article is limited to and equal to product under investigation. If both are one and the same then there is no need for any definition of like article and to make a determination a separate determination for “PUC” and “Like Article” accordingly. All articles which satisfy the criteria of ‘like’ article are to be included in the investigation for the purpose to correctly determine the standing of the Applicant Domestic Producers as Domestic Industry and injury, if any.
- (xx) Investigation is a continuous process. The DG Safeguards is required to make a determination about the like article during the investigation till the end of the investigation. It is not the requirement of law that if once the DG Safeguards made an incorrect determination of like article on the basis of the submission of the domestic industry that will not be changed during final decision. The DG Safeguards will take a final decision on like article only in its Final Findings.
- (xxi) The claim of the domestic industry at para B.6 of written submission that the domestic industry has been at the forefront of providing the latest technology and the highest quality output to the Indian user industry is factually incorrect. In fact BHEL made a presentation during the public hearing claiming that it has serious quality concerns on the products supplied by the domestic industry. Also Domestic industry has lost tender bids to foreign suppliers due to low quality of its products as compared to good quality products supplied by the foreign suppliers.
- (xxii) In Safeguard Duty Investigation against imports of Aluminium Flat Rolled Products and Aluminium Foil into India from People’s Republic of India-Final Findings dated 29<sup>th</sup> May, 2009, DG Safeguards while holding that definition of domestic industry should be product based and not producer based, excluded various products, which were not manufactured by applicants and did not treat such applicants as domestic industry for such excluded products.
- (xxiii) As claimed by the domestic industry at para B.5 of its written submission that all tenders by Indian users clearly specify the requirement of “Seamless Pipes” or “ERW Pipes” separately. Tenders and Bids floated by all Indian users such as ONGC, GAIL, IOCL, BPCL do not permit alternative supply of “ERW” pipes in place of “Seamless pipes” and the application in India are clearly defined as “only” seamless or “only” ERW *which is different from the other jurisdictions*. It is submitted that the claim of the domestic industry is illogical. Simply because tenders are floated by the Indian users such as ONGC, GAIL, IOCL, BPCL for supply of seamless pipes or ERW separately, it does not in any way imply that the two products are not like products. Further, it also

supported the fact that in other countries the “ERW” and “Seamless” pipes and tubes are treated alike. However, it may be noted that though separate tenders are issued but for the same application. It is not the submission of the Applicant Domestic Producers that the goods are used also at different places. The DG Safeguards is requested to seek information from the buyers who are Central Government Public Undertakings only such as ONGC, GAIL, IOCL, BPCL what are the substantiated technical and commercial considerations to seek tenders separately for “ERW” and “Seamless” tubes and pipes.

- (xxiv) During hearing an issue raised by the Respondents that the Applicant Domestic Producers have not demonstrated in response to which specific obligation that India incurred during 1994 imports of the subject goods increased. The silence of the Applicant Domestic Producers is an admission that they failed on that count.
- (xxv) Respondents submitted that there are no increasing imports due to existence any unforeseen developments and India’s obligation incurred during 1994, no causal nexus exists between assumed increased imports and injury to domestic industry, which are the pre-requisites before any safeguard measure can be imposed. Also, imposition of safeguard measure will not be in public interest since domestic industry neither has capability to cater to wide range of demand that user industries have nor the quality of products sold is good quality.

#### **14. Rejoinder Submission by the DI.**

##### **A. M/s ISMT LTD, M/s JINDAL SAW LTD ( M/s MAHARASHTRA SEAMLES LTD AS SUPPORTER)**

###### **Failure to provide mandated information:**

- (i) The petitioners submitted that the Domestic Industry has fully complied with the direction of the Hon'ble Director General (Safeguards) and has filed all the requisite data upto the most recent period of Q1- 2013-14(FY) in the formats of the Hon'ble Director General (Safeguards) and has also provided the import data for the period of Q1- 2013-14(FY).
- (ii) The non-confidential version of the data has not only been filed with the Hon'ble Director General (Safeguards) to be placed in the public file but has also been circulated to all the known opposing interested parties, within the limitation prescribed by the Hon'ble Director General (Safeguards) on 9<sup>th</sup> September, 2013 the communication dated 29<sup>th</sup> August, 2013 . The opposing interested parties have been granted sufficient opportunity to comment upon the same and any claim to the contrary is unjustified.

###### **Unforeseen Developments**

- (iii) There is not an iota of evidence placed on record by the opposing interested parties to establish that the requirement of unforeseen circumstances prior to initiation is a mandatory requirement.
- (iv) There is no provision under the WTO or the Indian legislations requiring unforeseen developments to be established at the stage of initiation and in fact, even the questionnaire format prescribed by the Hon'ble Director General (Safeguards) does not require the applicant to provide the same.
- (v) The WTO Appellate Body in *Argentina – Footwear(WT/DS121/AB/R dated 14<sup>th</sup> December, 1999)* 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.
- (vi) The jurisprudence regarding ‘unforeseen developments’ stipulates that it is a criterion required at the time of imposition of the measure. The same is also evidenced by the fact that none of the

Initiation Notifications issued by the Hon'ble Director General (Safeguards) in previous investigations expounds upon unforeseen circumstances and there has been no challenge to the same at the Hon'ble Director General (Safeguards).

- (vii) The Domestic Industry has also provided adequate evidence regarding unforeseen circumstances in the Petition at Pages 13 -14 clearly submitting the unforeseen developments that have attributed to the increased imports. Hence, the claim of the opposing Interested Parties that there is no information on unforeseen circumstances is baseless and factually incorrect.
- (viii) An Additional Communication dated 21<sup>st</sup> October, 2013 on Unforeseen Developments and Public Interest was filed by the Domestic Industry which was not only received by the interested parties but the Interested Parties made their comments to the said Additional Communication on Unforeseen Developments and Public Interest.

#### **Unforeseen Trade Remedial Actions**

- (ix) The Domestic Industry has demonstrated the manner in which, as a result of the unforeseen trade remedial actions on imports by major consuming sources such as US and EU, especially against imports from China, resulted in diversion of these imports to India, leading to a surge in imports into India.
- (x) Trade remedial actions in various markets have already been considered as a determinant of 'Unforeseen Development' by the Indonesian Safeguards Authority(G/SG/N/8/IDN/14; G/SG/N/10/IDN/14).

#### **Unexpected drop in consumption in European Markets**

- (xi) The drop in consumption in the EU markets was unexpected and as a result of the unexpected slow-down in the EU markets, the consumption in EU declined and producers from EU became export- centric and have resorted to focus on large-scale exports to growing markets such as India and China.

#### **Additional Capacities in China PR and new capacities planned in EU**

- (xii) The Chinese have been increasing capacities despite sanctions from various major markets which are leading to further diversion of imports to India.
- (xiii) The sudden decline in consumption in major markets such as EU and the trade remedial actions by other consuming markets was unforeseen and the increase in capacities was utilized for exports, leading to the increased imports of the subject goods into India. The same has been demonstrated at paragraph F(9-19) of the Written Submissions dated 12<sup>th</sup> December, 2013.
- (xiv) The submission that new capacities are not capable of producing the product under consideration, however, the interested parties have not provided an iota of evidence to substantiate the claim.

#### **Unforeseeably low pricing of imports despite increase in raw material costs**

- (xv) The raw material prices were increasing throughout the course of the Period of Investigation, however, despite the global increase in raw material prices, the import prices do not commensurate with the increase in cost of to make and sell product under consideration in India. As India is a price sensitive market, the low priced imports were well received by the consumers.

### **Violation of Principles of Natural Justice and Confidentiality**

- (xvi) It is denied by the Domestic Industry that they had not filed the Adjustment Plan and the Questionnaire Response till after the Public Hearing.
- (xvii) The Domestic Industry has filed the individual Adjustment Plan for each company prior to the public hearing vide communication dated 29<sup>th</sup> August, 2013.
- (xviii) As per the provisions of confidentiality under Rule 7 of the Safeguard Duty Rules, the Domestic Industry has provided the complete information and has requested proprietary information that is not available in the public domain to be kept confidential, as the disclosure will be harmful to the interests of the company.

### **Import Data Methodology and Variation**

- (xix) The import quantities and values considered in the Petition were on the basis of the transaction-wise import data collected from the Directorate General of Commercial Intelligence & Statistics (“DGCI&S”) located in Kolkata. The Domestic Industry had provided complete disclosure of the methodology along with sample transactions to explain the process of consideration of transactions as part of the import data of the product under consideration at Annexure 5 of the Application. It is submitted that the import data has been collected in an accurate manner.
- (xx) The consideration of EU Data does not arise in light of the transaction-wise import data being available with the Hon'ble Director General (Safeguards) and the submission of the Interested Parties is liable to be ignored.
- (xxi) M/s. NEI has claimed that import data submitted by the Domestic Industry contains extraneous data under chapter headings 73.04, 73.06 and 98.01. It is submitted that the entries of the imports of the subject goods were observed under the other so-called extraneous chapters of 73.04, 73.06 and 98.01 which were collated from the DGCI&S data.
- (xxii) As regards to the variation between the sales figures in the Petition and the Verification Report, the Hon'ble Director General (Safeguards) has appropriately considered the data of the Domestic Industry and has re-evaluated the sales as per its consistent practice. The same has also been clearly provided in the Notice of Initiation and appropriately provided to all opposing Interested Parties. Hence, the claim of the opposing Interested Parties pertaining to the discrepancy in the figures is appropriately and adequately explained and full disclosure has been made to the opposing Interested Parties.

### **Product under Consideration and ‘Like Article’**

- (xxiii) The Domestic Industry submitted that in the case of Dominican Republic - Bag and Fabric Safeguards (WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R dated 31 January, 2012) the WTO Panel held that there is no provision in the Agreement on Safeguards that governs or mandates the selection, description, analysis or determination of the product under consideration.
- (xxiv) In the recently initiated investigation by the United States International Trade Commission (USITC) into imports of Certain Oil Country Tubular Goods the product under consideration was defined as “oil country tubular goods” which are not classified under a single specific HS-Classification.
- (xxv) In the instant case, the scope of the product under consideration has been specifically defined to include those products and their “like articles” specifically manufactured by the Petitioners and is

not vague in any manner and adequately covers the range of the products sought to be included in the investigation.

- (xxvi) The Domestic Industry has provided in detail the methodology defining the scope of the product under consideration in the Petition itself. It is submitted that the Notice of Initiation as well as the Petition clearly and definitively provide the scope of the product under consideration and the various chapter headings provided in the Notice of Initiation are only indicative of the different headings under which the goods can be imported, however, it does not tantamount to being a distinct or different product merely on the ground of different types and uses, as claimed by the opposing Interested Parties.
- (xxvii) The other Interested Parties have not placed on record any evidence to establish that the subject goods are not capable of being imported simultaneously under different chapter headings noted in the Notice of Initiation.

#### **Allegation on Wider Scope Definition leading to incorrect Product Definition**

- (xxviii) It is an established fact that the Domestic Industry not only has the capacity to manufacture and sell the complete range of the product under consideration, it has actually manufactured and sold all the goods for which the Interested Parties have unfairly sought exclusion from the scope of the product under consideration.
- (xxix) The production process followed for the manufacture of the different types and grades is similar and the subject goods are manufactured in the same plant. It is submitted by the Domestic Industry that the chapter headings for different grades are not distinct or separate due to the grade or application of the pipe or tube.

#### **Claim of Exclusion of certain grades from scope of investigation**

- (xxx) The Domestic Industry has clearly provided information relating to production and sales of the said grades along with relevant evidence in the form of invoices for sample sales to examine the production and sales capacity of the Domestic Industry.

#### **Manufacture of High Pressure Cylinders**

- (xxxii) It is submitted that the Indian Industry have the capability to manufacture the high pressure seamless steel gas cylinder pipes and tubes. The standard sizes of seamless tubes used for manufacturing high pressure gas cylinders (OD x THK): 108 x 3.2, 139.8 x 4.2, 165.1 x 4.4, 232 x 5.4, 267 x 6/7.5, 273 x 7.6. The Domestic Industry has provided ample evidence, such as the enclosed test certificates for the purchase order placed on producer attached at Annexure 1 – Confidential, for supply of High Pressure Cylinder Tubes to establish that production capability of the Indian Industry to manufacture the said high pressure cylinders

#### **Exclusion of Rifled Tubes**

- (xxxiii) *Rifled tubes* are a type of boiler tubes, itself manufactured and sold by the Domestic Industry. M/s BHEL has not only bought but also, used rifled tubes manufactured and sold by M/s ISMT close to the tune of 1200 tonnes in 2010-11 and about 2741 tonnes in the entire injury period from 2009-10 till the Q1-2013-14.
- (xxxiiii) It had merely temporarily put on hold further procurement for some techno-commercial reasons. The Invoices of purchases made by M/s BHEL of *Rifle tubes* from M/s ISMT Ltd and other credible boiler manufacturers in the country have continued buying rifled tubes from the

Domestic Industry have been provided to the Director General (Safeguards) vide Rejoinder Submissions dated 20<sup>th</sup> September, 2013

#### **Supply to NEI Ltd**

- (xxxiv) It is denied that there is any regular supply or quality constraints with the subject goods supplied by the Domestic Industry. M/s NEI Ltd. has been regularly procuring the subject goods from the Domestic Industry and in 2012-13 has procured about 219 MT for a total value of about Rs. lacs 190 and in Q1-2013-14 has procured about 175MT for a total value of about Rs. lacs 144. Out of total procurement, M/s NEI has returned a small quantity valued at about 8 lacs, *which is about 1.2% of the total value procured by M/s NEI.*
- (xxxv) There are several other domestic manufacturers of bearings which have larger domestic share of production than M/s NEI and M/s NEI cannot claim to be a representative of the entire Indian Bearings Industry. The recent invoices for sale made to other bearing manufacturers have been provided to the Director General (Safeguards) vide Written Submissions dated 21<sup>st</sup> December, 2013.
- (xxxvi) It is also to be noted from the information provided by M/s NEI as regards impact on certain allegedly lower prices for the symbols/ grades relied upon by the Domestic Industry. It is submitted that the Domestic Industry has relied upon the price-lists of M/s SKF and the evidence in this regard has already been submitted to the Director General (Safeguards)
- (xxxvii) The pricelist is a wide market driven prices which are reflective of the competitive pricing market. Further, as regards the invoices of M/s NEI are concerned, the commercial consideration between the said parties and NEI are not known therefore they cannot be relied upon.
- (xxxviii) It remains unanswered as to why M/s NEI is attaining such lower prices, when other domestic producers are reporting significantly higher prices for the same grades. Clearly, the information provided by M/s NEI is not reliable and is liable to be disregarded.

#### **Submissions made on behalf of Exporters from Japan Alleged Superior Quality**

- (xxxix) There is no evidence placed on record to establish that the subject goods exported to India by the Japanese Exporters are of superior quality or are dissimilar from the subject goods manufactured by the Domestic Industry.
- (xl) No disclosure has been made by the Exporters on the precise standards or the manufacturing process and the absence of such disclosure clearly establishes that there is no real difference and the claim of the Japanese Exporters to the contrary is false and uncorroborated

#### **Exclusion on Grounds of Higher Price and Quality**

- (xli) The instant case is that of safeguards investigation and not an anti-dumping investigation, whereby the duties are levied on imports of all products, the exclusion of exports from Japan on the alleged grounds of quality as claimed by the Exporters is contrary to the basic principles of non-discrimination enshrined in the WTO law on Safeguards
- (xlii) The Japanese Exporters have merely made claims of some alleged "cutting edge technology". In the case of *Safeguard investigation concerning imports of Carbon Black – Final Findings* dated 31<sup>st</sup> July, 2012, the Director General (Safeguards) examined that the production process in China for the manufacture of carbon black, which depended upon Coal Tar Oil was different

and even less costly as compared to the production process of the Indian industry, which relied upon Carbon Black Feed Stock, however, the Director General (Safeguards) considered the same as like articles and imposed the safeguard duties.

- (xliv) The mere fact of higher price cannot be the sole determinant factor for exclusion of the articles, and the alleged higher prices can be on the basis of varied reasons included favourable contracts or high freight costs for transport.
- (xlv) The Domestic Industry manufactures the entire range of products in the scope of the Product under Consideration and the imports from Japan are technically and commercially substitutable with the subject goods manufactured by the Domestic Industry, and are directly competing with the customers of the Domestic Industry.
- (xlv) As regards the reliance placed on the submissions of M/s BHEL and M/s NEI, the Domestic Industry has already submitted its rejoinder to the same at appropriate sections in the present submissions and the Exporters from Japan have no real locus to submit the issues of M/s BHEL and M/s NEI.

#### **Price Effect relevance in Safeguards**

- (xlvi) The submission of the Japanese Exporters that price effect on the Domestic Industry is not relevant in a safeguard investigation is directly contradictory to the earlier submission claiming exclusion of Japanese exports on the ground that they are high priced imports.
- (xlvii) The claim that price injury can be addressed only in an anti-dumping investigation is against the basic tenet that anti-dumping and safeguards remedies can be applied without prejudice to each other and there is no restriction on even the simultaneous application of safeguard and anti-dumping duty.

#### **Claim for Segregation of PUC on Application/End-Use**

- (xlviii) The Exporters have not segregated the data pertaining to their exports to India in accordance with end uses or grades in the Exporters Questionnaire submitted to the Director General (Safeguards). It is settled position of law that one who seeks equity must do equity and the Exporters have not approached the Director General (Safeguards) with clean hands and are unfairly attempting to cast aspersions on the data submitted by the Domestic Industry.

#### **Exclusion of Japanese Exports from Levy**

- (xlix) The Interested Parties, including exporters from Japan have repeatedly sought exclusion of the imports from the imposition of safeguard duty on the basis of Section 8B(1).
- (l) It is respectfully submitted that the contention of the Interested Parties is wholly untenable and against the basic principles of safeguards, which is enshrined in Article 2 of the WTO-Agreement on Safeguards which mandates that the safeguard duty is to be applied irrespective of source.
- (li) The exemption of levy of safeguard duties is applicable only in the case of a “developing country” and is not available for developed countries such as Japan.
- (lii) The exclusion of “such quantity” from the levy of duty is only applicable in case of the recommendation or imposition of safeguard duties on the basis of a quota.

### **Inclusion of Non-Seamless Pipes and Tubes**

- (liii) The claim for inclusion of welded pipes and tubes using electrical resistance welding (“ERW pipes”) within the scope of the investigation as *‘like articles’* is liable to be rejected as fictitious and baseless.
- (liv) The Interested Parties have themselves submitted that the product scope is too wide, hence, inclusion of ERW pipes would definitely amount to widening the scope of the product under consideration and the same is contradictory to the submission of the opposing Interested Parties themselves.
- (lv) In the context of Anti Dumping, in United States – final dumping determination on Softwood Lumber from Canada (WT/DS264/R), the WTO Panel considered that the “like product” to the product under consideration has to be determined on the basis of Article 2.6, but that this provision does not provide any guidance on the way in which the “product under investigation” is to be determined.
- (lvi) The claim of the opposing Interested Parties is based on the Finding of the USITC concerning “oil country tubular goods”. The product scope in the said investigation, specifically included ERW Pipes and Tubes as “Oil Country Tubular Goods”.
- (lvii) The USITC held that Welded and Seamless products are interchangeable for oil exploration applications. The opposing Interested Parties have also admitted to the limited common interchangeability of ERW and Seamless Pipes and have not been held to be *like articles* otherwise.
- (lviii) The finding of the USITC for ERW Pipes and Seamless Pipes to be *like articles* in the said investigation is on account of the goods being specifically included in the scope of the product under consideration, which in the instant case is limited to Seamless pipes and Tubes and cannot include the ERW pipes or tubes.
- (lix) All tenders by Indian Users clearly specify the requirement of “Seamless Pipes” or “ERW Pipes” *separately*. Tenders and Bids floated by all Indian users such as ONGC, GAIL, IOCL, BPCL do not permit alternative supply of “ERW” pipes in place of “Seamless” pipes and the application in India are clearly defined as “only” seamless or “only” ERW which is different from the other jurisdictions.
- (lx) A copy of a recent tender floated by M/s ONGC attached with the Written Submissions dated 21<sup>st</sup> December, 2013 which clearly shows that the tender specifications clearly and unambiguously provide for procurement of “Seamless pipes only” and there is no permission to alternatively supply welded or ERW pipes.
- (lxi) At Annexure 2 – Confidential copies of separate tenders raised on ERW and Seamless line pipe are attached which clearly establish that ERW pipes and Seamless Pipes are not “like articles” in India.
- (lxii) The Indian User Industry does not permit the use of seamless pipes and ERW pipes *interchangeably* and they are not ‘like articles’ Hence, the inclusion of “ERW” pipes within the scope of the investigation is erroneous.

### **Participation in Trial and Development Tenders**

- (lxiii) The Domestic Industry denied the claim of the opposing Interested Parties that they are not qualified to manufacture certain products as it is participating in trial and development tender.

- (ixiv) The Domestic Industry submitted that Annexure IV of the Bid Documents floated by ONGC provides for the “Bid Evaluation Criteria” (BEC) clearly provides that suppliers should have manufactured/processed/threaded and ultimately supplied material of a minimum quantity to ONGC or other oil exploration companies. The Standard Booklet 1: Standard terms & conditions for global procurement of goods” of ONGC at Paragraph 51 provides that domestic bidders who have not supplied to ONGC are required to place “development orders” with ONGC.

#### **Alleged Disqualification of Domestic Industry**

- (ixv) The Domestic Industry has been suppliers of large quantities to ONGC in the injury period and provided the following information to establish that the domestic industry has not only bid on tenders floated by ONGC but has also successfully supplied and completed the orders.

Sr. No.	Name of the Petitioner	Details of Enclosure
1	ISMT Ltd.	ONGC order no. DZ-PR0029 dated 6.2.04 towards supply of 9-5/8” OD Casing Pipes of Q-125 grade
2	ISMT Ltd.	Notification of Award no. DLI/CHMM/EUE/ZNTKC 12003/Non-PEL/4010071915 dated 26.6.13 from ONGC towards supply of 2-7/8” OD Tubings and Pup Joints of L-80 & N-80 grades
3	Jindal Saw Ltd.	ONGC order no. 4010065915 dated 16.10.12 towards supply of a) 2-7/8” OD P-110 grade, b) 3-1/2” OD L-80 grade and c) 3-1/2” OD L-80 grade Tubing and Pup Joints
4	Jindal Saw Ltd.	Notification of Award dated 26.6.13 from ONGC towards supply of 5-1/2” OD and 7” OD Casing Pipes of L-80, N-80 and P-110 grades
5	ISMT Ltd.	Invoice no. DAJ1147417 dated 8.2.12 towards supply of 7” OD P-110 grade Casing Pipe to Oil India Ltd.
6	ISMT Ltd.	ONGC order no. DZ-PR0029 dated 6.2.04 towards supply of 9-5/8” OD Casing Pipes of Q-125 grade
7	Jindal Saw Ltd.	ONGC order no. 4010055614 dated 19.1.11 towards supply of 114.3MM OD x 7.9MM THK Line Pipes of X-46 grade

- (ixvi) The Domestic Industry submitted that although ONGC is a major consumer of the product under consideration, they have also made supplies to other consumers including exports. The Domestic Industry has made all efforts to bid and consequently supply them the intended grades. Hence, the claims made by the opposing Interested Parties that the participation by the Domestic Industry in Trial/Development Order is due to technical incapacity or and lower quality production is fallacious and misrepresentative.
- (ixvii) The exporters in other countries have found this country to be attractive to sell the subject goods due to free capacities available or due to imposition of duties from other jurisdictions. This has led the Domestic Industry to have lost contracts on certain grades particularly

sourced by ONGC and other domestic oil exploration companies and has also affected the repeated orders of some of these grades sourced by the said companies.

- (Ixxviii) There are certain conditions placed in the bidding request which prevents an interested party to bid for an order. This essentially restricts the interested bidder from placing a regular bid on technical grounds due to non-supply in the last five years.
- (Ixxix) There have been impediments both from the voluminous undercutting of imports of subject goods from imported sources as well as strenuous conditions placed in the bidding document which has not permitted the Domestic Industry to be successful bidders vis-a-vis competitors for the supply of certain grades to certain tenders floated by ONGC. It was submitted that non supply of some specific grades does not tantamount to any deficiency or disqualification on grounds of technical capability or standards of production.
- (Ixx) The submission filed by ONGC dated 30<sup>th</sup> August, 2013 clearly explains that the Domestic Industry has not been disqualified by ONGC but has lost out to imports due to severe price under-cutting by the extremely low priced imports and has been forced to resort to Trial and Development Tenders.

#### **Quality Issues and Supply to ONGC and Other Companies**

- (Ixxi) The fact that ONGC has accepted even development orders also proves that there is no incapacity or production standards deficiency as regards the petitioners.
- (Ixxii) The Domestic Industry has also provided the Director General (Safeguards) with Tubing Test Report from ONGC towards approval of 2-7/8" OD Tubings of L-80 grade for regular supplies provided to ISMT Ltd. which clearly establishes that the Domestic Industry is fully capable of, and has been, supplying the product under consideration to ONGC and other Oil Exploration companies as per the quality and standards required by the said Companies. Hence, the claim made by certain opposing interested parties that the domestic industry is incapable of supplying as per the quality requirements of ONGC is false and misrepresentative.
- (Ixxiii) ISMT is an accredited ISO 14001:2004 company and has a standard procedure for handling all quality complaints and the complaint by M/s NEI is presently under evaluation and therefore debit note issued by M/s NEI has not even been accounted for in the books of ISMT.

#### **Constitution of the Domestic Industry**

- (Ixxiv) In the case of United States – Safeguard Measures On imports Of Fresh, Chilled Or Frozen Lamb Meat From New Zealand And Australia (WT/DS177/AB/R and WT/DS178/AB/R dated 1<sup>st</sup> May, 2001) it was held by the Appellate Body of the WTO that the term "major proportion" implies the representative nature of producers making up the domestic industry which is required for imposition of the measure.
- (Ixxv) In the case of in *US — Wheat Gluten* (WT/DS166/R dated 31 July 2000) the WTO Panel held that data for only two domestic producers was also sufficient for constituting the 'domestic industry'
- (Ixxvi) In fact, in the case of European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (WT/DS397/AB/R dated 15 July 2011) the Appellate Body explained the major proportion to mean a relatively high proportion of the total domestic production.

- (lxxvii) In the Final Finding of Safeguard Duty investigation against imports of Aluminum Flat Rolled Products and Aluminum Foil in to India from People's Republic of China dated 29th May, 2009, the Director General (Safeguards) had held Hindalco which constituted 56% of total domestic production of Aluminum Foil constitutes and represent the domestic industry.
- (lxxviii) The Petitioners account for more than 50% of the total production of the subject goods in India and indisputably constitute a *major proportion* Hence, the Petitioners clearly constitute the '*Domestic Industry*' in India for the subject goods as required by Section 8B(6)(b) of the Act and are fully competent to submit the Application for levy of Safeguard duty.
- (lxxix) The other known prominent producers of the subject goods M/s BHEL, M/s Remi Metals and M/s OCTL –M/s OCTL and M/s Remi Metals have not participated in the investigation and have not expressed any opposition to the investigation.
- (lxxx) M/s BHEL appeared at the hearing and has clearly admitted that it is in fact a user of the subject goods and is involved only in the captive production of the subject goods.
- (lxxxi) The various other alleged domestic producers of the subject goods referred by the opposing Interested Parties mentioned below have not filed any Domestic Producer Questionnaire Response, and have not participated whatsoever in the present investigation.
- Mahalaxmi Seamless Ltd.
  - Ratandeep Metal & Tubes Pvt. Ltd.
  - Heavy Metals & Tubes Ltd.
  - Gandhi Special Tubes Ltd.
  - Sainest Tubes Pvt. Ltd.
  - Patel Airflow Ltd.
  - Bhatia Steel Tubes
- (lxxxii) The Notice of Initiation is published in the Gazette of India and sufficient notice has been provided to all domestic producers of the subject goods and the onus was upon them to participate in the present investigation, which all other domestic producers have failed to do so, except M/s Maharashtra Seamless Ltd., that has fully co-operated and participated with the Hon'ble Director General (Safeguards).
- (lxxxiii) One of the alleged domestic producers "M/s Ratandeep Metal and Tubes Ltd. has admitted to being redrawers of seamless pipes, depending upon the imports of the subject goods and are not engaged in the manufacture the subject goods.
- (lxxxiv) The opposing Interested Parties have not even considered providing the production quantities of the said producers and have merely averred that the said producers ought to have been considered as "Domestic Industry".
- (lxxxv) M/s Maharashtra Seamless Limited, who is a producer of the subject goods with a market share of approximately 26% also supports the petition and has subjected itself to the jurisdiction of the Director General (Safeguards).
- (lxxxvi) M/s Maharashtra Seamless Ltd. has fully co- operated with the Director General (Safeguards) and has also filed the post-initiation Domestic Producer Questionnaire Response with the Director General (Safeguards) within the prescribed time-limit. The Petition as well as the written submissions filed by the Domestic Industry also provides an analysis of the data for the industry as a *whole*, including the data of the supporter.

### **Standard of 'Domestic Industry' under Safeguards**

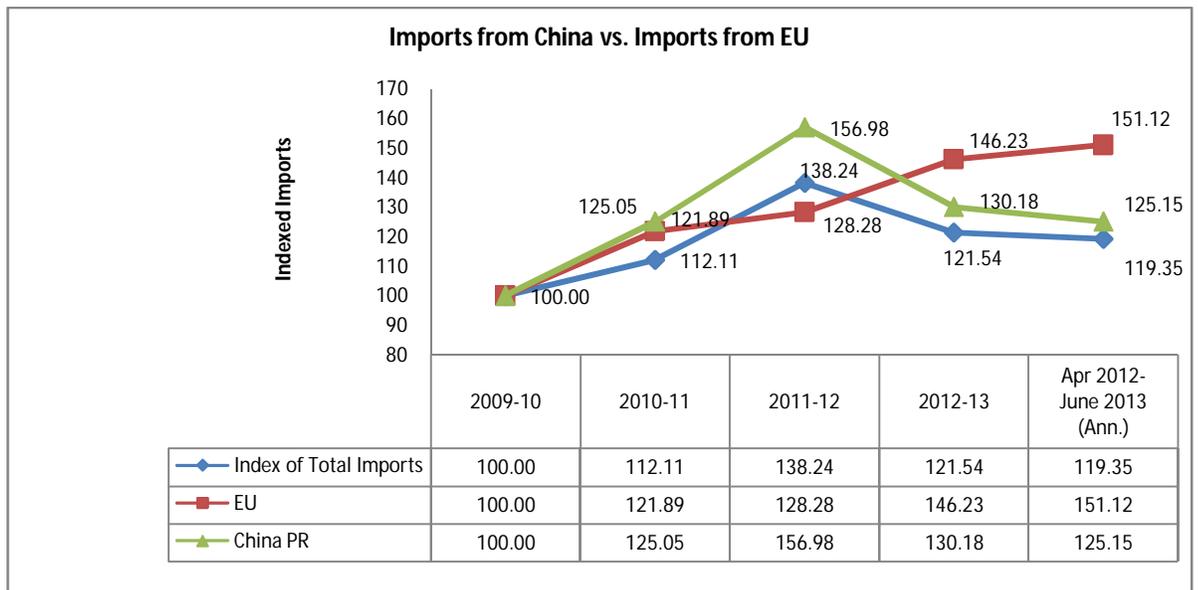
- (lxxxvii) The claim of the opposing Interested Parties the "domestic industry" defined under the Section 8B of the Act and Safeguard Duty Rules and the Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty On Dumped Articles And For Determination Of Injury) Rules, 1995 ("Anti-Dumping Rules") is *parimateriais* not only inaccurate but also irreconcilable with the WTO jurisprudence.
- (lxxxviii) Under Section 2(b) of the Anti-dumping Rules the definition of 'domestic requires the express exclusion of importers or exporters or companies related to importers or exporters, which is not provided under the Section 8B of the Act, which includes domestic producers of the "like article or a directly competitive article and also provides for those producers whose collective output of the like article or a directly competitive article in India constitutes a major share.
- (lxxxix) The reliance placed on the decision of the Appellate Body in the case of *EC - Fasteners*, the judgment of the Hon'ble Supreme Court in the case of *Reliance Industries vs. Designated Authority* reported at 2006 (202) ELT 23 (SC) and the judgment of the Bombay High Court in the case of *ISMT Ltd vs Union of India* reported at 2011 (270) ELT 19 (Bom), which are in the context of the Anti-dumping Rules is wholly irrelevant and is liable to be ignored. Further, in the earlier Anti-dumping investigation, only M/s ISMT had participated and whereas M/s Jindal SAW and M/s Maharashtra Seamless had not participated and had not co-operated with the Hon'ble Designated Authority, leading to the termination.
- (xc) The Domestic Industry denied that one of the domestic producers that is an importer was excluded in the determination of the total Indian production and also denied that any known domestic producer, which is importing the subject goods has been excluded. The Annexure - 1 of the Petition clearly enlists the production of all known domestic producers, on the basis of the public domain information available and no producer has been excluded.

### **Increased Imports of Subject Goods into India**

- (xci) The imports have increased in absolute terms as well as in relation to the production, sales and demand, during the injury period:
- On an end-point to end point-basis, the imports have increased by 19% in Apr'12-Jun'13 as compared to 2009-10, with highest increase by 38% intermittently in 2011-12.
  - Further the imports have increased in proportion to the production and sales of the Domestic Industry as well as the demand in the country.
  - The percentage of imports as compared to the production of the Domestic Industry has increased by 8% in Apr'12-Jun'13 and,
- (xcii) The imports clearly show an increased trend in the intervening periods of the Period of Investigation. The imports indicated an increasing trend from 2009-10 to 2011-12 which increased by 38% and thereafter marginally declined owing to the initiation of the investigation by the Director General (Safeguards).
- (xciii) It is clearly established that there is a significant surge in imports and the imports have increased suddenly enough, sharply enough, recently enough to not just cause serious injury to the Domestic Industry but also threaten to continue causing such injury.
- (xciv) The Domestic Industry had filed the application in November, 2012, which coincides with the period that reflects the highest surge in the increase in imports. It was only after and as a consequence of the filing of the application by the Domestic Industry that the imports had marginally reduced, but yet remained at very high levels, in absolute terms as well as in relation to the production, sales and demand in India.

### Imports from Other Sources

- (xcv) The opposing interested parties in the course of the earlier Public Hearing held on 2<sup>nd</sup> September, 2013 and the 2<sup>nd</sup> Public Hearing held on 12<sup>th</sup> December, 2013 vehemently argued that the Domestic Industry's application was focused on imports from a specific country (i.e. China) and did not warrant a global safeguard measure.
- (xcvi) The Domestic Industry submitted that the imports from the European Union in Apr'12-Jun'13(annualized) have shown a sharper increase than Chinese imports and has been constantly on a rise. Imports from European Union have increased by 51% in Apr'12-Jun'13 as compared to 2009-10 whereas imports from China PR have increased by .25% in Apr'12-Jun'13 as compared to 2009-10.
- (xcvii) The Indian market would also be susceptible to imports from various other sources in light of various trade remedial actions resorted by major user countries around the world such as EU, US, Indonesia, Mexico.



- (xcviii) As regards the submission of the Interested Parties concerning the reliance placed on the import data in the application filed before the Hon'ble Designated Authority, it is denied that such data is of any relevance in the instant case. It is respectfully submitted that the import data relied upon by the Interested Parties is dated and pertains to a different product under consideration. Further, the mere fact that there was an alleged dumping in the earlier periods of Financial Years 2005-06, 2006-07, 2007-08 and 1<sup>st</sup> April, 2008 to 30<sup>th</sup> June, 2009, in which only 3 months are common with the present injury period, has no relevance or bearing on the present investigation. The claim of the Interested Parties that the same is indicative of any malafides is baseless and against the basic tenet that anti-dumping and safeguards remedies can be applied without prejudice to each other and there is no restriction on even the simultaneous application of safeguard and anti-dumping duty.

### Serious Injury and Threat of Serious Injury Production

- (xcix) The production of the Domestic Industry has been severely impacted by imports of the subject goods in the due to increasing imports. The production of Domestic Industry in 2009-10 was 224216 MT and increased upto 318968 MT in 2011-12. However, it has significantly

declined in 2012-13 to 254316 MT and in Apr'12-Jun'13 (Annualised) to 2,47,827 MT by more than 20% as compared to 2011-12.

### **Capacity Utilisation**

- (c) The Capacity Utilisation shows a significant decline due to increased imports. The capacity utilisation of Domestic Industry. In 2009-10, it was 60% and in 2012-13 it is dropped to 37%. Idle Capacity of the Domestic Industry has significantly increased despite increase in demand.

### **Domestic Sales**

- (ci) The Domestic Industry sales in 2009-10 were 143,017 MT and increased up to 170,826 MT in 2011-12, however, it has declined steeply in 2012-13 to 141,588 MT and 1,38,726 MT for Apr 12-Jun 13(Annualised).

### **Demand and Market Share**

- (cii) The demand of the subject goods has increased over the period of investigation upto 5%. However, the sales of the Domestic Industry have decreased by 1%, whereas the imports have increased by 22%. Hence, the increase in imports is at a greater rate than the increase in demand.
- (ciii) It is respectfully submitted that the injurious effects of surge in imports is not only felt by the Domestic Industry but other major producer of the Product under Consideration as well.

### **Injury to Domestic Industry including Supporter**

- (civ) All the vital parameters including production, capacity utilization, sales of Domestic Industry including supporter have clearly reveal similar trends as that of the Domestic Industry. The production, sales, capacity utilization, of the Supporter and Domestic Industry has been negatively impacted due to the increased imports. Hence, the increased imports has cumulatively impacted the Indian industry as a whole

### **Threat of Serious Injury**

### **Trade Remedial Measures in Major Consuming Markets**

- (cv) There are various trade remedial actions taken by major markets across the globe including China, EU, US, Mexico and Indonesia to protect its domestic industry. This has lead to closure of markets for exporting countries such as China, EU, US and Russia, whereas India remains to be a price-attractive market. Hence, there is a clear and imminent threat of continuation of imports of the subject goods into India.
- (cvi) The market share of the Domestic Industry has already been retarded by the increased imports of the subject goods. In light of the unabated imports of the subject goods, it is likely to lead to a further decline in the market share of the Domestic Industry

### **Recent Initiation of Anti-dumping and Countervailing Duty Investigation by USITC**

- (cvii) The USITC has initiated an antidumping investigation into imports of *Certain Oil Country Tubular Goods* (which includes certain subject goods) and the subject countries of the USITC investigation are India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam.

- (cviii) In the absence of any safeguard duty protection to the Domestic Industry it is certain that exports from these sources will be diverted to India, thereby further aggravating injury to the Domestic Industry.

#### **Loss of Recent Tenders**

- (cix) The Domestic Industry has lost the substantial quantities in recent ONGC and OIL India tenders to foreign suppliers, which have been granted more than 80% of ONGC tenders and more than 57% OIL India tenders. Such unabated imports of the subject goods are causes and threatens to cause serious injury to the Domestic Industry and Indian Industry as a whole.

#### **Addition of New Capacities**

- (cx) New capacities have been installed in China PR as well as US and there is significant idle capacity in EU. Hence, in the absence of any safeguard duty protection to the Domestic Industry, there is a clear threat of further exports from these sources into India leading to continued injury to the Domestic Industry.

As per market intelligence, German company M/s. Benteler Steel Tube has invested \$900 million to set up a new steel tube plant in the United States which is expected to be running by 2015

Tenaris has also announced plans to set up a \$1.5 billion new seamless pipe mill in Bay City, USA

TPCO, China is also in an advanced stage of setting up a seamless pipe mill in Corpus Christi, USA

Baoshan Iron and Steel to establish seamless steel pipe unit in Thailand

Valloure & Sumitomo Tubos Establishes New Steelworks II-50

Xinxing Pipes Commences Production at Handan Pipe Plant

#### **Causal link and Other Factors**

- (cxi) The serious injury caused to the Domestic Industry bears a direct causal nexus with the increased imports of the subject goods into India.
- (cxii) The subject goods are sold in direct competition with the imports. The landed price of imports is significantly lower than reasonable costs and the selling prices of the Domestic Industry are determined by the import prices. Consequently, production, capacity utilization, sales, profits, return on investment and cash flow is declining due to continued presence of low price imports.
- (cxiii) Given the low prices offered by the foreign producers, the imports are surging further despite low prices offered by the Domestic Industry. The Domestic Industry is forced to reduce its prices at lower than cost of sales.
- (cxiv) As a result of the increased imports, there is a substantial increase in the market share 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.

- (cxv) The sales of the Domestic Industry declined with the increase in low priced imports and was forced to continue sales at depressed prices causing the decline in the profitability of the Domestic Industry Hence, there is a direct causal nexus between the decline in profitability and the increased imports of the subject goods

#### **Excessive Production Capacity**

- (cxvi) The growth in the capacity has been in line with the growth in the domestic demand of the subject goods. However, in 2012-13, the demand has declined to the rapid decline in the sales of the Domestic Industry and market share of the Domestic Industry being captured by the Imports, causing gross injury to the Domestic Industry.
- (cxvii) The decision of the Domestic Industry to increase capacity was clearly to cater to the growing Indian Demand and cannot be categorized as irresponsible or misconceived. Hence, the claim of the opposing Interested Parties that the injury to the Domestic Industry is self-inflicted on account of over-expansion is frivolous and unsubstantiated and liable to be dismissed.

<b>Particulars</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>Apr'12 – Jun'13 (Ann.)</b>
Capacity of Domestic Industry	MT	3,75,000	6,85,000	6,85,000	6,85,000	6,85,000
Demand	MT	5,54,233	6,13,616	6,88,396	5,84,098	5,72,965
Trend in increase in Market Share of Imports	%	100	101	111	115	115

#### **High Prices of Raw Materials and Volatility**

- (cxviii) The claim of the opposing Interested Parties that the high prices of raw materials and volatility have caused the injury to the Domestic Industry is baseless, untrue and denied by the Domestic Industry.
- (cxix) The raw material prices were increasing throughout the course of the Period of Investigation, however, despite the global increase in raw material prices, the import prices do not commensurate with the increase in cost of to make and sell product under consideration in India. As India is a price sensitive market, the low priced imports were well received by the consumers.

#### **Imports from China**

- (cxx) The claim of the opposing Interested Parties that solely the imports from China have caused injury to the Domestic Industry is unjustified, erroneous and is liable to be dismissed. The imports from the European Union in 2012-13 have shown a sharper increase than Chinese imports and have been constantly increasing. The Indian market will also be susceptible to

imports from various other sources in light of various trade remedial actions resorted by major user countries around the world such as EU, US, Indonesia, Mexico.

#### **Anti-dumping Application filed by the Domestic Industry**

- (cxxi) It has been the repeated allegation of the opposing Interested Parties that the fact that the Domestic Industry had filed an application with the Hon'ble Designated Authority is tantamount to a break in causal link and injury caused to the Domestic Industry is attributable to dumped imports
- (cxxii) The mere fact that there was an alleged dumping in the earlier periods of Financial Years 2005-06, 2006-07, 2007-08 and 1<sup>st</sup> April, 2008 to 30<sup>th</sup> June, 2009, in which only 3 months are common with the present injury period, has no relevance or bearing on the present investigation.
- (cxxiii) There has been no finding made by the Hon'ble Designated Authority concerning actual dumping in the aforesaid period and the said investigation was terminated without imposition of any anti-dumping duties.
- (cxxiv) The anti-dumping and safeguards remedies can be applied without prejudice to each other and there is no restriction on even the simultaneous application of safeguard and anti-dumping duty. This has been held in several investigations including *Safeguard Duty investigation against imports of Caustic Soda in to India -Final Findings* dated 9<sup>th</sup> April, 2010 and *Safeguard investigation concerning imports of Phthalic Anhydride (PAN) – Final findings* dated 29<sup>th</sup> March, 2012.

#### **Adjustment Plan**

- (cxxv) vide communication dated 29.08.2013, the Domestic Industry provided the adjustment plans set out for the individual companies. The Domestic Industry has provided specific steps regarding particular cost-reduction measures that it plans to undertake to facilitate the positive adjustment and has duly complied with the requirement under the Act and the Safeguard Duty Rules
  - (cxxvi) The submission that an adjustment plan is only for “structural changes” is not only erroneous and unsubstantiated but also fanciful. The step submitted by the Petitioners to improve sourcing, which is one of the several steps, shall clearly facilitate a positive adjustment and compete with the imports of the subject goods
  - (cxxvii) The object of safeguard duties is to remedy the serious injury suffered by the Domestic Industry and allow the Domestic Industry to undertake steps to facilitate positive adjustment to compete with the imports of the subject goods. Hence, to even claim that the proposed steps for facilitating the positive adjustment is an indicator of self-inflicted injury is not only illogical and misrepresentative of the entire safeguards process but appears to indicate a lack of the basic tenets of the Safeguards law.
  - (cxxviii) In the Report of the Panel in *Korea – Definitive Safeguard Measure On Imports Of Certain Dairy Products* (WT/DS98/R – 21 June 1999) it was held
- “7.108 *We wish to make it clear that we do not interpret Article 5.1 as requiring the consideration of an adjustment plan by the authorities, as the European Communities asserts. The Panel finds no specific requirement that an adjustment plan as such must be requested and considered*”

*in the text of the Agreement on Safeguards. Although there are references to industry adjustment in two of its provisions, nothing in the text of the Agreement on Safeguards suggests that consideration of a specific adjustment plan is required before a measure can be adopted. Rather, we believe that the question of adjustment, along with the question of preventing or remedying serious injury, must be a part of the authorities' reasoned explanation of the measure it has chosen to apply. Nonetheless, we note that examination of an adjustment plan, within the context of the application of a safeguard measure, would be strong evidence that the authorities considered whether the measure was commensurate with the objective of preventing or remedying serious injury and facilitating adjustment."*

### **Public Interest**

- (cxxix) The Domestic Industry has, over the years, developed the capability to support the domestic user sector and this has been made possible through huge investments in technology up-gradation and human resource development. The Domestic Industry is at a critical stage and requires immediate relief to prevent deterioration due to aggressive marketing and low priced imports by foreign producers as India is a price attractive market.
- (cxxx) The surge in low priced imports will lead to irreparable damage to the industry in the form of:
- a. Loss of employment: The Domestic Producers provide much larger employment, both direct and indirect, as compared to the exports. In case no safeguard duty protection is granted to the Domestic Industry, the Domestic Industry would have no option but to resort to wide-scale retrenchment to reduce the losses.
  - b. Loss of revenue to the Government on account of taxes: The poor financial performance and decline in profitability of the domestic producers, caused by the increased imports of the subject goods has impacted the taxes paid by the companies, which has resulted in a loss of revenue to the Government.
  - c. Increased outflow of Precious Foreign Exchange. Loss of revenue to the Government and outflow of Foreign Exchange is a double edged sword which is ought to hurt the public interest of India in a longer run.
- (cxxxix) The domestic industry is a vital pillar for India's strategic growth in power and oil exploration and indigenously caters to the demand.

### **Impact on ONGC**

- (cxxxix) As can be seen from the table below, imports of seamless products on an annualized basis is only about 2.3% of total imports of ONGC and its overall impact on its operations will be negligible, especially its profitability which is Rs. 209 billion.

### **Impact on Bearings Industry**

- (cxxxix) There is minimal impact on the bearing industry – SKF is taken as sample being one of the largest companies in India. The bearing industry is profitable (SKF's pre-tax net profitability was about 13% in 2012) and can absorb the incremental cost on account of Safeguard Duty – which does not affect all its products anyways – without burdening its customers..
- (cxxxix) In the case of Safeguard investigation concerning imports of Sodium Nitrite – Final Findings dated 17<sup>th</sup> September, 2013 the Hon'ble Director General (Safeguards) examined the public interest as under and proceeded with recommendation of the safeguard duty. The same analysis has been presented by the Domestic Industry, which clearly illustrates that the impact of the safeguard duty on end-users and consumers would be minimal and no harm would be caused to the user industry.

- (cxxxv) M/s NEI is known to be very aggressive with the pricing of its products to retain its market share and compete with other multinational companies. At point no. 2 of its communication dated 18 December 2013, M/s NEI has presented the supply information very selectively for some of its customers which are likely to be "Original Equipment Manufacturers" (OEM) with whom the contractual and commercial considerations that affect the price may exist and have not been disclosed. Therefore, the prices claimed by M/s NEI in its said Communication dated 18 December, 2013 cannot be relied upon.
- (cxxxvi) The price list of another Indian bearing company shows that the same bearings as sold by M/s NEI are quoted at 3 times the price disclosed by M/s NEI. The same is being attached at Annexure 1 (Confidential). The said fact by itself spells doubt over the accuracy and credibility of the information provided by M/s NEI.
- (cxxxvii) The Domestic Industry has relied upon the price-lists of M/s SKF. The said pricelist is reflective of the competitive market driven pricing. Clearly, the information provided by M/s NEI is not reliable and is liable to be disregarded.
- (cxxxviii) All the relevant the analysis have been presented by the Domestic Industry, which clearly illustrates that the impact of the safeguard duty on end-users and consumers would be minimal and no harm would be caused to the user industry. However, in the absence of immediate safeguard duty protection, the Domestic Industry shall continue to suffer serious injury.

#### **EXAMINATION AND FINDINGS:**

15. I have carefully gone through the case records and the replies filed by the domestic producers, users/importers, exporters and exporting government. Submissions made by various parties and the issues arising there from are dealt with at appropriate places in the findings below. The request of the DI for imposition of safeguard duty on the import of product under consideration has been examined with reference to the domestic law as well as international law. The findings have been given accordingly.
16. Section 8B of the Customs Tariff Act, 1975 deals with imposition of Safeguard Duty on imports. Section 8B(1) provides for imposition of Safeguard Duty by the Central Government on an article if the article is being imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the Domestic Industry.
17. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provide the manner and principles governing investigation. These Rules have been made under section 8B of the Customs Tariff Act, 1975. I have been conferred powers under these Rules to make recommendations for imposition of safeguard duty in terms of law.

The provisions of Agreement on Safeguards and the decisions of the WTO bodies have been stated/discussed at appropriate places below. The investigation has been conducted in accordance with the said Rules and the Final Findings are recorded through this notification.

#### **18. Extension of Safeguard period:**

As per the Rule 11(1) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, the Director General shall issue the final finding within 8 months of initiation of the safeguard investigation or within such extended period as the Central Government may allow. The

Notice of Initiation in the case was issued on 22.04.2012 and thus the last date for issuance of final recommendation was on or before 21.12.2013. However, due to change in the Designated Authority a second Public Hearing was held on 12.12.2013. Since it was not possible to examine all the views and counter views in the remaining time period, the Central Government allowed the extension of time period by further three months i.e till 21.03.2014.

Some of the interested parties have submitted that neither they nor their legal representatives in India have received any communication regarding any extension provided by the Central Government to issue a final finding in the case and in the absence of any time extension given by the Central Government within the said 8 months for rendering the final finding, the present investigation stands time barred and the Hon'ble Director General of Safeguards does not have the jurisdiction and locus to continue with the present investigation.

It may be noted that extension of time period is an administrative decision of the Central Government and there is no provision under Safeguard Rules which legally binds the Central Government to notify such extension to individual interested parties. The very fact that the extension was granted by the Central Government within eight months and notification to that effect was subsequently issued and uploaded on the CBEC official website is sufficient to meet the requirement of Rule 11 of Safeguard Duty Rules and therefore there is no merit in the argument that the present investigation stands time barred.

#### **19. Methodology and Source of Information:**

The transaction-wise DGCI&S import data for the product under consideration for the period from 2009-10 to 2012-13 and also from April 2013 to June 2013-14 (for production and sale) has been provided by the applicant. The source of Import data is DGCI&S. Reliance has been placed on DGCI&S data for the annual import figures up to 2012-13. The transaction-wise import data for the period 2009-10, 2010-11, 2011-2012 and 2012-2013 has been provided by the applicants. The applicant has claimed that the subject goods are being imported under various other classifications as well. The Domestic Industry has also provided complete disclosure of the methodology along with sample transactions to explain the process of consideration of transactions as part of the import data of the product under consideration at Annexure 5 of the Application. Further, the data pertaining to other safeguard economic parameters for the period from 2009-10 to 2012-13(December) has been got verified on the basis of Central Excise records of the petitioner to the extent considered necessary, through on-site verification of the unit of the applicant and such verified data for the POI (Period of Investigation) has been taken into consideration for injury analysis. The data for the fourth quarter of 2012-13 and first quarter of 2013-14 has been taken as furnished post 1<sup>st</sup> Public Hearing by the applicant. The data for three years or longer has been provided by the Domestic Industry in the form and manner provided under Rule 5(2) of Safeguard Duty Rules 1997 and Trade Notice No SG/TN/1/97 dated 06/09/1997. The non-confidential version of the verification report has been placed in the public file for all concerned.

As regards to M/s. NEI claim that import data submitted by the Domestic Industry contains extraneous data under chapter headings 73.06 73.04 and 98.01, it may be noted that the entries of the imports of the subject goods were observed under other chapter headings of 73.06, 98.01 and 73.04 also. Therefore, all such entries have been included in the import data. The Notice of Initiation as well as the Petition clearly and definitively provides the scope of the product under consideration, and the various chapter headings provided in the Notice of Initiation and in the petition are only indicative of the different headings under which the goods can be imported and are in no way binding to the scope of the Product under Consideration.

#### **20. Period of Investigation:**

The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard and the relevant Article XIX of GATT do not specifically define what the Period of Investigation should be. I am of the view that law in India provides discretion to the Competent Authority to decide upon the length of period which may be able to give fair amount of comparison in respect of increased imports and other factors leading to serious injury. Of course, such discretion has to be exercised judiciously.

The issue of period of investigation has been dealt with extensively in the panel's report on Argentina Footwear on Argentina Footwear, which is being reproduced below:

**ARGENTINA– SAFEGUARD MEASURES ON IMPORTS OF FOOTWEAR; Report of the Panel (WT/DS121/R dated 25.06.1999)**

8.216 *“Regarding the investigation’s almost exclusive reliance on end-point-to-end-point comparisons in its analysis of the changes in the situation of the industry, we have the same concerns as were noted above with regard to the “increased imports” analysis. Here we note in particular that if intervening trends are not systematically considered and factored into the analysis, the competent authorities are not fulfilling Article 4.2(a)’s requirement to analyse “all relevant factors”, and in addition, the situation of the domestic industry is not ascertained in full. For example, the situation of an industry whose production drops drastically in one year, but then recovers steadily thereafter, although to a level still somewhat below the starting level, arguably would be quite different from the situation of an industry whose production drops continuously over an extended period. An end-point-to-end-point analysis might be quite similar in the two cases, whereas consideration of the year-to-year changes and trends might lead to entirely opposite conclusions.”*

8.217 *“We believe that consideration of changes over the course of the investigation period in the various injury factors is indispensable for determining whether an industry is seriously injured or imminently threatened with serious injury. An end-point-to-end-point comparison, without consideration of intervening trends, is very unlikely to provide a full evaluation of all relevant factors as required.”*

From the above, it is clear that the provisions of Agreement on Safeguard do not provide for specific guidelines on the period of investigation. The Appellate Body Report has given its finding in unequivocal terms that the relevant investigation period should not only end in the very recent past; the investigation period should be the recent past.

In the instant case, the Notice of Initiation was issued on 22.04.2013, which primarily contains the data up to the year 2012-13 (Dec). Subsequently, post 1<sup>st</sup>public hearing, the domestic industry was asked to provide data for quarter 4 of 2012-13 and quarter 1 of 2013-14. All data submitted by the domestic industry was circulated to all interested parties and the same was also kept in the public file. All information so received, including the most recent information, is being considered for analysis.

In order to neutralize seasonal variation, if any, sufficiently longer sample size i.e annual data from FY 2009-10 to 2012-13 has been considered as the POI, for injury analysis.

In view of the above, I feel period of investigation is sufficiently long for the purpose of determination of injury to Domestic Industry.

**21. Product under Investigation:**

The product under investigation (PUC) is "Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) whether hot finished or cold drawn or cold rolled, of external diameter not exceeding 273.1 mm (O.D) with the tolerance as specified under relevant standards (herein after referred to as Seamless Pipes and Tubes) excluding:

1. Seamless alloy-steel pipes, tubes and hollow profiles of specification ASTM A213/ASME SA 213 and ASTM A335 /ASME SA 335 or equivalent BIS/DIN/BS/EN or any other equivalent specifications.
2. Non API and Patented Premium Joints/Premium Connections/Premium Threaded Tubes & Pipes of grades Q-125, 13CR,L-80,P110,C-90,C-95,T-90 &T-95
3. All 13 Chromium (13CR) Grades Tubes and Pipes not included in(2) above and
4. Drill Collars.

The product under consideration is classified under Customs sub-heading 73.04 of the Customs Tariff Act, 1975. An indicative list of the various classifications under which the product under consideration may possibly be classified is provided below as is imported under 8 digit level classification:-

73041910; 73041920; 73041990; 73042310; 73042390; 73042910; 73042990; 73043111; 73043119; 73043121; 73043129; 73043131; 73043139; 73043911; 73043919; 73043921; 73043929; 73043931; 73043939; 73045110; 73045120; 73045130; 73045910; 73045920; 73045930; 73049000:

Seamless tubes are hollow sections made of steel bars/billets and are produced by hot rolling technology and cold drawn technology, The tubes and pipes are manufactured conforming to various reputed international standards and specifications like API /ASTM /ASME /BS /JIS /DIN/EN etc. These specifications specify chemistry involved and mechanical properties of the product. The manufacturing route such as hot finished or cold finished / cold drawn is used to arrive at the final properties required by the specifications.

**(a) Scope of PUC is broad/large:**

Several Interested parties have contended that the scope of the PUC is very broad/large and that these products have different end uses and the DI has included several products in the product basket of the PUC which are not being manufactured/produced by them. All the types of the product for which the Interested parties have sought exclusion from the scope of the PUC, have been clubbed together in the exclusion table A, given below.

The issue regarding claim of exclusion of following grades from the scope of the investigation has been analyzed. The exclusion table containing information about the various types of exclusion sought by different interested parties and the counter submitted by the Domestic Industry in form of tangible evidence is given below:

Grades for which exclusion is sought during investigations by various interested parties

**Exclusion Table A.**

Industry request for	Grade for which exclusion sought	Evidence on the grades supplied by the Domestic Industry
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<b>exclusion</b>		
BHEL	Rifled Tubes	Invoice of sale made to BHEL No*****/16.01.2011
NEI , Nippon Steel, JFE Steel Corp and Sanyo Special Steel.	SAE 5210	Sample Invoice. No. ****/ dated 14.12.2013
	SAE 8720	Sample Invoice. No. ****/ dated 30.04.2013 (However, not produced in last four years)
	SUJ3	Sample Invoice. No. ****/ dated 31.03.2013
CISA, Rama Cylinders	Gas Cylinder, 34CrMO4	Purchase order dated 26.03.2013 & Sample Invoice. No. ****/ dated 24.05.2012
Mertex UK Ltd.	4-1/2" Tubing	Sample Invoice. No. ****/ dated 14.05.2013
	L-80	Sample Invoice. No. ****/ dated 26.08.2012
	N-80	Sample Invoice. No. ****/ dated 20.01.2013
	P-110	Sample Invoice. No. ****/ dated 08.02.2012
	C-95	Claimed that they have capacity and capability to produce the grade. But not produced in last four years
	Q125	Sample Invoice. No. ****/ dated 21.07.2012
	J-55	Sample Invoice. No. ****/ dated 28.02.2013
Nippon Steel, JFE Steel Corp and Sanyo Special Steel.	Higher Grades of 9-5/8" Casing pipes.	Sample Invoice. No. ****/ dated 10.06.2013, 30.11.2012
M/s Ratandeeep Ltd.	All sizes below 42 mm OD in all HS Code.	Sample Invoice. No. ****/ dated 30.01.2013
Nippon Steel, JFE Steel Corp and Sanyo Special Steel	Mechanical Tube for Needle Roller Bearing Grade JIS G3441,SCM415TK	Sample Invoice. No. ****/ dated 30.12.2012/18.05.2013

Nippon Steel, JFE Steel Corp and Sanyo Special Steel	Mechanical Tube for Crane SM-STR80-QA, SM-STR80-QC having OD from 42.7mm to 406.4 mm	Sample Invoice. No. ****/ dated 13.03.2013
Vallource& Mannesmann Tubes, Nippon Steel, JFE Steel Corp and Sanyo Special Steel.	Seamless steel pipes for off shore application ( Project line pipes)	Sample P.O. No. ****/ dated 07.03.2012
	OCTG Tubes	Sample Invoice. No. ****/ dated 06.08.2011
	Drill pipes	Sample Invoice. No. ****/ dated 29.10.2013
	Boiler Tubes.	Sample Invoice. No. ****/ dated 08.12.2013/19.04.2013
	Line pipe	Sample Invoice. No. ****/ dated 14.09.2009/08.11.2012
	Mechanical Tubes for bearing	Sample Invoice. No. ****/ dated 25.04.2012

\*\*\*\* Confidentiality claimed

In view of the above, it appears that the domestic industry have submitted the evidence in the form of invoices of bearing grades (SAE52100, SAE8720, SUJ3), L-80, N-80, P-110, Q125, J-55, 34CrMO4, rifled tubes and the invoice for trial order of Gas cylinder indicating that they have the capacity and capability to produce the PUC imported in various grades and sizes. It has been pointed by M/s Rama Cylinder (Interested Party) in the letter dated 23-05-2013 received from the Deputy Chief Controller of Explosives, Petroleum and Explosives Safety Organisation indicating that domestic industry is not capable of producing high pressure gas cylinder. Interested parties have also stated that none of the Indian tube mills are either in a position to offer them seamless steel tubes or manufacture the steel grade of alloy steel such as 34CRM04 and dimensional sizes of cylinders –tubes as per the technical specifications which require the intensive approval process laid by the Bureau of Indian Standards and Chief Controller of Explosives. It may be noted that from the invoice submitted by Domestic Industry it is found that the domestic industry has not only produced the grade 34CRM04 but they have also been placed the trial order for gas cylinder for 37Mn grade. As regard to grade SAE 8720 and C-95, Domestic Industry has claimed that they have capacity and capability to produce these grades but in the last four years, they have not produced these grades. However, it is pointed out that data of these grades have not been considered under the scope of the product. As regard to exclusion of all sizes below 42 mm OD in all HS Code, M/s Ratandeeep Ltd have stated that petitioners take long time to deliver and, therefore, all such sizes should be excluded. However, they have not stated that petitioners don't have capacity to produce these sizes of seamless pipes and tubes or that they have failed to produce the said goods.

Thus, it appears that no categorical evidence has been produced by the interested parties, which shows that any particular type of PUC, which is being imported into India is not produced by the domestic industry. Therefore, the contention of the Interested Parties for pruning of the scope of the PUC is not supported by any tangible facts/evidence and thus, is not acceptable when the Domestic Industry has provided actual evidence of production and supply of those products to different users of the PUC.

**(b) Like or directly competitive product:**

As against the contention that the product under consideration is a group of products and whether the group of imported products is 'like or directly competitive' to the group of products produced by domestic industry or not, it is not necessary to prove that each of the products of the group are 'like or directly competitive' to all the other products of the group. Instead, it is to be seen whether there exists a corresponding 'like or directly competitive' product of each of the imported products, produced by the Domestic Industry.

It is observed that the PUC consists of large number of products of similar nature and similar origin. The imported products falling under these headings at the eight digit level are similar as far as their technical characteristics, chemical composition and other basic features are concerned. These products also have similar uses. These imported products are directly competing or have potential to compete with such products produced by domestic industry. Despite possible minor superficial differences, in terms of quality, and therefore may be price, these products have similar basic physical characteristics and similar end uses. Accordingly therefore, as against the contention of the interested parties that the PUC is a product basket consisting of various grades and sizes of seamless pipes and tubes it is found that the concern of interested parties are more on the end product made out of the PUC, rather than the PUC itself. Moreover, since the domestic industry is producing almost identical /similar grades & sizes of seamless pipes and tubes, therefore they are the 'product under consideration' for the purposes of safeguard investigation

**(c) Exclusion due to small quantity imported from a country:**

With regard to exclusion of goods from Japan sought under Section 8B (I) proviso of the Customs Tariff Act, 1975 is concerned, it may be noted that it refer to quantity restriction under safeguards rules which has been notified under 9A of Foreign Trade(Development and Regulation) Act,1992 vide Foreign Trade(Development and Regulation) Amendment Act,2010. Thus, the submissions for exclusion of goods from Japan sought under Section 8B (I) proviso of the Customs Tariff Act, 1975 is not acceptable under General Safeguard Rules as the Safeguard Measure (Quantitative Restriction)Rules,2012have already been notified for which proper designated authority is Additional Director General Foreign Trade.

**(d) Injury analysis of PUC as per grade/use:**

The issue raised by the interested parties that Injury analysis has to be done for each category of the product has also been examined. Transaction wise import data of DGCI&S data relied in this investigation indicates that there are number of entries under PUC chapter headings where description of the product for instance is simply mentioned as seamless pipe/tubes or bearing grade tubes without any grade. Thus, to include only those entries where specific grade or product name is indicated would not have given clear picture of quantum of import of seamless pipes and tubes and therefore any analysis on the basis of a part-information would have been incorrect for the purpose of safeguard investigation.

**(e) Inclusion of ERW pipes in the PUC:**

An Interested Party has claimed that world over welded tubes and Pipes manufactured using Electrical resistance welding are used interchangeably with the Seamless tubes and pipes for the same use, i.e., in oil and gas exploration and transportation. They have also quoted the investigation initiated by

the United States in the matter where US treated welded tubes and pipes as like article to seamless tubes and pipes.

The issue has been examined. The manufacturing process of ERW and Seamless pipes and tubes is different. ERW (Electric Resistance Welding) pipe is manufactured by rolling metal and then welding it longitudinally across its length whereas Seamless pipe is manufactured by extruding the metal to the desired length. ERW pipe has a welded joint in its cross-section, while seamless pipe does not have any joint in its cross-section through-out its length. The basic Raw material required for manufacturing Seamless & ERW is also different. In Seamless pipe, Steel Round Billets are required to manufacture Seamless Pipe while Strip/plates/ Coils are required to manufacture ERW Pipes. Moreover, the PUC in both the cases are different.

Seamless pipes are mainly used for High-pressure applications such as Oil & Gas Exploration & Drilling, Oil & Gas Transportation, Hydrocarbon Industries & Refineries and Air and Hydraulic cylinders, Bearings, Boilers, Automobiles etc. ERW pipes are mainly used for low/ medium pressure applications such as transportation of water / oil.

It is noticed that depending upon the application pipes are selected. Generally it is found that ERW & SAW (Submerged Arc Welded) pipes can be substituted. However, there are some applications where seamless pipes could be substituted by ERW pipes but it is not the case that in each and every application seamless pipes can be substituted by ERW pipes. Further, in common market parlance seamless pipes and ERW pipes are not considered as the same. The domestic Industry has provided the evidence where tenders clearly specify the requirement of "Seamless Pipes" or "ERW Pipes" separately.

It may also be noticed that in the instant case the Domestic Industry has filed the petition for imposition of safeguard duty only on import of seamless pipes and tubes and none of the Indian user industry like BHEL, ONGC bearing industry etc has supported the contention of CISA. Therefore to impose safeguard duty on the item which was not even demanded in the petition would be unfair to the importers/user industry of ERW pipes.

In view of the fact that manufacturing process of production of ERW pipes and Seamless pipes is different, the raw material required for the production is different, their falling under the different tariff heading for classification and the fact that ERW pipes cannot be substituted for each and every application where seamless pipes are used, the Seamless pipes and tubes are considered as separate and distinct product for the purpose of this investigation. Thus ERW pipes are neither like nor directly competitive with seamless pipes in this case.

**(f) Quality Issues and Supply to ONGC and Other Companies:**

This is on record that ONGC has neither attended the Public Hearing nor have they submitted any Post-Hearing submission or rejoinder. However, as against the claim of several interested parties that the DI has failed to qualify for supply to the requirements of ONGC, the domestic industry has provided the evidence indicating that they have capacity and capability to manufacture the product under consideration. The ONGC's letter dated 30<sup>th</sup> August, 2013 clearly indicates that the Domestic Industry has not been disqualified by ONGC. It further states that in almost all the tenders floated by the ONGC, some or the other domestic bidders have qualified. These bidders were short listed as TA/CA. Hence they could not win the contract due to price competitiveness. Moreover, the Domestic Industry has also provided the evidence in the form of Tubing Test Report from ONGC towards approval of 2-7/8" OD Tubings of L-80 grade for regular supplies provided to ISMT Ltd.

Further, it is also observed that the domestic industry is supplying rifled tubes to M/s BHEL and bearing grade tubes to M/s NEI and several other domestic manufacturers of bearings. The

domestic Industry has provided the invoices to establish that they are producing and selling the rifled tubes and bearing grade tubes to the domestic user industry.

In view of facts above it is clearly established that the Domestic Industry is fully capable of, and has been supplying the product under consideration to ONGC, other Oil Exploration companies and other domestic industries as per the quality and standards required by the said Companies of the products falling under the PUC.

**22. Discrepancy in data in petition and Notice of Initiation:**

So far as discrepancies in data in Petition and Notice of Initiation is concerned, it is noticed that import data in respect to PUC presented in the petition was further scrutinized and all those entries which were found to be outside the scope of investigation were deleted from the data provided in the petition. Similarly, domestic data was considered for analysis only after the data was got verified by on-site visits to the plants of the domestic producers on the basis of central excise records. In this respect, it may be noted that the Safeguard Investigation proceedings are different from the judicial proceedings or appellate proceedings. During the Safeguard Investigation, new facts and evidences are brought up and analyzed. In case reliance is placed only on the facts mentioned in the application, the investigation, purpose of which is to bring forth relevant information and analyze the market condition, will become meaningless. Hence, it is necessary that all the facts brought in light during investigation are taken into account. Notice of Initiation incorporates data/information collected/verified during such preliminary enquiries and therefore data in the Notice of Initiation shall prevail over the data provided in the petition. However, principles of natural justice requires that new facts (non confidential) are made available to the Interested Parties by keeping the same in the Public File and all the information, including the recent information was placed in the Public File and is being considered.

**23. Confidentiality of information submitted:**

Rule 7 of the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 and Article. 3.2 of WTO Agreement on Safeguards provides for confidentiality treatment to certain information. The rules provide that an Interested Party is not required to disclose such information on actual basis which is confidential information of the company and disclosure of which can cause serious prejudice to the business interests of such party, which is not in public domain and which the petitioner has not disclosed before public at large in the past.

The Domestic Industry has provided some information on confidential basis and sought confidentiality on the information /data submitted by providing NCV of the said information.. The Domestic Industry provided non- confidential version of the application for safeguard measure as per the provisions of Safeguard Rules 1997 and Trade Notice No. SG/TN/1/97 dated 06.09.1997. Further, the Domestic Industry has submitted reasons for seeking confidentiality at the time of filing the application and subsequently alsowhich appears to be reasonable and, therefore, has been accepted, wherever claimed.

**24. Domestic Industry:**

The present investigations are taken up pursuant to an application made by M/s. Jindal Saw Ltd, Jindal Centre, 12BhikajiCama Place, New Delhi -110066 and M/s ISMT, Lunkad Towers, Viman Nagar, Pune 411014. M/s MSL Ltd., has supported the application. The shares of petitioner and the supporter companies in the domestic production of the PUC are as mentioned in the following table:

**Share of DI in Domestic Production of the PUC**

Company	2009-10	2010-11	2011-12	2012-2013
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	Share	Share	Share	Share
<b>ISMT</b>	31	31	31	31
<b>JindalSAW</b>	22	22	24	24
<b>MSL</b>	34	31	31	30
<b>Others</b>	13	16	14	15
<b>Total</b>	100	100	100	100

The share of the applicants excluding M/s MSL (who is supporting), is around 54% of the total production in India. The share of M/s MSL is around 32%, which is less than the market share of the applicants.

Clause (6) (b) of Section 8B of the Customs Tariff Act .1975 states that “domestic Industry” means the producers-

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

It is noticed that even after considering the contention of the interested parties, since share of domestic industry even after excluding the supporter is more than 50% of the total production of the seamless pipes and tubes in India, M/s ISMT Ltd. and M/s Jindal Saw Ltd. in all circumstances, constitute ‘domestic industry’, and definitely in terms of clause (b) of subsection (6) of Section 8B of the Customs Tariff Act, 1975.

As contended by some Interested Parties that several producers have not been considered, it is noticed that Notice of Initiation was also sent to other domestic Industries like BHEL, Ratandeep Metals & tubes, Remi Metals, Oil Country Tubular Ltd. as mentioned by the Interested Parties. Some of them responded to the Notice of Initiation while others did not, but none of them has contested that the applicants do not constitute domestic Industry. Therefore, the contention of the Interested Parties, in this regard, is not tenable.

Furthermore, in the anti-dumping case filed by one of the constituents of the Domestic Industry, i.e., M/s ISMT Ltd., it was rejected on the grounds that the said company alone does not constitute domestic Industry under the said rules. This is not the situation in the present case.

In view of the evidence available, I find that the applicants constitute the ‘Domestic Industry’ as per the rules.

**25. Data analysis:**

The analysis of data has been done primarily in relation to the domestic industry only. At some places the data of M/s MSL (supporter) has also been analyzed in order to deal with the issues raised by the interested parties. However, in order to analyze market share of imports, complete data, i.e, the data including that of the supporting entity, i.e., M/s MSL, has been relied upon.

**26. Increased Imports:**

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

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

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

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

From the above, it is seen that law i.e. Section 8B and 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. It is also seen the expression “increased quantity” has been defined in inclusive terms and the definition includes two parameters i.e. increase of imports in absolute terms and increase of imports in relative terms to domestic production. It is also seen that both these parameters need not exist together. The increased quantity is to be measured either in absolute terms or in relative to domestic production. The satisfaction/existence of one parameter is sufficient to fulfill the legal requirement.

The WTO Panels and Appellate bodies have further explained the international law on this issue and some of the relevant decisions of these bodies are narrated below:

I. The Panel in *Argentina — Footwear (EC)*(WT/DS/R dated 25.06.1999 )further examined whether there is consistency with Articles 2.1 and 4.2(a) in making a finding of increased imports on the basis of a comparison between the volume of imports at the starting-point of an investigation period and the volume of imports at the end of that period (“endpoint- to-end-point-comparison”). The Panel, later upheld in this respect by the Appellate Body, came to the conclusion that:

8.156 “[I]n assessing whether an end-point-to-end-point increase in imports satisfies the increased imports requirement of Article 2.1, the sensitivity of the comparison to the specific years used as the end-points is important as it might confirm or reverse the apparent initial conclusion. If changing the starting-point and/or ending-point of the investigation period by just one year means that the comparison shows a decline in imports rather than an increase, this necessarily signifies an intervening decrease in imports at least equal to the initial increase, thus calling into question the conclusion that there are increased imports.”

8.157 “In other words, if an increase in imports in fact is present, this should be evident both in an end-point-to-end-point comparison and in an analysis of intervening trends over the period. That is, the two analyses should be mutually reinforcing. Whereas here their results diverge, this at least raises doubts as to whether imports have increased in the sense of Article 2.1.”

It was further examined by the Panel in *Argentina — Footwear (EC)*, in a finding subsequently confirmed by the Appellate Body, considered, in this connection, that an analysis of intervening trends of imports was indispensable:

8.159 “[T]he question of whether any decline in imports is ‘temporary’ is relevant in assessing whether the ‘increased imports’ requirement of Article 2.1 has been met. In this context, we recall Article 4.2(a)’s requirement that ‘the rate and amount of the increase in imports’ be evaluated. In our view this constitutes a requirement that the intervening *trends* of imports over the period of investigation be analysed. We note that the term ‘rate’ connotes both speed and direction, and thus intervening trends (up or down) must be fully taken into consideration. Where these trends are mixed over a period of investigation, this may be decisive in determining whether an increase in imports in the sense of Article 2.1 has occurred. In practical terms, we consider that the best way to assess the significance of any such mixed trends in imports is by evaluating whether any downturn in imports is simply temporary, or instead reflects a longer-term change.”

The Panel in *Argentina — Footwear (EC)* further found that in the case before it the decline in the volume of imports could not be characterized as a temporary reversal of an increase in the volume of imports. It then stated that:

8.161 “[T]he Agreement requires not just an increase (i.e., any increase) in imports, but an increase in ‘such ... quantities’ as to cause or threaten to cause serious injury. ... the 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

- II. The Appellate Body in *Argentina-Footwear (EC)* (WT/DS/121/AB/R dated 14.12.1999) held that the increase in imports must have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. Relevant extract there from is as follows:

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

- III. The Panel on *US-Wheat Gluten* (WT/DS/166/R dated 31.07.2000), interpreted the phrase “in such increased quantities” as follows:

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

*recent, sudden, sharp and significant, both quantitatively and qualitatively, to cause or threaten to cause serious injury.*”

- IV. Further, the WTO panel in the case of *US — Line Pipe (WT/DS 202/R/29.10.2001)*, found that “there is no need for a determination that imports are presently still increasing. Rather, imports could have ‘increased’ in the recent past, but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination”

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

- V. In *US—Steel Safeguards (WT/DS/248/R, WT/DS/249/R, WT/DS/251/R, WT/DS/252/R, WT/DS/253/R, WT/DS/254/R, WT/DS/258/R, WT/DS/259/R)*, dated 11.07.2003 the Panel, in findings upheld by the Appellate Body, addressed the question of how recently the imports must have increased and concurred with the Panel’s view in *US — Line Pipe* in stating as follows:

10.161 “As the Panel in *US — Line Pipe* did that Article 2.1 of the Agreement on Safeguards speaks of a product that ‘is being imported ... in such increased quantities’. Thus, imports need not be increasing at the time of the determination; what is necessary is that imports *have increased*, if the products continue ‘being imported’ in (such) increased quantities. The Panel, therefore, agrees with the *US — Line Pipe* Panel’s view that the fact that the increase in imports must be ‘recent’ does not mean that it must continue up to the period immediately preceding the investigating authority’s determination, nor up to the very end of the period of investigation. As pointed out by the Panel in *US — Line Pipe*, the most recent data must be the focus, but should not be considered *in isolation* from the data pertaining to the less recent portion of the period of investigation. However, as indicated by the present continuous ‘are being’, there is an implication that imports, in the present, remain at higher (i.e. increased) levels.”

10.163 “Whether a decrease in imports at the end of the period of investigation, in the individual case, prevents a finding of increased imports in the sense of Article 2.1 of the Agreement on Safeguards will, therefore, depend on whether, despite the later decrease, a previous increase nevertheless results in the product (still) ‘being imported in (such) increased quantities’. In this evaluation, factors that must be taken into account are the duration and the degree of the decrease at the end of the relevant period of investigation, as well as the nature, for instance the sharpness and the extent, of the increase that intervened beforehand.”

10.164 “To give an extreme example, a short and very recent slight decrease would not detract from an overall increase if imports have increased tenfold over the several years beforehand. Conversely, to give an opposite extreme example, one could no longer talk about a product that ‘is being imported in (such) increased quantities’ or in fact in *any* increased quantities at all, if, at the time of the determination, import numbers have plummeted nearly to zero or to a level below any past point in the period of investigation.”

VI. The Appellate body In *US — Steel Safeguards* (WT/DS 248/AB/R, WT/DS 249/AB/R, WT/DS 251/AB/R, WT/DS 252/AB/R, WT/DS 253AB/R, WT/DS 254/AB/R, WT/DS 258/AB/R, WT/DS 259/AB/R, dated 10.11.2003 ) confirmed that imports need not be increasing at the time of the determination and insisted on the investigating authority's obligation to examine the trends of imports over the entire period of investigation:

367 "We agree with the United States that Article 2.1 does *not* require that imports need to be increasing at the time of the determination. Rather, the plain meaning of the phrase 'is being imported in such increased quantities' suggests merely that imports must *have increased*, and that the relevant products continue 'being imported' in (such) increased quantities. We also do *not* believe that a decrease in imports at the end of the period of investigation would necessarily prevent an investigating authority from finding that; nevertheless, products continue to be imported 'in such increased quantities.'"

The Appellate Body in *US — Steel Safeguards*, further reiterated its ruling made in *Argentina — Footwear (EC)* and emphasized the importance of reading "such increased quantities" in the context of Article XIX: 1(a) of the *GATT 1994* and Article 2.1 of the *Agreement on Safeguards* which confirm that such increased imports must be linked to the ability of the relevant increased imports to cause serious injury or threat thereof:

346 "We reaffirm this finding [*Argentina — Footwear (EC)*]. In that appeal, we underlined the importance of reading the requirement of 'such increased quantities' in the context in which it appears in both Article XIX:1(a) of the *GATT 1994* and Article 2.1 of the *Agreement on Safeguards*. That context includes the words 'to cause or threaten to cause serious injury'. Read in context, it is apparent that 'there must be 'such increased quantities' as to cause or threaten to cause serious injury to the domestic industry in order to fulfill this requirement for applying a safeguard measure.' Indeed, in our view, the term 'such', which appears in the phrase 'such increased quantities' in Articles XIX:1(a) and 2.1, clearly links the relevant increased imports to their ability to cause serious injury or the threat thereof. Accordingly, we agree with the United States that our statement in *Argentina — Footwear (EC)* that the 'increase in imports must have been recent enough, sudden enough, sharp enough and significant enough ... to cause or threaten to cause serious injury', was a statement about 'the entire investigative responsibility of the competent authorities under the Safeguards Agreement', and that '[w]hether an increase in imports is recent, sudden, sharp and significant enough to cause or threaten serious injury are questions that are answered as the competent authorities proceed with the remainder of their analysis (i.e., their consideration of serious injury/threat and causation)."

27. Keeping in view the above requirements of law with regard to 'increased imports', analysis has been done as below on the basis of objective and quantifiable data:

(a) **Increased Imports in absolute Terms:**

The following table shows the import statistics relating to Seamless pipes and Tubes:

Financial Year	Total Import (MT)	Total Import (indexed Yearly)
2009-10	307581	100
2010-11	344829	112
2011-12	425194	138
2012-13 Q1	99880	
2012-13 Q2	76118	
2012-13 Q3	104335	
2012-13 Q4	93515	
2012-13	373848	122

Source: DGCI&S

The total import of Seamless pipes and tubes in 2012-13 has been 373848 MT showing decrease of 51346 MT over previous year's Import of 425194 MT, i.e., the decrease is about 12% in percentage term. End-point to end-point comparison indicates that there is an increase in imports by 22% in 2012-2013 as compared to base year 2009-10. Except in the year 2012-13, there has been continuous increase in imports. End-point to end point comparison also indicates that import has increased in absolute terms but imports in 2012-13 when compared with immediate preceding year have not increased in absolute terms.

- (b) **Share of Imports relative to production:** The table below gives statistics of imports relative to the production. The share of imports has gone up during period of investigation and in the most recent period, i.e., 2012-13, both from the base year as well as from the preceding year.

	2009-10	2010-11	2011-12	2012-13
<b>Import (MT)</b>	307581	344829	425194	373848
<b>Total production (MT)</b>	422820	538554	583780	429454
<b>Share of Imports (%)</b>	73	64	73	87

Therefore, it is noted that there is an increase in import in relative terms, in relation to production in 2012-13 both from the base period and preceding year by about 14%.

From the above analysis, It is clear that there is substantial increase in imports of product under consideration in this case in relation to production and such increase is also happening in recent period and in my view is significant, sharp and sudden which satisfies the condition of levy of safeguard duty due to serious injury caused due to 'increased imports' under the law related to Safeguard duty.

**28. Serious Injury and Causes Thereof:**

- (i) Section 8B (6) (C) of the Customs Tariff Act, 1975 defines the expression of serious injury. "Serious injury" means as an injury causing significant overall impairment in the position of a domestic industry.
- (ii) Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 technically require that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant decline in sales, employment and productivity which will show "significant overall impairment" in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall *position* of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry. Similar observation have been made by WTO Panel in Para 139 of Argentina footwear Case Appellate Body Report (WT/ DS 121/AB/R dated 14.12.1999)
- (iii) The Annex (1) to the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules' 1997 provides as follows:

*"In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a demonstrate 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."*

- 29. Accordingly, in analyzing serious injury, all factors which are mentioned in the rules as well as other factors, which are relevant, have been considered. No single factor has been considered as dispositive. All relevant factors within the context of the relevant business cycle and conditions of competition, which are relevant to the affected industry, have been considered to evaluate the overall position of the domestic industry as below:

- (a) **Market Share:** Market share of domestic producers has fallen during the investigation period. The data in this regard is given in the table below:

Financial Year	Total Import (MT)	Sales of DI (MT)	Sales of other Indian Producers (including MSL) (MT)	Total Demand including (MT)	% of Market Share		
					DI	Others (including MSL)	Import
2009-10	307581	143017	104823	555420	25.75	18.87	55.38
2010-11	344829	168740	101020	614589	27.46	16.43	56.11

<b>2011-12</b>	425194	170826	93386	689406	24.78	13.54	61.68
<b>2012-13</b>	373848	141558	68692	584098	24.24	11.75	64.01

It is seen that the Applicants had a market share of 25.25 % in 2009-10 which increased to 27.46% in 2010-11. The market share of the applicants fell to 24.78% during 2011-12 and further declined to 24.24% in 2012-13. Thus, though the market share of DI declined in the recent period of 2012-13, it is very marginal when compared to the preceding year, i.e., only 0.54%. When compared with base year (2009-10) market share of the Domestic Industry declined by 1.51% in last four years. This is despite the fact that demand has declined in the most recent period. On the other hand, the market share of import increased from 55.38% in 2009-10 to 64.01% in 2012-13, i.e, by 8.63%. Thus, it is seen that imports have captured the market at the cost of the DI's share over the POI.

- (b) **Production:** The table below gives relevant statistics relating to cumulative domestic production of 'domestic industry' and of all Indian Producers including MSL.

<b>Year</b>	<b>2009-10</b>	<b>2010-2011</b>	<b>2011-12</b>	<b>2012-13</b>
Production by 'domestic industry' (MT)	224216	283619	318968	254316
Indexed	100	126.49	142.25	113.42
Cumulative production by all Indian producers including MSL(MT)	422820	538554	583780	429454
Indexed	100	127.37	138.06	101.56

The total production of domestic industry has increased since 2009-10 till 2011-12. However, the total production of 'domestic industry' in 2012-13 fell by 64652 MT compared to the year 2011-12, i.e., by 20%. The total production by all Indian producers show trend similar to the Domestic Industry, where however, almost at the same level in 2012-13 as compared to the base year 2009-10 is noticed but the decline from the preceding year 2011-12 is very sharp, causing injury to the DI.

- (c) **Change in level of domestic sales:** The table below gives relevant statistics relating to domestic sales of the domestic industry.

<b>Year</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
Domestic sales by 'domestic industry' (MT)	143017	168740	170826	141558
Indexed	100	118	119	99

The sales of DI have shown an upward trend from 2009-10 to 2011-12 but declined thereafter in 2012-13. End point to end point comparison also indicates marginal dip in sales of the DI. The drop in sales is in tandem to the decline in demand for the PUC. However, the drop in sales of 17.13% is sharper than the decline in demand of 15.28% in 2012-13 as compared to the preceding year 2011-12, with a rise in import share in relation to demand, causing injury to the DI.

**(d) Capacity Utilization:** The table below gives relevant statistics relating to capacity utilization of the domestic industry.

Year	2009-10	2010-11	2011-12	2012-13
Installed capacity of 'domestic industry' (MT)	375000	685000	685000	685000
Capacity utilization of 'domestic industry' (%)	60	41	47	37

The capacity utilization of the DI has shown continuous declining trend since 2009-10. Exception being 2011-12 when there was marginal improvement of 6% in capacity utilization as compared to previous year. It is seen that in year 2010-11 the domestic industry has increased its capacity by 310000 MT which resulted a fall in capacity utilization by 19% in 2010-11 compared to 2009-10, despite improvement in production by 26% during the same period. The domestic Industry managed to recover in 2011-12 but again capacity utilization fell in 2012-13.

In view of the submissions made by an Interested Party that lower utilization is due to the increased capacity and given the fact that the Domestic Industry enhanced its capacity in 2010-11 by 310000 MT, it was considered prudent to examine whether the decline in capacity utilization was due to increase in capacity.

Year	2009-10	2010-11*	2011-12*	2012-13*
Previous Installed capacity of 'domestic industry' (MT)	375000	375000*	375000*	375000*
Assumed Capacity utilization of 'domestic industry' (%)	60	76	85	68

\*Presumed to be same as in 2009-10, i.e. prior to capacity enhancement

Had the Domestic Industry not enhanced its capacity, its utilization as seen from production data, would have increased from 60% in 2009-10 to 68% in 2012-13. However, it would have had declined sharply in 2012-13, if compared with the preceding year. As the import was increasing throughout 2009-10 to 2011-12, the DI invested in enhancement of capacity to take on the rising demand. However, in year 2012-13 when demand declined substantially this expansion of the capacity of domestic industry caused a situation of excessive capacities in the most recent period.

**(e) Profits and losses:** The table below gives relevant statistics relating to profit and loss of the domestic industry relating to business of seamless pipes and tubes as submitted in submission post 2<sup>nd</sup> public hearing

Year (Unit)	Profit (Rs./MT)(Indexed)
2009-10	100
2010-11	86
2011-12	64

2012-13	43
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The Domestic Industry seems to be in profit throughout the Period of Investigation. However, their profitability has declined drastically in the recent period of 2012-13 from the base year as well as when compared in 2012-13 from the preceding year of 2011-12.

**(f) Employment:** The applicants have submitted that there is no significant change in the level of employment over the recent period. The number of employees (on average) increased from 2245 (2009-10) to 2645 (2012-13) as is apparent from the table below.

Year	2009-10	2010-11	2011-12	2012-13
Avg. number of employees in 'domestic industry' (NO.)	2245	2388	2567	2645
Indexed	100	106	114	117

It may be noted that normally domestic industry would not be increasing employment if the industry were suffering serious injury or threat of serious injury, but the increasing rate of employment has been sustained by the DI even in the most recent of 2012-13 despite decline in demand of the PUC, as well as declining sale.

**(g) Productivity:** The productivity of domestic industry has declined in the most recent period of 2012-13 when compared to 2011-12 and also when compared from the base year.

Year	2009-10	2010-11	2011-12	2012-13
Productivity/employee 'domestic industry' (MT/Employee)	100	118	124	96

It is also clear that increasing productivity was in conformity to the increase in employment of the DI, which, however, has shown reverse result in the most recent period of 2012-13.

**(h) Inventory:**

Inventory of the goods has increased throughout the injury period and more significantly in the recent period of 2012-13 by 3888 MT., i.e., by 41% from 2011-12. This piling up of the inventory is despite the fact that domestic sales have continuously increased from 2009-10 to 2011-12 with a corresponding rise in production, which has outpaced sales. This situation is further aggravated by the fact that this piling up of inventory is in a situation when the production itself has declined more than the domestic sale in the most recent period of 2012-13 than the preceding year. This situation has worsened in the most recent period of 2012-13 where it appears to be the result of declining exports as well as decline in overall demand for the PUC.

Year	2009-10	2010-11	2011-12	2012-13
Inventory(MT)	5691	8805	9583	13471

**30. Other factors:**

**(a) Import in relation to Demand:**

Financial Year	Total Imports (MT)	Total Demand (MT)	% of import with respect to Demand
2009-10	307581	555420	55.38 %
2010-11	344829	614589	56.11%
2011-12	425194	689406	61.68 %
2012-13	373848	584098	64.01%

For the purpose of the present investigations, the consumption or demand for the product under consideration is determined as the total of imports of product into India from different countries, domestic sales of the Domestic Industry (DI) and domestic sales of other domestic producers (including MSL). Changes in demand/consumption so determined over the period have been compared with the changes in the imports from various sources in order to determine whether imports of product under consideration in India have increased significantly in relation to consumption or demand for the product in the country. It is noticed in the table above that the import with respect to demand increased from 55.38% in 2009-10 to 64.01% in 2012-13, i.e., by 8.63%, continuously during last four years. It may also be noted here that when the demand of the product has increased, imports have increased and when the demand declined in 2012-13, imports have also declined. However, it is pertinent to note that even in this condition, the share of imports has risen in relation to demand during the POI.

On the contention of the Interested Parties regarding increase in import only from China, the data of imports of the PUC into India from China and countries other than China is as follows:

Year	Import from China	Import from other countries	Total Import.	% of Import from China
	Qty(MT)	Qty(MT)	Qty(MT)	
2009-10	198464	109117	307581	65
2010-11	248174	96655	344829	72
2011-12	311547	113647	425194	73
2012-13	258351	115497	373848	69

Source: DGCI&S.

Number of interested parties especially from Europe raised the issue that the present investigations should only have been conducted against China as import from other countries is at *de-minimis* level. A China-specific Safeguard measure can only be applied under Section 8C of the Customs Tariff Act, 1975 and the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002. These have been enacted in pursuance of Section 16 of China's WTO Accession Protocol which allows for a transitional product-specific safeguard mechanism with respect to imports from China. Paragraph

16.9 of the said Accession Protocol specifies that the application of Section 16 will terminate twelve years from the date of accession. It may be noted here that the current case was initiated in April 2012 and therefore any investigation under China-specific Safeguard measure would have been meaningless as China's WTO Accession Protocol was to expire on 10 December, 2013. In this regard, the quantum of import in the POI was examined and it was found that overall imports have been increasing in last four years in absolute terms and wherein share of imports of the PUC from China during the POI was on average 70 % and from the other countries is around 30%. Merely because percentage of import from China is more than other countries it does not bar safeguard investigation on overall import of PUC into India.

I am of the view that the subject petition by the Domestic Industry has been filed under Section 8B of the Customs Tariff Act, 1975 and investigation has also been conducted in the same light. It is noted that in a General Safeguard investigation under the said Section 8B of the Customs Tariff Act, 1975, imports from all countries are to be examined on a non-discriminatory basis, except for developing nations, where the imports, whether or not entering at above *de-minimis* levels are examined.

As regard to contention that this is more an antidumping case than safeguard case, my view is that anti-dumping duty is an internationally accepted and legally sustainable trade remedy measure to counter and neutralize the ill effects of dumped imports through tariff barrier whereas Safeguard duty is a measure to protect the Domestic Industry from injurious effects of increased imports by raising tariff barrier. Both the duties have one function in common, i.e., neutralizing injurious effects of imports, besides other functions. The Domestic Industry is legally justified for filing the present application as they claimed injury due to increase in imports. WTO laws also permit the same. No violation of either domestic or international law has been pointed out by any of the interested parties. This investigation has been conducted for determination of serious injury or threat of serious injury to domestic industry as a result of increase in quantum of imports of PUC into India and not as a result of dumping of PUC. Therefore, the arguments of the interested parties on the above counts cannot be accepted.

**(b) Exports:** The table below gives information on exports by the domestic industries.

Year	2009-10	2010-11	2011-12	2012-13
Exports by 'domestic industry'(MT)	87361	113437	147735	109579
Indexed	100	130	169	125

The exports from India by the DI has declined in 2012-13 from 2011-12, after a continuous rise till 2011-12 from 2009-10.

It may also be noted that Domestic Industry exported 38.9%, 39.9%, 46.3% and 43.08% of its production in 2009-10, 2010-11, 2011-12 and 2012-13 respectively. This shows that export of Seamless pipes and tubes is an important business of domestic Industries. The year 2012-13, witnessed fall in exports by 38156 MT, which made surplus capacity available for domestic market. The loss of export market by the Indian Industry in 2012-13 could not be compensated by the corresponding gain in domestic market as demand during the period has also decreased by 15.2%. This is evident from the fact that total domestic sales of the domestic industry also decreased in 2012-13. This appears to be one of the factor that contributed to rise in inventory in year 2012-13.

**(c) Overall Position of the DI:**

From the entire analysis made as above, it is seen that the market share of domestic producers has fallen during the investigation period. The total production of domestic industry has increased since 2009-10 till 2011-12. However, the total production of 'domestic industry' in 2012-13 fell as compared to the

year 2011-12. The sales of DI have shown an upward trend from 2009-10 to 2011-12 but declined thereafter in 2012-13. The capacity utilization of the DI has shown continuous declining trend since 2009-10. Exception being 2011-12 when there was marginal improvement of 6% in capacity utilization as compared to previous year. Profitability has declined drastically in the recent period of 2012-13 from the base year as well as when compared in 2012-13 from the preceding year of 2011-12. The productivity of domestic industry has declined in the most recent period of 2012-13 when compared to 2011-12 and also when compared from the base year. The Inventory of the goods has increased throughout the injury period. The exports from India by the DI has declined in 2012-13 from 2011-12, after a continuous rise till 2011-12 from 2009-10.

Thus, an evaluation of the overall position of the Domestic Industry, in the light of almost all the relevant factors having a bearing on the situation of the Domestic Industry, shows a significant overall impairment. It is thus concluded that Domestic Industry has suffered serious injury as a result of increased imports of the product under consideration.

### **31. Causal link:**

Rule 5(3)(c) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1977 states the requirement of a causal link between increased imports and alleged injury or threat of serious injury.

For the purpose of determining causation, all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry have been evaluated.

As the market share of DI has declined from 24.78% in FY 2011-12 to 24.24% in FY 2012-13 i.e. by 0.54% and from 25.75% in FY 2009-10 (base year) to 24.24% in FY 2012-13 i.e. by 1.51% with the corresponding increase in the share of imports from 55.38% in FY 2009-10 to 64.01% in 2012-13, the causal link appears to be established. Moreover, even though the quantum of decline in sales of the DI is lower than the fall in imports volume during 2012-13 as compared to 2011-12, there has been an increase in the market share of imports with a corresponding decline in the share of the DI.

In the instant case however, some interested parties have claimed that the import of the PUC has increased till 2011-12, thereafter it has decreased in the year 2012-13. During the same period production, sales, exports, productivity and employment of the industry have followed the trend of increased import. Here I find that when imports increased, the performance of the domestic industry improved and when import decreased in 2012-13, the performance of the domestic industry also suffered. However, it is also seen that the DI is suffering on account of lower capacity utilization even on enhanced as well as pre-enhanced capacities. The productivity has declined only in the most recent period even though the domestic industry has increased the employment throughout the injury period year-on-year basis irrespective of the fact whether import has increased or decreased. The inventory position has also worsened even when production has declined. It has been contended by the Interested parties that increased demand of the product till 2011-12 resulted in increase in imports, production, sales, productivity and employment and decreased in demand in 2012-13 resulted in decrease in imports, production, sales productivity and employment. However, this simple conclusion by the Interested Parties does not hold true on the facts, where despite a decline in import and demand of the PUC in the most recent period of 2012-13, the share of imports to demand as well as its market share has increased in 2012-13. It also gets supported by the fact that the DI continues to suffer from declining profitability throughout the POI. This shows a link between increased imports and the injury caused to the DI in the most recent period, as well as over the POI.

Article 4.2(b) of the Safeguard Agreement provides for establishment of causal link between the increased imports and serious injury and the same has to establish on the basis of objective evidence. The issue of causal link was also examined by the WTO Panel on Korea-Dairy (WT/DS98/R dated 21.02.1999 and this Panel has set forth the basic approach for determining "causation" :

7.89 “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.”

7.90 “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.”

I have evaluated all the listed and other relevant factors of an objective and quantifiable nature and these have been discussed above and the determination of serious injury is based on evaluation of these factors. It is seen from the analysis done above that upward trend in imports coincides with downward trend in injury factors. The evaluation of almost all the factors individually and in totality suggests causal link between increased imports and serious injury caused by such imports and therefore I hold that the causal link is established in this case.

### 32. Threat of Serious Injury:

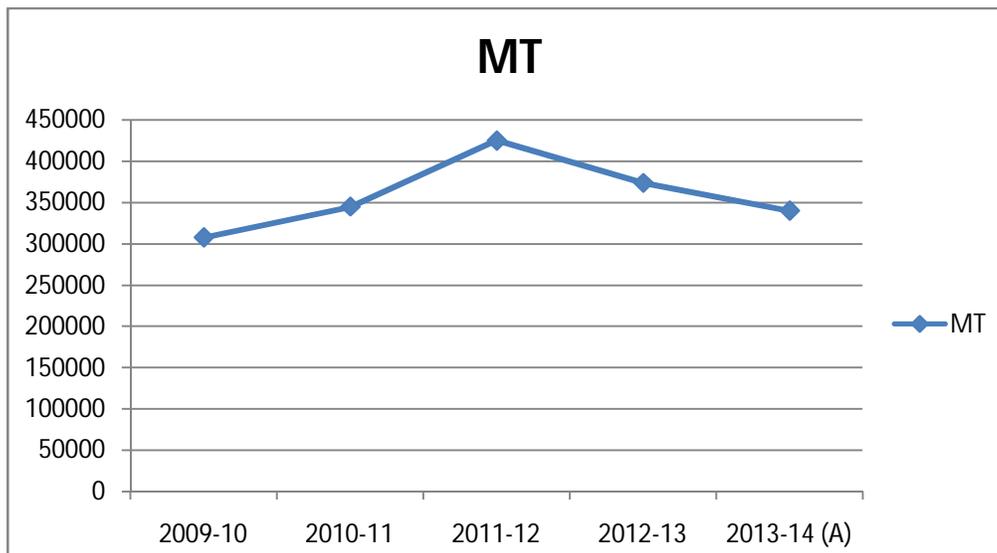
The applicants have stated that there is a clear and imminent threat of serious injury to the Domestic Industry on account of various trade remedial actions taken by major markets across the globe and new addition of capacities in China PR as well as US. Further, recent grant of more than 80% of ONGC tenders and more than 57% Oil India tenders to foreign suppliers will result in unabated imports of the subject goods causing threat of serious injury to the Domestic Industry and Indian Industry as a whole.

During the Public Hearing, data of import beyond POI was asked in order to examine whether there is a trend of increased import or not and whether it poses any serious threat to the DI or not. The DI furnished import data for the first quarter of 2013-14, which is shown below:

Financial Year	Total Import (MT)	Total Import (indexed Yearly on 2009-10)
2013-14 (Q1)	85011	
2013-14	340044 (Annualized)	111

Graph 1 below shows the nature of trend of imports from the base year 2009-10 to Q1 of 2013-14 Annualised. End-point to end-point comparison from 2009-10 to 2013-14 (A) indicates that there is an increase in imports by 11% in absolute terms, but shows a decreasing trend from 2012-13 to 2013-14 (A) as compared to 2011-12.

**Graph 1**



The post-POI analysis of Quarter 1 data for year 2013-14 also indicates that the decline in imports continued further in the Q1 of the current financial year 2013-14, i.e., decrease by 11 % in F Y 2013-14 to 340044 MTS as compared to 373848 MTS in 2012-13. Therefore, it is seen that even though there is an increase in imports during the Period of Investigation, but this trend is not sustained in the most recent period of 2012-13 from the preceding year or in 2013-14 (annualized) from 2012-13 or 2011-12.

In this regard, it is noticed that though an increase in capacities by China PR and in EU may pose a long term threat to the DI, analysis of the Post-POI data of April'2013 to June'2013 reveals that the said threat perception of the DI is largely unwarranted. Further, awarding/getting tenders or otherwise may not form a reason for threat to the DI because the major import in category of oil pipes and boiler pipes by the companies like ONGC is through the process of International Competitive bidding where domestic bidders are also given equal opportunity to participate in the tenders. Under the condition of International bidding, all the participants bid for the projects in accordance with strict terms and conditions that are specified in the tender bidding documents and bids at lowest price are selected by the buyer and exporters have no control over the price. Thus, it is an open procurement for a specific product. If the said product is to be supplied, it has to be at a competitive cost, whether by DI or by import.

Moreover, the contention of domestic industry is unacceptable when facts indicate that imports in Q1 2013-14 have further declined as compared to imports in previous quarter of 2012-13. The import data of Q1 2013-14 when annualized suggests that imports in 2013-14 would further expected to decline to 340044 MT as compared to previous year import of 373848 MT. Q1 data for 2013-14 for production and sales when annualized indicates that production 2013-14(annualized) would decrease by 1% as compared to the base year 2009-10, whereas sales 2013-14(annualized) would almost remain at the same level as the base year. The market share of DI 2013-14 (Annualised) would increase as compared to base year as well as immediate preceding year 2012-13. The market share of import would remain same in 2012-13 and 2013-14 (Annualised). Thus, there is no evidence on record to suggest that as a result of trade remedial action and addition of new capacity in China, exports from these sources will be diverted to India at such a large scale that it will threaten to cause serious injury to domestic industry. Therefore, it is clear that there is no imminent threat to the domestic industry from continuation of imports of the subject goods into India.

Financial Year	2009-10	2010-11	2011-12	2012-13	2013-14 (Q1)	2013-14 (Annualized)
Total Import (MT)	307581	344829	425194	373848	85011	340044
Production of DI(MT)	224216	283619	318968	254316	55468	221872
Sales DI	143017	168740	170826	141558	35785	143140
Sale of others(MT)	104823	101020	93386	68662		45246
Consumption/demand	555421	614589	689406	584064		528430
Market share in demand						
Import (%) w.r.t consumption	55	56	62	64		64
DI Sales	26	27	25	24		27

### 33. Adjustment Plan:

Rule 5(2) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules' 1997 requires submission of a statement on "efforts being taken or planned to be taken or both to make positive adjustment to import competition". The WTO Agreement on Safeguard provides that a member shall apply safeguard measure only to the extent necessary to prevent or remedy serious injury and facilitate adjustment.

The purpose of definitive safeguard measure is to provide the domestic producers with a limited period of time in which to restructure so as to more effectively compete with the imports. Section 8B (4) of Customs Tariff Act 1975 and Rule 16(2) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules' 1997 prohibits any possible extension of measure if there is no evidence that the domestic producers are adjusting.

The domestic producers in this case have laid down adjustment plan which mainly focuses on cost reduction in the following sectors:

- i) Raw Material.
- ii) Power & Utilities
- iii) Management of inventory and personnel and finances.

The M/s ISMT has submitted that they have started importing the DRI sponge iron which will bring down their cost of billets. M/s ISMT has recently set up a captive power plant which has commenced production in year 2013 and this would translate into power cost saving. They have also planned cost cutting by improvement in yield, change in type of fuel , planned shutdown of mill furnace, better stores and spares inventory management administrative cost and finance cost.

M/s Jindal SAW have stated that they are planning to use higher weight billets as input raw material , which will have positive impact on final yield and cost. In order to reduce the power cost M/s Jindal SAW intend to replace oil with that of coal to reduce energy cost. M/s Jindal SAW has also intended to bring down the both raw material and finish goods inventory over next 3 years. They are also in the process of developing new products for certain market.

Some of the interested parties have contended that the DI has not provided the requisite adjustment plan, i.e., without any concrete details and that the adjustment plan submitted by the DI has been claimed to be excessively confidential. The interested parties also stated that the proposed

restructuring plan submitted by the Domestic Industry, shows that the same is based on efficient management of resources by the Domestic Industry, such as better utilization of raw materials, power and energy, and personnel, as well as better inventory management, reduction of production and processing costs, etc., rather than ensuring any real structural adjustments. Interested parties also submitted that the proposed restructuring plan does not disclose the methods that will be used by the Petitioners in order to achieve the goals stated therein. Against the contention of the Interested Parties regarding excessive confidentiality in the submission of NCV of adjustment plan in the petition is concerned, the issue has been examined.

I find that the present petition for investigation of import of seamless pipes and tubes is not a case where applicant has not submitted the adjustment plan at all. The fact of the matter is that the domestic industry has submitted the adjustment plan in the confidential version of petition but they did not submit the adjustment plan in the non-confidential version of the petition claiming business propriety. However, during the course of the investigation, the applicants have submitted the non-confidential version of the adjustment plan on 29.08.2013 for both M/s ISMT Ltd. and M/s Jindal Saw Ltd.. The non-confidential version of the adjustment plan was thereafter circulated to all the interested parties and was also kept in the Public file. The interested parties have made their comments on the adjustment plan in their submissions/rejoinder. However none of them have submitted any concrete evidence that the adjustment plan of the DI is not provided to them and/or is not viable. Thus, contention of the interested parties that the domestic industry has violated Rule 5(2) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 by not submitting the adjustment plan is not tenable.

It appears from the adjustment plan submitted by the domestic industry that the DI has already started these positive adjustments and some of them are planned for over a period of 2-3 years which will result into total overall saving to enable them to adjust to heightened competition from import. Therefore, I find the adjustment plan of the Domestic Industry as reasonable and reliable.

#### **34. Imports of PUC from other developing countries in year FY 2012-13:**

Sr.No	Name of the country	Import Volume (MT)
1.	Bahrain	299
2.	Chile	88
3.	Congo	37
4.	Egypt	32
5.	Equatorial Guinea	79
6.	Indonesia	3934
7.	Kuwait	1454
8.	Malaysia	1029
9.	Myanmar	97
10.	Oman	687
11.	Pakistan	125
12.	Qatar	262
13.	Romania	1162
14.	Saudi Arabia	1359
15.	South Africa	163
16.	Sri Lanka	27
17.	Thailand	829
18.	Togo	0.46
19.	Trinidad	232

20.	United Arab Emirates	6124
21.	Vietnam	122
23.	Total (developing countries)	18141.46
24.	Total import all country.	373848

Source: DGCI&S.

From the above data I find that the total import of PUC into India from developing nation except China PR do not exceed 3% individually and 9% collectively. Thus, the import of product under consideration originating from developing nations except China PR would not attract safeguards duty in terms of Section 8B(1) of the Customs Tariff Act 1975 and Article 9 of WTO Agreement on Safeguards .

### 35. Unforeseen Circumstances:

It is noted that there is no express obligation/requirement on the Director General (Safeguards) to analyse unforeseen circumstances as there is no specific requirement either in Indian Rules on the methodology that should be followed for analyzing unforeseen developments or the WTO Agreement on Safeguards which also does not make any prescription with regard to the methodology that should be followed or the parameters that must be met in deciding 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 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.

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 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 member incurred that obligation.

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”

The domestic industry has submitted that Trade remedial actions in various markets have already been considered as a determinant of 'Unforeseen Development' by the Indonesian Safeguards Authority on a similar product under consideration (G/SG/N/81IDN114. G/SG/N/10/IDN/14)

*"According to World Steel Association-Statistical Year Book 2011, global production of the Subject Good has increased in line with demand underpinned by oil and gas exploration. However trade measures taken in several major markets, that could not have been foreseen, have resulted in trade deflection accounting for the significant increase in imports to Indonesia."*

**(a)** The Domestic Industry has pointed out the following unforeseen factors that have led to the increased imports of the product:

(i) **Unforeseen Trade Remedial Actions:**

The DI submitted that unforeseen Trade Remedial Actions on imports by major consuming sources such as US and EU, especially against imports from China, resulted in diversion of these imports to India, leading to a surge in imports into India. The domestic industry has submitted the following data in support of their claim:

**China exports to USA**

Period	Net Weight (MT)	Indexed Quantity	Increase/ (Decrease) in MT
2009	4,06,502	100.00	
2010	1,09,362	26.90	(2,97,140)
2011	1,52,576	37.53	(2,53,927)
2012	1,41,026	34.69	(2,65,477)

**China exports to India**

Period	Net Weight (MT)	Indexed Quantity	Increase/ (Decrease) in MT
2009	2,73,612	100.00	
2010	4,48,586	163.95	1,74,974
2011	5,35,140	195.58	2,61,528
2012	4,32,113	157.93	1,58,501

**EU exports to China**

Period	Net Weight (MT)	Indexed Quantity	Increase/ (Decrease) in MT
2009	1,20,301	100.00	
2010	86,411	71.83	(33,890)
2011	1,03,499	86.03	(16,802)
2012	78,159	64.97	(42,142)

**EU exports to India**

Period	Net Weight (MT)	Indexed Quantity	Increase/ (Decrease) in MT
2009	49,230	100.00	
2010	60,005	121.89	10,775
2011	63,153	128.28	13,923
2012	71,988	146.23	22,758

Interested parties contended that trade remedial actions mentioned by the domestic industry cannot be considered as unforeseen as most of the measures are in force since 2008-2009. It is also contended that there is nothing to suggest that levy of antidumping duty by China in 2012 against the EU lead to a diversion of imports and a *sudden, sharp* and *significant* increase in imports from EU into India in the POI. It is also contended that initiation of anti-dumping investigation concerning seamless tubes and pipes, initiated at the behest of the present applicant-domestic producers suggests that the domestic industry was aware of increasing imports from China PR

It is also contended by interested parties that the data submitted by the Domestic Industry in the additional submission of which shows that Chinese imports have fallen by almost 20% from 2011 to 2012. Likewise, EU imports into India have consistently increased since 2010 by about 14 -20%. EU exports to China in 2010 decreased by 33,890 tonnes from 2009 levels, the increase of imports into India in 2010 from the EU was 10,770 tonnes from its 2009 level.

I find that trend of imports during last four years indicates that import from China in year 2012-13 has increased by 59887 MT as compare to base year 2009-10. Further I find that import into India post 2009-10 indicates that the import has consistently showing significant increase. Since most of the measures are in force since 2008-2009, these measures led to increase in import to India during POI confirming the contention of the DI that trade remedy measures against China by EU and other Nations has diverted the import to India.

Year	Import from China PR Qty(MT)	Import from European Union.Qty (MT)	Total Import. Qty (MT)
2009-10	198464	49230	307581
2010-11	248174	60005	344829
2011-12	311547	63153	425194
2012-13	258351	71988	373848

Source: DGCI&S

**(ii) Unexpected Drop in Consumption in European Markets**

The domestic industry has submitted that the European markets have reported an unexpected drop in demand as a result of the massive capacities of the subject goods in foreign countries and the foreign producers have resorted to increased exports to India.

The interested parties have contended that more than 2 entire financial years have passed in the present case since 2010-11. An apparent drop in consumption in EC between 2008-09 and 2010-11 cannot be considered as 'unforeseen' or even relevant for the present safeguard investigation wherein market conditions as existing in 2012-13 or later needs to be examined. It is also contended that there is nothing to indicate that an alleged fall in demand in the EU over a 4 year period from 2008 -2011 lead to a sudden or sharp increase in imports form EU to India in 2013. EU imports to India have increased consistently since 2009 and there is nothing "unforeseen" about this development. It is also contended that the Petitioners do not explain what the basis for their allegation is, nor do they provide references for the sources of information alleging, that the EU exports to China fell from 90 million to 20 million EUR at the end of 2012. A purported drop in supply by 35% between 2009 and 2012 couldn't have led to a decrease in sales value by 78%. It has also been stated that the history of cases in the seamless products market indicated that the fluctuation of consumption in this market has been cyclical in nature. The Petitioners did not discuss or offer any explanation as to why or how fluctuation of consumption, i.e. the alleged unforeseen fall in 2009 and a subsequent recovery, in the EU is linked and correlates with an increase of imports of the subject product into India

As regard to the above submission of the DI and contentions made by the interested parties, I find that European markets have reported an unexpected drop in demand as a result of the massive capacities of the subject goods in foreign countries and the foreign producers have resorted to increased exports to India. The data in this regard has been analysed as below:

	Import from European Union.	Total Import
Year.	Qty (MT)	Qty (MT)
2009-10	49230	307581
2010-11	60005	344829
2011-12	63153	425194
2012-13	71988	373848

Source: DGCI&S

It may be seen that import from Europe has been consistently increasing in last four years. In 2009-10 it was 16% of the total imports and it has increased to 19 % of the total imports in 2013. An increase of 3% over a period of four years in relative terms and in absolute terms, the increased quantum of imports from EU has risen by 46% in 2012-13 over 2009-10, i.e., a clear surge which is in my view is unforeseen and supports the submissions made by the DI.

**(iii) Additional Capacities in China PR and new capacities planned in United States**

The domestic industry has submitted that Chinese and US producers have been increasing capacities despite sanctions from various major markets which are leading to further diversion of imports to India. In support of their claim regarding additional capacities in China PR and new capacities planned in United States DI has submitted the following:

- a) M/s. SMS Meer Germany had delivered the world's largest PQF plant for seamless tubes with diameters up to 20 to a Chinese consortium consisting of the M/s Tianjin Pipe Corporation and the M/s. Jiangsu Shagang Group, M/s Huaigang Special Steel Company and production was due to start in the beginning of 2012.
- b) New plants set up in United States by M/s. Vallourec with initial capacities as high as 350,000 MT (expected to go upto 500,000MT) which have started producing pipes since November 2012.
- c) M/s. Vallourec has completed the acquisition of M/s. Zamil Pipes in 2011 in Saudi Arabia which provides M/s. Vallourec with ready-to-run heat treatment capacity and threading facilities of up to 100 kt of pipe per year.
- d) As per market intelligence German company M/s Benteler Steel Tube has invested \$900 million to set up a new steel tube plant in the United States which is expected to be running by 2015.

The interested parties have contended that the new facilities are being created owing to a huge internal demand within the respective countries at the same time Domestic Industry has failed to indicate the simultaneous substantial increase in capacity of the Domestic Industry.

The interested parties also contended that Chinese exports to India shrunk by almost 20% in 2012. The information supplied by the Petitioners mentioned that there is potential to make some record setting tubes: 'The maximum diameter of 20 is a record. PQF seamless tubes are thus breaking into a new performance dimension' and 'For the 20-tubes SMS Meer has developed the world's largest cone type piercer with a roll diameter of 1700 mm'. The product scope of the present safeguard investigation is limited to tubes, pipes and hollow profiles of external diameter not exceeding 273.1 mm. Therefore, output of the plant in question might not even compete with products subject to the present investigation. As reported, this new plant in China can produce tubes up to 508mm diameters. Therefore, this piece of evidence does not support the Petitioners' argument.

The capacity increase in November 2012 in the US is not geared for exports from US to India and no evidence to the contrary has been provided by the Petitioners. The press release cited by the Petitioners suggests that the new capacities will serve the domestic market and sales

Information about the acquisition of already existing capacities in the Saudi Arabia is irrelevant to the argument regarding an increase of overall capacities world-wide. Which is more, a change in ownership cannot amount to "unforeseeable developments" within the meaning of GATT Article XIX: 1(a).

There is no explanation about the relevance of the expected capacity increase in the US in 2015 and the current level of imports, which the Petitioners allege to have increased.

It may be seen that all the above action were initiated in year 2011 and 2012 suggesting that as a result of the above actions, imports in India should have increased in the years 2011-12 and 2012-13. Examination of import data indicates that though imports have increased in 2011-12 as compared to previous years, they have not increased in the subsequent period, i.e., 2012-13 but as compared to base year the imports have increased significantly.

From the facts above, I find that the additional capacities in China PR and new capacities planned in United States domestic industry have resulted in increase of imports in India in 2011-12, but the trend could not be sustained in the most recent period, i.e., 2012-13 and Q1 of 2013-14. In view of the contention of the interested parties, it appears that there is no actual increase in capacity abroad and also the additional capacity created do not pertain to PUC which indicates that the concern of the domestic industry in this regard is totally unfounded. As regards to USA, the capacities planned in future may be considered a potential threat. Thus, Domestic Industry has failed to conclusively establish that enhancement of capacities in China and other countries have resulted in the diversion of PUC into India in the recent years, which had been unforeseen.

**(iv) Unforeseeably low pricing of imports despite increase in raw material cost**

The domestic industry submitted that raw material prices were increasing throughout the course of the Period of Investigation. However, despite the global increase in raw material prices, the import prices have not been commensurate with the increase in cost to make and sell product under consideration in India. As India is a price sensitive market, the low priced imports were well received by the consumers.

In their response interested parties contended that it has been a trend wherein Jindal Saw has often reduced price to match the price quoted by MSI, or ISMT and vice versa. Therefore, it is but obvious that injury is self inflicted. Moreover, most of the transactions in the Indian market are on the basis of ICB where the overseas suppliers and the domestic producers do not really enjoy much discretion to fix their prices in an open competitive system, but are primarily impelled by the buyer to offer low prices independently of any pricing policy that may be pursued by the suppliers in a free market. The decrease of the prices by the importers shown by the Domestic Industry is in consonance with the world wide decrease in the raw material costs up to 3rd quarter 2009 which has had an effect of the costs of the pipes produced in the year 2010-11. The DI has not explained why the alleged disparity in raw material prices and finished products is “unforeseeable”. There is nothing to suggest that even if this disparity existed, that such disparity cannot be explained by natural commercial choices made by manufacturers and is somehow “unforeseeable”. The allegation of decreased imports prices is not made out because import prices of the PUC from Japan have seen a huge increase of about 84% from 2009-10 to 2012-2013. If there had indeed been an “unexpected” or “unforeseeable” reduction of import prices this trend should have been reflected in all imports. It is also contended that the data submitted by the DI does not establish rising raw material prices. The prices of thermal coke and iron ore have decreased in June 2013 as compared to January 2010. Further average 2013 prices of thermal coke, coking coal, natural gas and steel scrap have all decreased from 2012 average prices For instance average 2012 price of steel scrap was USD 390/ton which has decreased to USD 382/ton in 2013

The interested parties also contended that data provided by the Petitioners appears to indicate that the Indian costs of sales increased by 5 index points in 2012-2013 while the costs of scrap dropped by 13.5. In contrast to the argument made by the Petitioners themselves, this information shows absence of correlation between these cost items. It thus follows that no conclusions can be drawn from this data as interpreted by the Petitioners, or its nexus with a purportedly sudden increase in imports. The Petitioners do not explain what is the unexpected event, which seemingly allows all other importers to be unaffected by global raw material prices while Indian producers are.

On the issue of low pricing of import despite increase in raw material internationally I find that the data submitted by the DI does not conclusively establish global rise in raw material prices. The Domestic Industry has submitted the following average raw material/other inputs prices:

	2010-11	2011-12	2012-13
<b>Thermal coal(\$/ton)</b>	115	125	97
Indexed	<b>100</b>	<b>108</b>	<b>84</b>
<b>coking coal(\$/ton)</b>	160	189	186
Indexed	<b>100</b>	<b>118</b>	<b>116</b>
<b>iron ore(C/dmtu)</b>	158	158	130
Indexed	<b>100</b>	<b>100</b>	<b>82</b>
<b>Natural gas(\$/000m<sup>3</sup>)</b>	310	410	422
Indexed	<b>100</b>	<b>132</b>	<b>136</b>
<b>steel scrap(\$/ton)</b>	375	420	386
Indexed	<b>100</b>	<b>112</b>	<b>102</b>
<b>electricity(C/KwH)</b>	6.81	6.84	6.7
Indexed	<b>100</b>	<b>100</b>	<b>98</b>

Source: Data provided by the Domestic Industry

For instance it is observed that price of steel scrap increased from \$375 in 2010-11 to \$420 in 2011-12 and in the year 2012-13, it has again decreased to \$ 386. The prices of other inputs like thermal coal, coking coal, iron ore, and electricity have also shown mixed trend in last three years. In fact in recent year 2012-13, raw material prices of steel scrap and other inputs like thermal coal, coking coal, iron ore, and electricity have shown decreasing trend. The only exception is natural gas where prices have shown increasing trend. Therefore, I find that the contention of the domestic industry that unforeseeably low pricing of imports despite increase in raw material cost is one of the reason for increased inputs is not substantiated by the facts/data submitted by the domestic industry themselves.

It is further observed from the examination of end-to-end point data (2009-10 to 2012-13) submitted by the domestic industry in the table below that landed price of import has increased by 4 percentage points as against 18 percentage point rise in selling price of the DI with a corresponding increase of 23 percentage points in cost of sales of the DI.

Particular	2009-10	2010-11	2011-12	2012-13
Landed price	100	90	99	104
Cost of sales	100	107	117	123
Applicant's selling price	100	106	114	118
Profit in Rs./MT.(Indexed)	100	86	64	43

This shows that the DI's cost of sales had been increasing, which has forced them to increase their selling price, but not to a level where they can be profitable. This price suppression appears to have affected their profitability, leading to serious injury to the DI, also caused in view of cheap imports

On examining the above data, I agree with the contention of DI that producers in China and European Union in particular are targeting the Indian market. Excess capacities are present in the major

exporting countries and it has been found that even when Indian demand/apparent consumption of the PUC has declined in the most recent period after a continuous increasing trend from 2009-10 to 2011-12, imports have increased in relative terms, both in relation to production and demand. It is, therefore, seen that out of the claimed unforeseen by the Domestic Industry only trade remedial action and drop in consumption in European market appears to constitute unforeseen development in the case..

### **36. Public Interest:**

There is no express obligation/requirement on the Director General (Safeguards) to analyse Public Interest under domestic safeguard law. However, 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.”*

In their written submissions regarding the question of public interest, the domestic industry have stated that they have over the years, developed the capability to support the domestic user sector and this has been made possible through huge investments in technology up-gradation and human resource development. The domestic industry is a vital pillar for India's strategic growth in power and oil exploration and indigenously caters to the demand. The DI has contended that surge in low priced imports will lead to irreparable damage to the industry in the form of (1) loss of employment, (2) loss of revenue to the Government on account of taxes, and (3) increased outflow of precious Foreign Exchange as the main reason for imposition of safeguard duty in the Public Interest. The domestic industry has provided the data and submitted that the impact of safeguard duty, if levied on product under consideration on these industries will be minimal as the procurement/consumption of product under consideration is miniscule to impact the operations of these industries.

Interested parties like M/s ONGC countered that many a times domestic bidders are not quoting for the entire quantity of any item or groups of ONGC tender and they are evaluated and considered only for the particular items/ groups they have quoted. ONGC have claimed that to meet its operational requirement, ONGC is procuring Seamless Pipes and tubes through International Competitive bidding process as limited sources of supply are available domestically. Further, Oil and gas companies like ONGC have been given special license by Director General of Hydrocarbons to import seamless pipes and tubes on which “nil” custom duty is applicable when imported into specific areas. It is further contended by the Interested Parties that levy of safeguard duty on seamless pipes and tubes shall adversely affect competition in their tenders, as participation by foreign bidder in ONGC's tenders would reduce considerably and in some case, may even deprive ONGC of the foreign bidder's reference price for comparison with the prices quoted by domestic bidder. Also levy of safeguard duty on seamless pipes and tubes etc would result in extra financial burden to ONGC which may adversely affect ONGC's operations. Other public sector company, BHEL, claimed that foreign suppliers are getting more orders due to entire range available vis-à-vis Indian Suppliers who have limited range. M/s NEI submitted that the impact of safeguard duty is between 7.5% to 13.1% and imposition of safeguard duty on bearing grade tubes would be against public interest

and any increase in cost of bearing would render their operation commercially unviable and will lead to a serious injury to them. They have also submitted that till such time as quality issues, which are basic for a highly precision product are full resolved, the question of granting protection to unsuitable product by safeguard measure does not arise.

I am of the view that a decision concerning the public interest in applying safeguard measures to the imports of the product under investigation involves striking an optimal balance between, not only the industry represented by the Petitioners, but also encompasses other user industries of the product concerned, which all will be heavily disadvantaged if a decision to impose a safeguard measure is taken because it would deprive them of reasonably priced product of desired quality/specifications. This would, in turn, have adverse effects on the competitive ability of Indian users. If the safeguard duty is imposed, these products would not be available to the Indian end user at a competitive price and they would be forced to bear the brunt of the high cost of import.

I appreciate that ONGC and BHEL which are public sector undertakings are engaged in exploration and exploitation of hydrocarbons and development of power plants infrastructure with the objective of achieving energy security for the Nation. Any safeguard duty imposed on seamless pipes and tubes would certainly result in a financial burden on these public sector companies which would adversely affect its operations especially when domestic bidders are not quoting for the entire quantity of any item or have limited range of the products. However, a strong and robust domestic industry is also a requirement which can fulfill the need of the domestic market and can grow in tandem and in competition to foreign suppliers. It has been noticed that the DI has been able to provide/offer almost all the types of grades of the PUC to the buyers domestically and has also healthy exports. They have demonstrated through tangible evidence in form of sales invoices that they have sufficient capacity and the expertise to manufacture a range of PUC. It has also been contended by the DI during their submissions that they are losing major selling opportunity in the form of lost tenders of M/s ONGC due to low priced imports, which is mainly on the price front. This aspect could not be examined in this investigation as because this investigation has been conducted under the provisions of Section 8B of the Customs Tariff Act' 1975.

It is also noticed that the DI has been demonstrated that imposition of safeguard duty will have minimal impact on the major user industries/sectors between 1.94% to 2.73 percent. M/s NEI has contended that the source of information of the prices of DI has not been communicated and therefore, it is not possible for them to discuss the same. M/s NEI also produced invoices in support of their prices and stated that the impact of safeguard duty would be in range between 7.5% to 13.1%. However, I find that except M/s NEI, no other producer or exporter of bearings have participated as interested parties or have submitted data during public hearing as against the evidence produced by the domestic industry with regard to minimal impact of safeguard duty. Considering that the proportion of use of seamless pipes and tubes by M/s NEI is insignificant as compared to total demand of seamless pipes and tubes and also the fact that M/s NEI is running in profits and therefore can afford to take burden of safeguard duty, I feel the imposition of safeguard duty on the PUC would be in Public interest.

### **37. Conclusion:**

There has been a significant increase in imports in relation to production. There is also substantial increase in imports in absolute terms when seen from end to end point of the POI. This increase in import has resulted in decrease in production, sales, export and productivity, capacity utilization and profitability and increase in inventory of the product. This has resulted into causing serious injury to the Domestic Industry, though there may not be a serious threat of serious injury. There is a causal link between increase in import and serious injury caused to the Domestic Industry during the POI. The DI has also provided a viable adjustment plan showing they are making positive adjustments to become competitive

to rising imports and that imposition of safeguard duty on the PUC will have minimal impact on the end users of the PUC and therefore are in Public Interest. I feel that the request of the DI for imposition of safeguard duty meets all the requirements of both domestic as well as international law.

Therefore, the DI deserves to be protected at this stage from the onslaughts of increased imports by adoption of emergency measure of safeguard duty.

**38. Recommendations:**

In view of the above, to protect the interest of domestic industry, it is recommended that safeguard duty may be imposed for two and a half years in terms of Rule 12 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997 on the import of Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) whether hot finished or cold drawn or cold rolled, of external diameter not exceeding 273.1 mm (O.D) with the tolerance as specified under relevant standards (herein after referred to as Seamless Pipes and Tubes) falling under chapter headings( the headings are indicative only ) 73041910; 73041920; 73041990; 73042310; 73042390; 73042910; 73042990; 73043111; 73043119; 73043121; 73043129; 73043131; 73043139; 73043911; 73043919; 73043921; 73043929; 73043931; 73043939; 73045110; 73045120; 73045130; 73045910; 73045920; 73045930; 73049000:

**excluding:**

- i Seamless alloy–steel pipes, tubes and hollow profiles of specification ASTM A213/ASME SA 213 and ASTM A335 /ASME SA 335 or equivalent BIS/DIN/BS/EN or any other equivalent specifications.
- ii. Non API and Patented Premium Joints/Premium Connections/Premium Threaded Tubes & Pipes of grades Q-125, 13CR,L-80,P110,C-90,C-95,T-90 &T-95
- iii. All 13 Chromium (13CR) Grades Tubes and Pipes not included in(2) above and
- iv. Drill Collars.

Considering the average cost of sales of the product under consideration, after allowing reasonable return on capital employed, it is recommended to impose safeguard duty as shown below:

Period	Rate of Safeguard Duty
First year	25% ad Valorem
Second Year	15% ad Valorem
Third year (for six months only)	5% ad Valorem

As the imports from developing nations except China PR, do not exceed 3% individually and 9% collectively, the import of product under consideration originating from developing nations except China PR, will not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

**Sd/-**

**(R. K. Singla)**  
**Director General.**