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

NOTIFICATION

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

G S R D-22011/06/2012 dated 24th September,2012 having regard to the Customs Tariff Act, 1975 and the Custom Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 thereof;

A. Procedure

1. An application has been filed before me Under Rule 5 of the Custom Tariff (Transitional Product Specific Safeguard Duty)Rules, 2002 by M/s. Jindal Stainless Ltd. 12,Bhikaji Cama Place,New Delhi:-110066 for imposition of Safeguard Duty on imports of "Hot Rolled Flat Products of Stainless Steel of 300 series" to protect the domestic producers of "Hot Rolled Flat Products of Stainless Steel of 300 series" against market disruption and threat of market disruption caused by the increased imports of "Hot Rolled Flat Products of Stainless Steel of 300 series" into India from PR China.

2. Having satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of Hot Rolled Flat Products of Stainless Steel of 300 series from China PR was initiated vide notice of initiation dated 26th June, 2012 and published in the Gazette of India, Extraordinary on the same day.

3. A copy of the Notice of Initiation dated 26th June, 2012 along with copy of non-confidential version of the application filed by the domestic industry was forwarded to the Central Government in the Ministry dealing with Commerce and other Ministries concerned, Govt. of China PR through their embassy in New Delhi and other interested parties listed below in accordance with Rule 6(2) & 6(3) of the Safeguard Rules'02:

Domestic Producers

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

Importers

a. Ratnemani Metals and Tubes & SurveySurvey No. 474Village Bhimasar Taanjar, Nr. Ghandhidham Distt. Kutch Pin-370240

b. Bhandari Foils & Tubes Ltd Plot No. D1-D4, Phase I INDL, Area AB Road Dewas (M.P)

c. Prakesh Steelage Ltd.Plot No. 26 Sector KWC,Kalamboli, Navi Mumbai Maharashtra

d. Rajendra Mechanical Industries Ltd 11, Cama Industrial Estate Goregaon East Mumbai

e. Phoenix Foils Pvt. Ltd.Plot No. 3, Expansion Area,New GIDC, Umbergao, Distt Valsad, Gujrat

f. Domet Trading Pvt. LtdPlot No. 1867, Road No.25,KWC Steel Ware Housing Complex Kalamboli, Maharashtra

g. Sangeeta Metal (India) 26/24, 68/1, Ground Floor, Sindhi Lane, Mumbai

h. Ramani Steel House 65/73, CP Tank Road,Mumbai

i. Nishant Infinn Pvt. Ltd 7, Taldhwaj Bhuvan, 1st Floor, Off No.1, 3rd Panjrapole Lane, Mumbai

j. A.C. Steel Sgop Laheri Building Ground Floor 282, S.V Road,Corner of 5th Khatwadi Lane , Mumbai

k. Quality Foils (India)Pvt. Ltd.3, Industrial Development colony Hisar,Haryana

Exporters

a. Taiyuan Iron and Steel (Group) Co. Ltd.No.2, Jiancaoping Taiyuan, Shanxi 30003, China.

b. Lianzhong Stainless Steel Corporation No1, Lianguang Road, East Section,Economic Technology Development Zone Guangzhou, 510760 China

c. Baosteel Tower,370 Pudian Road,Shanghai, 200122 China.

d. Jiuquan Iron and Steel (Group) Co. Ltd.No12 Xiongguan Dong Road,Jiayuguan,Gansu.

e. Zhangjiagang Pohang Stainless Steel Co. Ltd.Daxin Riverside Road,Zhangjiangang City Jiangsu Province,China.

Associations:-

a. Process Plant and Machinery Association of India (PPMA)002 Loha Bhavan, 91/93, PD Mello Road, Masjid (E) Mumbai-400009, India

b. All India Stainless Steel Industries Association(AISSIA)302, Arun Chambers, Madan Mohan Malviya Road, Mumbai, Maharashtra,-400034, India

c. Stainless Steel Exporters Welfare Association PD-4A, Pritampura, Delhi-110088 India

d. M/s The Tamil Nadu Stainless Steel Merchants and Manufacturers Association,13, Raghunayakulu street,2nd Floor,Park Town,Chennai:-600003

4. Questionnaires were sent to the known exporters from China PR, known importers/users in India and other interested parties as per the information available including the Govt. of China PR with request to make their views known in writing within 30 days of the initiation notice.

5. The initiation Notices dispatched to (a) M/s Sangeeta Metal (India), 26/24, 68/1(F/H) Ground Floor,Sindhi Lane, Mumbai (b) Taiyuan Iron and Steel(Group) Co.Ltd No.2,Jiancaoping Taiyuan,Shanxi 30003,China and (c) Lianzhong Stainless Steel Corporation No.1,Lianguang Road,East Section,Economic Technology Development Zone,Guangzhou,510760 China have been received back being incomplete address or left w/o address. The copy of the received back notices then placed on the notice board of the Directorate.

6. Request to consider them as interested parties were received from China Iron and Steel Association(CISA),China , Ministry of Commerce, GOC, China and The Tamil Nadu Stainless Steel Merchants and Manufacturers Association .All the requests were accepted.

7. The information presented by the applicant was verified to the extent possible, by onsite visits to the plants of the domestic producers. The non confidential version of verification report is kept in the public file.

8. The following parties have submitted their submission in response to Questionnaires sent by this Directorate.
   - M/s Remi Edelstahl Tubulars Ltd.Mumbai
   - M/s Ramani Steel House,Mumbai
   - M/s Fair Trade Practices,Advocates & legal consultants(on behalf of M/s The Tamil Nadu Stainless Steel Merchants and Manufacturers Association)
   - M/s Steel Authority of India Limited
   - Shri Rajeev Jain behalf of Bureau of Fair Trade,Ministry of Commerce,Government of People's Republic of China PR and China Iron and Steel Association,China
   - Shri A.K.Gupta,TPM Consultants on behalf of M/s JSL Stainless Ltd.
   - M/s Lakshmi Kumaran & Sridharan on behalf of M/s All India Stainless Steel Importers Association.

   Submissions made by these interested parties have been considered in the present order. Domestic industry filed its submissions on the views expressed by other interested parties, which have also been considered in the present order.All the views expressed by the interested parties have been taken into account in making appropriate determination. The non confidential information received or acquired has been kept in the public file.

B. <u>Views of Domestic Producers(Applicant)</u>

i. The product under consideration is "Hot Rolled Flat Product of Stainless Steel of 300 Series (of all widths) and encompassing all austenitic grades having minimum Nickel (Ni) content of 6%, compulsorily containing chromium, with or without the presence of other alloying elements like molybdenum, titanium etc.", hereinafter referred to as Hot Rolled Stainless Steels. The subject goods are used for manufacture of process equipments, re-rolling, reactor vessels, material handling equipments, railways, pipes & tubes, automotive components, rolled formed sections, architecture, building & construction, industrial fabrication etc. The subject goods are classified under Customs sub-heading no. 721911, 721912, 721913, 721914, 721921, 721922,721923, 721924,722011,722012 of the Customs Tariff Act, 1975

ii. There are two other producers of the goods but the applicant company M/s. Jindal Stainless Ltd account for more than 80% of production and hence is a major producer.

iii. The imports of the product under consideration have increased throughout the injury period in absolute terms with a sharp increase in imports in the recent period. There is a sudden, sharp and significant increase in imports in the recent period. Imports have also increased in relation to production in India throughout the injury period with a significant increase in the most recent period. It would thus be seen that imports of product under consideration have shown recent, sudden, significant and sharp increase. The condition prescribed under the rules in this regard is clearly met.

iv. The import and injury related data for 3 year period has been filed by the applicant.

v. Unforeseen development which has led to increase in imports is the rapid capacity growth recorded by China at a rate which is far higher as compared to the growth in domestic demand, resulting in excess production and huge surpluses. China was a net importer of stainless steel products until 2009 and thereafter became the exporter of the same.

vi. Access to cheap Nickel in the form of Nickel Pig Iron has enabled Chinese Stainless Steel producers to have a lower cost of production as compared to their counterparts in other countries. Development in Nickel Pig Iron facilities has happened over the last 2-3 years. This has allowed the country to ramp up production and dominate the global market in recent years. Nickel pig iron was developed in China specifically for stainless steel production**.**

vii. Other advantages of Chinese producers: Coke forms the second highest cost item in Ferro Chrome production cost after chrome ore which is an essential element in the manufacture of stainless steel. China, having very large coking coal deposits has a huge advantage over India. Borrowing cost of Chinese companies is below 5%, as credit is regulated by the Chinese government / its agencies.

viii. Demand of the product concerned has increased throughout the injury period, Further, the evidences provided shows that by end of 2015, China's stainless steel products capacity will reach 20 million tons and output will reach 19 million tons and the demand in China will reach 16 million tons, leaving a surplus of 3 million tons. Considering the huge production capacities of the subject goods in subject country and their export orientation and the increasing demand for the subject goods in India, in all likelihood imports will continue to remain high, causing market disruption and grave threat of market disruption to the domestic industry.

ix. Increased imports have led to increase in 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

x. Production and sales of the domestic industry declined significantly in 2010-11 with the surge in imports. The domestic sales and production of the domestic industry showed some improvement in 2011-12, however the same were still below the levels recorded in 2009-10

xi. Domestic industry substantially enhanced its capacities and set up a fresh new green field plant at Odisha. The production of the domestic industry should have increased whereas the production did not even reach the levels achieved in 2009-10 because of increased imports from China and consequent adverse sales volumes of the domestic industry.

xii. Increase in the Stainless Steel scraps prices and Nickel prices have led to a substantial increase in the cost of production. Domestic industry also increased the prices but the increase was lower to the cost to make and sell in order to vow the consumers. Despite such adverse and low prices, the volume of imports has surged from China in view of significantly low prices offered by the Chinese producers**.**

xiii. Landed price of imports is significantly lower than the selling price of the domestic industry. Landed price of imports is also lower than the cost of sales. The imports are significantly undercutting the domestic prices.

xiv. Capacity utilization of the domestic industry has severely suffered as a result of low production, and the same declined significantly even when the demand for the product under consideration has increased.

xv. Petitioner is faced with significant accumulated inventories. The levels of inventories have increased throughout the injury period with a significant increase in the most recent period.

xvi. Profitability of the domestic industry has steeply declined in the recent period. The cost of sales of the product under consideration has increased throughout the injury period. But the domestic industry was unable to increase its selling price in proportion to the cost of sales due to increasing price of raw material and presence of cheap imports. Consequently the profits earned by the domestic industry have declined throughout the injury period.

xvii. The return on investments also followed the same trend as that of profits. The return on investments declined due to presence of increased imports.

xviii. In addition to the market disruption already inflicted on the domestic industry, increased imports of product under consideration are threatening market disruption to the domestic industry.

xix. There are no other factors that may be attributing to the market disruption to the domestic industry other than the low priced imports. The imports of product under consideration from third countries have declined as a result of imposition of anti dumping duties on these imports.Share of China in total imports has increased significantly and that of other countries declined significantly.

xx. Petitioner has requested imposition of provisional safeguard duty. The interim measures are imperative in view of the steep deterioration in performance of the domestic industry, market disruption suffered by the domestic industry and the threat of market disruption as a result of increased imports of the product under consideration. The domestic industry has been forced to undertake production cuts. Domestic sales of the domestic industry have declined significantly. The capacity utilization of the domestic industry has steeply declined in the most recent period in view of decline in sales caused by surge in imports. Inventories with the domestic industry are rising significantly. The domestic industry is facing significant financial losses.

xxi. Petitioner has requested DG safeguards to issue preliminary findings in view of the critical circumstances. Petitioner has also provided information of the domestic industry segregated into 304 grade and other than 304 grade. It has further submitted that

a)imports of 304 grades have been increased in much higher volumes as compared to other than 304 grade.

b)the volume of imports of 304 grade and other than 304 grade on one hand and the performance of the domestic industry in these segments on the other hand clearly establishes that the domestic industry is suffering marked disruption due to Chinese imports. The market disruption is higher in case of 304 grades. However, petitioner is also suffering market disruption in other than 304 grades. Further, should the safeguard duty be restricted to only 304 grades, the imports would increase in other than 304 grades

xxii. Petitioner was advised to provide transaction-wise import data/ production/ sale/ export/inventory data and injury margin statement of Hot Rolled Flat Products of Stainless Steel 304 grade.

xxiii. The petitioner has provided all the required data pertaining to Hot Rolled Flat Products of Stainless Steel 304 grade.

xxiv. In the light of the critical circumstances, the applicant submitted that any delay in the application of safeguard measures would cause grave damage to the domestic industry. It requested the Authority to take immediate necessary actions in the form of provisional safeguard duty to prevent the domestic industry from suffering irreparable damage.

C. Views of Interested Parties:

(i) M/s Ramani Steel House,Mumbai

The company has submitted as follows –

a. The product under consideration is wider in range and includes products which are neither produced by the petitioner nor produced by any other manufacturer in India. Imports of grade 304 constitute 95-97%. The safeguard application should be considered only on grade 304 product types.
b. The petitioner production range is limited to (i) coil form (3mm-6mm thickness x 1000mm upto max. upto 1250 mm width and (ii) plate (quarto) (5mm-63 mm thickness x 1000 upto max. upto 1250 mm width). The application must be for the product range available and produced by the petitioner. Further, imports of the product under consideration shows as follows with regard to different widths, which shows that the imports of the product under consideration in the widths not produced by the domestic industry have increased. Imports of the product in the width produced by the domestic industry have not increased.

	2010-11	2011-12
Width 1000mm-1250mm	9,544MT	8,113MT
Width 1251 mm & up	6,508MT	10,451MT
Width below 999 mm & undisclosed width	8,757MT	19,120MT

c. The application of safeguard duty should be verified subject to Monopolies and Restrictive Trade Practice Act,1969. Petitioner is the only manufacturer having fully integrated plant in India. Other manufacturer, M/s SAIL do not have production facilities for Stainless Steel Hot Rolled plates (quarto plates) in any grade, thickness & width. Petitioner has 100% market share for the Quarto Plate.

d. Imports from third countries declined sharply from 45,120 MT in 2009-10 to 35,679 MT in 2010-11 and 37,071 MT in 2011-12 because of anti dumping duty. The drop in import from non china countries is offset by increase in import of China. Base year of 2009 being the year of World Economic disaster, the total import figure in 2009-10 is much below average. As the World Economy started recovery in 2010-11, 2011-12 the total import quantities reached earlier averages. Import data of the year 2009-10 cannot be considered as normal base year. Instead year 2010-11 should be considered as normal base year.

e. The petitioner is already enjoying huge subsidy as import duty on stainless steel scrap is nil, which comprises of approx 70 % cost of production and export duty drawback is 4% on stainless steel flat product.

(ii) <u>M/s Fair Trade Practices, Advocates & Legal Consultants (on behalf of M/s The Tamil Nadu Stainless Steel Merchants and Manufacturers Association)</u>

The has association has submitted as follows –

a. The term 300 series is too wide and would even include products which are under development stage and would be introduced in the future market. The scope of the product under consideration should be redefined and only 304 grade products should be considered. The grades falling under 300 series are imported in far more different sizes which are neither produced or sold by the petitioner or even other Indian producers. Majority of the imports(90-95%) of HR flat Products of Stainless Steel from China are of grade 304.

b. Import quantities from China for Stainless Steel Hot Rolled Quarto Plates (HS Code 7219.21,7219.21,7219.22, 7219.23, 7219.24) is almost miniscule quantities in all 300 series grade (Aprox.2-3%) and that is also width of 1500mm-2000mm which is not available in India

c. The scope of investigation should be restricted to the sizes which are produced and sold by the petitioner and sizes which are not produced or sold by the petitioner should be taken out of the purview of the investigation.

d. The cumulative assessment of the petition would clearly indicate that there is no surge in imports of the subject goods and the domestic industry has not suffered any market disruption.

(iii) <u>M/s World Trade Consultants & Advocates on behalf of Bureau of Fair Trade, Ministry of Commerce, Government of People's Republic of China PR and China Iron and Steel Association, China</u>

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

a. The petitioner has not brought about any substantive evidence to prove the condition for initiation of the safeguard investigation. The investigating authority has not carried out appropriate, enough scrutiny to the related facts. Initiation of the investigation is totally baseless and the investigating authority shall terminate the current investigation.

b. The petitioner's application for an investigation and imposition of safeguard measures on imports of whole range of 300 series of flat products of hot rolled stainless steel is clearly short of legal and factual basis. The GOI has authority to initiate an investigation into and impose safeguard measures to "an article". "Hot rolled flat products of stainless steel of 300 series" is a very broad category of products, and must be taken as "a set". There is no such a domestic industry in India that produces the whole range of hot rolled flat products of stainless steel of 300 series per se. The DG should deepen its investigation into the objective facts, to exclude the flat products of stainless steel of 300 series under the HS code 7220 less than 600mm in widths and that with width of more than 1250mm width from the scope of this investigation.

c. Petitioner did not correctly and objectively analyze the reasons for increase in imports from China. The claims of the petitioner are completely wrong. The capacity of China is appropriate as compared to its potential market demand. The decline in demand as described by the petitioner does not exist in China. The market advantages of Chinese enterprises are not significant as compared with the Indian enterprises, and the alleged advantages even do not exist.

d. The actual reasons for increase in the imports from China are (a) imposition of ADD on the product; (b) the increased demand in Indian market; (c) the characteristics and the changes of the demand structure of the Indian market has left space for imports from China. The stainless steel products in India were mainly used for utensils; however, the quality, grade, specification and service, etc. may not satisfy the increasing need in India particularly in the field of transportation, pipes and tubes, construction and vessels, among others because high quality stainless steel products are needed for these fields; (d) The production in India has strong concentrations. Petitioner has 75% market share in organized stainless steel sector in 2010. Meanwhile, it has manufacturing facilities only at three locations. Due to geographic differences and harsh transportation conditions, products of the domestic industry could not meet the increasing demand across the country; (e) Besides the organized stainless steel sector (high end market), there is also unorganized sector for common stainless steel products. The petitioner is not dominant in the unorganized sector and it leaves more space for other producers in this segment of the industry; (e) The decline of the global production and sales has left space for imports from China.

e. The price of the subject products imported from China has not declined materially. The export price of the products under consideration for the year 2010-11 increased by 13%, as compared with the price for the year 2009-10, and the export price for the year 2010-12 is essentially flat compared with the price for the year 2010-11. There is no price undercutting by imports. Further, the price in Indian stainless steel market generally followed a downtrend. The decline of the price of the product under consideration is not caused by the imports from

China, but resulted from the overall situation of the stainless steel market and even the whole steel market in India.

f. Imports from China has increased fast relatively during the period from 2009 to 2012, only in the sense that the rates are a bit higher compared with the slow growth of the domestic industry and the decline of other sources of supply; and the increased imports from China has contributed appropriately to the development of the market of the product at the proper time. The petitioner deliberately avoided the genuine reasons for the increased imports from China, and thus misled the investigating authority.

g. The petitioner has exaggerated the increased import of the subject product, and deliberately invented market disruption, which is a distortion of the market situation in India. There is no rapid increase of the subject product which has caused market disruption or material injury to the domestic industry. The deterioration of the petitioner's financial situation is the result of other factors.

h. Investigation period is too short, because the period of 2009-2012 only covers three fiscal years of India, which is inconsistent with the ordinary practice of trade remedy investigations in India.

i. The capacity of the petitioner has not really increased. The actual total capacity of stainless steel and the actual distribution of the total capacity among the stainless steel of different series during the POI, in order to present the actual situation of the changes of the petitioner's capacity with regard to the 300 series. Assuming that the capacity has increased, such increase and the decline in capacity utilization may not explain that that problems existed in the market of the like products. Petitioner's production did not change, and the only changed factor is petitioner's capacity. The decrease of the petitioner's capacity utilization resulted from the sharp expansion of the petitioner's capacity. As the relevant market in India is still yet to digest and absorb such changes in the market, so the production of the petitioner did not increase at the same pace. The petitioner has commissioned its capacity at the end of the POI without leaving adequate time for the market to respond. New capacity of the petitioner cannot satisfy the need of the downstream users in terms of variety, specification, quality, service, time of delivery, and other aspects of the products.

j. The inventory of the domestic market has increased at the same time with the increase of its capacity, which is a direct result from the fact that the increase of capacity has not been absorbed by the market.

k. There is no injury in terms of productivity. The change of productivity mainly resulted from the changes in the capacity and the employment.

l. With regard to market share, there are at least two kind of views regarding the petitioner' market share. The Director General should review the sources and implications of the data submitted by the petitioner in this regard. Further, DG should consider how the petitioner has considered its captive consumption when processing its data relating to its production, market share, sales, inventory, etc.

m. Due to weak demand in the US market, exports of the products under consideration from India to US have declined during the POI of 2010-2011. On the other hand, the exports of domestic industry have recovered during 2011 to the first half of 2012. The exports would influence the business performance of the petitioner/ domestic industry.

n. With regard to cost advantages to Chinese producers, although interest rate in India is high, the inflation rate in India is also high. Therefore, the real interest rate is not so high as compared with China. The domestic industry of the product under consideration in India has many cost advantages, such as the cheap iron ore, cheap energy (captive thermal power plants) and cheap labor. Petitioner has carried out many operational activities to make large investments and to expand its capacity relating to the product under consideration during 2009-12.

o. Overall business performance of the Petitioner does not show injury. The operating performance of the petitioner has not suffered material influence or "disruption" by the changes of the stainless steel market. The business performance of the petitioner shows that its business runs good and has not suffered any material injury or market disruption. Part of the petitioner's business performance indicators showing deteriorating status is due to mis-presentation of case in its petition, its personal reasons and the special market circumstances, instead of the increased imports from China. GOC will make further explanations with regard to the casual link.

p. There is no threat of market disruption. The assertion that the rapid increase of the subject goods imported from China is without legal and factual basis.

i. The claims of the petitioner about the market and industry of China is not consistent with Chinese actual situation. The claim that capacity is excess is not consistent with Chinese actual situation. The Chinese capacity of stainless steel submitted by the petitioner has extremely exaggerated the capacity of the products under investigation in China. The capacity of Chinese industry has huge market both at home and abroad. In domestic market: (1) The domestic market in China has a great potentiality (2) In accordance with the internationally recognized route of evolvement in consumption of stainless steel, China has explored only part of its developing market, the potential of further development of market for stainless steel in China is also tremendous; (3) The fact that, except for China (and India), the global market is declined as a whole does not mean the inexistence or disappearance of the demands. Actually, the demand of global market is recovered after 2009; (4) There are some great potential markets such as Africa around the world. The changes in domestic consumption structure of stainless steel in China will generate huge demand in the near future, which can completely absorb the existing capacity.

ii. The allegation that domestic demand in China declined is incorrect and misleading. Although the demand of stainless steel of 300 series in various countries has reduced, the domestic demand in China still kept a rapid growth. The domestic demands of stainless steel can match the existing capacity of China.

iii. The degree of internationalization and modernization of Chinese economy is more or less higher than that of India and the various costs in China are also higher than those in India. The demand potential in China is remarkably high

iv. In order to promote the energy conservation and emission reduction, China introduced a series of policies and measures in the recent years. And in the coming years, China will accelerate the elimination of backward production capacities. And it is anticipated that the backward parts of the total capacity of stainless steel will be further eliminated in China.

v. The rising costs in China restrict further expansion of Chinese capacity. The price of ferronickel in China continued to climb in the recent years, which is a major constraint for the production of stainless steel. The price of steel scrap in China fluctuates during the injury assessment period. It is incorrect that the prices of raw materials in China are always lower than India. The average wage of staff workers in manufacturing in China has risen in recent years, which leaded to significantly increase in the labor cost of Chinese manufacturing. The cost of capital of Chinese enterprises are much higher (e.g. the financial year 2009-2010) or approximately flat (e.g. the financial year 2011-2012).

vi. Since there are distinct differences between the consumption structure of China and that of India, and different products of stainless steel cannot substitute each other, so the stainless steel products (e.g. sections and long products, etc.) satisfying the demand in China are not the like products or directly competitive products with regard to the products under investigation, therefore, they can not cause any injury to the India market of the like products.

vii. The Chinese industry is facing a huge domestic demands with limited (and maybe also shrinking) capacity, it is unnecessary for them to scramble for the low-end market in India. It may expect to be non-remunerative or low profit for Chinese manufacturers to export the subject goods to India because the rising high production costs.

q. The relationship between rapid increase in the import of the subject products from China and the market disruption (material injury) which is claimed in the petition by the petitioner has a lot of legal and factual problems. Petitioner has not provided any analysis or evidence to establish causal link.

r. Some indices of business performance by the domestic industry in India are not good is not caused by the increased import from China, but resulted from either misrepresentation of the case, or the causes of their own business administration and/or the deteriorated internal and external business environments.

s. The petitioner has rapidly expanded its capacity, but it will normally take a relatively long time for the market to accept and absorb the new capacity. Generally, the (new) worker of new production line is inexperienced. The performance of the new equipment will also take times to get reasonably reliable for efficient production. Therefore, the rejection rate, defective rate and cost are normally high during starting period of new production capacity; in addition, the production cycle and the supply periodicity may also work here. All these factors may impact the absorption time for the new capacity.

t. The demand structure of stainless steel is witnessing some changes around the world. The demands for the products of 200 Series and 400 series have been increased. At the same time, except in China, the demands for 300 Series have been generally declined.

u. The business environment and conditions in the global market is deteriorated, which leads to the falling exports by the domestic industry in India.

v. The DG should consider the public interests comprehensively and completely, and not to impose safeguard measures accordingly. The petitioner did not put forward any claims with regard to public interest, nor the initiation notification required parties to provide information on public interests. The imposition of safeguard measures onto the product under consideration does not conform to the public interests. Import from China are the decentralized customers or traders and the small volume in each order, which demonstrates the demands of India may well be scattered to small and/or medium sized enterprises. A great number of small and medium enterprises need high-quality products at a reasonable price. According to the statistics provided by Chinese authority, there are 156 enterprises exported to India during 2010 to 2011. The majority of export of China to India was made by the traders. The minimum volume of export is even around 0.01 ton in the year 2011. It not only indicates that the total volume of export is decentralized, but also indicates a great deal of import is made by Indian trader. Indian market lacks domestic competition, given two small-scale competitors. The economic development of India needs a great number of supply of stainless steel. The per capita consumption of stainless steel in India is 1.2 kg as compared to the world average of 4 kg and China's 5 kg. This low per capita consumption of stainless steel in India presents immense opportunities for growth in domestic stainless steel market. The stainless steel consumption in India is estimated to be around 2.0 million tons in 2010 which is expected to grow to around 5.0 million tons by 2020 at annual growth rate of around 9.5% as compared to expected world average growth of 6% over the next decade. Globally, the stainless steel usage is widely spread into infrastructure sector such as construction and transport and these accounts for 10 to 15 percent of total consumption. In India, stainless steel is mainly used in kitchenware sector which accounts for almost 70% of the stainless steel consumption. The demand for the infrastructure spending is growing in India and estimated to touch around USD 1.7 trillion over the next decade. The large part of this infrastructure spending is expected to be in the areas of up-gradation of railways, railway stations, roads, airports and other transportation systems as well as various other construction activities. With the Government's focus on modernization of railways and airport systems, the demand for the stainless steel from these sectors is expected to grow considerably. Areas such as transport, tubing, construction which currently accounts for around 5% each of the total demand, are expected to consume around 15% each of the overall stainless steel consumption in India. The consumers need uninterrupted supply of stainless steel to foster and support its development.

w. Petitioner’s claim of urgent circumstance is without legal and factual basis. The petitioner failed to prove the necessity to impose any provisional measures to the products under consideration imported from China. The overall business performance of the petitioner has been in good shape of business. The downstream enterprises would not hold large stocks which may result in increase in cost. The domestic industry is already been overprotected. The Chinese enterprises did not have a motive to battle for clients by price undercutting in a short-term.

x. Safeguard duty would not be in the interests of India, especially the bilateral trade relation between China and India. The Indian authority should be restrained in the initiation and imposition of transitional safeguard measures.

y. The issue of transitional safeguard measures is always an important concern for the Govt. of China (GOC). The GOC has, at multiple levels and through multiple channels, expressed its position concerning the issue: the transitional safeguard clause was formed under specific historical conditions, and was a restrictive measure against imports from China; and because the clause lacks objective standard and fairness, and the procedure of the clause lacks transparence, the GOC openly objects to the reference to this clause by other WTO members for initiating transitional safeguard measures, and hopes that other WTO members can address transitional safeguard cases prudently.

(iv) <u>M/s Lakshmi Kumaran & Sridharan</u>

Following submissions have been made on behalf of M/s All India Stainless Importers Association.

a. Domestic industry has not filed individual questionnaire response. In case confidential version is filed, it is not available in the public file.
b. Domestic industry has provided incorrect information with regard to major industrial users.
c. DGCI&S data has not been made available.
d. Table showing Chinese customs data wrongly named as China to India (300 series) since it includes other products also.
e. Applicant domestic producer has not provided complete information on captive markets, which is against WTO Panel and Appellate Authority rulings: US- Anti-dumping measures against Hot-rolled Steel products from Japan (WT/DS184/AB/R) and US – Transitional safeguard measure on combed cotton yarn from Pakistan (WT/DS192/AB/R)

f. HR series 304 in coil form only is being imported and thus other HRSS products should be excluded from product scope. Different grades are used in different applications and not substitutable.
g. Plates and coils are classified separately at six digit level of HS code, imports are only of coil and they have different uses. Thus plates should be excluded.
h. Coils of thickness more than 1250 mm not produced by domestic producer and cannot be included in product scope, as stated in the cases of Magnet Users Association vs. Designated Authority 2003 (157) ELT 150 and Videocon Narmada Glass vs. Designated Authority 2003 9151) ELT 80.
i. Petition gives no clarity as to whether the Odisha unit is operating as DTA or SEZ.
j. The claim that Odisha plant has commenced production is false. It has been done only to get benefit of deduction of expenses and depreciation under income tax.
k. Domestic Industry does not consist of only applicant producers. Therefore authority should collect injury data of total production.
l. Increase in imports is less than increase in production and the reason for increase is Anti-Dumping duty on other supplier countries.
m. Increase in capacity is not reliable since date of commencement of Odisha unit is not clear. Also, the method of claiming dedicated capacity towards production of PUC not disclosed.
n. Capacity utilization has also been affected due to non availability of raw material like Scrap, Nickel and Chromium.
o. Comparison of production and sales figures are wrong as production figures constitute captive products while sales is only of product as such.
p. The claim that inventories has increased in not correct.
q. Though capacity has increased, number of employees has not increased.

D. Examination by the Director General

Views expressed by the interested parties have been examined. Some of these views have been addressed at the respective places in this order. As regards other issues raised by the interested parties, they have been examined as follows:

a. As regards adequacy of the petition and examination of the same, it is not established that the petition did not contain substantive evidence. The investigation was initiated after due scrutiny of the facts and having regard to various legal provisions.

b. It is seen that the Notice of Initiation has been issued by considering the product under investigation as “Hot Rolled Flat Products of Stainless Steel of 300 series (of all widths) and encompassing all austenitic grades having minimum Nickle (Ni) content of 6%,compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc.” classified under Customs sub-heading no. 721911, 721912, 721913, 721914, 721921, 721922,721923, 721924,722011,722012 of the Customs Tariff Act, 1975”. In response to this initiation it is found that several interested parties have raised the issue that the scope of the products has been flawed in many aspects of the facts and that to investigate and impose safeguard measures on whole range of 300 series of flat products of hot rolled stainless steel do not reflect the actual situation of the ordinary course of trade in the sector. On scrutiny of the submissions made by the interested parties including Govt. of

China, M/s China Iron & Steel Association, M/s Ramani Steel House, Mumbai etc. and the response of the Domestic Industry to the said submissions, it appears that the scope of the product under consideration is large and it requires modifying/narrowing down to a particular grade for the purpose of adequate and appropriate injury analysis. In this regard, based on the available records, submissions of the interested parties and the DI, the scope of the product under consideration is therefore restricted/narrowed from ….300 series…. to …..grade 304… i.e. the PUC is now more specific and restricted to "Hot Rolled Flat Products of Stainless Steel of 304 grade (of all widths) having minimum Nickel (Ni) content of 6%,compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc.". The product is currently classified under customs sub-heading no. 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 722011, 722012 of the Customs Tariff Act, 1975.The customs classification is indicative only and in no way it is binding upon the product scope.

c. The subject goods are used for manufacture of process equipments, re-rolling, reactor vessels, material handling equipments, railways, pipes & tubes, automotive components, rolled formed sections, architecture, building & construction, industrial fabrication etc.

d. Therefore, the scope of the product under consideration is restricted to **"Hot Rolled Flat Products of Stainless Steel of 304 grade** (of all widths) having minimum Nickel (Ni) content of 6%,compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc."

e. With regard to the reasons for increased imports, it is noted that even if it is admitted that these stated reasons led to increased imports, the same does not establish that imports were necessary for these reasons. The domestic industry with or without other domestic producers was in a position to meet the demand of the product on account of these factors identified. Imposition of anti-dumping duty on other countries does not justify switching of imports from those countries to China. Moreover, the investigation has clearly established that the increase in imports is far more than the reduction in imports from third countries and increase in demand.

SN	Particulars	Units	2009-10	2010-11	2011-12
1	Imports from				
	China	MT	5,264	26,702	35,741
	Third countries attracting dumping duty	MT	25,963	16,308	14,287
2	Demand	MT	87,281	88,782	102,002
3	Changes in (From base Year)				
	China	MT		21,438	30,477
	Third countries attracting dumping duty	MT		(9,654)	(11,675)
	Demand	MT		1,501	14,720

Thus, the increased imports not only substituted the imports from third countries but also the sales of the domestic industry and demand in India.

f. The fact that demand in India increased cannot be a justified reason for increase in imports, particularly when there is more than adequate capacity for the product in the Country. While increased imports might have been necessary in a situation of demand-supply gap, increased imports due to increase in demand is unjustified when there is sufficient capacity for the product in the country and the same is remaining unutilized. The facts of the case have not established that increase in imports were necessary because of the characteristics and the changes of the demand structure of the Indian market, or that the quality, grade, specification and service, etc. may not satisfy the increasing need in India particularly in the field of transportation, pipes and tubes, construction and vessels, among others because high quality stainless steel products are needed for these fields. The domestic industry offers product in all those market segments and regions where imports have been made. Given the price of the product, the impact of freight due to geographical situations does not appear to be so significant cause of increase in imports. The domestic industry was in fact earlier meeting the entire demand from one plant in the North India, while it has now set up another plant in the Eastern part of the Country, thus providing increased flexibility to the company to sell the product from two locations in the Country. Furthermore, some of the factors identified are not new developments or changes in market situation necessitating imports. The consumption pattern of the product, the geographical situation of the country and other characteristics relating to product and market structure have admittedly not undergone a change which could justify increase in imports. Consumption of the product in unorganized sector also does not justify increased imports. The domestic industry contended that it sells through a number of depots throughout the country and employs sufficient marketing network commensurate to the need in this trade to meet the requirement of the consumers in the country. Moreover, it is noted that if the market situation were the same during the entire period considered, such market situations cannot be a reason for increase in imports. Decline in global production and sales cannot be a justified reason for increased imports in India from China.

g. As regards changes in import price, it is noted that the petitioner contended and Govt. of China has also stated that price of inputs involved in production of product under consideration have increased. The information on record shows that the increase in cost is far higher than increase in prices. In fact, Govt. of China has contended that number of input costs, cost of labor etc. in China have in fact increased more than India. If so, it clearly establishes that the increase in the export price is not commensurate with increase in costs. Thus, either the concerned Chinese producers were not faced with cost increases, or the Chinese producers did not increase price commensurate with cost increases. The fact that some of these producers may be international producers located in China is irrelevant in this regard.

h. The submission made on behalf of Govt. of China seems to admit that the imports from China increased rapidly and the same was higher as compared to the growth of the domestic industry. In other words, Govt. of China seems to agree that imports increased over the period in relation to consumption in India. The argument of the Govt. of China that such increased imports were because of development of the market would have been true only if the country had insufficient capacity for the product in the country.

i. It is noted that the Govt. of China has at some places stated that Chinese imports increased and at other places contended that Chinese imports have not increased. The Govt. of China has also stated that deterioration of the petitioner's financial situation is the result of other factors, which implies that the GOC infact agrees that the petitioner's financial situation deteriorated.

j. Ramani Steel Industry has argued that the application of safeguard duty should be verified subject to Monopolies and Restrictive Trade Practice Act, 1969 as it is the only manufacturer having fully integrated plant in India. As the petition filed clearly shows, petitioner is not the sole producer. In fact, SAIL, a Govt. of India enterprise is another producer of the product under consideration. The company has in fact addressed a communication to this office with regard to present investigations. Further, extracts from SAIL's website and Annual Report enclosed which shows the following:

   (a) Alloy Steel Plant Durgapur has manufacturing facilities for stainless steel slabs and these slabs are in turn supplied to Salem Steel plant which rolls the same into coils.

   (b) Salem steel plant has also undertaken a backward integration drive wherein they are setting up their own melting and slab casting facilities.

   As regards both the laws, i.e. Competition law and Safeguard law, they have been enacted for different purposes and have exclusive jurisdictions. It may be noted that safeguard investigations determine sudden surge in imports and the critical circumstances of the domestic industry and thereafter recommends the imposition of safeguard duties. From the safeguard rules, it is clearly borne out that a company, who is a major producer (there is no restriction of sole producer), is entitled to seek protection against surge in imports causing injury to the industry. Thus, any issue relating to MRTP should be taken in the appropriate forum. Moreover, neither M/s Ramani Steel House nor anybody else has provided any evidence to substantiate their allegation of monopolistic attitude of the petitioner.

k. As regards investigation period, it is considered that the investigation period is not short and the same is reasonable & necessary in the facts of the present case. This office has in fact considered three years or lower period in the past as well. Even other investigating authorities globally have considered investigation period of three years or lower for the purpose. The WTO has, in the context of Anti-Dumping Agreement, stated that total period of data collection for injury assessment should be at least three years. Moreover, a three year period in the present case is necessary and reasonable additionally for the reason that the product was earlier suffering from dumping and therefore consideration of an additional prior period would have resulted in consideration of the investigation period of anti-dumping case where the Designated Authority on Anti Dumping has clearly found that the domestic industry has suffered material injury. The final findings notified by the Designated Authority on Anti Dumping has been perused. It appears from the final findings notified by the Designated Authority and the injury analysis carried out by the Designated Authority that consideration of a longer period would have also clearly established that the product has been imported into India, from China, in such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry. In fact, the domestic industry had market share of 58% in the POI of that investigation, whereas the market share of the domestic industry has now declined to 41% in the current period, that too when the domestic industry has enhanced capacities significantly and the market is no longer suffering from dumping.

l. With regard to submissions on enhancement of capacity and decline in capacity utilization, it is noted that the facts on records clearly shows that the petitioner has in fact undertaken enhancement of capacity which was commercialized in August 2011. Further, it is noted that the petitioner had achieved much higher rate of production in the beginning of production at the new plant.

m. Number of feeds taken by petitioner at a new plant clearly shows that the low capacity utilization is not on account of start up operations or problems that existed in the market or sharp expansion of capacity, or ability of the petitioner to digest and absorb changes in the market or the time required by the market to respond to the capacity enhancement. Petitioner is an established producer of the product in the country and has not introduced new product and has merely enhanced its production of existing product. Furthermore, imports of the product from China are for the same or similar set of applications where the domestic industry was already offering the product form its existing plant and started offering the product from its new plant. It is also noted from the verification documents that the petitioner has undertaken significant exports of the product which includes exports to various market.

n. As regards the argument on inventory, it is noted that admittedly the demand for the product in India increased significantly. The increase in inventories with the domestic industry is in fact less than the increase in surge in Chinese imports. Thus, the domestic industry would not have faced increased inventories in the absence of increased imports.

o. As regards reasons for decline in productivity, it is noted that if the productivity declined because of changes in the capacity and employment, the same clearly establishes that the domestic industry was unable to fully utilize the employees for productive purpose and this could have been only because of the deliberate decision of the domestic industry not to produce to the extent it could have, which however is not the case. The reason was inability to produce in wake of sudden surge in import and loss of market share.

p. As regards submissions on market share, it is noted that the market share has been examined twice – once excluding captive consumption and once including captive consumption. It is seen that in the situations show the same results, i.e. market share of domestic industry declined and that of imports increased. Thus, in either situation, it is clearly established that Chinese imports have increased in relation to consumption and domestic industry has lost market share.

q. Exports by the domestic industry have significantly increased and therefore it is not true that the claimed injury is on account of decline in export sales.

r. As regards submissions on absence of cost advantage to Chinese producers, the facts of the case have clearly established that the input prices for the product increased significantly, whereas export price from China did not increase proportionately. Further, available information with regard to exports of inputs from Indonesia and Philippines shows that the price at which these inputs have been exported from these countries to China are materially lower than the prices at which these inputs have been exported from these countries to third countries.

Nickel Ore and Concentrate :-260400

Source: - Export from Indonesia - Uncomtrade data

		Price(USD/MT)			Share in exports (%)		
Sn.	Year	China	Other countries	Difference	China	Other countries	Total
1	2007	$50.84	$92.43	$41.59	60.18	39.82	100.00
2	2008	$35.02	$73.37	$38.36	62.26	37.74	100.00
3	2009	$19.99	$44.33	$24.35	72.86	27.14	100.00
4	2010	$24.28	$57.17	$32.88	81.67	18.33	100.00
5	2011	$32.15	$57.20	$25.05	88.60	11.40	100.00
Source :- Export from Philippines Uncomtrade data							
		Price(USD/MT)			Share in exports (%)		
Sn.	Year	China	Other countries	Difference	China	Other countries	Total
1	2007	$31.37	$98.72	$67.35	84.65	15.35	100.00
2	2008	$24.67	$53.16	$28.49	69.45	30.55	100.00
3	2009	$13.16	$29.26	$16.09	82.02	17.98	100.00
4	2010	$16.31	$40.75	$24.45	79.43	20.57	100.00
5	2011	$25.23	$44.84	$19.61	88.46	11.54	100.00

s. As regards overall business performance of the domestic industry, it is noted that the injury to the domestic industry is required to be seen in the context of product under consideration. Nevertheless, in view of arguments by Govt. of China, the overall performance of the domestic industry has been examined as per published results and observed that the profits and revenues of the domestic industry moved as shown in the table below.

Sn.	Particulars	2009-10	2010-11	2011-12
1	Company as a whole			
	Revenue	575,654	683,897	789,104
	PBT**	57,037	44,735	(15,381)
2	304 series			
	Revenue(indexed)	100	105	122
	Profit(indexed)	100	(182)	(675)

* Value in Rs lacs

** profit before Tax

t. It is seen that there is significant deterioration in overall performance of the domestic industry.

u. As regards submissions on absence of threat of market disruption, it is noted that the facts of the case have clearly established that the Chinese imports of the product have surged rapidly. The rate of increase in imports is quite significant (more than 600% increase in imports in about two years). The submissions of Govt. of China are directed on possibilities of decline in imports or no further increase in imports in future. However, the reason advanced does not establish that the imports of the product under consideration have declined or would not increase further. On the contrary, it is admitted that consumption of 300 series has declined globally and production of 300 series has increased in China. Further, the Indian demand constitutes a very low level as compared to the Chinese production.

v. As per the ISSF Crude Steel Survey conducted in 2011, total 300 series production reported in Asian region (including China) was 10.5 million tons. Grade wise production in 300 series was reported to the extent of 3.33 million tons out of which the grade wise break up is as follows:

304	: 3.006 million tons
316	: 0.307 million tons
Other Grades	: 0.025 million tons.

It is submitted by the petitioner that 304 grade constitutes the dominant grade amongst the 300 series of stainless steel.

w. As regards absence of casual link, it is noted that no evidence has been provided that injury to the domestic industry is largely because of other identified factors. The fact that petitioner has expanded capacity significantly cannot be a factor leading to injury for the reason that in a situation of significant capacity expansion, the imports would not have surged. Since petitioner is already in production of the product under consideration at other plant for reasonably longer period and further since petitioner achieved good production levels after start of production and was thereafter forced to suspend production or reduce the rate of production clearly establishes that the low capacity utilization is not on account of inexperienced workers or new production lines. The verification records of the petitioner do not show abnormal rejection rate or defective rate which could not have been cause of injury.

x. As regards global change in the demand pattern of stainless steel products, it is considered that the same cannot be the factor of injury to the domestic industry in the domestic market, particularly when the petitioner has ability to produce and supply all types of products.

y. As regards changes in the demand pattern, it is noted that the decline in demand for 300 series in the global market at best establishes a threat of injury to the domestic industry in India. Further, the increase in demand in 300 series in China implies increased production and therefore increasing ability with the Chinese producers to export the material.

z. As regards the argument that business environment and conditions in the global market deteriorated, which leads to the falling exports by the domestic industry in India, it is noted that the export volumes of the domestic industry in fact increased.

aa. With regard to the factors for public interest identified, it is considered that the factors identified do not establish that imposition of safeguard duty shall not be in public interest. The fact that imports are to the decentralized customers or traders having small volumes is irrelevant, particularly when the domestic industry is in fact in a better position to meet small volume requirement of the customers in India. Since the domestic industry is selling the product through depot and through established marketing channels, imposition of safeguard does not imply any adverse impact on this account. Imposition of safeguard duty shall not reduce competition in the market as is established by the imports from third countries which have remained significant despite imposition of anti-dumping duty. The consumers shall be free to source the material from all possible sources. The fact that product is important for the country’s requirement or that the consumption of the product would increase significantly in future at the least establishes the need for vital and vibrant domestic industry in India. It is also noted that none of the interested parties have been able to establish that the impact of proposed safeguard duty shall be significant on the downstream industry and does not justify imposition of safeguard duty on this account.

bb. It is noted that overall business performance of the company in fact has materially deteriorated. The facts have clearly established that the performance of the domestic industry has significantly deteriorated with regard to the product under consideration despite imposition of anti dumping duty. Imposition of safeguard duty is warranted in order to arrest decline of the domestic industry.

cc. With regard to the argument on consideration of captive consumption, it is clarified that total production of the domestic industry has been considered as per excise records, regardless of the market where the company has used such production. Sales volumes of the domestic industry have been considered both for domestic market and captive consumption. It is also noted that if sales of the domestic industry are to be considered after including captive consumption, the same shows an improvement from 98594 MT (2009-10) to 103042 MT (2011-12). Thus, consideration of sales including captive consumption shows that the sales volumes of the domestic industry in the domestic market declined, whereas the captive consumption increased, thus leading to overall increase. Further, the market share of the domestic industry including captive consumption shows the same trend as that of market share of the domestic industry excluding captive consumption, i.e., the market share of the domestic industry declined and that of imports increased. It is thus concluded that there is no material difference in the performance of the domestic industry after including captive consumption as well.

SN	Year	China	Non China	DI Sales (Including captive)	Other Indian Producers	Total Demand
	Volume (in MT)					
1	2009-10	5,264	28,439	98,594	8,777	141,074
2	2010-11	26,702	19,662	92,292	5,645	144,301
3	2011-12	35,741	19,164	103,042	5,450	163,397
	Share in Market %					
1	2009-10	3.73	20.16	69.89	6.22	100.00
2	2010-11	18.50	13.63	63.96	3.91	100.00
3	2011-12	21.87	11.73	63.06	3.34	100.00

dd. With regard to concerns on restrictive application of transitional safeguard measures, it is considered that the measures are being invoked only in those situations where it is considered that the same is absolutely necessary to prevent injury to the domestic industry.

ee. Comparison of import price from China with import price from third countries shows that the import price from China are materially below the import price from third countries. Further, imports from a number of third countries from where the imports are being reported are attracting anti dumping duty. The landed price of import from third countries are significantly higher than the landed price of imports from China.

SN	Particulars	Units	2009-10	2010-11	2011-12
1	Imports from				
	China	MT	5,264	26,702	35,741
	Third countries attracting dumping duty	MT	26514	16775	14871
2	Demand	MT	87,282	88,782	102,002
3	Changes in (From base Year)				
	China	MT		21,438	30,477
	Third countries attracting dumping duty	MT		(9739)	(11643)
	Demand	MT		1,501	14,720
4	Import Price				
	China	Rs/MT	113,220	141,605	147,708
	Third countries attracting dumping duty	Rs/MT	100,704	140731	164162

E. Findings of the Director General (Safeguards) :

1. I have carefully gone through the case records, the replies filed by the domestic producers, exporters and exporting nations. Submissions made by these interested parties have been considered in the present order. Domestic industry filed its submissions on the views expressed by other interested parties, which have also been considered in the present order. Submissions made by the various parties and the issues arising there-from are dealt with at appropriate places in the findings below. The issue to impose immediate safeguard measures has also been examined.

2. Domestic Industry requested for imposition of provisional safeguard duty citing critical circumstances, as evidenced by the steep deterioration in its performance leading to market disruption and the threat of market disruption as a result of increased imports of the product under consideration. The domestic industry has argued that it has been forced to undertake production cuts. . It has undertaken substantial expansion of capacities, which are remaining significantly idle. Domestic sales of the domestic industry have declined, while the same should have increased significantly as a result of substantial additions to the capacities, increase in demand and imposition of anti dumping duty. The capacity utilization of the domestic industry has steeply declined. Inventories with the domestic industry are rising significantly. Domestic Industry is forced to sell at prices even below the its cost to make

and sell and is consequently facing financial losses in its domestic market.

3. Rule 9 of Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 notified vide Notification No. 34/2002-NT-Customs dated 11.06.2002 prescribes that the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he/she may record a preliminary finding regarding "market disruption" or "threat of market disruption". The principles governing investigations have been provided in the Rule 6 of the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002. The harmonious reading of Rules 6 & 9 of the said Rules leads to a conclusion that the Rules provide for expeditious recommendation of provisional safeguard duty based on preliminary findings. Rule 15 of the said Rules provide for refund of differential safeguard duty in case safeguard duty imposed after conclusions of the investigations is lower than the provisional duty already imposed and collected. Therefore, while the consumers have recourse to refund of duty, the injury to the domestic industry cannot be repaired, if there is delay in imposition of safeguard duty. In the facts and circumstances of the present case, it is considered that the interim measures are imperative in view of deterioration in performance of the domestic industry as a result of increased imports of the product under consideration from China PR. As this case has already been initiated, this interim measure is in full conformity to the domestic law as well as Article 16.7 of the China's Accession Protocol.

The product under investigation:

4. The scope of the product under consideration for investigations have been initiated includes Hot Rolled Stainless Steels products of a number of grades, which includes, inter-alia, 301, 304, 321, 309 , 310, 316, 317, 321, 347, etc. A number of interested parties who have responded to the Notice of Initiation have stated that the scope of the product under consideration is too wide and should be restricted, as majority of the imports are only of 304 grades. The interested parties have also argued that different grades have different applications and non-304 grade products cannot meet the requirements of 304 grade products. Responding to the arguments of the interested parties, the domestic industry has also contended that the surge in imports is primarily in 304 grade and the domestic industry has suffered market disruption in respect of 304 grade. While objecting to restricting the scope of the product under consideration to only 304 grade, the domestic industry has stated that in case the safeguard duty is restricted to only "304 grade Hot Rolled Stainless Steels products", the surge in imports will shift to non-304 grade products and the domestic industry will suffer injury in those products. However,I find that the domestic industry has not rebutted that the consumers of 304 grade products cannot consume non 304 grade products.

5. Considering that each consumer requires a specific grade of Hot Rolled Stainless Steels product, consumers of 304 grade products cannot consume non-304 grade product, the surge in imports is markedly different in 304 grade and non-304 grade products, performance of the domestic industry is markedly different in respect of 304 grade and non-304 grade products, it is considered appropriate to restrict the scope of the product under consideration to include only 304 grade products. Accordingly, all scope of the product under consideration is restricted to only 304 grade products.

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

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

In view of the same, I consider it appropriate to specify that the scope of the product under consideration extends to ASTM 304 grades (including all variants of 304 grade) with all its variants and the equivalent specification in other standards.

7. All reference to product under consideration hereinafter relates only to 304 grade product (which includes 304L and all variants of 304 grade as well) or their equivalents. All reference to 304 grade hereinafter includes all variants of 304 grade. All non-304 grade product are hereinafter considered as non-product under consideration.

8. A number of interested parties have sought exclusion of specific product types within 304 grades. The claims made by the interested parties were examined and the same is dealt herein below.

a) Exclusion of plates – Some interested parties sought exclusion of plates from the scope of product under consideration on the grounds that the imports of the product under consideration are only in coil form. The detailed imports data was examined transactions by transaction and it is found that there are imports of plates from China. It is found that if the product under consideration is having width below 600 mm, it is classifiable under 7220 and is normally (almost always) in coil form. Further, if product under consideration is 600 mm or above, it is classifiable under 7219. Under 7219, coils are classifiable under 721911, 721912, 721913 & 721914; whereas product not in coil form (i.e., sheet/plates) are classifiable under 721921, 721922, 721923 & 721924. The only difference in the product falling under 7219 and 7220 is width of the product. Similarly, the only difference in coil and sheet/plate is in the length of the product. A coil is cut into smaller size before use. Therefore, the customer can either buy the product in coil form or in plates/sheet form. However, there is no difference in the product properties. These are merely different physical forms of the product under consideration.

b) It is also relevant to point out that the interested parties have extensively referred to anti dumping case. These interested parties have however conveniently ignored that in the anti dumping case, the product scope includes both coils and sheet/plates. Further, the domestic industry has supplied the product under consideration in plate form as well. It is also noted that the difference in coil and plate is only in the length of the product. A coil in cut form is known as plate. It is therefore considered that it would not be appropriate to exclude plates from the scope of the product under consideration.

c) A number of interested parties have argued that the product types above 1250mm should be excluded from the scope of the product under consideration. It has also been argued that product scope should be restricted to product having width above 600mm only and all product types below 600mm should be excluded. Reference to anti-dumping duty imposed on the product has also been made where the product scope has been restricted to product types upto 1250mm only. I however, note that the domestic industry has produced and supplied product above 1250 mm from their new plant at Odisha. Domestic industry has provided relevant evidence in this regard and the verification documents also establishes the same. Thus, even when exclusion of product type above 1250 mm was justified on the grounds that domestic industry was not offering wider widths products, it is noted that the domestic industry has now setup a new plant from where it is offering wider width products. As regards narrow width product types, i.e. product types below 600mm width, I note that it would not be appropriate to exclude these product types also. Firstly, there are imports of HR products below 600mm and the domestic industry has also supplied HR products below 600 mm. Secondly, even when it may not be possible for a consumer of wider width to meet its requirement by using narrower width product, it is possible for a consumer of narrow width product to buy a wider width product and consume the same. Thirdly, the safeguard rules require consideration of like or directly competitive product and it is clearly understood that the scope of directly competitive product is not restricted to the actual competition during the relevant period. Even if the product has potential to compete post, it would be necessary to include such product within the scope of the product under consideration, failing which the objective of imposition of safeguard duty itself shall be defeated to such an extent.

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

Domestic Industry:

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

(a) *"Domestic industry" means producers -*

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

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

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

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

Period of Investigation (POI):

13.The Customs Tariff Act, 1975, the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002, do not specifically define the Period of Investigation . However the issue of period of investigation has been dealt in detail in Panel findings in US-Line Pipe Case against Korea. The Panel in this case ruled that it is up to the discretion of the investigating authority of the importing Member to decide the "length of the period of investigation" and its "breakdown":
"We note that the Agreement contains no requirements as to how long the period of investigation in a safeguards investigation should be, nor how the period should be broken

down for purposes of analysis. Thus, the period of investigation and its breakdown is left to the discretion of the investigating authorities. In the case before us the period selected by the ITC was five years and six months, which is a period similar in length to the one used by the Argentine investigating authority in Argentina — Footwear Safeguard. However, we note that the Appellate Body, in the findings relied upon by Korea to argue the question of the length of the period of investigation, emphasized not the length of the period per se, but that there should be a focus on recent imports and not simply trends over the period examined. In the case of the line pipe investigation the ITC did not merely compare end points, or look at the overall trend over the period of investigation (as Argentina had done in the investigation at issue in Argentina — Footwear Safeguard). It analyzed the data regarding imports on a year-to-year basis for the 5 complete years, and also considered whether there was an increase in interim 1999 as compared with interim 1998. We are of the view that by choosing a period of investigation that extends over 5 years and six months, the ITC did not act inconsistently with Article 2.1 and Article XIX. This conclusion is based on the following considerations: first, the Agreement contains no specific rules as to the length of the period of investigation; second, the period selected by the ITC allows it to focus on the recent imports; and third, the period selected by the ITC is sufficiently long to allow conclusions to be drawn regarding the existence of increased imports."(paras. 7.196, 7.199 and 7.201[1])

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

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

14. From the above, it is clear that neither the domestic laws on Transitional Safeguard measures nor Agreement on Safeguard and Article XIX of GATT, nor the Accession Protocol of the Peoples Republic of China provide specific guidelines on the period of investigation. However, having regard to the nature and purpose/objective of the present investigations, it is evident that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and market disruption and it should not only end in the very recent past but the investigation period should be the recent past.

15. Based on an application made by the petitioner, the Designated Authority earlier initiated anti dumping investigations vide Notification No. 14/12/2010 on imports of "Hot Rolled Flat

[1] WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case
[2] WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case

products of Stainless Steel of ASTM Grade 304 with all its variants" originating in or exported from European Union, Korea RP, South Africa, Taiwan and USA. The Authority notified final findings vide Notification No.14/12/2010-DGAD dated 11th October, 2011 and recommended imposition of definitive anti-dumping duty. Based on this recommendation of the Designated Authority, the Govt. of India imposed anti dumping duty on imports of the product vide notification no. 104/2011-Customs dated 25th November, 2011. Investigation was carried out for 1st April 2008 to 30th September, 2009 as the "period of investigation" and the injury analysis was undertaken considering the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008 and April 2008 to September, 2009..

16. Considering the facts of the case as above and that the period selected should be sufficiently long to allow conclusions to be drawn regarding existence of increased imports and to neutralize the effect of seasonal variation, it is considered appropriate to adopt data for the period F.Y. 2009-10 to 2011-12 for the purpose of the present investigations.

Source of Information:

17. Imports of the product under consideration are being reported in a number of customs classifications, viz. 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 722011, 722012. Further, these customs classifications are not dedicated for the product under consideration alone. Imports of other types of Hot Rolled products of stainless steel and of different grades are also being reported in these classifications. In view of the same, it is noted that the summary information published by the DGCI&S is not useful in determining volume of imports of the product under consideration in the country because transaction wise data is required in this case. The DI has submitted transaction wise import data from IBIS, Mumbai which has been considered.

18. The data on various economic parameters submitted by the domestic industry in their petition has been verified by this directorate to the extent possible and the non confidential version of verification report was placed in public file. The verified data has been taken into consideration for injury analysis.

Confidentiality of Information submitted

19. The domestic industry has provided some information on confidential basis and sought confidentiality on the information /data submitted. The domestic industry provided non confidential version of the application for safeguard measure as per the provisions of Safeguard Rules 2002 and Trade Notice No. SG/TN/1/97 dated 06.09.1997. Further the domestic industry has submitted reasons for seeking confidentiality at the time of filing the application.

20. Rule 7 of the Customs Tariff (Transitional Product Specific Safeguards Duty) Rules, 2002 and Article. 3.2 of WTO Agreement on Safeguards provides for confidentiality treatment to certain information (there is no provision under Accession Treaty of the People's Republic of China in this regard). The rules provide that an interested party is not required to disclose such information on actual basis which is confidential information of the company and disclosure of which can cause serious prejudice to the business interests of such party , which is not in public domain and which the petitioner has not disclosed before public at large in the past.

21.Accordingly, I have considered the prayer for confidentiality wherever it has been sought by the domestic industry and other interested parties, and has been granted under the provisions of the aforesaid rule.

<u>Increased Imports</u>

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

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

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

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

24. The rules require 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 and as a percentage of domestic production.

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

… the Agreement requires not just an increase (i.e., any increase) in imports, but an increase in "such…quantities" as to cause or threaten to cause serious injury. The Agreement provides no numerical guidance as to how this is to be judged, nor in our view could it do so. But this does not mean that this requirement is meaningless. To the contrary, we believe that it means that the increase in imports must be judged in its full context, in particular with regard to its "rate and amount" as required by Article 4.2(a). Thus, considering the changes in import levels over the entire period of investigation, as discussed above, seems unavoidable when making a determination of whether there has been an increase in imports "in such quantities" in the sense of Article 2.1. (emphasis added)

26. The analysis of the increased imports of the product under consideration has been conducted in the light of the above mentioned provisions. Imports of product under consideration from People's Republic of China into India have shown sharp increase in absolute terms as well as in relative terms. It is also noticed that imports from People's Republic of China has increased significantly whereas the imports from other countries have declined. The increase in imports from China is sudden and significant, causing market disruption and threat of market disruption. The data relating to imports of product under consideration from 2009-10 to 2011-12 is as under.

(i) **Increase in Imports fromChina in absoluteterms:**

The imports of the product under consideration (revised) have increased throughout the injury period in absolute terms. There is a sudden, sharp and significant increase in imports in the recent period. The Imports from China increased from 5264 MT in 2009-10 to 35741MT in 2011-12 which is an increase of 679% whereas imports from other countries has declined from 28439 MT in 2009-10 to 19164 MT. There is a sudden surge in imports in 2011-12 over 2009-10 period from China.

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

It is seen from the data above that imports of the product under consideration from China were low in 2009-10. The imports have then shown a drastic and significant increase in short period. Overall imports of product under consideration from China have increased to almost 6 times in 2011-12 in comparison with the total quantity of 5,264 MT imported in 2009-10, i.e. the base year.

It is noted that significant imports of the product were earlier being reported from third countries, which the Designated Authority found as imports at dumping price and accordingly anti-dumping duties were imposed on imports from these countries. Interested parties have contended that imports from China is a result of imposition of anti dumping duty. Since anti dumping duty has been imposed on imports of the product under consideration from South Korea, USA,European Union,South Africa and Taiwan, the consumers have shifted their procurement to imports from China. The domestic industry contended that with the imposition of anti-dumping duty, the volume of imports being reported from third countries at dumping price was a legitimate market of domestic industry. This was additionally for the reason that the domestic industry enhanced its capacities significantly and therefore was ready to offer the product in the market. However, imports from China increased so significantly that the same has not only taken over the imports from third countries but also increase in the demand of the product in the Country. Further, whereas imports from third countries declined in 2011-12 from 2009-10 by 9275 MT, imports from China increased by 30477 MT. Further, it is seen that whereas the imports from third countries remained almost at similar levels during 2010-11 and 2011-12, Chinese imports significantly increased in 2011-12.. Thus, imports from China have not only taken away the demand released by third country supplies, but also has taken away the increasing share of demand in the market. It is also noted that imposition of anti dumping duty on some countries did not imply that the demand so generated should be met by third countries. Imposition of anti dumping duty merely implies that the imports should come at fair prices and all parties – including domestic industry, countries attracting anti dumping duty and third countries are expected to thereafter equally compete in the market.

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

The imports of product under consideration in India have also increased rapidly in relation to production of the domestic industry. It is also noted that the domestic industry production was meant for not only sales in the domestic market but also for exports and captive consumption in the downstream production. Domestic industry contended that its production should have therefore increased at a faster rate as compared to imports, given multiple markets for which the domestic industry is producing the product and only one merchant market where the imports are being reported.

SN	Financial Year	Imports from China (grade 304)	Domestic industry Production	China imports in relation to production
		MT	MT	%
1	2009-10	5,264	100,265	5.25
2	2010-11	26,702	98,448	27.12
3	2011-12	35,741	129,900	27.51

It is seen that imports from China which constituted merely 5.25% of the total production has shown significant increase and now constitutes almost 27.51% of the total production. The increase in imports in relation to production in 2011-12 from 2010-11 is inspite of the increase in production of the DI, which shows the damage to the DI by this sudden surge in import from China.

(iii) Imports in relation to Consumption/Demand

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

Year	Imports from China (Grade 304)	Indian consumption (grade 304)	China imports in relation to consumption
	MT	MT	%
2009-10	5,264	87,281	6.03
2010-11	26,702	88,781	30.07
2011-12	35,741	102,002	35.03

It is observed that the imports of HR Stainless steel of 304 grade from China clearly shows a trend of increased imports in 2011-12 as compare to 2009-10 in relation to demand in the country.

The imports of Chinese product under consideration in India have increased rapidly in relation to Indian consumption of product under consideration. It is seen that imports from China remained at a low level (6.03%) during 2009-10. However, the imports have increased significantly thereafter in 2011-12 to such an extent that the imports in relation to consumption constituted 35.03% of Indian consumption.

<u>Unforeseen developments</u>

27. I agree with the domestic industry's submissions that 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 or under Accession Treaty of the People's Republic of China on the methodology that should be followed for analysing unforeseen developments. The Agreement on Safeguard 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. It is however, considered that it is important to examine the circumstances which have led to increased imports.
28. In Argentina — Footwear (EC) and Korea — Dairy, the Appellate Body held that "any safeguard measure imposed after the entry into force of the WTO Agreement must comply with the provisions of both the Agreement on Safeguards and Article XIX of the GATT 1994[3]
29. Article XIX of GATT 1994 states as follows
1.(a)If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession

30. 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 Body in the same case noted a GATT panel report which held that the development must have been unforeseen at the time of tariff negotiation. The Appellate Body in Korea-Dairy case held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.

31. 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":

[3] Appellate Body Report on Argentina — Footwear (EC), para. 84 and Appellate Body Report on Korea — Dairy, paras. 76–77.

32.The panel on US- Steel Safeguards[4] concluded that the confluence of several events can unite to form the basis of an unforeseen development:

"The United States argues that the robustness of the US dollar was a development which combined with the other developments, namely, the currency crises in Asia and the former USSR and the continued growth in steel demand in the United States' market as other markets declined, lead to increased imports."

33.I find that the domestic industry has pointed out several factors that have led to the sudden surge in the imports of the product from China, as analysed herein below:

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

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

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

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

It is seen that 300 Series account for more than half of the total consumption of the stainless steel.

(ii) 304 grade product accounts for significant proportion in 300 series product- it is noted that a number of product types are produced within 300 series, some of which includes 301, 304, 321, 309 , 310, 316, 317, 321, 347, etc. It is noted that out of these products, production and consumption of 304 grade product is significantly higher and constitutes majority production and consumption

[4] Para 86 of Korea Dairy case Appellate Body Report Of WTO 36

SN	Description	2009-10	2010-11	2011-12
1	Production(MT)			
	304 grades	1,00,265	98,448	1,29,900
	Non 304 grades	37,874	44,048	51,612
	Total	1,38,139	1,42,496	1,81,512
2	Share in production (%)			
	304 grades	72.58	69.09	71.57
	Non 304 grades	27.42	30.91	28.43
3	Consumption(MT)			
	304 grades	87,281	88,782	1,02,002
	Non 304 grades	39,429	39,684	44,083
	Total	1,26,710	1,28,466	1,46,085
4	Share in consumption(%)			
	304 grades	68.88	69.11	69.82
	Non 304 grades	31.12	30.89	30.18
5	Import from China(MT)			
	304 grades	5,264	26,702	35,741
	Non 304 grades	100	607	442
	Total	5,364	27,309	36,183
6	Share in imports from China(%)			
	304 grades	98.14	97.78	98.78
	Non 304 grades	1.86	2.22	1.22

It is thus noted that the product under consideration forms majority of 304 series production and consumption pattern. Further, in respect of imports, practically entireties of imports are of 304 grades.

(iii)<u>The Chinese production pattern</u>:- The production and consumption pattern of various types of Hot Rolled Stainless Steel production in China has been examined. It is noted that there has been a shift in the production and consumption of Stainless Steel from 200 series to 300 series in China over the years.

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

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

The table below shows the actual production volumes.

Production of Stainless Steel-China (in million MT)								
Series	2004	2005	2006	2007	2008	2009	2010	2011
200	1.68	1.32	1.62	1.93	1.97	2.61	3.78	3.97
300	0.70	1.15	2.43	3.84	3.51	4.58	5.51	6.94
400	0.42	0.83	1.35	1.84	1.87	2.61	3.06	3.34

It is seen that while 200 series earlier constituted the majority product amongst the HR Stainless Steel production in China, the consumption pattern has undergone a significant change in the recent years. Consumption of 300 series now constitutes much larger share in production of Hot Rolled Stainless Steels consumption in China. In fact, it has overtaken consumption of 200 series product in both absolute terms and in relation to production of various products.

34. I also examined various available published information on production, consumption and profitability of various products. It is noted that while the domestic industry provided relevant information in this regard, none of other interested parties have provided any material, nor other interested parties have made any submissions with regard to reliability or otherwise of these published information adopted by the petitioner. Examination of these published information shows as follows.

(i) Source: International Stainless Steel Forum, Media Release, dated 21st March, 2012

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

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

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

The above clearly shows dominance of 300 series production globally.

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

Information available on record shows that China's demand of product under consideration did not increase in consonance with the increase in capacity, which resulted in excess production and significant surplus capacities. Domestic industry has contended that this rapid growth in supply in the last two years was unforeseen, because till 2009, China was a net importer of stainless steel products. From the data provided by the domestic industry, it is observed that supply grew at the rate of 17.4% whereas consumption grew at the rate of 4.7%. Massive addition of the capacities more than the domestic demand and consumption led to a situation where the country shortly started exporting significant volumes in various markets and became a net exporter from a situation of net importer. Stainless Steel exports from China to world surged from 735,000 MT in 2009 to 1,532,000 MT in 2010 registering a growth of 108% as evidenced from the Weekly Fax Service No. 1210-23.01.2012 by Heinz H Pariser. Table below shows the demand-supply position of China over the years:

(Demand Supply position in China - Stainless Steel) in '000 MT			
	2009	2010	2011
Supply (Finished Steel)	8,240	10,480	11,792
Demand	8,801	10,018	10,411
Excess Supply	(561)	462	1,381

(iii)Further the evidence placed on record shows that the Chinese manufactures are aggressively targeting exports of Stainless Steel. The data reveals that export volumes for the year 2011 was 48.9% higher than the year before, mainly due to an increase of 103% year on year in hot rolled flat products. Relevant information is extracted below:

Source: Heinz H Pariser dated 17th Feb, 2012

"...... Stainless steel imports into China during the fourth quarter 2011 increased slightly over Q3 (+2.2% Q-o-Q). Cumulated import volumes, however were 12,5% lower than last year. Hot Rolled flat products declined 32.1% Y-o-Y; cold rolled flat products decreased 4.5% Y-o-Y and long products were 1.1% lower than in 2010.

Full year export volumes, however, were 48.9% higher than the year before, mainly due to an increase of 103.4% Y-o-Y in hot-rolled flat products. .."

Source: www.steelguru.com dated 24th July 2012

"...Steel inventory already at 15 million tonne Chinese mills have become aggressive in export particularly in the SE Asian region giving nightmares to the Japanese and Korean mills. China boosted first half steel exports to 27.26 million tonnes, the highest for a six month period since 2008 sending affirmative signals of an inevitable price war looming in this region... "

(iv)Decline in demand of 300 series production in China:

In China, as per reports available on record, there was a production-consumption gap of almost 1.4 million tonnes in 2011, which was essentially a result of capacity and production growing at a higher pace as compared to consumption in the domestic market of China. The huge growth in volumes in China has forced Chinese producers to sell their products at lower prices as compared to Indian producer prices. The Chinese producers have created significant production capacities and are therefore looking for market opportunities. Considering the huge production capacities, as per the information provided by the domestic industry and not rebutted by opposing parties with sufficient evidence, and considering the increasing demand for the subject goods in India, the imports are likely to continue to remain high as compared to 2010-11 and 2011-12, which is a grave threat to market disruption. Further the evidence placed on record shows that the domestic demand of Stainless steel, especially 300 series, in China has slowed down and is not at par with the increased level of production. China is expected to expand in the coming period, as borne out of domestic compulsions. Chinese producers are facing excessive capacity leading the Chinese manufacturers to further intensify exports even at losses. Relevant information is extracted below:

Source: www.steelguru.com dated 20th July 2012

“......... China’s export prices for stainless steel have kept falling over the past month as the demand has remained weak, especially for 300 series…”

Source: Metal Bulletin Research dated May 2012

“...... The Chinese Stainless steel market has taken a clear step down over the last month. This is a further reduction in the sentiment from last month, when it became apparent that the Chinese market had weakened. Prices have also been hit by the weak demand…”

Source: http://in.reuters.com dated 20th July, 2012

“China’s slowing demand for steel is driving Chinese exports of the metal to the highest level in more than three years.

"Before, China was exporting 2 million tonnes per month and now it is suddenly 5 million tonnes. Given that domestic demand in their respective countries is already not particularly strong, they (local steel producers) are clearly afraid," said Helen Lau, a commodities analyst at UOB-Kay Hian in Hong Kong.

"China will continue to export at a high rate for the rest of the year. I understand they (the Chinese steel mills) are making very little money from exporting, but it is still better than closing down their plants and laying off their staff."

Source: http://gbtimes.com dated 26th June, 2012

“Slumping demand
With the domestic economy slowing and demand stagnant, Chinese steelmakers have kept their eyes on overseas markets. ***China's steel exports jumped 28 percent in the first four months of this year****.”*

(v)Advantages with Chinese Manufacturers in Nickel Pig Iron leading to significant cost advantage:
Domestic Industry has pointed out various advantages with Chinese manufacturers on account of access to cheap Nickel in the form of Nickel Pig Iron which enables the Chinese producers to have a lower cost of production as compared to their counterparts in other countries. According to the data of Antaike, as provided by the domestic industry, the production of Nickel Pig Iron rose by 58.1% to 254.3 kt in 2011, as compared to the last year. As a result of this cost advantage, the Chinese manufacturers are able to export the product under consideration at a lower price.

It is noted that Nickel pig iron is a low grade ferronickel invented in China as a cheaper alternative to pure nickel for production of stainless steel. The production process of nickel pig iron utilizes laterite nickel ores instead of pure nickel sold on the world market. China imports laterite nickel ores from Indonesia and Philippines. Evidence on record shows that import of Nickel ores has increased substantially, which is essentially for the production of Nickel pig Iron. Further, companies in China are also investing in manufacturing facilities required for the production of nickel pig iron with lower production cost leading to increase in production. This clearly leads to a reasonably foreseeable situation of increase in the production and export of the product under consideration. Relevant evidence states as follows:

Source: Heinz H Pariser dated 9th July, 2012

"…… May imports of nickel ores and concentrates into China soared to an incredible 6.55 Mill tonne overall, almost exclusively nickel laterites from Indonesia and Philippines. Year to date imports climbed by 73% on 2011 to 21.2 Mill t.

Laterite Ores

Imports from Indonesia advanced to 4.0 Mill. tonne in May bringing year to date imports from Indonesia upto 15.1 Mill t- 85% more than last year. Although it can be expected that the sharp rise in these imports is related to the export restrictions that were installed in Indonesia on May 6th this year, it also spurned imports from other suppliers. Shipment from Philippines, the other large laterite ore supplier rose by 71% M-oM to 2.4 Mill t. Compared to last year, year to date imports from Philippines were 47% higher and amounted to 5.8 Mill t. Notably, some 149 kt of laterite ores have so far also been imported from New Caledonia."

Source: Metalbulletin.com dated 13th July, 2012

"Chinese stainless steel producer Tsingshan Group is trialling output at a new plant that uses rotary kiln electric furnace (RKEF) technology to produce nickel pig iron at significantly lower production costs.

"We just started trial production to test operation of the furnaces and will start normal production soon," an official at the company said. Nickel pig iron production in China is increasingly being produced by rotary kiln furnaces, making production viable at lower nickel price levels…"

Source: Quarterly Commodity Insights Bulletin, May 2012.

"…According *to Beijing Antaike Information Development Co., in the near term, China's consumption of nickel pig iron, a low cost alternative to refined nickel, is expected to remain high, considering its cost advantage over refined nickel as it can be procured locally. The production of Nickel Pig Iron in China is expected to increase 15% in 2012 to reach 300 kt, up from estimated 260 kt in 2011…"*

(vi) Other advantages with Chinese manufacturers leading to cost advantages to Chinese producers:

China has large coking coal deposits which gives the Chinese manufacturers a huge advantage over Indian producers. The domestic industry has submitted that coke forms the second highest cost item in Ferro Chrome production cost, which is an essential element in stainless steel manufacturing.. Other advantages with Chinese Manufacturers are the benefit of receiving low borrowing cost for Chinese companies, as, the domestic industry contended, credit is regulated by the Chinese government / its agencies and very low volatility of Chinese Yuan, which, domestic industry argued, obviates the need for the importers to hedge the currency risk, unlike India, where the currency hedging cost for 3-6 months varies between 5-7% which is an additional burden on Indian manufacturers, particularly because 60% of the raw material is imported.

(vii) Increase in SS scrap (raw material) price: The information for the cost of production provided by the domestic industry shows that in the production of the product under consideration, the raw material cost is one of the major costs incurred by the producers of Hot Rolled flat products of Stainless Steel. Hence, raw material prices play a major role in deciding the price trend. SS scrap, which has shown a massive increase in price, constitutes a major input for production of the product under consideration. Increase in the price of SS scrap led to the increase in the price of the product under consideration globally, including in India. It is observed that even though the domestic industry increased its prices, the same were still lower than the increase in the cost of production during the year 2010-11 and 2011-12. It is noted that the imports from China have entered into India at prices significantly lower than domestic industry prices.

	Volume		CIF Price (Rs./MT)		Input price (SS Scrap)-indexed	Selling price - indexed(DI)
Year	China	Non China	China	Non China	(Rs/MT)	(Rs/MT)
2009-10	5,264	28,439	112,099	99,728	100	100
2010-11	26,702	19,662	140,203	138,710	169	128
2011-12	35,741	19,164	146,245	160,167	203	131

Source: import-IBIS, IP—DI and SP-verified data.

In view of the above, I agree with the domestic industry's submission that the recent shift worldwide, from HR stainless steel production from 200 series to 300 series, significant cost advantages available to the Chinese manufacturers, and the decline in the demand of HR Stainless products in China leading to excessive capacity and production, together form the unforeseen reasons for the increase in imports from China.

Market disruption and Threat of Market disruption

35. **Market disruption**

(i)Statutory framework: Under the Rules, "market disruption" shall be caused whenever an article is imported into India, from the People's Republic of China, in such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry. "Market disruption" shall be caused whenever imports of a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry. "Threat of market disruption"means a clear and imminent danger of market disruption.

(ii)Annexure to Rule 8 of the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 requires that certain listed factors as well as other relevant factors must be evaluated to determine market disruption or threat of market disruption. Any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. 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 may show "material injury" to the domestic industry, and therefore may justify a finding of market disruption. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "material injury" to the domestic 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.[5]

(iii)Accordingly, in analyzing market disruption or threat of market disruption all factors, which are mentioned in the rules as well as other factors which are relevant for determination of market disruption or threat of market disruption, have been considered. 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. The determination of market disruption or threat of market disruption is based on evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.

(iv)It is observed that the increased imports of product under consideration from China PR have caused and are threatening to cause market disruption to the domestic producers as indicated by the following factors:

36. Market share:

a. For the purposes of determining market share, the sales volume of the domestic industry considered is as per excise records maintained by the domestic industry. Market share has been determined considering dispatches by the Indian industry and imports into India. It is seen that the market share of domestic industry has declined from 51.33% in 2009-10 to 40.88% in 2011-12. This was the period when the imports entered the Indian market at significant rate capturing the Indian market. The market share of the subject imports from China increased radically from 6% in 2009-10 to 35% in 2011-12. This sharp growth in Chinese market share led to decline in market share of both domestic industry and import from third countries.

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

[5] Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

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

It is seen that whereas demand for the product under consideration showed positive trend throughout the period, the increase in Chinese imports was far more than increase in demand i.e. against an increase of 14,720 MT in demand in 2011-12 over 2009-10, the rise in import from China was 30,478 MT for the same period. Further, whereas the demand was positive, the domestic industry has had negative sales when compared with the sales of the base year 2009-10. This negative trend in sales is despite imposition of anti dumping duty and setting up of a greenfield plant of significant capacities.

37.Production:- The production of the domestic industry has been determined on the basis of production reported by the domestic industry in its excise records. As the demand for the product under consideration was increasing, the domestic industry increased its capacity. The domestic industry has set up a 6 million MT green field plant at Odisha for production of various hot and cold rolled steel production, including the product under consideration. Domestic Industry's commencement of commercial production at a new green field plant should have shown significant increase in the production. It is however, noted that the surge in imports prevented the domestic industry from utilizing its fresh production capacities and the same have remained significantly idle.

Production of the domestic industry was as follows over the period considered. The domestic Industry has submitted that it has three broad market segments – (a) merchant domestic market within the Country; (b) captive consumption, where the domestic industry produces various cold drawn steel products, wherein the input is hot rolled products; (c) exports. Evidence has been placed to show that capacities have been set up by the petitioner considering the domestic and global demand for the product under consideration.

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

It is seen that the overall production of the domestic industry increased over the period, with significant increase in 2011-12 after commencement of production at new plant in July, 2011. It is also seen that the production of the domestic industry for the product under consideration is more than demand. Thus, it is not a case where the imports were necessitated due to lack of domestic production.

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

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

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

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

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

40**. Sales**: The sale has been determined on the basis of dispatches made by the domestic industry, as reported in their excise records. Table below shows sales of the domestic industry duly verified from their excise record and sales of other Indian producers provided by the petitioner.

Year	Production	Sales	Total Demand
	MT	MT	MT
2009-10	100,265	44,802	87,281
2010-11	98,448	36,772	88,782
2011-12	129,900	41,646	102,002

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

(ii)It is also noted in relative terms, sales as percent of demand declined from 51.33% of demand in 2009-10 to 40.82% of demand in 2011-12. This clearly shows that the sales volumes of the domestic industry have got adversely impacted due to surge in Chinese imports.

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

(iii)It is further noted that the Chinese imports have increased in relation to the sales of the domestic industry.

Year	Import from China	Sales of domestic industry	Chinese Imports as a % of sales
	MT	MT	%
2009-10	5,264	44,802	11.75
2010-11	26,702	36772	72.62
2011-12	35,741	41,646	85.82

(iv)Chinese imports which constituted mere 11.75% of the sales of the domestic industry in 2009-10 have shown gigantic increase and constituted 85.82% of the sales of the domestic industry.

(v)The domestic industry contended that the rising imports of product under consideration have prevented the domestic industry from selling its production in the domestic market in proportion to the increase in demand so significant was the increase in imports that the same has led to significant increase in the inventories.

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

41.**Employment and productivity**: The productivity has deteriorated during the year 2011-12 despite the fact that the employment increased during 2011-12 due to setting up of new unit in Odisha which started functioning from July, 2011.

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

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

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

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

43. **Price undercutting, suppression/depression:** It is observed that weighted average landed price of imports of PUC from China is significantly lower than the selling price of the domestic industry.

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

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

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

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

45. **Conclusion** – It is thus concluded that the imports of the product under consideration have increased significantly in absolute terms and in relation to production and consumption in India. As a result of significant surge in Chinese imports, the domestic industry has suffered market disruption in terms of decline in market share of the domestic industry, decline in sales volumes , increase in inventories, deterioration in productivity, significant decline in profitability and return on investments. Even though the domestic industry was able to increase its production, domestic sales declined even when production and consumption increased. Therefore, the decline in market share, sales volumes and increase in inventories

far outweigh the improvement in production. I also note that it is not necessary that each and every parameter relating to performance of the domestic industry must show deterioration. Considering the performance of the domestic industry in respect of various parameters, I conclude that the domestic industry has suffered market disruption as a result of increased imports of the product under consideration from China.

46.**Threat of market disruption**

(i)The rules provides as follows –

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

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

(ii) The Panel on US — Lamb[6] considered that a focus on the recent data available pertaining to the end of an investigation period was logical in view of the future-oriented nature of a threat of serious injury analysis. The relevant extracts are as follows:

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

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

Therefore, we consider that, by basing its determination on events at the end of the investigation period (i.e., one year and nine months) rather than over the course of the entire investigation period, the USITC analyzed sufficiently recent data for making a valid evaluation of whether significant overall impairment was "imminent" in the near future. By the same token, we also consider that, by basing its determination at all on data about events from the recent past, rather than relying exclusively on projections for the various industry

6 . Panel Report on *US — Lamb*, paras. 7.192–7.194

indicators into the future, the USITC made its threat determination on the basis of objective and quantifiable facts, and 'not merely on allegation, conjecture or remote possibility'

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

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

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

(iv)The Chinese imports are entering the Indian market in increased quantities in absolute terms as well as in relation to production and consumption in India. Significant price difference between the domestic and imported product shows the adverse price effect of increased imports on Domestic Industry. It is seen from the import data that there is significant shift in imports from third countries to China. Import from Non China countries has decreased from 84.38% in 2009-10 to 34.90% in 2011-12,whereas the import from China increased from 15.62% to 65.10% during the same period. Considering the selling price of the domestic industry for the subject goods, the price difference between domestic industry price and import price from China is significantly positive and is likely to remain positive. The Chinese product is likely to remain lucrative, posing continued threat of injury to the domestic industry.

(v)The threat of serious market disruption is established by the following factors:-

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

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

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

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

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

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

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

(vi)In view of above it is concluded that the increased imports from China have caused market disruption to the domestic industry. Further, the domestic industry is faced with continued threat of market disruption from Chinese imports.

47.**Other Factors of Injury:**

(i)Annexure to the Rules provides as follows

The determination referred to in paragraph (1) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the article concerned and "market disruption" or threat thereof. When factors other than increased imports are causing "market disruption" to the domestic industry at the same time, such "market disruption" shall not be attributed to increased imports. In such case, the Director General may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.

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

(iii)In the light of the above, the possible other factors that may be attributed to the injury to domestic industry are as under –

a) Demand of the product: There is no contraction in demand of the product under consideration in India. Demand of the product in India has shown significant increase over the years**.**

b) Changes in the patterns of consumption: There is no evidence on record that the pattern of consumption with regard to the product under consideration has not undergone any material change. Changes in the pattern of consumption could not have contributed to the injury to the domestic industry.

c) Trade restrictive practices of and competition between the foreign and domestic producers: There is no evidence on record that trade restrictive practices or competition between the foreign and domestic producers could have contributed to the injury to the domestic industry.

d) Developments in technology: There is no evidence on record that technology for production of the product has not undergone any such significant change that the same could have caused injury to the domestic industry. Developments in technology are not a factor of injury.

e) Export performance: The claimed injury to the domestic industry is on account of domestic operations. Domestic industry has provided injury information for domestic operation. It is noted that the exports made by the domestic industry have significantly increased. Claimed injury to domestic industry cannot be attributed to exports. It would be seen that (a) the export volumes of the domestic industry have increased (which establishes that claimed injury to the domestic industry is not due to possible deterioration of exports) and (b) profitability of the domestic industry in exports is worse than domestic (which establishes that exports is not preference for the domestic industry.

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

(iv)It is thus concluded that possible other factors have not contributed to the injury to the domestic industry.

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

(i)The Panel on Korea — Dairy set forth the basic approach for determining “causation”:

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

To establish a causal link, Korea has to demonstrate that the injury to its domestic industry results from increased imports. In other words, Korea has to demonstrate that the imports of SMPP cause injury to the domestic industry producing milk powder and raw milk. In *addition, having analyzed the situation of the domestic industry, the Korean authority has the obligation not to attribute to the increased imports any injury caused by other factors."*[7]

(ii) For the purpose of determining causation, I have evaluated all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. The product is largely sold in comparison/competition with imports. The landed price of imports is significantly lower than the selling prices of the domestic industry. Subject imports are available at prices lower than domestic industry. Consequently, the consumers are increasingly switching over to imports, thus forcing the domestic industry to offer non-remunerative prices. The cost of production for the product under consideration increased significantly. Even when the domestic industry increased its prices, the rate of increase in the cost of production was significantly higher than the rate of increase in the selling price. The domestic industry is losing sales opportunities. Consequently, production, capacity utilization, profits, return on investment is suffering due to continued presence of low price imports. The domestic industry has suffered significant decline in profits and return on investment to such an extent that the domestic industry suffered significant financial losses from a situation of profits and negative return on investment from a situation of positive return on investment. The performance of domestic industry shows that despite increase in demand of the product under consideration over the period, the market share of domestic industry declined and that of imports increased. It is thus evident that injury to the domestic industry has been caused by the increased imports.

49**. Public Interest**:

(i)Article 3 of the Agreement on safeguards states as follows:
"A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as ***to whether or not the application of a safeguard measure would be in the public interest****. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law."*

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

(iii)Some interested parties have argued that imposition of safeguard duty would not be in public interest. The issue has been examined. In this respect, it is important to keep the prime objective of transitional safeguard laws in mind, which is to address injury to the domestic industry because of increased Chinese imports. It is in the interest of all to keep a healthy and competitive Industry. It is apparent that if the safeguard measures are not taken, both the prices and market share of domestic industry will further decline, resulting in financial losses to the domestic industry to the extent of getting the domestic industry unviable and

[7] Panel Report on *Korea — Dairy*, paras. 7.89–7.90

consequent loss of employment as well as loss of strategic and economic interest to keep the domestic market competitive. The imposition of safeguard duty would allow the domestic industry to remain competitive and, at the same time, users/buyers will have a wider choice to source their material requirements, that too at competitive prices.

(iv)While arguing that imposition of safeguard duty shall not be in public interest, it is noted that none of the interested parties have provided any quantified claim in this regard.

(v)It is noted that already anti dumping duty has been imposed on the imports of the product under consideration from other sources. It has not been established by any interested party that imposition of these anti dumping duties have caused any significant distortion in the market. It has not been demonstrated by the consumers either that the impact of safeguard duty on the consumers will be unbearable. At the same time, the domestic industry has argued that given the market share of China, the impact of proposed safeguard duty on the consumer industry shall be insignificant. The domestic industry has further stated that it shall not increase its prices as a result of imposition of the proposed safeguard duty. Therefore, it is in public interest to impose safeguard duty on imports of product under consideration from China PR.

50.**Critical Circumstances**:

(i)Rule 9 of the rules requires the Director General to proceed expeditiously with the conduct of the investigation and in critical circumstances, the Director General is required to record a preliminary findings regarding “market disruption” or “threat of market disruption”. “Critical circumstances” means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause market disruption to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry.

(ii)It has been examined whether critical circumstances exists in the present case and whether imposition of provisional safeguard duty is warranted in the present case.

a. The sudden surge in Chinese imports, performance of the domestic industry and surplus capacity with China has been considered in order to determine the existence of critical circumstances.
b. It is noted that the increase in imports from China is too significant in both absolute terms and relative to consumption in India.

SN	Financial Year	Unit	2009-10	2010-11	2011-12
1	Demand	MT	87,282	88,781	102,002
2	Imports from China	MT	5,264	26,702	35,741
3	Domestic industry sales	MT	44,802	36,772	41,646
4	Imports in relation to consumption	%	6.03	30.08	35.04
5	Changes in (as compared to base year)				
A	Demand	MT		1,501	14,720
B	Imports from China	MT		21,438	30,477
C	Domestic industry sales	MT		(8,030)	(3,156)
D	Share of China	%		24.05	29.01

c. The performance of the domestic industry has been analyzed as under:

SN	Particulars	Units	2009-10	2010-11	2011-12
1	Production	MT	100,265	98,448	129,900
2	Capacity Utilisation	%	91.82	86.16	55.19
3	Sales-Domestic	MT	44,802	36,772	41,646
4	Inventory	MT	2,120	2,876	13663
5	Total imports	MT	33,703	46,364	54,905
6	Imports From China	MT	5,264	26,702	35,741
7	Market share of domestic industry	%	51.33	41.42	40.83
8	Market share of China	%	6.03	30.08	35.04
9	Profit/loss(indexed)		100	(222)	(726)
10	Profit in domestic sales(indexed)		100	(182)	(675)
11	Landed price of Chinese imports	Rs/MT	119,051	148,897	155,315
12	Landed price of Chinese imports (indexed)		100	125	130
	Selling Price of DI(indexed)		103	131	135
13	Cost of Sales(indexed)		101	136	151

d. It is noted that the market share of import from China has risen phenomenally as a result of phenomenal increase in the volume of imports. Landed price of imports are significantly below the selling price of the domestic industry. The domestic industry is faced with significant price suppression. Resultantly, the profitability of the domestic industry has deteriorated very dramatically to a situation of significant financial losses suffered by the domestic industry. Domestic sales of the domestic industry have declined with respect to base year 2009-10. Even when the sales volumes increased to some extent in 2011-12, the sale still remained below the levels registered in 2009-10, despite significant increase in demand over the period. The capacity utilization of the domestic industry has steeply declined. Inventories with the domestic industry are rising significantly. Domestic Industry had to sell at prices even below the cost to make and sell in order to prevent import.

e. Continued increase in imports: The pattern of import in the subsequent period as provided by the petitioner was also examined to see in order to look at the criticality of the situations and whether circumstances justify immediate imposition of safeguard duty**.**

f. Actual production is significantly lower than projected as a result of increased imports: It is noted that the domestic industry had an installed capacity of 0.78 million MT for production of various kinds of Hot Rolled Stainless Steel products, including 304 grade products. Domestic industry has further set up a new green field plant at Odisha with an installed capacity of 0.8 million MT for production of various kinds of Hot Rolled Stainless Steel products, including 304 grade. This green field plant has been setup in Odisha in view of a number of advantages envisaged to cater to domestic and international requirements for this product.

g. Corporate Debt restructuring done by domestic industry in view of significant adverse performance – the domestic industry contended that the adverse effect of surge in imports and criticality of the situation can be seen in steeply deteriorating profitability. The domestic industry suffered drop in profits by Rs. 123 crores in 2010-11 as compared to 2009-10 and by Rs 601 crores in 2011-12 as compared to 2010-11. In view of significant financial losses suffered by the domestic industry, domestic industry faced serious difficulties in repaying its interests and principal amounts and had to request the financial institutions for Corporate Debt Restructuring (CDR). The annual report of the domestic industry for the year 2011-12 states as follows in this regard.

The domestic industry has further submitted that even when it has been granted one CDR, the domestic industry is not sure whether it would be in a position to meet its revised obligations under the restructuring plan in view of significant continued financial losses in the most profitable product of the company. In fact, the company has already applied for second corporate debt restructuring, which is at present under consideration of the concerned authorities.

h. Industry in other countries facing difficulties as a result of Chinese imports:- The domestic industry contended, based on published reports, that steel companies in other Asian countries have also been facing difficulties because of imports from China. Evidences placed on record shows that producers in these countries are requesting for possible trade actions against imports from China on the grounds of significant imports.

Source: metalbulletin.com dated 4th June, 2012

***"…….** In recent months Chinese mills and traders have flooded SE Asia with cheap Steel offers, tempted by the regions higher prices. This has left some of SE Asia's mills claiming that their sales have suffered in the phase of these Cheap imports.."*

***"………** Indonesia's local steel industry pushed its government to renegotiate the free trade Agreement to protect its steel makers from Chinese makers.*

i. Conclusion – the evidence on record shows that critical circumstances exists in the present case, as there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause market disruption to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry. The imports of the product under consideration from China have increased rapidly. The preliminary determination shows that surge in import due to significant price difference between the domestic and imported product and surplus capacities with the Chinese producers. The Chinese producers have developed cost advantages. As a result of surge in imports, the domestic industry has suffered market disruption and the imports are further threatening market disruption to the domestic industry.

j. In view of the foregoing, it is concluded that critical circumstances exist in the present case justifying imposition of provisional safeguard duties immediately. Any further delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry.

51. Conclusion and Recommendation:

On the basis of the above preliminary findings it is concluded that increased imports of product under consideration from People's Republic of China have caused and threatened to cause market disruption to the domestic industry comprising of producer of "Hot Rolled Flat products of Stainless Steel-304 grade". Critical circumstances exists in the present case and any delay in application for specific safeguard measures would cause damage which it would be difficult to be repaired, necessitating immediate application of provisional specific safeguard duty for period of 200 days, pending final determination of market disruption and threat of market disruption. Considering the average cost of production of product under consideration of the domestic industry (confidential), a reasonable return on capital employed, the present level of import duties and average import prices of product under consideration, Specific Safeguard Duty at the rate of 20% ad valorem on "**Hot Rolled Flat products of Stainless Steel -304 grade (of all widths) and encompassing all austenitic grades having minimum Nickle (Ni) content of 6%,compulsorily containing chromium with or without the presence of other alloying elements like molybdenum, titanium etc.",** falling under sub-heading no. 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924,722011,722012 of the Customs Tariff Act, 1975, which is considered to be the minimum required to protect the interest of domestic industry, is recommended to be imposed on imports of such goods from Peoples Republic of China.

52. Further Process:

a. A public hearing will be held in due course before making a final determination, for which the date will be informed separately.

Sd/-
(Indrani Dutt Majumder)
Director General