DIRECTOR GENERAL (SAFEGUARDS)

NOTIFICATION

New Delhi, 9th September, 2015

Subject:-Safeguard investigation concerning imports of "Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more" into India. – Preliminary findings-Reg

G S R D- 22011/26/2015 dated 9th September, 2015 having regard to the Customs Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 thereof;

(A) Procedure

1. An application has been filed before me on 27th July, 2015 under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 by M/S Steel Authority of India Limited; M/S Essar Steel India Limited, and M/S JSW Steel Limited through M/S Lakshmi Kumaran & Sridharan Attorneys, New Delhi, for imposition of Safeguard Duty on imports of **"Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more",** hereinafter referred to as 'PUC' (Product under consideration) into India to protect the domestic producers of PUC against serious injury/threat of serious injury caused by the increased imports of PUC into India. The domestic industry has also requested for imposition of provisional safeguard duty in view of steep deterioration in performance of the domestic industry as a result of increased imports of product under consideration.

2. In order to satisfy the requirements under Rule 5 of the said Safeguard Rules, the information presented by the applicant was got verified by on-site visits to the plants of the domestic producers to the extent considered necessary. The non-confidential version of verification report is kept in the public file. Having satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of PUC into India was initiated vide notice of initiation dated 7th September,2015 and published in the Gazette of India, Extraordinary on the same day.

3. A Copy of the Notice of Initiation dated 7th September,2015 along with copy of non-confidential version of the application filed by the domestic industry were forwarded to the Central Government in the Ministry dealing with Commerce and other Ministries concerned, Governments of major exporting countries through their embassies in India, and the Interested Parties mentioned in the application filed by domestic industry, in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

4. Questionnaires were sent to the known interested parties as per the information available with request to make their views known in writing within 30 days of the initiation notice.

(B) Preliminary Observation and Findings of the Director General (Safeguards) :

5. I have carefully gone through the application filed by the domestic industry and the records of verification visit conducted by the officers of the Directorate General of Safeguards.

(I) The product under Consideration (PUC):

The product under consideration is **"Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more"** hereinafter referred to as 'PUC' (Product under consideration) classifiable under Chapter 72 of the Customs Tariff Act, 1975, under tariff heading 7208 and tariff item 72253090. The applicant has claimed that these products are not further worked than hot-rolled and are flat products of iron, alloy or non-alloy steel, in prime or non-prime condition having 'as-rolled' edge or 'trimmed' edge or 'slit' edge. These products may be pickled or non-pickled (with or without skin-pass or tempering), slit or non-slit and having nominal width of greater than or equal to 600mm. These products may be as-rolled or thermo-mechanically rolled or thermo-mechanically controlled rolled or controlled rolled. These products may have patterns in relief derived directly from rolling. These products may have been subjected to various processing steps like pickling, oiling, rewinding, temper rolling, heat treatment, etc.

The following are not included in the scope of the product under consideration:

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

(II) Domestic Industry:

6. Section 6(b) of the Customs Tariff Act 1975 defines domestic industry as follows:

(b*) "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*

7. The application has been filed by M/S Steel Authority of India Limited; M/S Essar Steel India Limited, and M/S JSW Steel Limited through M/S Lakshmi Kumaran & Sridharan Attorneys, New Delhi. They have claimed that their production together accounts for more than 50% of the total production of PUC in India and it represent a major proportion of Indian production of the product under consideration in the country and thus have the standing to file the present application.

8. After taking into account the information on record, it is determined that production of the domestic producers filing the application and who have provided relevant information constitutes a major share of the total production of the said article in India. Accordingly, they constitute Domestic Industry as per Section 6(b) of the Customs Tariff Act 1975.

(III) Period of Investigation (POI):

9. The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard and the Article XIX of GATT do not specifically define what the Period of Investigation should be. From several case laws on safeguard measures, it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguard and Art. XIX of GATT provides specific guidelines on the period of investigation except the fact that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury. The Period of investigation in this case has been taken from 2013-14 to 2015-16(Annualised) which is long enough to take into consideration the market conditions and to ascertain the need, if any, of imposition of Safeguard Duty.

(IV) Source of Information:

10. The transaction wise import data for the 'PUC' has been taken from International Bussiness Information Services (IBIS), as provided by the domestic industry from 2013-14 to 2015-16(Q1) and same has been taken into consideration for analysis. The domestic data from 2011-12 to 2015-16(Q1) has been submitted by the domestic industry and the same has been verified by on-site visit by the department on the basis of excise records and other records maintained in the units to the extent deemed necessary.

(V) Confidentiality of Information submitted

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

12. Rule 7 of the Safeguards Rules, 1997 and Art. 3.2 of WTO Agreement on Safeguards also provide for confidentiality. The applicant is not required to disclose such information which is confidential

information of the company, disclosure of which can cause serious prejudice to the business interests of the company, which is not in public domain and which the applicant has not disclosed before public at large in the past. Accordingly confidentiality, as prayed for by the domestic industry, is granted.

(VI) Increased Imports (Absolute & in relative terms)

13. 'PUC' is imported into India from various countries. The imports of 'PUC' have shown an increasing trend in absolute terms as well as in relative terms during the period as shown in table below:-

Financial Year	Total Imports (MT)	Index	All India Production (MT)	Import with respect to all India production (%)
2013-14	1292099	100	25510777	5
2014-15	2540114	197	26395795	10
2015-16(Q1)	844840		6646258	
2015-16(A)	3379360	262	26585032	13

(VII) Unforeseen development

14. It is noted that there is no express obligation/requirement on the Director General (Safeguards) to analyse unforeseen circumstances as there is no specific requirement either in the Indian Rules, on the methodology that should be followed for analyzing unforeseen developments or in the WTO Agreement on Safeguards, which also does not make any prescription with regard to the methodology that should be followed or the parameters that must be met in deciding unforeseen developments. The Agreement on Safeguards read with Article XIX of GATT, however, obligates the national authorities to examine the "unforeseen developments" which led to the serious injury to the Domestic Industry. It is understood that this Directorate has consistently been examining the issue of "unforeseen developments" in its investigations. It is, therefore, considered important to examine the unforeseen developments or circumstances which have led to increased imports.

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

16. 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":

17. The panel on US- Steel Safeguards[1] 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."*

18. The applicant has pointed out that Steel manufacturers in a number of countries including China PR, Russia, Ukraine have developed huge capacities to cater to demand of steel by developed countries and rest of the world. Most of the developed countries that were traditionally the biggest importers of steel such as United States and the European Union have reduced their dependence on imported steel. This development adversely affected exports of steel from China PR, Russia, Ukraine etc. to developed countries. Manufacturers in these countries had to think of ways to dispose off their production. India happened to be the natural choice for these manufacturers for multiple reasons.

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

19. World crude steel capacity at 2351 million tons as on 31 December 2014 has reached a level far in excess of global demand by almost 30% resulting in growing urge to export the surplus steel to countries like India that have good demand.

20. India, with relatively better demand prospects (domestic demand up by 3.1%) and high domestic prices, has remained an attraction for these steel surplus economies to channelize their excess capacities.

21. Russia has increased its exports to India. As per a report by a reputed journal Steel360, Russian steel exporters have been experiencing high realization for their exports due to their currency that has weakened in the recent past. This has led to an export push for Russian steel in India. Further, the Russian exporters have a restricted access to traditional markets like the European Union and Ukraine resulting in export push to India.

22. Ukraine's currency Hryvnia witnessed sharp depreciation of about 60% in 2014 alone. This was a result of political unrest in Ukraine due to Russia's intervention. Due to long period of unrest in Ukraine, its economy contracted and its currency sharply depreciated to US dollar. However, depreciation in Ukraine's currency helped its steel producers/exporters to leverage their low priced exports to put further pressure on the global steel market. It is well documented in many leading international newspapers and journals how Ukraine has joined Russia and China PR to drive down steel prices and divert its surplus steel to countries with good demand. It is documented that Ukraine will continue this trend even in 2015.

23. China PR is experiencing weak domestic demand. Infrastructure sector, mainly housing, which has been the biggest consumer of steel in China PR is going through a slowdown. Manufacturers in China PR can no longer dispose off their production in the domestic market. This situation is likely to remain unchanged in the short term and Chinese steel use will continue to record a negative growth of -0.5% in 2015 and 2016. As a result, exports to countries like India is a natural choice as demand of steel has been on the rise in India. Such intrinsic factors in China PR led to sudden surge of imports from China PR.

24. On examining the data/evidences given, it is noticed that producers in China PR, Russia, Ukraine and other countries are sending PUC in the Indian market as India, with relatively better demand prospects and high domestic prices, has remained an attraction for these steel surplus economies to channelize their excess capacities. The report published in **World Steel Dynamics** states that "effective capacity figure for early 2015 is 1055 million tones for the non-Chinese industry and 991 million tones for China, a total of 2.05 billion tones. When compared to steel production in 2014 of 1.66 billion tones, there is 382 million tones of excess global steel making capacity". Accordingly, In view of above and in view of the evidences produced, I observe that the excess capacities present in the major exporting countries and increasing Indian demand/apparent consumption of PUC are the reason for increase in imports. It is, therefore, seen that the above reasons cited by the Domestic Industry constitute unforeseen development.

(VIII) Serious Injury and Threat of Serious Injury

25. **Serious Injury**: The applicant have claimed that the increased imports of 'PUC' have caused and are threatening to cause serious injury to the domestic producers of 'PUC' as indicated by the following factors:

(a) **Production**: The production of the domestic industry remained at the same level during 2013-14, 2014-15 and 2015-16(Annualised) as shown in the following table:-

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

(b) **Market Share of domestic producers in domestic demand**: Market share of the applicants has fallen in the most recent period. Applicants had a market share of 45% in 2013-14 which fell to 37% during 2015-16 (A). During the same period, the market share of import increased from 6% to 12%, as shown below:-

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

(c) **Productivity & Employment**: The trend of employment and productivity remained same throughout the period as shown in the table below:-

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

(d) **Capacity Utilisation:** The capacity utilisation remained same during the period 2013-14 to 2015-16(A) as evident from the table below:

Financial Year	Installed Capacity (MT)	Capacity Utilisation (%)
2013-14	23568996	76
2014-15	23568996	76
2015-16(Q1)	5884372	
2015-16(A)	23537488	76

(e) **Profit/loss** – The profitability of the domestic industry has declined sharply in 2015-16(Q1) and the domestic industry recorded losses as shown in the following table:-

Financial Year	Profitability (Rs. /MT) (Indexed)
2013-14	100
2014-15	135
2015-16(Q1)	(55)

(f) **Inventory**- The table below depicts the inventory levels which have witnessed an increase from 100 points in 2013-14 to 103 points in 2015-16(A).

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

(g) **Price depression**: It is noticed from the table that the domestic industry was always under consistent pressure to either reduce their prices to match the import prices or to hold on to their prices. The penetration of increased imports at an unprecedented high level was such that even after reducing the prices, the domestic industry was not able to keep on to its production, sales and market share. This has resulted into losses during 2015-16(Q1) for the domestic industry.

Particulars	Unit	2013-14	2014-15	2015-16(Q1)
Cost of sales (Indexed)	Rs/MT	100	97	92
Weighted average sales realisation (Indexed)	Rs/MT	100	99	84
Landed Value(Indexed)	Rs/MT	100	94	77
Profit/(Loss) Indexed	Rs/MT	100	135	(55)

26. In view of the above, it is seen that there is all around deterioration in the financial parameters of the domestic industry and the domestic industry has suffered serious injury and immediate protection is required in the form of the safeguard duties with a view to save the domestic industry from further injury.

27. As may be seen from the above, a threat of serious injury is also present in the current investigation. There is a huge increase in imports over the period of investigation which has caused serious injury to the domestic industry and in all likelihood, the imports of the PUC will further increase and continue to threaten the domestic industry with serious injury. The market share of domestic industry decreased from 45% in 2013-14 to 37% during 2015-16(A) whereas during the same period, the market share of import increased from 6% in 2013-14 to 12% in 2015-16(A) which is a cause of concern.

(IX) Causal Link between Increased Import and Serious injury or Threat of Serious injury:

28. 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."[2]

29. A comprehensive evaluation of parameters enumerated above demonstrates that serious injury and threat of serious injury is being caused by increased imports. For the purpose of determining causation, all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry have been evaluated. In the instant case, the following are relevant in this regard –

i) The volume of imports has increased significantly from 100% to 262% in absolute terms ;
ii) Market share of imports has increased from 6% to 12% and, consequently, market share of the Domestic Industry has declined from 45% to 37%;
iii) As the imports are available at prices lower than the selling price of Domestic Industry during 2015-16(Q1), the consumers are switching over to imports due to which the Domestic Industry is faced with rising inventory and the decreasing import prices are preventing the Domestic Industry from sustaining its prices.;
iv) Due to increased imports on low prices, the Domestic Industry is unable to increase its production and sales as compared to the rate of increase in demand/consumption of product under consideration in India;
v) The profitability has declined and DI started to incur losses in the most recent period due to increased imports.

30. In view of the above I find that there is a direct correlation between the increase in imports and serious injury suffered by the domestic industry as import in absolute term increased more than two and a half

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

times during the year 2015-16(A) as compared to base year 2013-14 and domestic industry is losing market share which has declined from 45 % to 37 %. The import price per ton has declined sharply. Consequently, the domestic industry has suffered losses in the recent past. It is, thus, evident that injury to the domestic industry has been caused by the increased imports.

(X) Developing Nations:

31. The percentage of imports from developing nations has also been examined. The import of the product under consideration is originating from more than one developing nation whose aggregate percentage of import into India is more than 9% .Therefore, in terms of Ntfn.103/98 cus dated 14-12-98 as amended, the import of product under consideration originating from developing nations will also attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

(XI) Critical Circumstances:

32. As per Rule 2(b) of Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 the "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 serious injury to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry.

33. The Rule 9 of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 notified vide Notification No. 35/97-NT-Customs dated 29.07.1997 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 "serious" or "threat of serious injury". The principles governing investigations have been provided in the Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. The harmonious reading of Rules 6 and 9 of the said Rules leads to a conclusion that the Rules provide for expeditious recommendation of provisional Safeguard duty based on preliminary findings. The 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.

34. The surge in import, poor performance of the domestic industry have been considered in order to determine the existence of critical circumstances.

a) The quarter wise analysis of the data for 2014-15 and 2015-16(Q1) indicates that imports have remained at significantly higher levels during the period 2015-16(Q1) as compared to 2014-15(Q1) and the import prices have come down drastically over the same period leading the domestic industry's prices downwards. The net sales realisation of the domestic industry came down during 2015-16(Q1) when compared with the net sales realization during 2014-15(Q1) as shown below:-

Particulars	**Unit**	**2014-15 (Q1)**	**2014-15 (Q2)**	**2014-15 (Q3)**	**2014-15 (Q4)**	**2015-16 (Q1)**
Cost of sales (Indexed)	Rs/MT	100	99	101	94	94
Weighted average sales realisation (Indexed)	Rs/MT	100	100	96	90	82
Landed Value(Indexed)	Rs/MT	100	98	98	90	78
Profit/(Loss) Indexed	Rs/MT	100	113	41	49	(31)
Price undercutting(Indexed)	Rs/MT	(100)	(71)	(132)	(94)	(13)

b) Due to a significant decline in sales realisation, profits per MT have declined sharply and turned into losses during 2015-16(Q1) as compared to 2014-15(Q4). As the profits have already turned into losses for the domestic industry, it is necessary to arrest the surge in imports without any further loss of time.

c) The domestic industry has claimed that they are also receiving counter offers from many customers to supply the subject goods at substantially lower prices (lower than cost of production). The customers quote the prices offered by Chinese and other suppliers to force the reduction in prices of subject goods. The Chinese and Other producers have offered a price in the range of USD 320-350 per MT during the month of July 2015 for supplies to be effected in September-October,2015. Accordingly, the prices of the domestic industry are spiraling down further. There is clear evidence that increased imports have caused and are also threatening to cause serious injury to the domestic industry.

d) The market share of import has risen from 6% in 2013-14 to 12% in 2015-16(A). The domestic industry has been forced to keep production, Sales , capacity utilization on hold due to surge in imports. Inventories with the domestic industry are rising. Further, the domestic industry is facing financial losses.

e) The preliminary determination thus shows that excessive surge in import with falling unit price during the entire period of investigation; poor performance of the Domestic industry has caused serious injury or threat of serious injury and constitute critical circumstances in the instant case.

(C) Conclusion:

35. On the basis of analysis of the application filed by the domestic industry and the injury parameters it is observed that the domestic industry is suffering serious injury/threat of serious injury in respect of market share, profits/losses, inventory, decline in domestic selling prices etc. As a result, domestic industry have incurred losses on account of significant increased imports of the subject goods. In view of the above, I find that critical circumstances exist justifying imposition of provisional safeguard duties immediately in order to save the domestic producers from damage of serious injury which it would be difficult to repair, if the application of safeguard measure is delayed.

(D) Recommendation:

36. In view of the findings above, it is concluded that increased imports of PUC in to India have caused and threatened to cause serious injury to the domestic industry/ producers of PUC. There exist critical circumstances, where any delay in application for provisional Safeguard measures would cause damage which it would be difficult to repair, necessitating immediate application of provisional Safeguard duty for period of 200 days, pending final determination of serious injury and threat of serious injury. Considering the average cost of sales of PUC by the domestic producers (confidential), a reasonable return on cost of sales excluding interest, the present level of import duties and present average import prices of PUC, provisional Safeguard Duty at the rate of 20% (Twenty percent) ad valorem for 200 days which is considered to be the minimum required to protect the interest of domestic industry, is recommended to be imposed on imports of PUC.

(E) Further Process:

37. The information provided by various parties may be subjected to verification where necessary, for which they will be informed separately.

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

Sd/-
(Vinay Chhabra)
Director General.