

DIRECTOR GENERAL (SAFEGUARDS)

NOTIFICATION

New Delhi, 8th December, 2009

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Subject:- Safeguard investigation concerning imports of Hot Rolled Coils / Sheets / Strips – Final findings

G S R having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 thereof.

PROCEDURE

1. An application was filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as “Safeguard Rules”] by M/s. Ispat Industries Limited, “Casablanca” Sector II CBD Belapur, Navi Mumbai 400 614 and Essar Steel Limited, Essar House, 11, Keshavrao Khadye Marg, Mahalaxmi, Mumbai 400 034 for imposition of Safeguard Duty on imports of Hot Rolled Coils / Sheets / Strips into India to protect the domestic producers of Hot Rolled Coils / Sheets / Strips against serious injury/ threat of serious injury. Having satisfied that the requirements of Rule 5 were met, the Notice of Initiation of Safeguard investigation concerning imports of Hot Rolled Coils / Sheets / Strips (here in after called the “said products”) into India was issued on 9th April,2009 and was published in the Gazette of India on the same day.
2. A copy of the notice was sent to the governments of all the exporting nations through their embassies in New Delhi. A copy of initiation notice was also sent to all known interested parties listed below:

Domestic Producers

- i) Ispat Industries Limited, Mumbai
- ii) Essar Steel Limited, Mumbai
- iii) JSW Steel Limited, Mumbai
- iv) Steel Authority of India Limited, New Delhi
- v) Tata Steel Limited, Mumbai

Domestic Producers Association

- i) Automotive Component Manufacturer Association of India, New Delhi
- ii) All India Steel Re-rollers Association, New Delhi
- iii) Builders Association of India, Mumbai

- iv) Cold rolled steel Manufacturer Association of India, New Delhi

Importers and Users

- i) Bhushan steel Limited, New Delhi
- ii) National Steel & Agro Industries Ltd, Indore
- iii) Shree Precoated Steel Ltd, Mumbai
- iv) Uttam Steels, Mumbai
- v) Yash Pal and Co, New Delhi
- vi) Vishal Tubes & Pipes Pvt. Ltd, Mumbai
- vii) V.D.Swamy and Company Limited, Chennai
- viii) Unimech Engineers, Satna
- ix) Toyota Tsusho Corporation, Bangalore
- x) The Premier Automobiles Ltd, Mumbai
- xi) Sanco Chemicals Pvt. Ltd, Mumbai
- xii) Samir Industrial Metal Corporation, Mumbai
- xiii) Rane (Madras) Ltd., Chennai
- xiv) Ramesh Steel Sales, Mumbai
- xv) National Brass Works, Mumbai
- xvi) Gujarat Otofilt, Ahmedabad
- xvii) Brakes India Limited, Chennai
- xviii) Bharat Tin and Enamel Co. Private Ltd, Kolkata
- xix) Abdul Wajid and Co., Mooradabad
- xx) Mark Auto Industries Limited, Gurgaon
- xxi) Kiran Overseas, Mumbai
- xxii) Kehr Surgical & Allied Products P. Ltd., Kanpur

Exporters & Foreign Producers

- i) Wuhan Iron And Steel (Group) Corporation, China
- ii) Baotou Iron And Steel (Group) Co.Ltd. China
- iii) Beijing Shougang Co Ltd, China
- iv) Severstal, Russia
- v) Ilych, Ukraine
- vi) Eregli Iron And Steel Co.Turkey
- vii) Dongbu Group, South Korea
- viii) Sahaviriya Steel Industries PCL Thailand
- ix) Highveld Steel, South Africa
- x) Ispat Karmet, Kazakhstan
- xi) Nippon Steel Corporation, Japan
- xii) Mobarakeh Steel Company, Iran
- xiii) Steelcorp, Phillippines

- xiv) Arcelor Mittal, EU
- xv) Bluescope Steel Limited, Australia
- xvi) Orrcon Pty Limited, Queensland
- xvii) Cockerill Sambre Sa, Belgium
- xviii) Associated Tube – Canada
- xix) Eramet , France
- xx) Erasteel SAS, France
- xxi) Hüttenwerke Krupp, Germany
- xxii) Salzgitter Ag Stahl Und, Germany
- xxiii) Natsteel Holdings Pte Ltd, Singapore
- xxiv) Tang Eng Iron Works Co. Ltd. Taiwan
- xxv) Corus Group - United Kingdom
- xxvi) Hoa Phat Steel Pipe Co Ltd , VietNam
- xxvii) Anshan Iron And Steel Group Corp. China
- xxviii) Evarzholding Group Co. Ltd, Russia
- xxix) Industrial Union Of Danbass, Ukraine
- xxx) SCM, Ukraine
- xxxi) POSCO South Korea
- xxxii) G Steel PCL Thailand
- xxxiii) NSM Steel Thailand
- xxxiv) Saudi Iron And Steel Company Saudi Arabia
- xxxv) Mittal Steel South Africa
- xxxvi) JFE Steel Corporation, Japan
- xxxvii) Esfahan Steel Company Iran
- xxxviii) Megasteel Wisma Lion, Malaysia
- xxxix) Mittal Steel Galati, Romania
- xl) Onesteel Limited, Australia
- xli) Duferco Belgium, Belgium
- xlii) Altasteel Ltd. Canada
- xliii) Badische Stahlwerke Gmbh, Germany
- xliv) Saarstahl AG, Germany
- xlv) Nedstaal B.V. , Netherlands
- xlvi) Ovako Holdings Ab, Sweden
- xlvii) Yieh United Steel Corporation Taiwan
- xlviii) Commercial Metals Company - United States
- xliv) Euro Gulf Steel Industries

3. Questionnaires were also sent, on the same day, to all known domestic producers and importers and exporters asking them to submit their response within 30 days.

4. All requests for consideration of interested parties and extension of the time period were considered taking the expediency of investigation into account and accordingly the requests were accepted.
5. The applicant had requested for provisional safeguard duty and provided evidences of existence of critical circumstances. The need to impose immediate safeguard measures was examined as per Rule 9 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. A preliminary finding was issued on 23rd April 2009 recommending provisional safeguard duty @ 25% for import of said products up to and including the CIF value of US\$ 600 per MT. The Provisional Safeguard duty was recommended to be imposed on imports of Hot Rolled Coils/Sheet/Strips up to 20 MM thickness and 2000 MM width classified under sub-heading no. 7208 of Scheduled I of the Customs Tariff Act, 1975. However, no provisional safeguard duty was imposed by Government of India.
6. A public hearing was held on 28th October 2009, notice for which was sent on 2nd September, 2009. The public hearing was not attended by the applicants. All interested parties who participated in the public hearing were requested to file written submission of their views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Interested parties were also given an opportunity to file rejoinder, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.
7. The information presented by domestic producers was 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.
Views of the Domestic Industry
8. The applicants did not attend the Public Hearing on 28th October, 2009 nor did they submit their written submissions after the Public Hearing. Therefore, the views of the domestic industry as provided in the application and their subsequent submissions are as follows:
9. The applicants viz. Ispat Industries Limited, Essar Steels Limited and supporters M/s. JSW Steels Limited and Steel Authority of India Limited constitute 79% of domestic production of the product. The applicants along with the supporter constitute the domestic industry.
10. The product under consideration in the present investigation is Hot Rolled Coil/Sheet/Strips falling under customs subheading no. 7208 of Customs Tariff Act.

11. Imports of the product concerned into India which was 1.67 Lac MT/month in 2005-06 remained at almost same level in 2006-07. In 2007-08 it increased to 2.30 Lac MT/month, but declined to 2.25 Lac MT/month in April08-June08 quarter and to 0.80 Lac MT/month in July08-Sept08 quarter. With the start of current recession, imports started increasing rapidly at steeply declined prices and increased to 1.479 Lac MT/month in Oct-Dec08 quarter, which increased to 2.306 MT/month in Jan-Feb month.
12. Price of imported material started declining from Oct 08 because of unforeseen decline in global demand due to global unexpected recession. The prices declined steeply from the levels of above US\$ 1000 pmt in Oct., 08 to below US\$ 400/MT at present.
13. In general, there is two months time lag between the booking and arrival of shipments in India. The material booked in Oct-Nov 2008 started landing in Indian ports from January 2009.
14. It would be seen that the import price increased significantly in 2007-08, partly due to increase in input costs and partly due to global increase in the import prices. However, with the sudden recession, the import prices plummeted to very low levels, as would be seen from the table below. The declining trend in the prices continued even in March 2009.

Year	Price in USD/MT
2005-06	738
2006-07	607
2007-08	781
April-Sept08	1070
Oct-Dec08	1054
Jan 09	858
Feb 09	648
Present offers	380

15. The contribution of imports of steel of CIF below US \$600 in total imports of steel increased sharply to reach 61.71% in February 2009 from 5.28% in April-

September 2008. The table below gives the percentage contribution of steel of below US\$ 600 in total imports of steel. Incidentally, the non injurious price is US\$600 in the instant case. It means imports of steel with below non injurious import price have sharply increased.

Year	Volume in MT (Avg monthly import below 600 US\$ or below NIP)	% of below US\$ 600 or below NIP in total import	import price in USD
April-Sept08	8,071	5.28%	504.82
Oct-08	2,975	1.85%	518.36
Nov-08	6,192	3.40%	444.12
Dec-08	27,394	27.17%	538.38
Jan-09	97,182	38.78%	468.35
Feb-09	129,963	61.71%	450.24

16. The collapse of world economy caused huge demand supply gap. The demand of steel fell sharply on account of unprecedented recession. The fall in demand led to huge surplus steel in the world market. This surplus with reduced demand led to steep decline in prices of steel in the international market. As consumers of steel are very sensitive to price, they are shifting to imported steel at the cost of domestically produced steel. These circumstances are unforeseen. These unforeseen circumstances have led to sudden increase in import.
17. The domestic production, sales and capacity utilization have declined steeply on account of increased imports.
18. The fall in international prices of steel accompanied with fall in production, sales, profitability of the domestic producers constitute critical circumstances. In view of critical circumstances, applicants have requested for immediate imposition of

provisional safeguard duties. They have also requested for continuation of safeguard duty for two years.

Views of Governments of the exporting nations and exporters

19. There are number of grades of Steel which are not produced in India. For example, the special grade API is not manufactured in India. Inclusion of these products of safeguard investigation is not correct as imports of these articles cannot cause any injury to the domestic industry.
20. The comparison of figures is not correct as unequal periods have been selected to suit requirements.
21. The Initiation Notice covers everything under sub-heading No. 7208 up to 20 MM thickness and 2000 MM width whereas the Petition excludes plates and universal plates from product under consideration. There are various grades of steel, which are not manufactured in India but the same has been included in the product under consideration.
22. The period of investigation is not fixed.
23. On 21st November 2008, Government of India has put the product under Restricted List. The termination of anti dumping investigation was also upheld by the High Court. Therefore there is no ground for continuation of safeguard investigation.
24. The unforeseen circumstances are not explained properly and it is not accompanied with any evidence.
25. The Preliminary Findings have been issued hurriedly. Two weeks is not sufficient time for careful analysis of data.
26. There is a dual investigation on the same product i.e. both safeguard investigation and anti-dumping investigation are being done simultaneously which is in violation of WTO terms.
27. Essar Steel Limited and Ispat Industries Limited (the applicants) failed to appear at the Hearing to present their case. They also failed to offer any written submission or updated data in support of their case by 4th November 2009, the deadline prescribed by the DG (Safeguards). Such failure by the applicants to support their case provides sufficient grounds for the Director General (Safeguards) to terminate the present investigation
28. The applicants cannot meet the domestic demand and thus imports are inevitable.
29. There seems to be no increase in imports. In fact, imports for the year 2008-09 were slightly less than 20 million tones which corresponds to a decrease of 30 % as compared to the previous year.
30. There is also no increase in imports in relative terms.

31. The import figure of the fiscal year 2008 -09 of period of 11 months is 1.8 million MT which was 2.8 million MT in 2007-08. Unless the figure for imports for March 2009 is more than 945,524 MT there is no absolute increase in imports contrary to the applicant's claim.
32. The imports decreased by more than 30% between April 2007- March 2008 and April 2008-Feb 2009 whereas domestic production only decreased by 18% (From 17,781,469 MT to 14,582,918 MT). No safeguard measures can be imposed in the absence of increase in imports.
33. The Applicants do not constitute domestic industry as they do not constitute the majority. The applicants Essar Steels Ltd. and Ispat Industries Ltd. together constitute only 33% of total Indian Production.
34. The volume of imports of Hot Rolled Coils/ Sheets/ Strips to India from UAE is negligible.
35. The domestic industry is not suffering any serious injury or threat of serious injury. The investigation has been initiated at the instance of the Domestic Industry, which failed to attend the Public Hearing on 28th October 2009. Their non appearance shows that they are no longer interested in pursuing the same. Under such circumstances, the instant investigation may be terminated.
36. There is no decrease in production. The capacity utilization has increased to reach 93%. The domestic sales have also increased. The employment level does not show decline. The financial indicators do not show any serious injury. Therefore, conditions of domestic industry do not satisfy the need for imposition of safeguard duty.
37. Injury to the domestic industry, if any, is self-inflicted. As per the submission of the domestic industry they suffered a loss of Rs. 543.67 crores from domestic sales in 2005-06. The domestic industry claimed that they suffered a loss of Rs. 233.04 crores in 11 months of 2008-09, which is less than half of the loss it suffered in 2005-06. Losses by the domestic industry are thus, due to its inefficiency and cannot be attributed to imports, as alleged by them.
38. The weighted average contribution margin during the 11 months period of 2008-09 works out Rs. 10303 per MT, which is very high, if compared to previous years contribution margins. The safeguard petition is filed with a motive to earn abnormal profit, as there is no injury to the domestic industry.
39. The import figures and demand in India show that both have decreased after September, 2008. The decrease in demand in domestic and international market have naturally led to reduction in sales and production
40. The applicants' declared that increasing prices of hot-rolled coils have resulted in excess inventories. But according to the JSW Steel Annual Report 2008-09, there is no indication of deterioration in their financial health.

41. Reduction of prices, if any, was inevitable and has nothing to do with imports. The domestic industry has kept on increasing the contribution margin from Rs. 6374 per MT in 2005-06 to Rs. 10303 per MT in April '08 to February '09. This shows that the increase in selling price is more than the increase in cost of sales.
42. Developing countries below 3 % individually and 9 % cumulatively have been included in the preliminary findings, which is against the law and the Agreement.
43. The injury analysis is neither complete nor objective and lacks transparency. Pursuant to WTO S.A Article 4.2 (a) at least eight injury factors should be analyzed for injury determination, but the same has not been done.
44. Imports were stable and sales, production, employment and even profitability increased as compared to the reference year. The causal link analysis between the imports and the alleged serious injury is weak and incomplete.

Views of the end users and importers

45. It would be seen from Annexure 3 of the Petition that the Applicants i.e., Essar Steels Ltd. and Ispat Industries Ltd. together constitute only 33% of total Indian Production. The definition of domestic industry under the Act does not provide for supporter. A mere 33% share of total production cannot be said to constitute major share within the meaning of domestic industry.
46. The Petition or the Preliminary Findings do not establish the existence of unforeseen developments. Even if it is assumed that global decline in demand and production of steel is unforeseen development, the same has not resulted into any increase in imports. On the contrary, the imports from China, Saudi Arabia and Thailand (major exporters of "subject goods" to India) have decreased in 2008-09 as compared to the previous year.
47. The Initiation Notice covers everything under sub-heading No. 7208 up to 20 MM thickness and 2000 MM width whereas the Petition excludes plates and universal plates from product under consideration. Without commenting on the legality of clubbing such a large group of products under one single category, we are at a loss as to what constitutes product under consideration.
48. In any case, definition of the product under consideration is overly broad. The market, end usage and the customers of Coils, Sheets and Strips are different and the products are also priced differently. This has significant repercussions on average prices for the subject goods in light of the different products' mix.
49. The increase in import is a necessary condition for initiation of safeguard investigation. It is seen that imports during 2008-09 were 19.880 Lac MT as compared to 27.68 Lac MT during 2007-08 – a steep fall of 7.8 Lac MT (28.18%) in a single year. Yet, the Applicant claim that there was increase in imports.

50. There is no surge in imports of the product under consideration. As per the data used in the Preliminary Findings the calculated imports data is as below:

Year	Imports (Lac/MT)
2005-06	20.04
2006-07	19.67
2007-08	27.68
2008-09	19.88

51. The imports over the last three - four years have been around 19 to 20 lac MT per annum. The imports went up to 27 lac MT in 2007-08, which was a boom period for the domestic industry. There is no evidence of increase in imports in 2008-09 . Even when there has been sharp contraction in demand in year 2008-09 vis-à-vis 2007-08, the market share of the domestic industry has increased by almost 1.17% i.e. 26.73% from 25.56%. At the same time the share of imports has declined by almost 3.05% from 22.31% to 19.26%. It is also evident from the data submitted by Petitioner that total market share of Indian producers has also increased from 77.69% in 2007-08 to 80.74% in 2008-09. Hence, there is no injury on account of market share of the domestic producers.
52. It is evident that even when the demand has shrunk almost by 17%, the Applicant has been able to increase its market share to 28% in 2008-09 from 26% in 2007-08. Therefore, there is no injury on account of sales volume.
53. Even when demand for the subject goods has declined sharply, the Applicant has been able to achieve a 2% rise in its production level. Further, in the same market conditions other producers have been able to achieve 9% increase in their production level as a share of total demand.
54. It would be seen from the figures that JSW Steel, SAIL and other supporters have achieved capacity utilization in the range of 90.4% to 99.99% in the same period when the Applicant is claiming injury. If the other producers of subject goods have been able to achieve almost 100% capacity utilization in a shrinking market, it is not understood as to why the Applicants have lower capacity utilization figure. The decline in capacity utilization is not due to increase in imports but due to internal problems faced by the applicants.
55. Based on the data provided by the Applicant there is no injury on account of employment. The employment figures show continuous increase. The Profit data states that the applicants have incurred heavy losses. However, it is worth noting that the applicants have admitted that the losses incurred during this period are on account of exchange rate translation losses.
56. Steel industry has been over-protected by way of licensing restrictions on the said products since November 2008. Further protection may not be desirable vis-à-vis consumer interest and competition in the market.

57. If there is no increase in imports, there is no question of examination of injury parameters as enshrined in Article 4.2(a) of AoS and paragraph 1 of Annex to the Safeguard Duty Rules. Nonetheless, in the light of the analysis of various factors above, it is clear that the Applicant does not suffer from any injury let alone serious injury.
58. In the absence of increase in imports, there can be no causal link between said imports and the alleged serious injury. Therefore, it is submitted that the Authority should exercise judicial economy and terminate the investigation just on the ground that there are no increased imports.
59. Further, there is no causal link between the so-called increased imports and the alleged injury (which does not exist). The quarterly results for Q4 FY 2008-09 of ISPAT declares:
- During October 2008, the company had commenced upgradation and modernisation of its Blast Furnace for achieving better productivity, efficiency and reducing cost of production, which has been completed during May 2009. Shut-down of Blast Furnace during the period had resulted in non-availability of Hot Metal, which is one of the key source of metallic for the Company's Hot Rolled Coils plant. As a result, production of Hot Rolled Coils during the quarter was lower at 3.66 lakhs MTs, representing capacity utilisation of 44%.*
60. Therefore, it is accepted position of the Applicant itself that fall in production and capacity utilization was caused due to the non-availability of Hot Metal.
61. When the NIP for the domestic industry is US\$ 610, imposing a duty of 25% on products upto US\$600 PMT, would lead to a landed value of US\$ 804 resulting in an excess protection of US\$ 194 PMT. DG (Safeguards) cannot recommend a duty which is far in excess of what is required to remove injury as it would be against the express provisions contained in Rule 11(2). This is without prejudice to our argument that no duty is warranted in the facts and circumstances of this case.
62. Any imposition of safeguard duty over and above the existing border tax (customs, education cess, SAD etc.) would result in significant increase in prices of steel. Such an increase in steel price would adversely affect the infrastructure sector which is already reeling under the pressure of global economic meltdown. All infrastructure projects pertaining to roads, railways, bridges, housing etc. would suffer acute financial pressure due to hike in steel prices.
63. HR Coil prices have fallen globally. However domestic industry is selling the products at unjustified price. The safeguard duty would artificially keep the price at higher level.

Findings of D.G.

64. I have carefully gone through the case records and the replies filed by the domestic producers, users/importers, exporters and the exporting governments. Submissions made by various parties and the issues arising there from are dealt with at appropriate places, in the findings below.
65. **Product under consideration:** The applicants have sought imposition of safeguard duty on Hot Rolled Coils/Sheet/Strips upto 20 MM thickness and 2000 MM width, which is classified under sub-heading No. 7208 of Schedule I of the Customs Tariff Act 1975. The product under consideration is produced and sold in a large number of grades and in a combination of a varieties of thickness and widths.
66. Various interested parties have submitted that the Initiation Notice covers everything under sub-heading No. 7208 upto 20 MM thickness and 2000 MM width whereas the Petition excludes plates and universal plates from product under consideration. In view of the said exclusion the product for safeguard measure does not remain clear. The market, end usage and the customers of Coils, Sheets and Strips are different and the products are also priced differently. This has significant repercussions on average price of the subject goods in light of the different products' mix. Further, various interested parties have submitted that there are certain products eg. All API grades beyond 16 MM , Ultra low carbon steel (having carbon upto .001%), Hot Rolled having tensile strength of more than 650 mpa, which are not produced in India but these are included within the scope of the investigation. As these articles are not produced in India, imports of such articles cannot cause injury or threaten to cause injury.
67. The issue was analyzed. The applicants could not produce any evidence that All API grades beyond 16 MM , Ultra low carbon steel (having carbon upto .001%) and Hot Rolled having tensile strength of more than 650 mpa are manufactured by them. They also could not produce any evidence as to how the product not manufactured by them are 'like or a directly competitive article' to the imported products. In fact, they could not submit even the names of the article which might be considered 'like or a directly competitive article' to API grades beyond 16 MM , Ultra low carbon steel (having carbon upto .001%) and Hot Rolled having tensile strength of more than 650 mpa,
68. In order to analyze the contention of the interested parties it is necessary to have the detailed information about the physical characteristics, end use, manufacturing process, price relationship and other relevant characteristics of the product. The applicants have neither attended the public hearing nor submitted any information in support of their claim even when their contention of 'like or directly competitive article' was disputed based on facts and law. The information provided in the application is not sufficient enough to justify their original claim.

In the absence of any such evidence, inclusion of these products for safeguard investigation is not justified.

69. It is therefore held that products mentioned in the application are not 'like or directly competitive article' to what is manufactured by the domestic industry.
70. **Domestic Industry** - There are five major producers in India having capacity to produce the product sought to be investigated for imposition of safeguard duty, namely Ispat Industries Limited, Essar Steel Limited, JSW Steels Limited, Steel Authority of India Limited and TATA Steels Limited. The petition has been filed by Ispat Industries Limited and Essar Steel Limited. M/s. JSW Steels Limited and Steel Authority of India Limited have supported the petition.
71. Various interested parties have submitted that from Annexure 3 of the Petition it is seen that the Applicants i.e., Essar Steels Ltd. and Ispat Industries Ltd. together constitute only 33% of total Indian Production. The definition of domestic industry under the Act does not provide for supporter. A mere 33% share of total production cannot be said to constitute major share within the meaning of domestic industry. They also contested that information / data on different parameters was provided for two petitioner industry only.
72. The domestic industry¹ is defined in Sec. 8 (B)(6)(b) of the Customs Tariff Act, 1975. The definition of domestic industry does not recognize the concept of supporters. The information given by the applicant relates to M/s. Ispat Industries Limited and M/s. Essar Steel Limited only. When complete information relating to supporters does not form part of the application, there is no basis to include 'supporter' in the domestic industry. The applicants have not produced any evidence to show that the applicants constitute majority. There is no evidence on record which can show that the applicants represent the domestic industry. On the contrary, the performance of M/s. Tata Steels and M/s. Steel Authority of India Limited is entirely different from the performance of the applicants. The applicants who have provided their relevant information do not represent the domestic industry and their collective output does not constitute major share of the total production of the said article in India. Therefore the applicants do not constitute the domestic industry in terms of Section 8B(6)(b) of the Customs Tariff Act, 1975.

¹Section 8B(6)(b) of the Customs Tariff Act 1975 defines domestic industry as follows:

- (b) *"Domestic industry" means the producers –*
- (i) *as a whole of the like article or a directly competitive article in India; or*
 - (ii) *whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.*

73. **Increased imports:** - The applicants have provided import information of Hot Rolled Coils/Sheet/Strips upto 20 MM thickness and 2000 MM width classifiable under sub-heading No. 7208 of Schedule I of the Customs Tariff Act 1975, on the premise that these are the product under consideration. However, the basic premise of product identification is under question as evidences of these being 'like or directly competitive' product are not available. When the product identification has come under question, the import data relating to such products cannot be used to determine increased imports.

Serious Injury or Threat of Serious Injury:

Statutory framework:

74. "Serious injury" means an injury causing overall impairment in the position of a domestic industry;² and "threat of serious injury" means a clear and imminent danger of serious injury.³
75. The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 technically requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant decline in sales, employment and productivity which will show "significant overall impairment" in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall *position* of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.⁴
76. Accordingly, in analyzing serious injury or threat of serious injury all factors of domestic industry, which are mentioned in the rules as well as other factors which are relevant for determination of serious injury or threat of serious injury, have to be considered. The determination of serious injury or threat of serious injury

² Section 8B(6)(c) of the Customs Tariff Act, 1975.

³ Section 8B(6)(d) of the Customs Tariff Act, 1975.

⁴ Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

needs to be 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.

77. In the instant case, the applicants do not constitute 'domestic industry' and no information on all the relevant factors has been made available by the applicants. In absence of necessary information the existence of serious injury or threat of serious injury cannot be determined.

Conclusion and Recommendation:

78. Based on the above, no safeguard duty on imports of Hot Rolled Coils / Sheets / Strips is recommended.

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(PRAVEEN MAHAJAN)
DIRECTOR GENERAL (SAFEGUARDS)

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