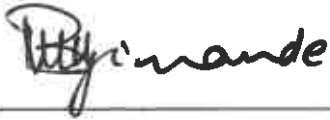


Report No. 596

**INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD
AGAINST THE INCREASED IMPORTS OF OTHER SCREWS FULLY THREADED
WITH HEXAGON HEADS MADE OF STEEL: FINAL DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its **Report No. 596: INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD AGAINST THE INCREASED IMPORTS OF OTHER SCREWS FULLY THREADED WITH HEXAGON HEADS MADE OF STEEL: FINAL DETERMINATION**



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PRETORIA

24/01/2019

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD AGAINST THE INCREASED IMPORTS OF OTHER SCREWS FULLY THREADED WITH HEXAGON HEADS MADE OF STEEL: FINAL DETERMINATION

SYNOPSIS

On 20 April 2018, the Commission initiated an investigation for remedial action in the form of a safeguard against the increased imports of other screws fully threaded with hexagon heads made of steel (the subject product) through Notice No. 199 of *Government Gazette* No. 40585 dated 20 April 2018 (the "Initiation Notice").

This followed an application lodged by the South African Iron and Steel Institute ("SAISI" or the "Applicant") on behalf of South African Fasteners Manufacturers' Association ("SAFMA") and its members CBC Fasteners (Pty) Ltd ("CBC") and Transvaal Pressed Nuts Bolts and Rivets (Pty) Ltd ("TPN"). SAISI is a non-governmental representative organization serving the collective interests of the primary steel industry in the Southern African Customs Union ("SACU"). TPN and CBC are major producers of the subject product in SACU.

The investigation was initiated after the Commission determined that there was *prima facie* evidence that there were unforeseen developments which, together with the effects of South African obligations under the World Trade Organisation ("WTO"), resulted in a surge in imports of the subject product, which imports caused serious injury to the SACU industry.

On initiation of the investigation, the WTO, and the countries with a significant interest in the exports of the subject product were notified of the initiation of the investigation.

Interested parties responded to the initiation notice by making written and oral representations to the Commission. These representations were taken into consideration by the Commission in making its preliminary determination.

The Commission made a preliminary determination that:

- There were unforeseen developments;
- South African and other SACU member states have incurred obligations under the WTO (“WTO Obligations”);
- As a result of these unforeseen developments and the effects of these WTO obligations, there has been a surge in imports of the subject product into SACU; and
- The said surge has caused serious injury of the SACU industry which produces like or directly competitive products.

The Commission considered that there were critical circumstances where a delay in imposition of provisional measures, would cause damage that would be difficult to repair and that there was clear evidence that increased imports have caused serious injury to the SACU industry. The Commission therefore made a preliminary determination to request the Commissioner for SARS to impose provisional payments to the amount of 42.09 per cent *ad valorem* on imports of the subject product.

The provisional measures were imposed against all countries, except the developing countries listed at the end of the report as the imports from each of these countries do not exceed 3 per cent of the total volume of imports or collectively for more than 9 per cent of total imports.

On 03 August 2018, the Commission issued Report No. 589 (Preliminary Report) explaining in detail the basis in fact and in law of its preliminary determination and invited interested parties to comment on its preliminary determination.

On 10 August 2018, the Commission, through Notice No. 453 of 2018 of *Government Gazette* No. 41827, invited interested parties to attend and address the Commission on whether or not it would be in the public interest to impose definitive safeguard measures on the subject product, in accordance with Section 20.2 of the Safeguard Regulations.

Based on the information contained in the Commission's Preliminary Report, the comments received, and public interest submissions, the Commission made a final determination before "essential facts" that there were unforeseen developments and that these unforeseen developments and the effect of the obligations incurred under the GATT 1994, led to the increased volume of imports and that the surge in imports of other screws fully threaded with hexagon heads made of steel is causing serious injury to the SACU industry.

The Commission indicated that it was considering making a final determination to recommend to the Minister of Trade and Industry that the following safeguard measures be imposed on imports of other screws fully threaded with hexagon heads made of steel:

Period	Rate of safeguard measure
03 Aug 2018 – 02 Aug 2019	50.54%
03 Aug 2019 – 02 Aug 2020	48.01%
03 Aug 2020 – 01 Aug 2021	45.61%

The Commission further indicated that it was considering making a final determination to recommend to the Minister of Trade and Industry to exempt imports for the motor industry under the APDP from the payment of the safeguard duty.

The Commission also indicated that it was considering making a final determination to recommend to the Minister of Trade and Industry that the measures should be imposed against imports from all countries, excluding imports from developing countries where the imports from each of these countries do not exceed 3 per cent of the total volume of imports or collectively for more than 9 per cent of total imports.

The Commission sent out letters to all interested parties, informing them of the "essential facts" which were being considered by the Commission, and invited comments from interested parties on those "essential facts" for the Commission's consideration prior to making a final determination.

Taking all the information available to it into account, including all comments received during the investigation, the Commission made a final determination that there were unforeseen developments and that these unforeseen developments and the effect of the obligations incurred under the GATT 1994, led to the increased volume of imports and that the surge in imports of other screws fully threaded with hexagon heads made of steel is causing serious injury to the SACU industry. The Commission made a final determination to recommend to the Minister of Trade and Industry that the following safeguard measures be imposed on imports of other screws fully threaded with hexagon heads made of steel:

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1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the International Trade Administration Commission's Amended Safeguard Regulations (SGR¹) and giving due regard to the World Trade Organisation's Agreement on Safeguards (the "Safeguard Agreement") read together with Article XIX of the WTO General Agreement on Tariffs and Trade, 1994 (GATT 1994).

1.2 APPLICANT

The South African Iron & Steel Institute ("SAISI" or the "Applicant") an industry association, lodged the application on behalf of South African Fasteners Manufacturers' Association ("SAFMA") and its members CBC Fasteners (Pty) Ltd ("CBC") and Transvaal Pressed Nuts Bolts and Rivets (Pty) Ltd ("TPN"). CBC and TPN are major producers of other screws fully threaded with hexagon heads made of steel in the Southern African Customs Union ("SACU").

1.3 ALLEGATIONS BY THE APPLICANT

The Applicant submitted that a confluence of events (listed below) forms the basis of the unforeseen developments that support its application.

The Applicant stated that during the Uruguay Round negotiations, South Africa did not foresee the following events:

- The unprecedented steep rate of increase in fastener production capacity after the Uruguay Round of negotiations. This mainly took place to support growing construction and manufacturing activity, as well as to help build infrastructure, particularly in emerging economies. This growth in global capacity was mainly fuelled by the growth of the Chinese and other Asian fastener markets;

¹ Published as Notice No. R662 in the Government Gazette No 27762 of 8 July 2005.

- The significant downturn of the fastener market as a result of the Asian financial crisis that contributed to the imbalance between capacity and demand, that is, the global oversupply of fasteners. This led to a significant increase in export volumes by countries with excess production capacity;
- This in turn led to an unprecedented increase in trade remedy actions being taken against fastener products, including set screws by a number of countries, notably Canada and the European Union which are significant export markets for the products concerned. Given the fact that fasteners are a commodity product, excess capacity in one region can, with relative ease, displace production in other regions, thus harming producers in those markets;

The Applicant further stated that an example of a country which had and will continue to have a significant effect on global demand for fasteners is China. China is the world's largest steel producer and the country with the highest demand for steel due to its historically fast-growing economy. Furthermore, in terms of fasteners, the Applicant's information on unforeseen developments will focus largely on the development and overcapacity of the Chinese fastener market, as according to the Canadian Anti-dumping report², China is the world's biggest producer of screws, nuts, bolts and washers. Thus, the influence it has on global capacity as well as excess capacity is significant. China is also the largest exporter of low-cost fasteners.

1.4 INVESTIGATION PERIOD

The period of investigation to determine the recent, sudden, sharp and significant increase in imports was 01 July 2012 to 30 June 2017 and for the evaluation of data for purposes of the determination of serious injury is 01 July 2014 to 30 June 2017. In response to requests from other interested parties the

² Canadian Anti-dumping Report on certain carbon steel fasteners originating in or exported from the People's Republic of China and Chinese Taipei, 5 September 2014, Canada Border Services Agency.

Applicant also provided information for the period 01 July 2012 to 30 June 2014.

Comments by Chinese exporters to the Commission's Preliminary Report

The Chinese exporters indicated that the key position of the Commission on the relation of imports surge and the period of investigation is expressed in the last paragraph of section 6.3 of the Commission's Preliminary Report as follows: "The Commission considered that in terms of the WTO Safeguard Agreement there is no requirement that state the period of investigation for injury must coincide with the surge in imports".

The Chinese exporters indicated that they disagree with the Commission's view point on this matter. They indicated the WTO Safeguard Agreement contains no indication as to how the reference period should be selected. Therefore, the WTO Members remain in principle free to select whatever period they deem appropriate notwithstanding the importance of the issue. However, it is undisputed that the issue of "surge of imports", "serious injury" and "causation" within the meaning of Article 2.1 of Safeguard Agreement must be considered and discussed within a fixed period.

The Chinese exporters further indicated that in practice, the reference period for examination of the import trends shall coincide with that for the examination of the "serious injury" to the domestic industry producing like or directly competitive products. This contrasts with the practice in anti-dumping investigations, where two reference periods are clearly distinct.

The Chinese exporters also indicated that the Commission's position is obviously in conflict with the practice of all other WTO member's practice. More important, it is also in conformed to the previous practice of ITAC in safeguard investigation. As indicated in the final determination on investigation of safeguard against certain flat hot-rolled steel products in April 2017, of which period of investigation is 01 January 2012 to 31 December 2014 plus additional seven months information for 2012 to 2015, the length of period of investigation is the shortest in the Commission's practice. The analysis on the increased

imports is focusing in the period of investigation.

Commission's consideration

In terms of the WTO Safeguard Agreement there is no requirement that the period of investigation for injury must coincide with the surge in imports. However, for the purpose of providing further clarity on the causal link even though it is not a requirement, the Applicant was requested to submit the injury information for the period that coincides with the surge in imports. The additional injury information submitted confirms that the Applicant is experiencing serious injury in a form of: decline in sales volume, output, market share, productivity, utilisation of production capacity and employment for the period that coincide with the surge of imports i.e. 1 July 2013 to 30 June 2017.

Comments by Chinese exporters on the essential facts letter

Chinese exporters indicated that the period of investigation established in the notice of initiation is from July 2014 to June 2017. The analysis of the trends in imports before the POI is irrelevant and invalid. They further indicated that the analysis on the increased imports shall be focused in the same investigation period of injury. They indicated that the Commission's position is obviously in conflict with the practice of all other WTO member's practice, and does not conformed to the previous practice of the Commission. In the investigations of safeguard against certain flat hot-rolled steel products, lysine and frozen potato chips, the period of investigation for injury are all coincide with the surge in imports.

Response by the Applicant

The Applicant indicated that the Respondents wish to imply that either no surge is present at all, or that a surge was indeed present, but fell outside the period of investigation, and as such should be disregarded. The Applicant also indicated that the same Respondents however wish that further information beyond the POI should be included, as it would fit a narrative they have themselves created in order to do away with very necessary safeguard measures. They further indicated that the Commission was abundantly clear that the surge was in fact present and that the serious injury suffered by the

domestic industry is directly related to this surge. The Applicant also indicated that for information purposes, they refer to its various previous correspondences where the surge was expressly proven. There was a significant and sudden increase in imports in absolute terms of screws, fully threaded, with hexagon heads (subject product) from 2,989 tonnes for the year ending June 2013 to 7,352 tonnes for the year ending June 2014. This represents an increase of 146% in absolute terms. During the ensuing periods of 2015 and 2016, imports continued to maintain a significant influence over the South African market for the product concerned. Imports in absolute terms again increased sharply for the year ending in June 2017 to 7,883 tonnes, which is 163% more than the import volume for the year ending June 2013 and 33% higher than the import volume for the year ending June 2015.

The Applicant further indicated that the surge in imports manifested itself when imports increased from 2,989 tonnes for the period ending June 2013 to 7,352 tonnes for the period ending in June 2014. This was already stated in the Application and any inference to the contrary is baseless and indicates to a selective reading of the documents.

The Applicant also indicated that relative to SA production, imports have increased from about half for the year ending June 2013, to almost double the ensuing year. The continued increase in import volumes at the end of the period of investigation further exacerbated the impact imports had on the local market and as a consequence imports as a percentage of local production increased to more than triple for the period ending June 2017.

Commission's consideration

The investigation period for purposes of the determination of serious injury was 01 July 2014 to 30 June 2017 and for increase in volume of imports is 01 July 2012 to 30 June 2017. However, in response to requests from other interested parties the Applicant also provided information for the period 01 July 2012 to 30 June 2014. The purpose of this information was to provide more clarity on the causal link even though it is not a requirement in terms of the WTO Safeguard Agreement that the Applicant should submit the injury information for the period

that coincides with the surge in imports.

1.5 INVESTIGATION PROCESS

1.5.1 The information submitted by the Applicant was verified on 24-25 January 2018.

1.5.2 The application was accepted as being properly documented on 12 April 2018.

1.5.3 The investigation was initiated on 20 April 2018.

1.5.4 The SACU importers of the subject product known to the Applicant are:

- National Socket Screws;
- Boltworld (Pty) Ltd;
- Pro-Tech;
- Joes Fasteners;
- Screw Distributors;
- All Trade/Rutherford;
- BMG;
- Boltfast;
- Shenka; and
- NSS Fasteners.

1.5.5 The following interested parties responded and provided comments on the investigation:

- Embassy of the Federative Republic of Brazil;
- NAAMSA;
- Embassy of the Republic of Turkey;
- Embassy of Mexico;
- China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME);
- Ministry of Trade in Indonesia;
- FDA representing Bolt World; Boltfast; and Bearing Man Group; and

- NSS Fasteners.

1.5.6 The verification of the information for the period 1 July 2012 to 30 June 2014 was completed on 13 July 2018.

1.6 COMMENTS FROM INTERESTED PARTIES

The Commission considered all comments received from interested parties prior to making its final determination. All submissions made by interested parties are contained in the Commission's public file for this investigation and are available by arrangement, for perusal. It should be noted that this report does not purport to present all comments received and considered by the Commission. However, some of the salient comments received from interested parties and the Commission's consideration of these comments are specifically included in this report.

1.7 PRELIMINARY DETERMINATION

On 10 July 2018, the Commission made a preliminary determination that:

- There were unforeseen developments;
- South African and other SACU member states have incurred obligations under the WTO ("WTO Obligations");
- As a result of these unforeseen developments and the effects of these WTO obligations, there has been a surge in imports of the subject product into South Africa and SACU; and
- The said surge has caused serious injury of the SACU industry which produces like or directly competitive products.

The Commission considered that there were critical circumstances where a delay in imposition of provisional measures, would cause damage that would be difficult to repair and that there is clear evidence that increased imports have caused serious injury to the SACU industry. The Commission therefore made a preliminary determination to request the Commissioner for SARS to impose provisional payments to the amount of 42.09 per cent *ad valorem* on imports of the subject product.

The provisional measures were imposed against all countries, except the developing countries listed at the end of the report as the imports from each of these countries do not exceed 3 per cent of the total volume of imports or collectively for more than 9 per cent of total imports.

The Commission's preliminary determination was published in Notice Nr 792 of 2018 in *Government Gazette* Nr 41812 dated 03 August 2018, with details of the findings contained in the Commission's Report Nr. 589.

1.8 A public interest hearing was held on 18 September 2018, where interested parties raised public interest issues that the Commission considered prior to making a final determination. The following interested parties made submissions:

- Embassy of the Republic of Turkey;
- JinFast Industries SDN BHD;
- China Chamber of Commerce for Import and Export of Machinery and Electronic Products
- SAFMA;
- FDA;
- Solidarity;
- Naamsa; and
- Eureka DIY.

1.9 On 27 November 2018 essential facts letters were sent to all interested parties informing them of the "essential facts" which were being considered by the Commission and inviting comments from interested parties on these "essential facts" being considered.

1.10 Comments were received from the following interested parties by 11 December 2018:

- China Chamber of Commerce for Import and Export of Machinery and Electronic Products

- **SAFMA;**
- **FDA;**
- **NSS Fasteners;**
- **Eureka DIY; and**
- **Fastenright.**

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

Other screws fully threaded with hexagon heads made of steel.

2.1.2 Tariff classification and WTO Obligations

The subject product is imported under the following tariff subheading:

Table 2.1.2 (a): Tariff classification for the subject product

Tariff heading	Tariff subheading	Description	Stats unit	Rate of duty				
				General	EU	EFTA	SADC	Mercosur
7318		Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel:						
7318.1		Threaded articles:						
7318.15		Other screws and bolts, whether or not with their nuts or washers:						
	7318.15.39	Other screws, fully threaded with hexagon heads (excluding those of stainless steel)	Kg	30%	Free	Free	Free	30%

South Africa incurred the following obligations with regard to the subject product under the GATT 1994:

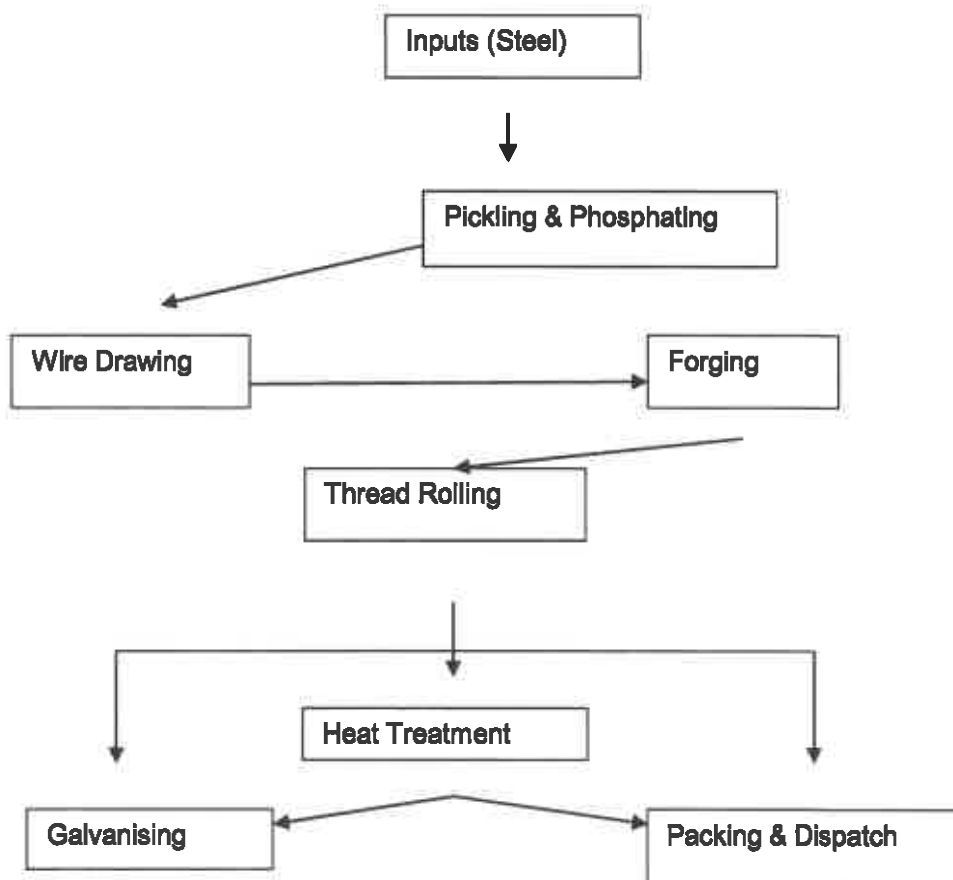
Table 2.1.2 (b): South Africa's Tariff Bindings for the subject product

Tariff heading	Tariff subheading	Description	Statistical unit	Bound rate
7318		Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel:		
7318.1		Threaded articles:		
7318.15		Other screws and bolts, whether or not with their nuts or washers:		
	7318.15.39	Other screws, fully threaded with hexagon heads (excluding those of stainless steel)	Kg	30%

South Africa further made the commitment that the duty for this subheading would reduce between 1995 and 1999 from 19% to 15% starting in January 1995.

2.1.3 Production process

Figure 1: Diagram of the production process



As depicted in the above diagram the production of other screws fully threaded with hexagon heads made of steel goes through various processes. Raw steel coils are received from the supplier. These coils go through the steel preparation process which includes an acid clean and the addition of a phosphate coating to allow for easier forging. Once cleaned, the forging of the steel into a set screw takes place on a forging machine. The cut off coil pieces move through a few stages of continuous forging, or shaping, into the set screw on the same machine. The heads are then cut into a hexagonal shape and threads are rolled on the set screw in line on the same forging machines.

If required by the product specification, the set screw will then move through a heat treatment furnace, and thereafter, if required, the product is plated for corrosion protection by electro galvanising or by dipping in molten zinc.

The Applicant indicated that the technical specifications of the imported product and the domestically produced SACU product are almost identical, except perhaps for the manufacturers identification mark.

2.2 SACU PRODUCT

2.2.1 Description

Other screws fully threaded with hexagon heads made of steel.

2.2.2 Production process

The production process is the same as the imported product (See paragraph 2.1.3).

2.2.3 Application or end use

The Applicant indicated that the subject product is in almost all industries used in joining materials, i.e. mining, construction, agriculture, utilities, process industries, automotive industry, general engineering and the do-it-yourself

market.

2.2.4 Categories of users

The following categories of users use the subject product in the domestic (SACU) market, namely suppliers, distributors and end-users. These users in turn supply different market sectors such as agricultural, automotive, communication, mining, construction and general engineering.

2.3 LIKE OR DIRECTLY COMPETITIVE PRODUCTS ANALYSIS

In terms of SGR 2, a like product is "a product which is identical, i.e. is alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration", while a directly competitive product is a product, other than a like product, that competes directly with the product under investigation.

In determining whether the imported product is a like product to, or directly competitive with the SACU product, the Commission uses the following criteria:

Table 2.3: Like or directly competitive products analysis

	Imported product	SACU product
Tariff Headings	7318.15.39	7318.15.39
Raw materials	Hot rolled steel in irregularly wound coils and hot rolled bars and rods.	Hot rolled steel in irregularly wound coils and hot rolled bars and rods.
Production process	<p>Raw steel coils are received from the supplier. These coils go through the steel preparation process which includes an acid clean and the addition of a phosphate coating to allow for easier forging.</p> <p>Once cleaned, the forging of the steel into a set screw takes place on a forging machine. The cut off coil pieces move through a few stages of continuous forging, or shaping, into the set screw on the same machine.</p> <p>The heads are then cut into a hexagonal shape and threads are rolled on the set screw in line on the same forging machines.</p>	<p>Raw steel coils are received from the supplier. These coils go through the steel preparation process which includes an acid clean and the addition of a phosphate coating to allow for easier forging.</p> <p>Once cleaned, the forging of the steel into a set screw takes place on a forging machine. The cut off coil pieces move through a few stages of continuous forging, or shaping, into the set screw on the same machine.</p> <p>The heads are then cut into a hexagonal shape and threads are rolled on the set screw in line on the same forging machines.</p>

	<p>If required by the product specification, the set screw will then move through a heat treatment furnace, and thereafter, if required, the product is plated for corrosion protection by electro galvanising or by dipping in molten zinc.</p> <p>The technical specifications of the imported product and the domestically produced product are almost identical, except perhaps for the manufacturers identification mark. The imported product is therefore like product to the domestically produced product.</p>	<p>If required by the product specification, the set screw will then move through a heat treatment furnace, and thereafter, if required, the product is plated for corrosion protection by electro galvanising or by dipping in molten zinc.</p> <p>The technical specifications of the imported product and the domestically produced product are almost identical, except perhaps for the manufacturers identification mark. The imported product is therefore like product to the domestically produced product.</p>
Application or end use	<p>The subject products are in almost all industries used in joining materials, i.e. mining, construction, agriculture, utilities, process industries, automotive industry, general engineering and the do-it-yourself market.</p>	<p>The subject products are in almost all industries used in joining materials, i.e. mining, construction, agriculture, utilities, process industries, automotive industry, general engineering and the do-it-yourself market.</p>

Comments from NSS Fasteners

NSS Fasteners stated that on average 10 per cent of its products are not manufactured in South Africa and should the Commission recommend the implementation of a safeguard measure on all products imported into South Africa, it will include products not manufactured in South Africa. NSS requested that the Commission excludes these products.

Commission's consideration

The Commission considered that although NSS alleges that certain products are not manufactured in South Africa, no details of these products were provided and it is difficult to establish whether this allegation is true. As was the case with regard to the safeguard duty on hot rolled steel, NSS will be at liberty to apply for the creation of a rebate provision should it be able to provide support for its allegations.

The Commission also considered the following commitments made by the Applicant in its development plan:

- *Increase in total production volume;*
- *Expected increase in total investment (plant machinery buildings);*
- *Increase in supply side measures (research and development; skills development and training; upgrading machinery and equipment), which could lead to the manufacturing of these products.*

After considering all the above, the Commission made a final determination that the SACU product and the imported products are “like products” or “directly competitive products”, for purposes of comparison, in terms of the SGR.

3. INDUSTRY STANDING

3.1 DOMESTIC INDUSTRY

SAISI lodged the application on behalf of SAFMA and its members, CBC and TPN. CBC and TPN are major producers of other screws fully threaded with hexagon heads made of steel.

Comments from NSS Fasteners

NSS Fasteners stated that the application is based on information submitted by CBC and TPN. According to the Applicant they represent more than 60 per cent of the market.

SA Bolt Manufacturers Company (SA Bolt) and Impala Bolt and Nut (Impala) supported the investigation. This leaves Ben Cor, T & I Chalmers Engineering (T & I) and Tel-Screw Products (Tel-Screw) that expressed no opinion on the application.

The importer stated that the more than 60 per cent of total production that CBC and TPN profess to hold is based on an estimate. The importer believes that certain anomalies arise because of this estimate and the fact that SA Bolt, Impala, Ben Cor, and T & I and Tel-Screw did not provide at least the following information: import figures; production; and sales. NSS Fasteners therefore requested the Commission to obtain these figures from the rest of the members of the South African Fasteners Manufacturing Association to establish the actual imports, production and sales figures of the industry.

Response from the Applicant

The Applicant indicated that all the manufacturers manufacturing the product concerned have either provided financial information or supported the application. In fact, all the manufacturers that supported the application also submitted production figures to the Commission, which were taken into consideration when industry standing was assessed.

Commission's consideration

The Commission considered that letters of support from other domestic manufacturers, namely Impala and SA Bolts indicating the volume produced were submitted to the Commission. According to the Applicant CBC and TPN enjoy the majority share of more than 60 per cent of production volumes of the subject product in the SACU. The Applicant further indicated that the estimate for periods 2015 and 2016 are in line the experience of the members of SAFMA trading in this market segment.

In terms of SGR 7.2 "An application shall be regarded as brought by or on behalf of the SACU industry if:

- (a) at least 25 per cent of the SACU producers by domestic production volume support the application; and*
- (b) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application."*

Considering the above, the Commission made a final determination that the application can be regarded as being made "by or on behalf of the domestic industry".

4. UNFORESEEN DEVELOPMENTS AND EFFECT OF WTO OBLIGATIONS

4.1 Requirements of Article XIX of GATT and Effect of WTO Obligations

Article XIX of the GATT provides as follows:

"If, as a result of unforeseen developments and of the effect of 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."

In terms of the WTO, it is interpreted to mean that the developments in the market should have been unforeseen at the time of negotiation of the relevant tariff concessions.

The Commission also analysed the effects of the obligations incurred with regard to the subject product under the GATT 1994.

Comments from Importers

The importers stated that "did SACU undertake obligations, including tariff concessions, on the subject product and, if affirmative, how did that prevent the authority from providing the necessary relief to the industry without resorting to a safeguard?" The importers further indicated that they noted that the applicable duty during the cause of the investigation period i.e the period from 2014/15 to March 2017 was set at 15 per cent, whereas it was increased to 30 per cent on 31 March 2017. It was stated that the Applicant therefore should have been required to explain why such an increase would not have provided it with the necessary protection, as it appears from the evolution of import statistics after June 2017.

The importers further stated that there is no need to impose further duties until it is shown that the normal duty increase was ineffective.

Response from the Applicant

The Applicant indicated that the WTO in various panel decisions clearly provide that the existence of a tariff concession meets the requirement for obligations incurred, as there would have been no need for any safeguard measures if an Applicant could have unilaterally changed tariff duties at will without limit.

The Applicant further stated that in any event, the only obligation that exists in terms of our WTO commitments on this particular product is the binding of the tariff in terms of the 1994 Uruguay tariff negotiations.

The Applicant also stated that the data submitted by it clearly indicates that the SACU manufacturers are suffering serious injury as a direct consequence of the surge in imports. In fact, since the imposition of the 30 per cent import duty in March 2017, imports continued unabated, further exacerbating the serious plight of both the local fastener manufacturers, as well as its only raw material supplier, ArcelorMittal.

Commission's consideration

The Commission noted the obligations South Africa undertook pertaining to this tariff subheading (as reflected above). These obligations prevented an increase in the customs duty beyond 30 per cent.

The Commission further considered the comments stating that the level of customs duty has been increased from 20 to 30 per cent in March 2017. However, from the available import information shown in the table below, it is clear that the increase in the customs duty did not have a significant impact on the volume of imports.

Analysis of imports post the imposition of the duty in March 2017

The following table shows the import statistics of the subject product for the period pre and post the imposition of the customs duty in March 2017:

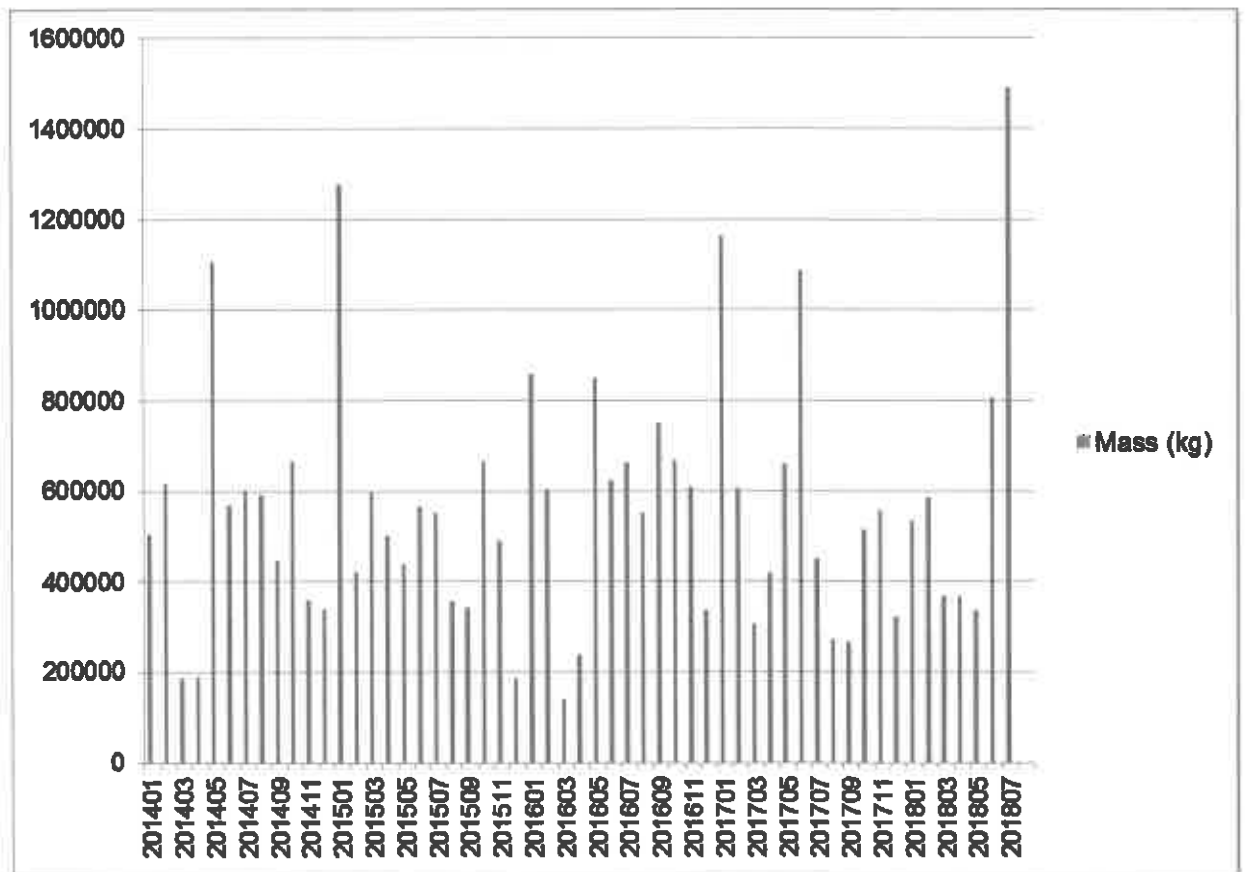
Table 4.1: Import statistics - 7318.15.39

Period	Quantity in kg
201401	504 545.09
201402	617 355.66
201403	186 067.28
201404	189 517.07
201405	1 106 874.44
201406	570 163.54
201407	604 432.09
201408	591 352.89
201409	448 218.24
201410	665 301.5
201411	359 163.6
201412	338 643.54
201501	1 278 209.25
201502	421 574.73
201503	597 677.9
201504	500 650.9
201505	438 696.19
201506	566 407.59
201507	552 729.85
201508	357 769.25
201509	342 659.27
201510	665 049.81
201511	491 327.35
201512	186 696.86
201601	858 159.34
201602	601 996.5
201603	142 678.31
201604	238 180.67
201605	850 882.35
201606	623 916.13
201607	664 116.37
201608	552 126.93
201609	749 170.89
201610	668 200.2
201611	607 951.66
201612	336 612.46
201701	1 163 083.86
201702	605 908.3
201703	307 284.33
201704	420 661.4
201705	659 210.66
201706	1 085 966.72

201707	451 245.7
201708	272 622.33
201709	266 502.44
201710	514 122.04
201711	557 757.95
201712	323 349.91
201801	534 400.13
201802	586 319.91
201803	367 376.94
201804	369 672.54
201805	338 468.69
201806	807 844.84
201807	1 492 687.35
201808	996 917.87

The following graph shows the import statistics of the subject product for the period pre and post the imposition of the customs duty in March 2017:

Graph 4.1: Import statistics of set screws (7318.15.39)



The Commission's consideration

The Commission considered that from the above table and graph it is clear that imports after the imposition of the duty in March 2017 did not decrease, and instead continued at levels higher than in March 2017. The volume of imports tripled from March 2017 to June 2017. The Commission therefore concluded that the increase in the customs duty did not deter imports.

4.2 Information submitted by the Applicant – Unforeseen developments

The Commission considered the information submitted by the Applicant in relation to unforeseen developments. The Applicant stated that a confluence of events forms the basis of the unforeseen developments that support this application. It explained that this oversupply of steel, and specifically the subject product, in the world is causing a surge in imports into the SACU.

The Applicant stated that during the Uruguay Round of negotiations in 1986 to 1994, South Africa did not foresee the following events:

- The unprecedented steep rate of increase in fastener production capacity after the Uruguay Round of negotiations. This mainly took place to support growing construction and manufacturing activity, as well as to help build infrastructure, particularly in emerging economies. This growth in global capacity was mainly fuelled by the growth of the Chinese and Asian fastener markets;
- The significant downturn of the fastener market as a result of the Asian financial crisis that contributed to the imbalance between capacity and demand, that is, the global oversupply of fasteners. This led to a significant increase in export volumes by countries with excess capacity.
- This in turn led to an increase in trade remedy actions being taken on fastener products, including set screws, by a number of countries, notably the Canada and the European Union, which are significant export markets for these products. Given the fact that fasteners are a commodity product, excess capacity in one region can, with relative ease, displace production in other regions, thus harming producers in those regions;

The Applicant further stated that an example of a country which had and will continue to have a significant effect on global demand for fasteners is the People's Republic of China ("China"). China is the world's largest steel producer and the country with the highest demand for steel due to its historically fast-growing economy. The Applicant's information on unforeseen developments focused largely on the development and overcapacity of the Chinese fastener market. According to the Canadian Anti-dumping Report³, China is the world's biggest producer of screws, nuts, bolts and washers. Thus, the influence it has on global capacity as well as excess capacity is significant. China is also the largest exporter of low-cost fasteners.

Comments by the Importers

The importers stated that "the information submitted by the Applicant pertaining to unforeseen development does not relate to fasteners and specifically to the subject product. They also stated that the Applicant indicated that "this broad product category, other screws and bolts (7318.15), represents roughly 50% of the total production of the fastener industry." However, no indication is given as to what percentage of the fastener industry is represented by the subject product, which has been narrowly defined as only fully threaded screws with hexagon heads, excluding those made from stainless steel."

Comments from Chinese exporters

Chinese exporters indicated that "in order to implement safeguard measures, the increase in imports of the products concerned must be a result of unforeseen developments and the effect of the obligations incurred by a contracting party under the agreement, including tariff concessions under the General Agreement on Tariffs and Trade ("GATT 1994"), including tariff concessions within the meaning of Article XIX: 1(a) of the GATT 1994. The meaning of the term "unforeseen developments" has been interpreted by the relevant precedents in the WTO dispute settlement cases as developments

³ Canadian Anti-dumping Report on certain carbon steel fasteners originating in or exported from the People's Republic of China and Chinese Taipei, 5 September 2014, Canada Border Services Agency.

that affect the competitive relationship between the imported and domestic products to the detriment of the latter and to such a degree as to result in a situation where the increase in imports causes serious injury or threat thereof to the domestic industry. The Application indicates that the unprecedented steep rate of increase in fastener production capacity has caused increased imports of the product concerned in the South Africa. However, Chinese exporters consider that such global overcapacity problem would be a mere result of long-term supply and demand conditions that could not be regarded as “unforeseen.” Furthermore, a mere reference to global overcapacity in fastener production does not amount to a demonstration of the change in the competitive relationship between the domestic and the imported products. It was stated that the increase in imports of the products concerned during the POI was not unforeseen to the SA industry. The competition between the imported products and the domestic products were much fiercer in the period from July 2008 to July 2011.”

Response from the Applicant

The Applicant stated that it would like to direct the respondents’ attention to the various WTO panel decisions (US - Lamb, US - Steel) regarding what constitutes “unforeseen developments” for the purposes of a safeguard application.

“The appellate body here has set the standard for what is to constitute “unforeseen” and what this is to be taken in context with. In its ordinary meaning, the panel has upheld that the meaning of “unforeseen” is directly translated to “unexpected” i.e. was a certain event or development in the industry expected to happen? Further to this the body has also affirmed and reaffirmed that the development or event should have been unforeseen at the time of the Uruguay round of GATT negotiations. In this regard the panel has been very consistent. As such, any notion that the unforeseen developments that it provided in its application should have been foreseen at any time after the Uruguay round of negotiations is moot and not relevant, in its entirety.”

The Applicant further stated that "it must be noted that the test to be conducted in this regard is an objective one. "Should the stated development have been foreseen or at the very least have been foreseeable at the round of negotiations in 1994? The simple answer is no." Here the Applicant looks to the case of US - Steel, where the Appellate Body agreed that the growth of the Asian market was indeed unforeseeable, as no reasonable person could have expected such a sharp growth in an output of steel and steel products. This coupled with the stark decrease in the demand for the above products in Asian countries are enough to prove that this requirement has been met."

The Applicant also stated that "in creating a causal link between the unforeseen development and the increase in imports, it must be noted, that providing an analytical breakdown of the link would not only be extremely difficult, expensive and overly tedious, it would also be highly speculative and inaccurate, as there exists no single global framework of statistics, especially on individual items and external effects on their production, distribution, costs, etc. Such an approach would consist of almost exclusively making assumptions without merit, which they contest is not something the negotiators could have intended for."

In emphasising its argument the Applicant indicated that it would like to put forward the legal doctrine of "sine qua non," also known as the "but for" test. "Would the surge in imports have occurred, but for the fact that the Chinese steel market had experienced such a sharp increase, especially coupled with a decreasing local (Chinese) demand for steel and steel products? Again, the simple answer is no. Is it possible that further factors attributed to the above? Possibly, but again, this would require further assumptions on the matter that cannot logically be made without creating a context conflict in the proverbial "intention of the legislator."

"As such, the Applicant is content that without the increase in Chinese steel manufacturing capability, excess global capacity, as well as increased trade actions being taken by various countries to protect their steel markets, as well as the product concerned, local markets would not have undergone a surge in

imports, creating the required relevant causal link between the unforeseen developments and surge in imports, leading to serious injury of the domestic industry. Thus, the Applicant contends that the unforeseen developments requirement has been met in this regard in its entirety and that any contention to the contrary is unfounded and without merit."

The Applicant further stated that "its argument is further confirmed by the recent EU notice of initiation of a safeguard investigation concerning the importation of various steel products (2018/C 111/10), dated 26 March 2018, as well as the standard practice implemented by various investigative authorities, including ITAC, where it made a similar finding in the recent safeguard investigation into hot rolled coil."

Commission's consideration

The Commission considered that the allegation that unforeseen development is not product related is unfounded. The Applicant used the subject product and also used an estimate on the composition of the subject product from the total production of the fastener industry. The Commission noted that neither the regulations nor the WTO Agreement requires that the analysis of unforeseen developments should be done by tariff subheading.

It is the Commission's view that unforeseen developments in the present case constitute the following: the increase in the production capacity of fasteners and the subject product at the levels stated could not have been foreseen prior to 1994. This increased production therefore filtered through all fastener producing markets in the world, especially led by the increase in production from China as both a high producer and consumer of fasteners including the subject product.

Therefore the Commission considered that it could not have been foreseen that world steel production would have increased to levels as high as these after 1994. This increase led to an oversupply of steel throughout the world and consequently an increase in the Global wire rod and fastener production. The oversupply is coincided with contracting demand of wire rod, fasteners

and the subject product globally, thus resulting in excess supply of the subject product.

Comments by Chinese exporters to the Commission's Preliminary Report

The Chinese exporters indicated that in order to prove its arguments on unforeseen development, the Applicant stated that during the Uruguay negotiations in 1986 – 1994, South Africa did not foresee the following events:

- The unprecedented steep increase in fastener production;*
- The Asian financial crisis; and*
- An unprecedented increase in Trade Remedy actions being taken on fastener products.*

The Chinese exporters further indicated that they have previously demonstrated that the three above factors are irrelevant to unforeseen developments within the meaning of Article XIX: 1(a) of GATT. Therefore no repeated comment is added. However, the logic of the Applicant is ungrounded given the fact that official SARS statistics show no significant surge in imports of the subject product in the past 3 years or 6 years or 9 years which is a reasonable period. As a consequence, there is no legal basis for the safeguard.

Comments by NSS Fasteners to the Commission's Preliminary Report

NSS Fasteners indicated that between 1992 and 1994 the statistics exhibit a sharp increase in imports recorded under tariff subheading 7318.15.39. It therefore question the statement that is could not have been foreseen that there would have been an increase in imports after the implementation of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). It further indicated that South Africa's markets opened up after years of sanctions and any imports subsequent should have been expected. South Africa became part of the global market and steel production has always shown significant year on year increases since the 1950s.

It also indicated that even if there were such expectations, the fears would have been allayed by the actual developments over the period 2011 to 2017. Except for a brusque increase from 2012 to 2013, imports show a gradual increase over this period concerned.

It further indicated that the period of 2012 to 2013 is also the period referred to by the Applicant to justify its unforeseen developments arguments and the period on which the trade remedies applied by the countries referred to in the application was in reaction to. The other trade remedy actions taken by the countries referred to was in 2004, 2009 and 2011. It therefore concluded that this is not recent.

Applicant's response

In its response the Applicant indicated that it would like to direct the Respondents' attention to the various WTO panel decisions (US -Lamb, US - Steel) regarding what constitutes "unforeseen developments" for the purposes of a safeguard application.

The Applicant further indicated that the Appellate Body here has set the standard for what is to constitute "unforeseen" and when this is to be taken in context with. In its ordinary meaning, the panel has upheld that the meaning of "unforeseen" is directly translated to "unexpected" i.e. was a certain event or development in the industry expected to happen? Further to this the Body has also affirmed and reaffirmed that the development or event should have been unforeseen at the time of the Uruguay round of GATT negotiations. In this regard the Body has been very consistent. This is also clearly stated in the questionnaire sent out by the Commission to the Applicant.

The Applicant also indicated that any notion that the unforeseen developments that it provided in its application should have been foreseen at any time after the Uruguay round of negotiations is moot and not relevant, in its entirety.

With regard to NSS Fasteners comments, the Applicant indicated that it is not clear from the response whether the tariff subheading quoted actually

refers to the product concerned as a new separate tariff subheading only came into existence in January 2011 after an application by CBC. If the history of fastener manufacture in South Africa is considered, it is clear that the events stipulated on its submission and accepted by the Commission in its preliminary Report was completely unexpected.

Commission's consideration

The Commission reiterated its initial view that the allegation that unforeseen development is not product related is unfounded. The Applicant used the subject product and also used an estimate on the composition of the subject product from the total production of the fastener industry. The Commission noted that neither the regulations nor the WTO Agreement requires that the analysis of unforeseen developments should be done by tariff subheading.

It is the Commission's view that unforeseen developments in the present case constitute the following: the increase in the production capacity of fasteners and the subject product at the levels stated could not have been foreseen prior to 1994. This increased production therefore filtered through all fastener producing markets in the world, especially led by the increase in production from China as both a high producer and consumer of fasteners including the subject product.

Therefore the Commission considered that it could not have been foreseen that world steel production would have increased to levels as high as these after 1994. This increase led to an oversupply of steel throughout the world and consequently an increase in the Global wire rod and fastener production. The oversupply is coincided with contracting demand of wire rod, fasteners and the subject product globally, thus resulting in excess supply of the subject product.

Comments by Chinese exporters on the essential facts letter

Chinese exporters indicated that global overcapacity problem would be a

mere result of long-term supply and demand conditions that could not be regarded as "unforeseen". They further indicated that a mere reference to global overcapacity in fastener production does not amount to a demonstration of the change in the competitive relationship between the domestic and the imported products. They indicated that the average import volume of the product concerned in the period from 2008/2009 to 2010/2011 was 12,832.32 ton, while the average import volume of the product concerned in the current POI is 6,874.67 ton, 53.57% of that of the historical period. The competition between the imported products and the domestic products were much fiercer in the period from July 2008 to July 2011.

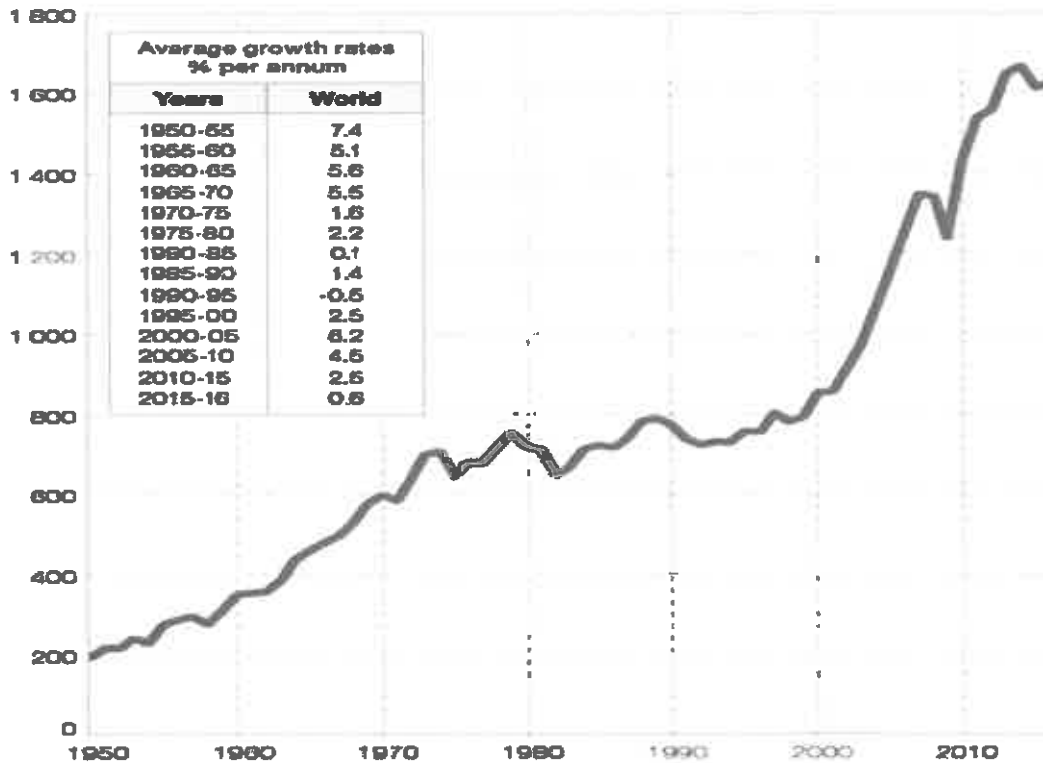
Global Crude Steel Production

The Applicant stated that:

- *"It is important to note that during the Uruguay Round of negotiations from 1986 through 1994, global production of crude steel remained stable with a marginal increase of about 4% over the period. It is on the basis of this stable steel production outlook that South Africa set its general steel bound tariff rates and committed not to exceed them. What followed is, however, a massive and unexpected increase in global production;*
- *Chinese crude steel production soared from 128 million MT in 2000 to 779 million MT in 2013 – an increase of 651 million MT over the last 13 years. Therefore, China's steel production increased by a volume of roughly seven and a half times the total production of the U.S. industry alone. At the same time, China's official steel capacity levels reached 1,106 million MT in 2013, meaning it had excess capacity of 327 million MT;*
- *In fact, Chinese crude steel production is accelerating. According to a Bloomberg news article dated 14 September 2017, "Chinese crude steel output climbed to 74.59 million metric tons last month, surpassing the previous peak of 74.02 million MT in July, and up from 68.57 million MT in August 2016, according to the statistics bureau Thursday. While that's an all-time high for the month, daily output was less than the record in June. Production surged 5.6 percent to 566.4 million tons in the first eight*

months, also a record increase in global production.”

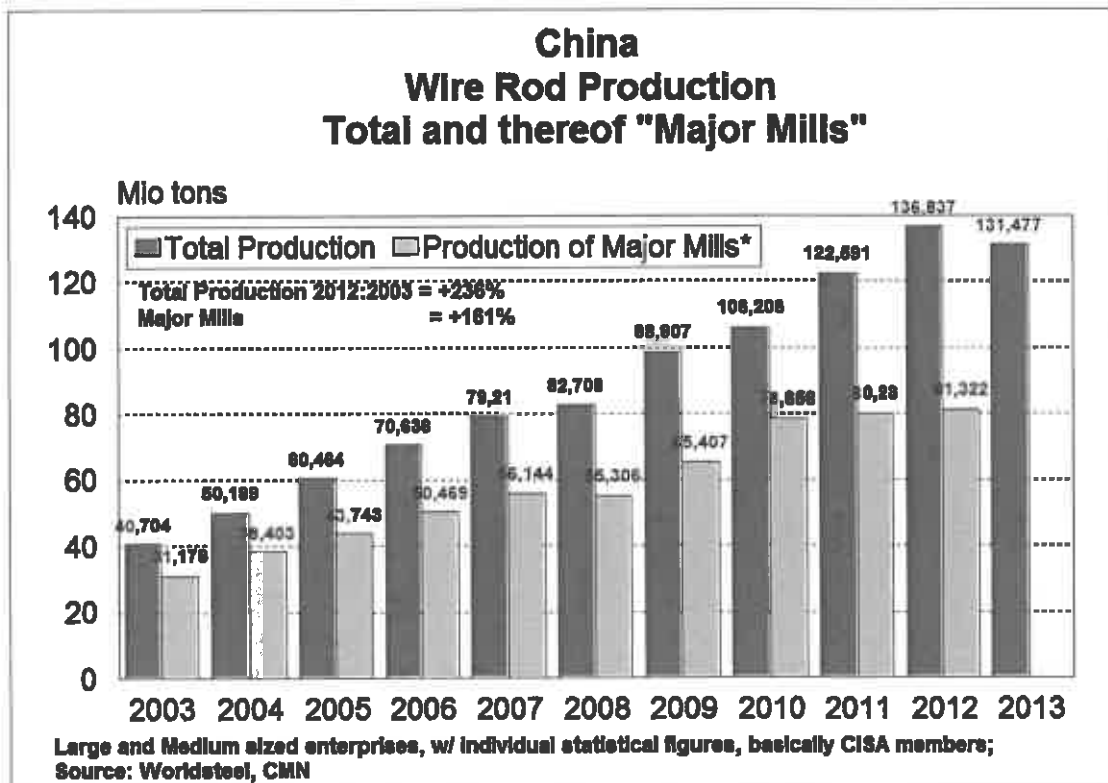
Graph 4.2(a): Global Crude Steel Production



Wire rod (basic raw material input)

- *The Applicant stated that it is also a well-known fact in the market place that the Chinese wire rod capacity and production (basic raw material for fasteners) also increased significantly over the course of the past decade and continues to increase even further.*
- *The Applicant also stated that according to Worldsteel data current (2017) wire rod production in China amounted to 141,850 million tonnes, an increase of 8%, despite assurances from the Chinese government that it will cut back on production. Another source of serious concern for the applicants is the existence of huge excess capacity for wire rod in China. This huge overcapacity existing in China of 40-50 million tonnes is now dormant. Moreover, much of the capacity comes from new entrants, which will be forced to increasingly export to keep their facilities in operation given the large domestic overcapacity.*

Graph 4.2(b): Current wire rod capacity



The Applicant also stated the following factors as unforeseen:

- *"Growth of the Chinese fastener market;*
- *Slowdown of the Chinese economy and a global contraction in demand;*
and
- *Trade remedy actions on fastener products by other trade authorities ranging from 26.5% to 79.5%."*

The Applicant also stated that "these unexpected events highlighted above, (growth and overcapacity in global steel supply, growth and overcapacity in global wire rod supply, trade measures being taken by WTO member states on these products) all led to a significant increase in the value added or downstream trade of steel products (including fasteners) which were unforeseen at the time South Africa concluded its WTO commitments in 1994.

The Applicant concluded that the above confluence of circumstances leading to a considerable oversupply of fasteners, coupled with the economic slowdown globally and in South Africa were unforeseen at the time South Africa concluded its tariff negotiations and it has resulted in an increase in

imports of the subject products causing serious injury to the SACU industry, as demonstrated elsewhere in the Application.”

Commission’s consideration

The Commission is of the opinion that it could not have been foreseen that world steel production would have increased to levels as high as these after 1994. This increase then led to an oversupply of steel throughout the world and subsequently an increase in the wire rod and fastener industry. The oversupply also coincided with contracting demand of wire rod, fasteners and the subject product globally, thus resulting in excess supply of the subject product.

5. SURGE OF IMPORTS

5.1 Import volumes

The information considered for the increased imports covered the period 1 July 2012 to 31 June 2017.

The following table shows import volumes as sourced from the South African Revenue Service (SARS) for the period July 2012 to June 2017.

Table 5.1: Import volumes (tons)

	July 2012 – June 2013	July 2013 – June 2014	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Total Import volumes	2 989	7 352	6 826	5 915	7 883

The information in the table above indicates that the total imports increased by 145 per cent from the period ending June 2013 to the period ending June 2014 and slightly declined by 7 per cent from the period 2014 to 2015. However, there is a 163 per cent increase for the period ending June 2013 to period ending June 2017, which is 18 per cent more than the surge level in the period ending June 2014. Notwithstanding the increase in the customs duty to 30 per cent *ad valorem* in March 2017, imports continue at levels higher than that in March 2017.

Comments by the Importers

The importers argued that:

- *the sharp increase in imports occurred 5 years ago which by no reasonable definition can be considered recent;*
- *The volumes then dropped for the 4 years, before increasing in year 5; and*
- *The import volumes for the intervening period between the close of the investigation period and the initiation of the investigation in fact show a significant decline in volume.*

Comments by the Chinese exporters

The Chinese exporters indicated that the import volume of the product concerned in the beginning year of the period of investigation (POI) is 6826 Ton, while the import volume of the product concerned at the end of POI is 7883 Ton. This represents an increase of 15% in absolute terms. They also indicated that such increase is not a continuous trend during the POI since imports decreased by 13 per cent for the years of 2014/2015. It was questioned whether this trend in import quantities would be sufficient to fulfil this requirement for applying a safeguard measure.

The Chinese exporters further indicated that with regard to the nature of the increase in imports, the Appellate Body in Argentina – Footwear (EC), held that “this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury' .” Certainly, 15 per cent of increase during the POI is not recent enough, sudden enough, sharp enough, and significant enough.

Response from the Applicant

The Applicant stated that “the surge in imports manifested itself when imports increased from 2,989 tonnes for the period ending June 2013 to 7,352 tonnes for the period ending in June 2014. It also stated that imports of the products concerned have remained at a significant level. In fact, imports have continued to increase in the latest year of the investigation period being June 2017 indicating the fact that the subject product is being imported at a level where the increase in imports can be considered to be sudden, recent, significant and sharp.”

It further stated that “this initial increase in imports, as well as the subsequent level of imports during the ensuing years of the period of investigations clearly satisfied the first pre-requisite for a finding of serious injury, in terms of Art 4(a) of the SG Agreement, where it refers to “imports in such increased quantities” that will cause or threaten to cause serious injury.”

The Applicant also stated that “relative to South Africa’s production, imports have increased from 60 per cent as a percentage of local production for the year ending June 2013, to more than 185 per cent for the year ending June 2014, as a direct consequence of the substantial surge indicated in its application. The continued increase in import volumes at the end of the period of investigation further exacerbated the impact imports had on the local market and as a consequence imports as a percentage of local production increased to 306 per cent for the period ending June 2017.”

Commission’s consideration

The Commission considered that in US — Line Pipe⁴, the Panel found the following:

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

⁴ Appellate Body Report, US – Line Pipe

the requirements of Article 2.1 are met.”

Furthermore, the Panel observed that an increase in imports before the date of a determination, but not sustained at the date of the determination, could still cause actual serious injury at the time of the determination.

In this investigation, the total imports increased by 145 per cent from the period ending June 2013 to the period ending June 2014 and slightly declined by 7 per cent from the period 2014 to 2015. However, from the period ending June 2013 to period ending June 2017, imports increased by 163 per cent which is 18 per cent more than the surge level in the period ending June 2014.

5.2 Increased imports

Article 4.5 of the Safeguard Agreement points out that to examine whether the increased imports have caused or are threatening to cause serious injury to a domestic industry, the competent authorities shall evaluate, in particular, the rate and amount of the increase in imports of the subject product in absolute and relative terms.

The following table shows the volume of imports of the subject product as sourced from the SARS relative to production for the period July 2014 to June 2017.

Table 5.2: Increase In Import volumes In relative terms

Tons	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Total Imports	6 826	5 915	7 883
Applicant total production	100	69	70
Imports as a % of the Applicant's output	100	125	165

These figures were indexed due to confidentiality using the period ending June 2015 as the base year

The above table indicates that imports relative to production increased by 65 index points from 2015 to 2017. The imports increased by almost 2000 tons from the year ending June 2016 to the year ending June 2017.

In its analyses of imports, the following was also taken into account:

- The surge in absolute terms began in the period ending June 2013 and it maintained its levels in 2014. The rate and amount of increase from July 2012 to June 2013 is clearly sudden. The high volumes arising from the surge in the volume of imports were maintained throughout the period of investigation both in relative terms and absolute terms.
- The amount of increase in 2014 was high and significant.
- The period ending June 2014 is recent enough to meet the conditions of the safeguard agreement. This must be considered in line with the fact that although there were slight intermittent declines, the increase has been maintained throughout the period of investigation. The import volumes reached their highest level in 2017.

Based on the above, the Commission made a final determination that there was a surge in the volume of imports of the subject product that was recent enough, sharp enough, sudden enough and significant enough.

6. SERIOUS INJURY

6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following serious injury analysis relates to the consolidated information of CBC and TPN representing more than 60 per cent of the SACU industry by production volume.

The Commission made a final determination that this constitutes “a major proportion” of the total SACU domestic production, in accordance with the SGR.

6.2 CONSEQUENT IMPACT OF THE INCREASED IMPORTS ON THE INDUSTRY

Section 8.1 of the SGR states that serious injury shall be understood to mean “significant overall impairment” in the position of the SACU industry.

6.2.1 Actual and potential decline in sales

The following tables show the Applicant's SACU sales volumes of the subject product for the period of investigation:

Table 6.2.1: Sales volumes

	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Sales volume (Ton)	100	69	68

These figures were indexed due to confidentiality using period ending June 2015 as the base year

The Applicant's sales volume decreased by 31 index points from the period ending June 2015 to the period ending June 2016, and decreased by 1 index points from the period ending June 2016 to the period ending June 2017.

6.2.2 Profit

The following table shows the Applicant's profit situation:

Table 6.2.2: Profits

	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Applicant's gross profit	Negative	Negative	Positive
Applicant's Units sold (tons)	100	69	68
Applicant's total gross profit (R)	Negative	Negative	Positive
Applicant's net profit R/ton	Negative	Negative	Negative
Applicant's net profit (R)	Negative	Negative	Negative

These figures were Indexed due to confidentiality using the year ending June 2015 as the base year

Comments from NSS Fasteners

NSS Fasteners stated that "it is not clear whether profit/loss figures pertain to the product concerned only and whether its own imports are included in these figures. On the assumption that it is for the product concerned only and includes imports, the Applicant's gross profit margin and gross profit per unit improved considerably, from negative to positive margins. This resulted in improved net profit margins as well. The Applicant's financial positions seem to be improving, not worsening."

Commission's consideration

The Commission considered that although the net losses decreased during the period June 2015 to June 2017, it is clear that TPN and CBC have been operating at net losses during the period of investigation.

6.2.3 Output

The following table outlines the Applicant's domestic production volume of the subject product during the period of investigation:

Table 6.2.3: Output

	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Total production of product concerned	100	69	70
*Estimate of other SACU producers production for SACU consumption	100	69	70

These figures were indexed due to confidentiality using the year ending June 2015 as the base year

* Letters of support from Impala and SA Bolts were received, indicating the volume produced during the period of investigation. According to the Applicant CBC and TPN enjoy the majority share of production volumes of the subject product in the SACU. The Applicant further indicated that the estimate for periods 2015 and 2016 are in line with the experience of the members of SAFMA trading in this market segment.

The output decreased by 31 index points from the period ending in June 2015 to the period ending in June 2017, and increase by 1 index point from the period ending June 2016 to the period ending in June 2017.

Comments from NSS Fasteners

NSS Fasteners stated that “total production and sales are down 30% yet total imports are up only 15%. Total South African consumption remained more or less the same. The assumption that the whole South African industry lost production of 30% can therefore not be correct. The production lost by the Applicants cannot be attributed to sales only. They must have lost sales to the other South African manufacturers, some who imported as well.”

NSS Fasteners therefore requested that “the Commission obtain the production, sales and import figures from the other SA manufacturers, and deduct own imports from the import figures before assessing the impact of imports on production, sales and market share of the industry.

An increase in imports of 15% cannot result in lost sales of 30%, where the market size remained the same.”

Commission's consideration

The Commission considered that although CBC imported the subject product in the periods ended June 2016 and June 2017, their imports were necessitated by the extremely low priced imports which entered the SACU market at a price which was less than the SACU industry's cost of production and thereby inflicting injury to the SACU industry. CBC's own imports were subtracted from the import volumes for purposes of the injury analysis. The table above indicates a decrease of 30 index points in total production for SACU consumption during the period of investigation. The figures are indexed and as imports became more dominant a linear correlation is less obvious. The Commission also considered that the downstream steel industry is depressed due to slow economic growth, that there is an increase in imports and that the fastener industry is classified as an industry in distress. The Global overcapacity and the Asian financial crisis, exacerbated by sluggish domestic demand all contributed to the decline in output.

6.2.4 Market share

The following table shows the market share for the subject product based on sales volumes:

Table 6.2.4: Market share

	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Applicant sales volume (tons)	100	69	68
Estimated sales by other SACU producers (tons)	100	69	68
Estimated total volume of SACU sales by SACU producers (tons)	100	69	68
Volume of imports (tons) excluding own imports	6 826	5 361	7 115
Applicant market share %	100	86	69
Total market share held by SACU producers %	100	86	69
Market share held by imports %	100	107	116

These figures were indexed due to confidentiality using the year ending June 2015 as the base year

Commission's consideration

The Commission considered that the market share of the SACU industry decreased by 31 index points from the period ending June 2015 to June 2017 whilst imports increased by 16 index points for the same period.

Own Imports

With regards to own imports the Applicant indicated that TPN did not import the subject product but that CBC did import some product. It submitted the following main reasons for importing:

- The cost to import was substantially lower than the local cost of manufacture;*
- Labour strikes in 2011 and again in 2014 effectively eroded 3 to 5 weeks of production. This encouraged CBC to provide alternatives; and*
- To a lesser extent, steel supply at times was not consistent due to maintenance issues from their steel supplier. It seems that these difficulties have been overcome.*

The Applicant further stated that the protection afforded by a 73 per cent dumping duty on the subject product awarded in November 2012 was effectively negated by 4 Chinese manufacturers being excluded. CBC conducted an analysis of import versus local manufacture and established a package of sizes, primarily in 6mm to 16mm, where importing popular diameter lengths was 25 per cent to 30 per cent cheaper. This was whilst the general duty was 20 per cent. Based on this, importing was implemented. CBC advised in the general duty application from 20 per cent to 30 per cent in 2016 that a 10 per cent duty increase would be insufficient to offset the benefit of importing. The Applicant stated that now that a safeguard duty is being applied for, the decision has been taken to cancel the import programme.

Comments from NSS Fasteners

NSS Fasteners stated that "the South African industry's imports must be taken into account when imports and market share of imports are considered as well as the sales of the other producers. The sales figures are based on estimates and the sales of the other South African producers would include the imported product. The estimate of the South African sales results in an anomaly. The Applicants and the rest of the industry lost the same percentage points in sales, i.e. 32, while imports increased by 15 percentage points. The figures that represent the percentage of imports over local production would

therefore be incorrect. Production volumes could have decreased by a maximum of 17 percentage points not 32.”

Commission’s consideration

The Commission considered that although CBC imported the subject product in the periods ended June 2016 and June 2017, their imports were not significant enough to cause injury to the SACU industry. Furthermore, these own imports were subtracted from the import volumes for purposes of the injury analysis.

6.2.5 Productivity

Using the Applicant’s production and employment figures, its productivity in respect of the subject product is as follows:

Table 6.2.5: Productivity

	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Applicant’s Total production volume (Ton)	100	72	72
Applicant’s Number of employees (manufacturing)	100	96	93
Applicant’s tons per employee	100	76	77
Applicant’s total employment	100	94	92
Applicant’s Total Investment	100	96	98
Applicant’s Output ratio *	100	95	105

These figures were indexed due to confidentiality using the year ending June 2015 as the base year

Commission’s consideration

The Commission considered that productivity decreased by 23 index points from the period ending in June 2015 to period ending in June 2017 while total production decreased by 28 index points in the same period. Total employment decreased by 8 index points. The decrease in production had an impact on the decrease in productivity during the period of investigation.

6.2.6 Utilisation of production capacity

The following table provides the Applicant’s capacity utilisation, using plant capacity and output for the subject product:

Table 6.2.6: Utilisation of production capacity

	July 2014 - June 2015	July 2014 - June 2015	July 2014 - June 2015
Applicant's capacity (Tons)	100	100	100
Applicant's capacity utilisation %	100	73	73

These figures were indexed due to confidentiality using the year ending June 2015 as the base year

Commission's consideration

The Commission considered that utilization of capacity for the Applicant decreased by 27 index points during the period of investigation.

6.2.7 Employment

The following table provides the Applicant's total employment figures:

Table 6.2.7: Employment

	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Applicant's number of employees (manufacturing)	100	96	93
Applicant's total employment	100	94	92

These figures were Indexed due to confidentiality using the year ending in June 2015 as the base year

Commission's consideration

The Commission considered that total employment decreased by 8 index points during the period of investigation.

6.3 ADDITIONAL INJURY FACTORS CONSIDERED

The Applicant stated that in addition, the serious injury experienced by the fastener industry directly as detailed in the statistics and financial information presented, also had a knock-on effect on the primary producer of steel.

The Applicant also stated that what needs to be considered is the impact that this sudden and significant increase in imports had caused as a direct result of the loss of production and market share by local manufacturers:

- ArcelorMittal, the primary steel producer supplying the fastener manufacturers has reduced dispatches to the industry from 43 000 tons

in 2008 to current levels estimated at 20 000 tons per annum. This in itself has affected the viability of their primary steel supplier and has increased the risk of the ability to viably produce fastener quality steel for the future;

- Whilst electricity supply was at one stage a constraint, in terms of current demand, ESKOM desperately needs to get back the huge loss of supply to maintain its viability and sustainability;
- Value added work that has been subcontracted in the form of galvanising, hot dipped or electro, heat treatment, tooling manufacture have all lost critical volume to their business;
- Loss of local production leads to losses in a number of other input costs. These includes, but is not limited to:
 - Packaging material;
 - Chemicals and oils;
 - Maintenance spares; and
 - Tooling utilised in the forging and threading process, internally produced or outsourced.

The Applicant further stated that in addition to the fastener industry, which has suffered a huge loss of employment, across all the sectors detailed above there has been loss of employment. This loss of employment has not only been the direct worker losing employment itself where chances of re-employment are slim, but the multiplier impact of dependants of the person losing employment.

The Applicant stated that the above deals with the serious injury that has already taken place. Should a safeguard duty not be approved, the likely further injury scenario is as follows:

- Fastener quality steel by ArcelorMittal could potentially be eliminated because the product is not viable in their production process. Import alternatives to local fastener manufacturers are not viable because of quality risks, pre-payment requirements and the increased safety stock requirement;

- More of the affected industries mentioned above will suffer, including electricity demand, galvanisers, chemical. Lubrication oils, packaging and tooling. It is very likely that some industries will close down;
- The viability of local fastener manufacture will increasingly be diminished. The alternative is import and/or closure. In both cases loss of employment will take place which an overburdened unemployed economy can ill afford.
- The loss of local manufacture will result in the "just in time" requirement of industry which local manufacturers serve will be lost. This in itself will result in potential stoppages and downtime in the broad spectrum of industries local manufactures serve.
- The increasing dominance of one big across the board importer will ultimately lead to control of prices and an additional cost to the economy.

Comments from the Importers

The importers stated that there is no injury information provided for the period showing the sharp increase in volumes, making it impossible to connect the import volume increase and the alleged injury suffered.

The importers further stated that:

- *"The alleged surge was outside the injury period;*
- *The import trends between July and June in 2013 and July and June in 2014 has not continued, but declined.*
- *Production and sales decreased by 32 percentage points whilst imports only increased by 15 percentage points. It was stated that this is indicative that imports could not have been the cause of any injury."*

The importers also stated that "the imports from China were principally from those Chinese exporters that were found not to be dumping during previous anti-dumping investigations. These prices can therefore not be the cause of any injury.

The increase in the general rate of duty was effective from March 2017. The July 2017 to March 2018 import figures exhibits a decrease in imports as a result thereof. The Commission is therefore not yet in a position to determine the impact of the increase in the general rate of duty. A safeguard measure would be premature.

In general terms, the SA steel industry seems to have lost its ability to export. This affects its economies of scale and costing and has an indirect effect on its ability to compete with the imported product."

Comments from Chinese exporters

The Chinese exporters stated that "the product concerned is just one category of products in the South African fasteners industry. The increased imports of one portion of products cannot cause a significant overall impairment in the position of a domestic industry. They further stated that how could the alleged "significant overall impairment" in the position of the SA domestic industry be sufficiently clear to attribute to the increased imports of 7318.15.39, which constitute just a portion of SA industry's business."

Response from the Applicant

The Applicant stated that "the information submitted in the application clearly represented a prima facie case indicating that the South African manufacturers of the subject product concerned are experiencing serious injury in the form of a decline in sales volume, output, market share, productivity, utilisation of production capacity and employment for the period directly following the surge of imports i.e. 1 July 2014 to 30 June 2017."

The Applicant also stated that "there is little doubt that the serious injury currently being suffered by the local industry has led to the overall impairment of the fastening manufacturing capability in South Africa and that unless urgent intervention in the form of safeguard action is being implemented; the loss of local manufacture of the product concerned is imminent."

The Applicant further indicated that “this serious injury satisfies the meaning of Art 4.2(a) of the SG Agreement when it defines serious injury as a significant overall impairment in the position of a domestic industry. The core standard of overall impairment is obviously imprecise and open to differing opinions and judgments, but the inference is that national authorities have wide discretion in their assessment of serious injury and that the treaty text imposes few meaningful constraints on this aspect of their analysis. However, as indicated in their application the injury being suffered by the local industry is serious and within the meaning envisaged by the SG Agreement, as well as the Safeguard Regulations.”

The Applicant also stated that “the information contained in their application, as well as the serious injury analysis by the Commission follow the list of injury indicators contained in Art4.2(a) of the SG Agreement, where it lists the share of the domestic market taken by imports, changes in the level of sales, production, capacity utilisation, profits and losses and employment as specific indicators, and the only provision is that these indicators should be assessed individually.”

The Applicant further indicated that “the application follows the wording of Article 4.2 of the Safeguard Agreement, that the competent authorities will assess the rate and amount of the increase in imports of the product concerned in absolute and relative terms, and the impact on the domestic market by the increased imports. The Applicant also stated that it is important to take note that the past tense is used in the causal analysis, the inference being that it suggests a period after the surge as indicated.

It is clear from the determination the Commission made in order to initiate the investigation, that the Applicant submitted prima facie evidence in its application that the SACU industry was experiencing serious injury that could be causally linked to the recent, sudden, serious and significant surge in imports of the subject product.”

The Applicant further stated that “according to numerous comments by the respondents, there exists a disconnect in the information provided to the Commission in the application, insofar as the link between the surge in imports and the information supplied to establish serious injury is concerned. In terms of the explanation above regarding the establishment of a causal link between increased imports and the serious injury being suffered by the domestic industry, this is not the case.”

The Applicant also stated that “although there is no requirement for the requested information to be provided, as clearly indicated in the wording of the SG agreement, it has provided that information in order to assist the investigation and provide further proof of existing injury to the local market.”

The Applicant submitted the following information for the period July 2012 to June 2014:

Table 6.3(a): Absolute increase in imports

Annual import statistics: 7318.15.39 Set screws					
Import volumes and values per annum (Tonne and Rand)					
	July 2012 – June 2013	July 2013 – June 2014	July 2014 – June 2015	July 2015 – June 2016	July 2016 – June 2017
Volume (Tonnes)	2 989	7 352	6 826	5 915	7 883
Value (Rand)	39 013 588	85 503 137	91 909 181	102 428 820	139 744 260
Average unit price (R/tonne)	13 053	11 630	13 465	17 315	17 727

Table 6.3(b): Relative increase in imports as a percentage of SACU production

Screws fully threaded with hexagon heads	July 2012 – June 2013	July 2013 – June 2014	July 2014 – June 2015	July 2015 – June 2016	July 2016 – June 2017
Imports% Local production	100	303	280	349	462

Table 6.3(c): Market Share Analysis

Market share: Screws fully threaded with hexagon heads					
Volume = tonnes	July 2012 – June 2013	July 2013 – June 2014	July 2014 – June 2015	July 2015 – June 2016	July 2016 – June 2017
TPN	100	94	92	85	84
CBC	100	96	69	32	31
Total CBC TPN	100	94	80	55	55
Other SACU producers	100	94	80	55	55
Total SA sales volume	100	94	80	55	55
Import volume	100	246	228	198	264
Total SA Consumption	100	155	140	113	139
Market share TPN/CBC	100%	61	57	49	39
Local market share	100%	61	57	49	39
Market share imports	100%	159	164	176	190

Table 6.3(d): SACU Production Volumes

Volume=Tonnes	July 2012 – June 2013	July 2013 – June 2014	July 2014 – June 2015	July 2015 – June 2016	July 2016 – June 2017
Total production of the product concerned	100	79	76	53	54
Production for SACU consumption	100	79	76	53	54
Other SACU producers' production for SACU consumption	100	79	76	53	54

Table 6.3(e): Productivity

Consolidated		July 2012 – June 2013	July 2013 – June 2014	July 2014 – June 2015	July 2015 – June 2016	July 2016 – June 2017
Total production volume	Tonnes	100	89	87	63	62
Number of employees (manufacturing only)	Headcount	100	96	81	77	75
Units per employee	T/Employee	100,00	93	108	82	83
Total employment	Headcount	100	95,81	68,84	64,65	63,02

Table 6.3(f): Capacity Utilisation

Volume = tonnes	July 2012 – June 2013	July 2013 – June 2014	July 2014 – June 2015	July 2015 – June 2016	July 2016 – June 2017
Capacity TPN CBC	100	100	100	100	100
Actual production TPN CBC	100	79	76	53	54
Capacity utilisation %	100	79	76	53	54
Rest of SACU capacity	100	100	100	100	100
Rest of SACU production	100	79	84	58	59
Rest of SACU capacity utilisation %	100	79	84	58	59

Commission's consideration

The Commission considered that in terms of the WTO Safeguard Agreement there is no requirement that state the period of investigation for injury must coincide with the surge in imports. However, for the purpose of providing further clarity on the causal link even though it is not a requirement, the Applicant was requested to submit the injury information for the period that coincides with the surge in imports. The additional injury information submitted confirms that the Applicant is experiencing serious injury in a form of: decline in sales volume, output, market share, productivity, utilisation of production capacity and employment for the period that coincide with the surge of imports i.e. 1 July 2013 to 30 June 2017.

6.4 Summary - serious Injury

Based on the above information, the evaluation of the injury information of the Applicant for the period 2012 to 2015 is shown in table 6.3.1.

Table 6.3.1: Serious Injury Indicators

Imports in absolute terms	Increased
Imports in relative terms	Increased
Sales volumes (Tons)	Decreased
Net Losses (R)	Decreased
Output (Tons)	Decreased
Market share (Applicant)	Decreased
Productivity (Units per employee)	Decreased
Utilisation of capacity (%)	Decreased
Employment (number of employees)	Decreased

Having assessed each injury factor and noting that there is a decline in the industry's performance as listed above, the Commission made a final determination that the domestic industry was experiencing serious injury.

7. CAUSAL LINK

7.1 VOLUME OF IMPORTS AND MARKET SHARE

In considering whether there was a causal link between the imports of the subject product concerned and the serious injury, the Commission considered all relevant factors including factors other than imports of the subject product that may have contributed to the SACU industry's injury.

The following table shows that from the period ending in June 2013 to the period ending in June 2017, there was an overall increase in imports, especially during the period of the surge. It also shows that the volume of imports reached their highest level in the period July 2016 to June 2017.

Table 7.1 (a): Import statistics

	July 2012 – June 2013	July 2013 – June 2014	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Total Import volumes	2 989	7 352	6 826	5 915	7 883

The following table compares the market share of the SACU industry with that of imports for the period ending in June 2015 to the period ending in June 2017:

Table 7.1 (b): Market share

	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Applicant sales volume (tons)	100	69	68
Estimated sales by other SACU producers (tons)	100	69	68
Estimated total volume of SACU sales by SACU producers (tons)	100	69	68
Volume of imports (tons) excluding own imports	6 826	5 361	7 115
Applicant market share %	100	86	69
Total market share held by SACU producers %	100	86	69
Market share held by imports %	100	107	116

These figures were indexed due to confidentiality using the year ending June 2015 as the base year

Commission's consideration

The Commission considered that although CBC imported the subject product in the periods ended June 2016 and June 2017, their imports were not significant enough to cause injury to the Applicant. These imports were excluded from import figures for purposes of the injury analysis. It further

considered that the market share of the SACU industry decreased by 31 index points from the period ending June 2015 to June 2017 whilst imports increased by 16 index points for the same period.

7.2 CONSEQUENT IMPACT OF SURGE OF IMPORTS

Table 7.2.1: Serious Injury Indicators (2012 -2015)

Imports in absolute terms	Increased
Imports in relative terms	Increased
Sales volumes (Tons)	Decreased
Net Losses (R)	Decreased
Output (Tons)	Decreased
Market share (Applicant)	Decreased
Productivity (Units per employee)	Decreased
Utilisation of capacity (%)	Decreased
Employment (number of employees)	Decreased

7.3 VIEWS OF THE SACU INDUSTRY'S CLIENTS REGARDING QUALITY, DELIVERY TIMES, SERVICE AND AFTER SALES SERVICE

- **Quality**

The Applicant stated that the quality of the Applicants' products is generally regarded as good, even for demanding applications. The products are tested and delivered to international specifications on material properties and tolerances. Several quality checks are systematically performed to minimize defective material.

- **Delivery times**

The Applicant stated that delivery times are regarded as good as most of the general items are sold from stock.

- **Service and after sales**

The Applicant stated that service is generally regarded as good and the Applicants' regularly interacts with their customers in this regard.

- **After sales service, including guarantees and warranties and technical training to customers**

The Applicant stated that a small but experienced technical support exist for customers regarding the product. The products concerned are fully guaranteed to the applicable international specification ordered. Prompt resolution of quality claims is ensured by personal attention from a dedicated team.

7.4 ATTITUDE OF THE WORKFORCE TOWARDS THE COMPANY

The Applicant stated that the attitude of the workforce is generally regarded as good and wage negotiations are conducted through a bargaining council.

7.5 FACTORS OTHER THAN THE INCREASED IMPORTS CAUSING INJURY

Table: 7.5

Strikes, go-slows or lock outs during the past twelve months	The Applicant stated that there were no strikes, go slows or lock outs during the past twelve months.
Contraction in demand or changes in patterns of consumption	The Applicant stated that there were no contractions in demand or changes in pattern of consumption.
Productivity of the domestic industry vis-a-vis that of the exporters	The Applicant indicated that there were no significant developments.
Development in technology	The Applicant stated that the productivity of the domestic industry is on par with that of the exporters.

Comments from NSS Fasteners

NSS Fasteners stated that "other factors detracting from establishing a causal link the surge in imports and the serious injury being suffered by the domestic industry, such as:

- *Labour strikes in 2011 and again in 2014 which effectively eroded 3 to 5 weeks of production;*
- *Steel supply at times was not consistent due to maintenance issues from our steel supplier;*
- *While electricity supply was at one stage a constraint, regarding current*

demand, ESKOM desperately needs to get back the huge loss of supply to maintain its viability and sustainability.”

Commission's consideration

The Commission considered that the market share of the SACU industry decreased by 31 index points from the period ending June 2015 to June 2017 whilst imports increased by 16 index points for the same period.

It further considered that although there are factors other than the surge in imports such as labour strikes, inconsistent steel supply and electricity supply constraint; these factors did not sufficiently detract from the causal link between the surge in imports and the serious injury suffered by the Applicant, as these factors were temporary and did not take place throughout the period of investigation.

Comments by Chinese exporters on the essential facts letter

Chinese exporters indicated that it seems that even protected by the extremely high level of customs tariff and anti-dumping measures in the past decades, the SA industry of fasteners still claims that they are in a significant overall impairment situation. They further indicated that the cause of alleged serious injury must be multi-factorial, and the SA industry's own factors shall be well analyzed by the ITAC.

Chinese exporters further indicated that the product concerned is just one category of product of the SA industry of fasteners. The increased imports of one portion of products cannot cause a significant overall impairment in the position of a domestic industry. They also indicated that the applicant failed to supply the information on other factors such the labour strikes; constraint of steel supply; and electricity supply in its application

Commission's consideration

The Commission reiterates its initial view point that although there are factors other than the surge in imports such as labour strikes, inconsistent steel supply and electricity supply constraint; these factors did not sufficiently

detract from the causal link between the surge in imports and the serious injury suffered by the Applicant, as these factors were temporary and did not take place throughout the period of investigation.

7.6 Summary - Causal link

Taking the above into consideration, the Commission made a final determination that although there were factors other than the surge in imports such as labour strikes, inconsistent steel supply and electricity supply constraint; these factors did not sufficiently detract from the causal link between the surge in imports and the serious injury suffered by the Applicant, as these factors were temporary and did not take place throughout the period of investigation.

8. PUBLIC INTEREST

Interested parties were invited through Notice No. 453 of 2018 of *Government Gazette* No. 41827 dated 10 August 2018 to make public interest submissions on or before 07 September 2018.

Provision for a public interest hearing is made in Article 3 of the Safeguard Agreement (SA), and SGR 20.

SA Article 3.1 provides 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 SGR provide as follows with regard to the final determination and public interest:

"20.1 In its final determination the Commission shall consider whether

- (a) the SACU industry is experiencing serious injury or threat of serious injury, as contemplated in sections 8 and 9;
- (b) there were increased imports;
- (c) any increase in imports can be attributed to unforeseen developments;
- (d) the increased imports resulted in serious injury or threat thereof to the SACU industry;
- (e) other factors contributed significantly to the serious injury; and
- (f) the imposition of a safeguard measure would be in the public interest".

20.2 "In determining whether a safeguard measure would be in the public interest the need to take note of the trade distorting effect of the surge in imports and the need to restore effective competition shall be given special consideration."

The trade distorting effects of the surge in imports and the need to restore effective competition are not defined or given any parameters against which

they should be considered. The two are therefore given the following interpretation:

- **Trade distorting effects of a surge**

The trade distorting effects of a surge can be taken into account following a determination that a surge in imports has caused serious injury to the domestic industry. This is in line with the fact that the surge has been such that trade is distorted resulting in unusually high level of imports coming to SACU than could be expected. Therefore the trade distorting effects of a surge in imports are manifested in the performance of the SACU industry during the POI. That is, whether or not the SACU industry is suffering serious injury as a result of a surge in imports. The consideration then has to do with how and the extent to which a safeguard action may be taken to rescue the domestic industry from those effects of a surge.

- **Restore effective competition**

In the case of restoration of effective competition as well it is submitted that this is a consideration that can be made following a determination that there has been a disturbance in the market, as a result of a surge in imports. The disturbance has had an effect of altering the competition in the market. The competition to be restored is competition between the domestic industry and the imports. Effective competition would be restored when the situation before the surge in imports is achieved to allow the industry to ready itself for the eventuality that even if safeguard measures are imposed, they will finally be lifted, and should be ready then to compete with imports. In this case therefore the aim would be to take a measure that it is expected would reduce the volume of imports to levels before the surge, which is the period ending in June 2013 import level.

A public interest hearing was held on 18 September 2018, wherein interested parties raised public interest issues that the Commission considered in making a final determination.

A summary of issues that interested parties raised regarding public interest is provided below.

8.1 Trade distorting effects of the surge in imports

Comments from interested parties

- *Chinese exporters indicated that there was no indication of a sharp, sudden, recent or significant increase of imports during the period of investigation.*
- *They further indicated that the increase of general rate of import duties from 15 per cent to 30 per cent ad valorem, in March 2017 has remedied the trade distorting effects.*
- *Chinese exporters also indicated that the current investigation was initiated on 20 April 2018. At that stage, it has been more than one year since the increased general tariff enforced, and the effect of increased tariff was available to the Commission. Objectively, based on customs data of SARS, such approach has significantly deterred the imports in the following year and there is nonexistence of emergency circumstances as stipulated in Emergency Action on Imports of Particular Products, Article XIX:1, GATT 1994. Neither of the initiation, nor the measure is justified.*

Comments from the Applicant

- *The Applicant indicated that the fastener industry continues to be threatened by the surge in imports. Most countries have introduced protective measures for their local economies and South Africa is lagging in this regard.*
- *Applicant also indicated that despite the increase in customs duties, imports continue and safeguards are therefore necessary.*

Commission's consideration

The Commission considered that from table 4.1 and graph 4.1 in chapter 4 of this report it is clear that imports after the imposition of the duty in March 2017 did not decrease, and instead continued at levels higher than in March 2017.

It can therefore be concluded that the increase in the customs duty did not deter imports.

8.2 Restoration of Effective Competition

Comments from Interested parties

- *Chinese exporters indicated that effective competition has been restored as there has been a decrease in imports following the increase of the import duties.*
- *Importers indicated that if the local manufacturers are granted an oligopoly, they will be free to set selling prices at will, thereby causing further financial harm to the current importers and pushing prices up even further.*
- *The importers further indicated that this protectionist model does not encourage the local suppliers to make their production processes more efficient. Instead it allows them a permanent buffer of 72.09 per cent which then eliminates international competition.*

Comments from the Applicant

- *The Applicant indicated that safeguard measures are the only effective measure to protect the fastener industry against disruptive “fair” competition.*
- *The Applicant further indicated that in this regard, the aim of the safeguard measure is to assist the industry in recovering from the serious injury caused by a surge in imports, which is in turn caused by the short-term structural distortion of oversupply in the global steel market. However, the positive impact of the duty is not limited exclusively to a domestic producer, but also to the trade and economy of South Africa as a whole.*
- *The Applicant also indicated that as the industry is recovering from the serious impact of imports:*
 - *Employment which has seen a significant decline and will start picking up again.*

- *Hundreds of millions of rands that exited the South African economy as a result of imports will now stay in the local economy, securing a stronger South Africa future.*
- *Estimated R60 million rand in increased locally sourced raw material sales annually.*
- *Estimated R125 million injection into domestic economy annually.*
- *This will serve as a catalyst for future action to protect industry from foreign intrusion (import penetration).*
- *In situations where industries have been completely decimated, it will lead to a revival of these products, as well as supporting industries.*
- *The Applicant further stated that since the imposition of the provisional safeguard measures the fastener industry has already seen an increase in orders placed which in turn has seen an increase in employment opportunities. Local manufacturers are also considering additional investment opportunities which all aligns with the development plan and the reciprocal commitments made during the tariff application.*
- *The Applicant also indicated that the provisional safeguard duties imposed has restored business confidence in a sector which for years had been in decline and on the brink of total collapse.*

Commission's consideration

- *The Commission considered that imports after the imposition of the custom duty in March 2017 did not decrease but instead continued at levels higher than in March 2017.*
- *The Commission further considered that the Applicant was experiencing serious injury in a form of: decline in sales volume, output, market share, productivity, utilisation of production capacity and employment for the period that coincide with the surge of imports i.e. 1 July 2013 to 30 June 2017.*
- *The Commission noted that the measure is put in place to temporally allow the domestic industry to adjust and be internationally competitive. It also noted that with time, the duties will be liberalised.*

8.3 Import Trends

Comments from Interested parties

- *Chinese exporters indicated that during the period of investigation, the overall absolute imports increased 15 per cent. Imports volume are always up and down, with average imports volumes of 8 039 tons per year in past 10 years, while the average imports volumes in during the period of investigation is 6 848 tons;*
- *Chinese exporters also indicated that there has been a decrease in imports following the increase of the import duties.*

Comments from the Applicant

The Applicant stated that despite the 15 per cent duties having been implemented, imports continue and safeguards are therefore necessary.

Commission's consideration

The Commission considered that from table 4.1 and graph 4.1 in Chapter 4 of this report it is clear that imports after the imposition of the duty in March 2017 did not decrease, but instead continued at levels higher than in March 2017. It therefore concluded that the increase in the customs duty did not deter imports.

8.4 Price Impact

Comments from interested parties

- *Chinese exporters indicated that over-protection to the Applicant is against SACU's public interests;*
- *Chinese exporters further indicated that the provisionally safeguard measure is 42.09 per cent, plus the 30 per cent customs duty increased in March 2017, the total duty is 72.09. In the May 2018, the average imports price of the product concerned was R23,216 per ton. After the preliminary determination, the rand value after the customs duty will be R39,953 per ton. They also indicated that this is a disaster for the downstream industry.*
- *Chinese exporters also indicated that on the 20th April, the date of initiation of the safeguard, the imported price was 1,000USD per ton. The price in*

ZAR was R12,040 per ton. On the 5th September, assuming that the price stays the same, 1,000USD per ton. The price in ZAR is now 15,424 per ton, 128.1% than 4 months ago.

- *Chinese exporters further indicated that higher priced imports and supply shortage will give SACU producers strong initiative for pricing. Stronger power of pricing will inevitably lead to substantial increase in prices for the SACU fasteners market.*
- *Chinese exporters also indicated that the devaluation of rand is around 22.6 per cent in past 4 months which will also greatly increase the price of the price of the product concerned.*
- *Importers indicated that raising the cost of the subject product with a further 42.02 per cent duty will have a catastrophic impact on end users (the public).*
- *Importers further indicated that given the 1 per cent VAT hike, the economic and current exchange rate, consumers are struggling. Any further financial increase will put an unnecessary burden on the consumer.*
- *Naamsa indicated that the additional costs involved in either increased duty or overhead would reduce the competitiveness of locally produced vehicles, both domestically and for the export market.*
- *Naamsa further indicated that the increase in the safeguard duty would adversely impact on the cost of other hardware products used by the automotive industry that are not available locally and ultimately the automotive industry's cost of doing business.*
- *Naamsa indicated that screw manufacturing is centralised in a number of suppliers globally for specific OEMs and as such economies of scale reduces the purchase price, localisation based on local volume would in most instances not be feasible.*
- *Naamsa provided an example of one OEM which indicated that the value of screws imported in a financial year amounted to R22,3 million and the higher safeguard duty would amount to R9,4 million which would ultimately end up with the consumer where vehicle affordability is imperative to achieve the targets and objectives under the current APDP and South African Automotive Masterplan 2021-2035.*

- *Naamsa further indicated that localisation might not be feasible given the exit costs that could potentially be charged by import suppliers.*
- *The Solidarity indicated that importers are setting the price below cost of local manufacturers.*
- *It also indicated that importers do not support local manufacturing.*

Comments from the Applicant

- *The Applicant indicated that it had conducted research which clearly indicatef that the inflationary impact of the safeguard measures will be negligible at worst, and cannot be a serious consideration when public interest is considered.*
- *The Applicant also indicated that with regards to price and the inflationary aspect raised by Naamsa, it would like to mention that the majority of fasteners in the automotive industry are imported with the vehicle parts as part of an import package, under a completely different code to the one affected by its safeguard application. Only the non-critical and aftermarket parts will be affected by these duties.*
- *The Applicant indicated that in a recent EU case on public interest i.e. zeolite a powder show cases that a cost increase to the consumer is not adequate to warrant the dissolution of safeguard measures based on public interest.*
- *The Applicant also indicated that an examination of international case law has indicated that even though the interests of downstream users are the most frequently involved in public interest considerations, the non-application of the measure due to the interests of downstream users is quite rare. The general tendency is that the investigating authorities give more weight to the interests of the Applicant.*
- *The Applicant further indicated that the gum rosin case in the EU is a rare example of non-application of trade measures due to the downstream industry's concern. The investigation showed that the measures would result in substantial cost increase for number of downstream industries, which provide jobs for a lot of employees. However, this finding alone was not sufficient in convincing the EU Authority to not imposing measures; it*

was supported by the findings that the measures would not be effective in removing injury to domestic industry. This case indicates the general tendency that “interests of the downstream industry are rarely decisive on its own, only when it is doubtful whether an industry will benefit from the measure, the negative impact on downstream users becomes important.”

- *The Applicant raised the question that is the gum rosin case finding applicable in this investigation? The Applicant indicated that the answer is clearly no. It indicated that in this investigation, by the Commission’s own admission, the imposition of safeguard measures will have a significant impact to stop the surge in imports which has caused the industry to suffer serious injury as a result thereof. Therefore, based on international case law, the public interest consideration of the applicant significantly outweighs the public interest consideration of the downstream industry or users.*

- *The Applicant further indicated that the following benefits are already evident:*
 - *The importers immediately increased its prices which will have a significant impact to stop the surge in imports which has caused the fastener industry to suffer serious injury as a result thereof.*
 - *More orders already being placed with local suppliers.*
 - *Already an increase in employment opportunities.*
 - *New investment opportunities already being considered.*
 - *Alignment with development plan and reciprocal commitments made in tariff application.*

8.5 Employment Impact

Comments from Interested parties

- *Importers indicated that 46 jobs will be lost in the distribution industry.*
- *The Solidarity indicated that employment in the fastener industry is down by 37 per cent in 2017 compared to 2013.*
- *The Solidarity further indicated that local industry is under pressure due to slow economic growth and large scale imports.*

- *The Solidarity also indicated that safeguard measure is a last resort to save the industry from total collapse.*
- *The Solidarity further indicated that if safeguard application is approved local fastener industry and value chain sectors employment will be increased. However, if it not approved the Solidarity indicated that AMSA may stop producing B&N quality steel resulting in job losses. Skilled labour in the fastener industry will be lost and the industry will be forced to close production plants, retrench workers and become importers.*
- *The Solidarity also indicated that local steel demand (AMSA) will increase which in turn enable for AMSA workers.*
- *The Solidarity indicated that the reciprocity commitments from the industry with regards to the tariff application will be voided and lost.*

Comments from the Applicant

- *The Applicant indicated that since the imposition of the provisional safeguard measures the fastener industry has already seen an increase in orders placed which in turn has seen an increase in employment opportunities.*
- *The Applicant also indicated that local manufacturers are also considering additional investment opportunities which all aligns with the development plan and the reciprocal commitments made during the tariff application.*
- *The reciprocal commitments are as follows:*
 - *Increase in total production volume*
 - *Expected increase in total investment (plant machinery buildings)*
 - *Increase in supply side measures (research and development; skills development and training; upgrading machinery and equipment)*
 - *Expected increase in total export (volume and value)*
 - *Expected increase in total employment for the period following imposition of tariff protection (skilled, semiskilled and unskilled)*
- *The Applicant indicated that the success and ultimate implementation of these commitments are intrinsically linked to the imposition of definitive safeguard duties.*

- *The Applicant further indicated that as committed in its development plan, the industry accepts responsibility and will work with all stakeholders to support the growth and development of the industry by preserving level-playing field, promoting investment particularly in a skilled workforce, and by creating a favourable business environment.*

Commission's consideration

- *The Commission considered that total employment decreased by 8.44 per cent during the period of investigation.*
- *The Commission also considered that if the safeguard duties were not imposed, the fastener industry would witness a further decline in employment, as the SACU manufacturers had already indicated that they would stop manufacturing and would instead import the subject product if this application is not approved by the Commission.*
- *The Commission considered that AMSA may stop producing B&N quality steel resulting in job losses. Skilled labour in the fastener industry will be lost and the industry will be forced to close production plants, retrench workers and become importers.*
- *This will also have devastating impact to the manufacturing sector which is already shedding jobs.*

8.6 Capacity, quality and safety considerations

Comments from interested parties

- *Importers indicated that the local manufacturers are unable to meet the demand - it cannot supply variety and volume.*
- *Naamsa indicated localisation of the screws is not feasible due to the safety critical nature of the screws used in the automotive industry additional resources would have to be spent on the site engineers and testing amongst other.*
- *Naamsa further indicated that current supply base in South Africa do not have the manufacturing tooling required, nor has a the pre-requisite safety testing been completed to potentially localise the less critical screws in the short term. They also indicated that even if the local suppliers invested in*

the tooling, they would not achieve optimal economy of scales to make the screws financial feasible.

Comments from the Applicant

- *The Applicant indicated that the South African manufacturers of the product concerned have the capability and ability to manufacture many if not all of the products allegedly not manufactured locally. It further indicated that this contention is supported by a list given to the Commission on 11 July 2018 by the Fastener Distributors' Association, where certain products not manufactured locally were highlighted. This list was forwarded to local manufacturers and the resounding feedback was that all the products listed were indeed available from local producers.*
- *The Applicant further indicated that it resolved to work with the Commission and SARS to support any request for a temporary rebate by interested parties affected where a product is not manufactured locally and where local capacity to manufacture such a product does not exist. It also indicated that this will minimise the unintended consequences of the safeguard duty whilst at the same time support the growth and development of the local industry.*
- *With regards to quality, the Applicant indicated that its products quality is generally regarded as good, even for demanding applications. The products are tested and delivered to international specifications on material properties and tolerances. Several quality checks are systematically performed to minimize defective material.*
- *With regard to Naamsa's comments, the Applicant indicated that Naamsa admits that they had governmental intervention which in turn led to a growth in the automotive market, yet they deny the plight of the domestic fastener industry. It further indicated that this is an extremely hypocritical stance to take, considering that without the government intervention, they would have also suffered, most likely to a lesser extent than the fastener manufacturing market will, as it is in danger of completely shutting down if the safeguard measures aren't enacted and aren't sufficient.*

- *The Applicant further indicated that NAAMSA further states that the domestic industry does not have the relevant equipment to manufacture fasteners and if they do, it is of low quality. This is an untrue statement, as there has never been any inspection or audit to verify this statement, and in fact, CBC is currently providing fasteners to Toyota and Ford, both exporting brand, which shows this to be untrue.*

Commission's consideration

- *The Commission considered that the SACU industry is currently operating at a very low capacity utilisation, given a platform it could increase its capacity utilisation and meet the demand.*
- *The Commission considered that for the models the Applicant is unable to manufacture rebate provisions could be created.*
- *The Commission made a final determination to recommend to the Minister of Trade and Industry to exempt imports for the motor industry under the APDP from the payment of the safeguard duty.*

Comments by Importers on essential facts letter

The importers indicated that they believe the Commission's intention to impose a definitive safeguard duty is not in the public interest considering the number of jobs that will be lost. They further indicated that at the public interest hearing they raised their concerns regarding the immediate job losses. They indicated that at present an importer has already put in motion the process of retrenching employees.

Commission's consideration

The Commission considered that by imposing the safeguard measure more jobs will be saved in the fastener industry.

9. SUMMARY OF FINDINGS

9.1 Unforeseen developments

The Commission made a final determination that there is sufficient evidence to indicate that there were unforeseen developments and that these unforeseen developments and the effect of the obligations incurred under the GATT 1994 led to the alleged surge of imports of the subject product.

9.2 Surge of imports

The Commission made a final determination that the surge in volume of imports is recent enough, sudden enough, sharp enough and significant enough.

9.3 Serious injury

The conclusion on injury indicators is as follows:

Table 9.3: Serious Injury

Imports in absolute terms	Increased
Imports in relative terms	Increased
Sales volumes (Tons)	Decreased
Net Losses (R)	Decreased
Output (Tons)	Decreased
Market share (Applicant)	Decreased
Productivity (Units per employee)	Decreased
Utilisation of capacity (%)	Decreased
Employment (number of employees)	Decreased

The Commission made a final determination that the information analysed indicates that the Applicant is experiencing serious injury.

9.4 Causal link

The Commission made a final determination that although there are factors other than the surge in imports such as labour strikes, inconsistent steel supply and electricity supply constraint; these factors did not sufficiently

detract from the causal link between the surge in imports and the serious injury experienced by the Applicant, as these factors were temporary and did not take place throughout the period of investigation.

9.5 Public interest

The Commission in making its final determination, took the following into account in with regard to public interest:

The information with regard to imports after the imposition of the duty in March 2017 indicate that imports did not decrease but instead continued at levels higher than in March 2017. The Commission therefore concluded that the increase in the customs duty did not deter imports;

The Applicant was experiencing serious injury in a form of: decline in sales volume, output, market share, productivity, utilisation of production capacity and employment for the period that coincide with the surge of imports i.e. 1 July 2013 to 30 June 2017;

The measure is put in place to temporally allow the domestic industry to adjust and be internationally competitive and the duties will be liberalised over the period of implementation;

Total employment decreased during the period of investigation. The Commission considered that if the safeguard duties were not imposed, the fastener industry would witness a further decline in employment, as the SACU manufacturers had already indicated that they would stop manufacturing and would instead import the subject product if this application is not approved by the Commission;

AMSA may stop producing B&N quality steel resulting in job losses. Skilled labour in the fastener industry will be lost and the industry will be forced to close production plants, retrench workers and become importers. This will also have devastating impact to the manufacturing sector which is already

shedding jobs; and

The SACU industry is currently operating at a very low capacity utilisation, given a platform it could increase its capacity utilisation and meet the demand.

The Commission in making its final determination found that it would be in the public interest to apply safeguards measures.

10. APPLICANT'S DEVELOPMENT PLAN

Pursuant to Section 21 of the SGR, a safeguard measure shall, amongst others, only be applied to facilitate adjustment of the SACU industry.

It is therefore required that the Applicant submits a plan indicating how it will adjust to increase its competitiveness.

10.1 Applicant's adjustment plan

The adjustment plan submitted by the Applicant highlighted the following measures it will put in place to improve competitiveness of the industry:

- Investment in new equipment and technology;
- Product development to rationalize the input material range to assist ArcelorMittal Newcastle with the consolidation of their production volumes and to optimise the product offering to the domestic market;
- Support the introduction of a prior import surveillance system, similar to that of Europe and the USA to deal with the influx of final products;
- Continuous training of SARS to improve customs control;
- Establishment of industry forum; and
- Support higher level designation/localization.

In addition to the above the Applicant indicated that it has made the following reciprocal commitments during the tariff application.

- Increase in total production volume;
- Expected increase in total investment (plant machinery buildings);
- Increase in supply side measures (research and development; skills development and training; upgrading machinery and equipment);
- Expected increase in total export (volume and value); and
- Expected increase in total employment for the period following the imposition of tariff protection (skilled; semiskilled; unskilled).

The Applicant however indicated that as was cited in its tariff application when the above commitments were made, the increase in the tariff to the bound rate was not enough. These commitments have always been subject to the imposition of additional safeguard protection on selected products of which screws are one.

Comments by the Importers on essential facts letter

The importers stated that the Applicants have still not provided an adjustment plan showing how they will improve their competitiveness, and that a document identifying additional products for safeguard action and working closer to competitors are not steps towards making the industry competitive. It was also stated that an adjustment plan is meant to demonstrate how the industry will adjust to the competitive landscape.

Commission's consideration

The Commission considered that an adjustment plan has been submitted by the Applicant, indicating how the industry will adjust to improve its competitiveness.

10.2 CONCLUSION

The Commission made a final determination that the Applicant submitted sufficient information in its plan to indicate that it will adjust to increase its competitiveness.

11. DEFINITIVE SAFEGUARD MEASURES

In terms of SGR 21.1, "A safeguard may be applied only-

- To the extent necessary to prevent or remedy serious injury or threat thereof; and
- To facilitate adjustment of the SACU industry."

SGR 21.5 states that, "the Commission may recommend a definitive safeguard measure in a form of:

- A customs duty;
- A quantitative restriction; or
- A combination of measure contemplated under paragraph (a) and (b)."

11.1 Unsuppressed selling price

The Commission noted that the Applicant is experiencing substantial price depression as well as price suppression and is currently selling products below the cost of production. The current selling prices of products are therefore not representative of selling prices which would allow the Applicant to make a reasonable profit.

For purposes of its preliminary determination, the Commission calculated the measure based on the price disadvantage between the Applicant's unsuppressed selling price and the landed cost of the imported product.

The Applicant's unsuppressed selling price was calculated using a 10 per cent profit margin as opposed to the 20 per cent margin requested by the Applicant in calculating an unsuppressed selling price. The 10 per cent profit margin was based on the Competition Tribunal ruling which stated that AMSA's EBITDA should be capped between 10 per cent – 15 per cent, as part of their settlement of past anti-competitive behaviour.

However, for the purposes of final determination the Commission noted the comments submitted by the Applicant relating to amongst others the depressed state of the industry and took into account that the duty will be

gradually phased down over three years. The Commission therefore decided to use a profit margin of 15 per cent in the calculation of the Applicant's unsuppressed selling price. The Commission is of the view that this is a reasonable profit margin to use.

Applicant's response to the Preliminary determination

The Applicant indicated it would like to propose that a reasonable profit margin calculation should be based on return on net asset (RONA) due to the fact that it is more appropriate as it deals with return on investment which is precursor to return on sales.

The Applicant further indicated that in order to substantiate its position it has conducted a research which indicated that any final determination should take into account the current adverse condition the industry finds itself in. Consequently, the duty has to be significant to redress the significant injury the industry is experiencing. Furthermore, in order to regain some market-share the industry will require a capital injection of sorts. Raw material, work in progress, finished stock, and the debtors book all need to be financed and any new cash injected into this cycle will only start to flow back into the bank, at best, a 120-days after spend.

The Applicant also indicated that the impact of relief based on a 10 per cent profit margin will not address the underlying cause of the serious injury being experienced by the industry. Rather, it will only offer temporary relief until such time as the safeguard measures are phased down at which point imports will again dominate the market.

The Applicant therefore calculated the reasonable profit margin as follows:

- *Year 1, based on RONA of 32%, EBIT on sales result is 21.1%*
- *Year 2, based on RONA of 32%, EBIT on sales result is 17.8%*
- *Year 3, based on RONA of 32%, EBIT on sales result is 15.2%*
- *Year 4, based on RONA of 32%, EBIT on sales result is 13.3%. According to the Applicant this is just above Hudaco's return on sales of 11%, well below Howden engineering return on sales of 18%.*

The Applicant further indicated that the above demonstrates why return on investment is key to determining a return on sales and why this must be the first determinant in establishing a reasonable return on sales. The Applicant also indicated that historically the industry has had dumping duties in place in ranges above 70% which is indicative of the range of protection required. Considering that there has to be a phase out of the duty, a higher start is reasonable so that in the final year some protection is still in place.

The Applicant also indicated that it reaffirms its position in the Application that a final safeguard duty of 88% is imposed. There is a short window of opportunity to redress these issues. The final duty should be higher to take this into consideration as well as the phase down period of the duty.

Comments by NSS on essential facts letter

NSS indicated that it has instructed Prof LM Brummer for an opinion on what a reasonable return on net assets would be in the fastener industry.

In his opinion Prof LM Brummer concluded that:

- *The Commission intends calculating the applicant's unsuppressed selling price by using a 15 per cent profit margin that is based on the submission by CBC of October 2018;*
- *He agrees that the appropriate base to start from to calculate an appropriate profit margin is the return on net assets. CBC seeks a return on net assets of 32 per cent. This is based on a return achieved by Hudaco Industries Limited and supported by unit trusts returns over a period of 20 years with premiums added for low tradability of investment and "all eggs in one basket";*
- *However in his view and based on his experience, returns obtained on long term unit trust investments cannot be compared to the returns achieved in the manufacturing industry for the following reasons:*
 - *Returns obtained on unit trusts are based on a portfolio of equity and other instruments and is therefore dependant on the degree*

of diversification of this portfolio

- *This diversification is then also the factor that determine the risk profile of the unit trust portfolio. The risk profile of a unit trust will therefore differ substantially from that of a manufacturing operation. This difference in risk profile will again determine what a reasonable return on net assets for the industry in question might be.*
- *Without some detail investigation it is not possible to express an opinion on a reasonable return on net assets for the industry in question. Some detail investigation on the cost structure, asset structure and asset utilisation, to name a few variables that effects this return, will have to be undertaken if one needs to quantify a reasonable return.*
- *To conduct such an investigation will take some time and it was not possible to do so within the time limits afforded to him.*

Response from the Applicant

The Applicant indicated that the proposal of the industry, outlined in its response of 17 August 2018, a 32 per cent Return on net assets is equal to a 21 per cent EBIT and would have resulted in a final safeguard duty of 77 per cent, which is close to the level asked for in their application.

The Applicant further indicated that it is clear that the Commission in its essential facts letter took cognizance of the depressed state of the industry and that manufacturers have incurred significant losses over the period of investigation. Contrary to the assertion of NSS that the 15 per cent stipulated in the essential facts letter is based on Return on net asset of 31 per cent. It seems to merely a move to the 15 per cent the Competition Tribunal ruling which stated that AMSA's EBITDA should be capped at.

The Applicant also indicated that although it might have preferred a higher margin, it feels that the Commission's approach establishes a fair middle ground.

Commission's consideration

Taking into account all comments regarding this issue, the Commission decided to make a final determination to a 15 per cent profit margin in the calculation of the Applicant's unsuppressed selling price, as it is considered to be a reasonable profit margin for the fastener industry.

11.2 Landed cost calculation

The Commission calculated the price per unit for each country for the period 01 July 2016 to 30 June 2017 and noted that these prices ranged between R9.00 and R4 227.43 per kilogram. The Commission is of the view that this clearly reflected that there were anomalies on the price per kilogram of certain countries. As examples, it was noted that imports from Israel where only 56.15 kilograms but were imported at a price of R237 370 per kilogram and that imports from the Philippines where only 1.6 kilograms but were imported at a price of R3 477 per kilogram. The Commission noted that the imports from China represented more than 85 per cent of the total imports during the period 01 July 2016 to 30 June 2017. The Commission is therefore of the opinion that Chinese FOB price will give a true reflection of import prices during the period 01 July 2016 to 30 June 2017.

The Commission therefore decided to use the average FOB price of China for purposes of the calculation of the price disadvantage as obtained from the import statistics. The Commission added 30 per cent for duties, freight, insurance and clearing costs to the FOB price to arrive at the landed cost.

11.3 Definitive safeguard measure

The Commission took note of the proposal by the Chinese exporters to use a quota as an alternative to a definitive safeguard duty. The Commission acknowledges that the Safeguard Regulations and the WTO Agreement do allow for other forms of measures to be considered in addition to a customs duty.

The Commission noted that although the European Union, United States of America and Canada have made use of quotas, the Commission has not made use of quotas in the past due to the administration burden and the cost implications thereof.

The Commission is of the opinion that the quota system poses the following challenges:

- A quota is useful for the management of trade volumes. However, it imposes a higher burden than a tariff system in terms of administration;
- It will require the implementation of an import licensing regime;
- It will require establishment of rules covering the distribution of quotas;
- It will require import surveillance i.e. monitoring reports on a quarterly basis;
- The competent authorities must ensure that its administration is carried out in accordance with the principle of non-discrimination as stated in Article XIII of the GATT;
- Safeguard agreement states that: "A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives."
 - In this investigation, the average import level of the last three years prior to initiation, is 6 874 tonnes;
 - The imports prior the surge were 2 989 tones; and
 - If the Commission were to use 6 874 tonnes as a quota, as prescribed by the Safeguard Agreement, the Commission is of the opinion that this quota will not have an impact as the imports will

still be higher than the period before the surge in imports (2 989 tonnes). A quota will in this case not be effective to prevent or remedy serious injury.

In view of the above mentioned challenges, the Commission decided not to deviate from the methodology of applying a safeguard duty.

The Commission determined the safeguard duty to be 50.54 per cent *ad valorem*.

11.4 Liberalisation of the safeguard measure

Section 21.8 of the SGR provides as follows:

"Where a definitive measure is imposed for a period exceeding one year the Commission shall recommend how the measure should be liberalised at regular intervals over the period that the measure is applied"

The Commission decided to recommend that the measure be liberalised the as follows:

Table 11.4: Liberalisation of the safeguard measure

Period	Rate of safeguard measure
03 Aug 2019 – 02 Aug 2019	50.54%
03 Aug 2019 – 02 Aug 2020	48.01%
03 Aug 2020 – 01 Aug 2021	45.61%

Comments of the importers on essential facts letter

The importers indicated that the proposed phased downs are really slow. They further indicated that it should be borne in mind that this duty is being imposed on top of normal 30 per cent duty, which provides the industry with more than 80 per cent protection. So they propose that whatever the final duty is be phased down evenly over 3 years. They indicated that this provides the industry with some additional protection whilst at the same time allowing competition to more rapidly enter the market and prevent a long-term anti-competitive situation developing.

Commission's consideration

The Commission is of the opinion that the proposed phase down establishes a fair middle ground considering the depressed state of the domestic industry. The Commission considered that the measure is put in place to temporarily allow the domestic industry to adjust and be internationally competitive

12. FINAL DETERMINATION

The Commission made a final determination that there were unforeseen developments and that these unforeseen developments and the effect of the obligations incurred under the GATT 1994, led to the increased volume of imports and that the surge in imports of other screws fully threaded with hexagon heads made of steel is causing serious injury to the SACU industry.

The Commission therefore made a final determination to recommend to the Minister of Trade and Industry that the following safeguard measures be imposed on imports of other screws fully threaded with hexagon heads made of steel:

Period	Rate of safeguard measure
03 Aug 2018 – 02 Aug 2019 ⁵	50.54%
03 Aug 2019 – 02 Aug 2020	48.01%
03 Aug 2020 – 01 Aug 2021	45.61%

The Commission further made a final determination to recommend to the Minister of Trade and Industry to exempt imports for the motor industry under the APDP from the payment of the safeguard duty. No other rebates should be allowed unless a request is received from ITAC. The rebate items in Schedule No. 3 and 4 that will be excluded from the payment of the safeguard duty are 317.06/00.00/03.00 and 460.460.17/00.00/03.00, and on condition that, the set screws classifiable under tariff subheading 7318.15.39 are eligible products under the APDP.

The Commission also made a final determination to recommend to the Minister of Trade and Industry that the measures should be imposed against imports from all countries, excluding imports from developing countries where the imports from each of these countries do not exceed 3 per cent of the total volume of imports or collectively for more than 9 per cent of total imports. These countries are listed below:

⁵ If the amount of the provisional payment is less than the amount of the safeguard duty imposed, the amount of the difference shall not be collected by the South African Revenue Service.

**LIST OF DEVELOPING COUNTRIES EXCLUDED
FROM THE MEASURES**

Country	Country
Afghanistan	Fiji
Albania	Gabon
Algeria	Gambia, The
American Samoa	Georgia
Angola	Ghana
Antigua and Barbuda	Grenada
Argentina	Guatemala
Armenia	Guinea
Azerbaijan	Guinea-Bissau
Bangladesh	Guyana
Belarus	Haiti
Belize	Honduras
Benin	India
Bhutan	Indonesia
Bolivia	Iran, Islamic Rep.
Bosnia and Herzegovina	Iraq
Brazil	Israel
Bulgaria	Jamaica
Burkina Faso	Jordan
Burundi	Kazakhstan
Cambodia	Kenya
Cameroon	Kiribati
Cape Verde	Korea, Dem Rep.
Central African Republic	Kuwait, the State of
Chad	Kosovo
Chile	Kyrgyz Republic
Chinese Taipei	Lao PDR
Colombia	Latvia
Comoros	Liberia
Congo	Libya
Cook Islands	Lithuania
Costa Rica	Macedonia, FYR
Côte d'Ivoire	Madagascar
Cuba	Malawi
Cura	Maldives
Djibouti	Mali
Dominica	Marshall Islands
Dominican Republic	Mauritania
Ecuador	Mauritius
Egypt, Arab Rep.	Mexico
El Salvador	Micronesia, Fed. Sts.
Eritrea	Moldova
Ethiopia	Mongolia

Country	Country
Nicaragua	Montenegro
Niger	Morocco
Nigeria	Mozambique
Pakistan	Myanmar
Palau	Nepal
Panama	South Sudan
Papua New Guinea	Sri Lanka
Paraguay	St. Lucia
Peru	St. Vincent and the Grenadines
Philippines	Sudan
Romania	Suriname
Russian Federation	Syrian Arab Republic
Rwanda	Tajikistan
Samoa	Tanzania
São Tomé and Príncipe	Thailand
Saudi Arabia, Kingdom	Timor-Leste
Senegal	Togo
Serbia	Tonga
Seychelles	Tunisia
Sierra Leone	Turkey
Solomon Islands	Turkmenistan
Somalia	Tuvalu
Uganda	Venezuela, RB
United Arab Emirates	Vietnam
Ukraine	West Bank and Gaza
Uruguay	Yemen, Rep.
Uzbekistan	Zambia
Vanuatu	Zimbabwe