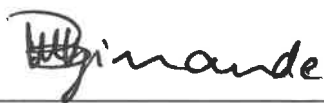


Report No. 589

**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: PRELIMINARY DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its **Report No. 589: 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: PRELIMINARY DETERMINATION**



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CHIEF COMMISSIONER

PRETORIA

17/07/ 2018

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: PRELIMINARY 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"). SAIISI is a non-governmental representative organization serving the collective interests of the primary steel industry in South Africa. TPN and CBC are major producers of other screws fully threaded with hexagon heads made of steel in the Southern African Customs Union ("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 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 should be 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.

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 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 Applicant also provided information

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.

for the period 01 July 2012 to 30 June 2014.

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 comments received from interested parties prior to making its preliminary 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 should be 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.

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:

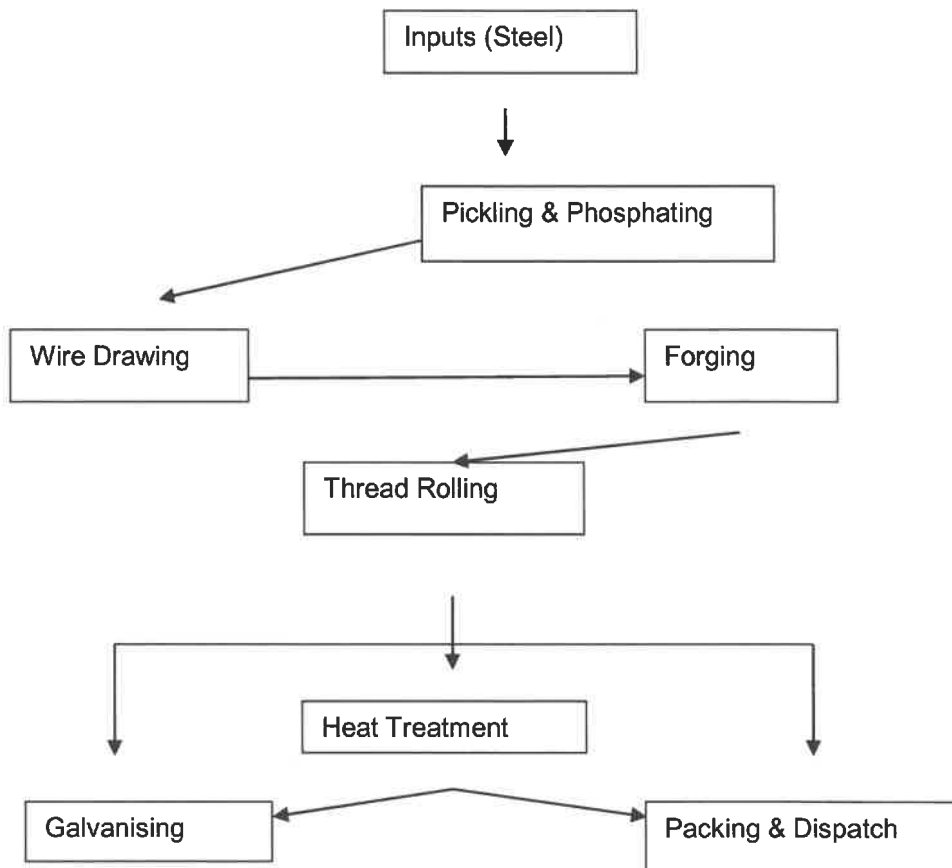
Table 2.1.2 (b): South Africa's Tariff Bindings for the subject product

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.

After considering all the above, the Commission made a preliminary 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 preliminary 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

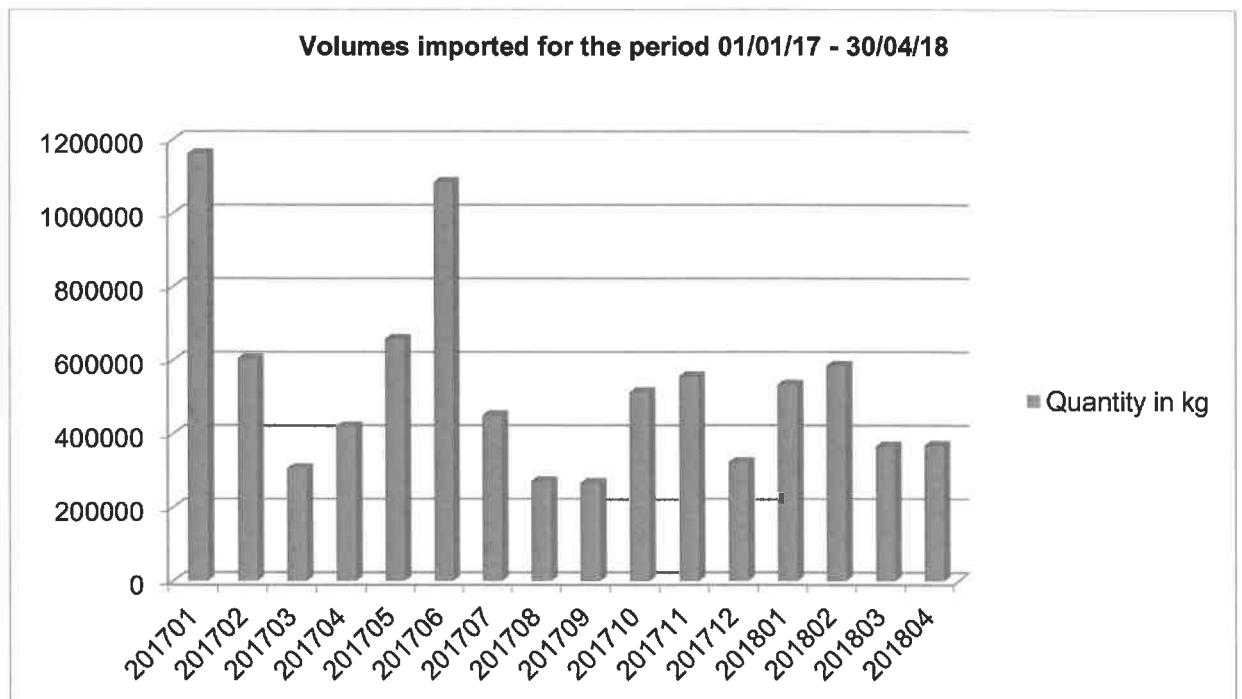
The following table shows the import statistics of the subject product for the period pre and post the imposition of the customs duty in March 2017:

Table 4.1: Import statistics - 7318.15.39

Period	Quantity in kg
2017/01	1 163 083.86
2017/02	605 908.3
2017/03	307 284.33
2017/04	420 661.4
2017/05	659 210.66
2017/06	1 085 966.72
2017/07	451 245.7
2017/08	272 622.33
2017/09	267 046.02
2017/10	514 122.04
2017/11	557 757.95
2017/12	323 349.91
2018/01	534 400.13
2018/02	586 319.91
2018/03	367 376.94
2018/04	369 673.54

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 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

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.

relevant precedents in the WTO dispute settlement cases as developments 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

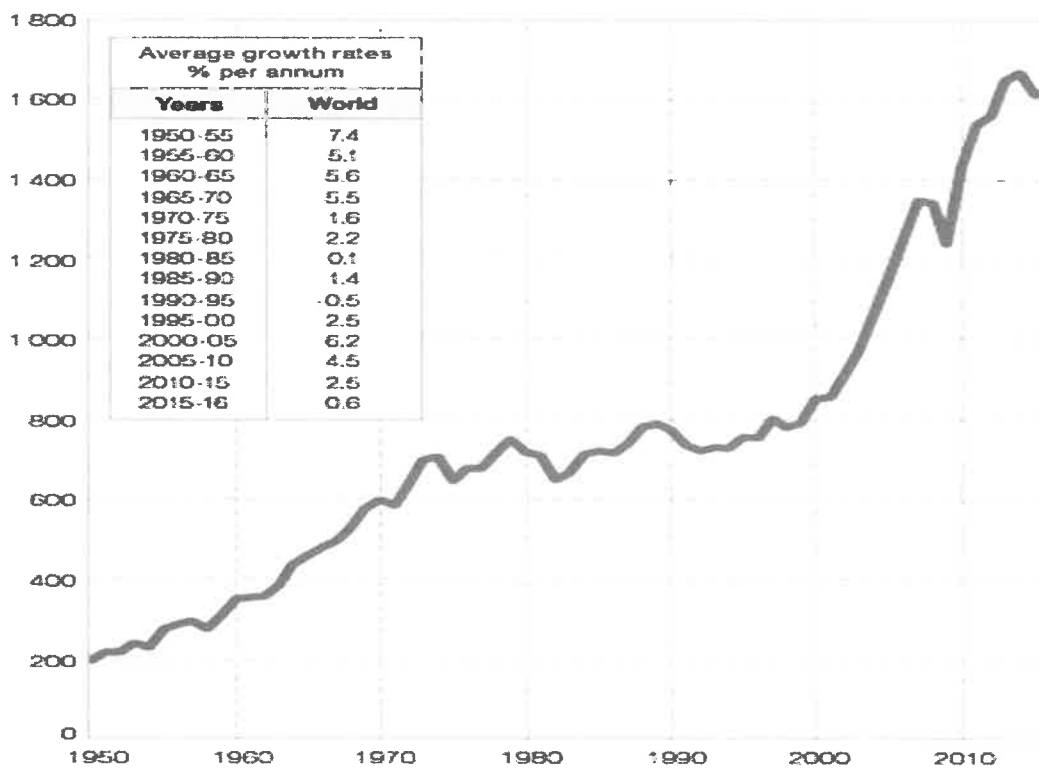
and the subject product globally, thus resulting in excess supply of the subject product.

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.”*

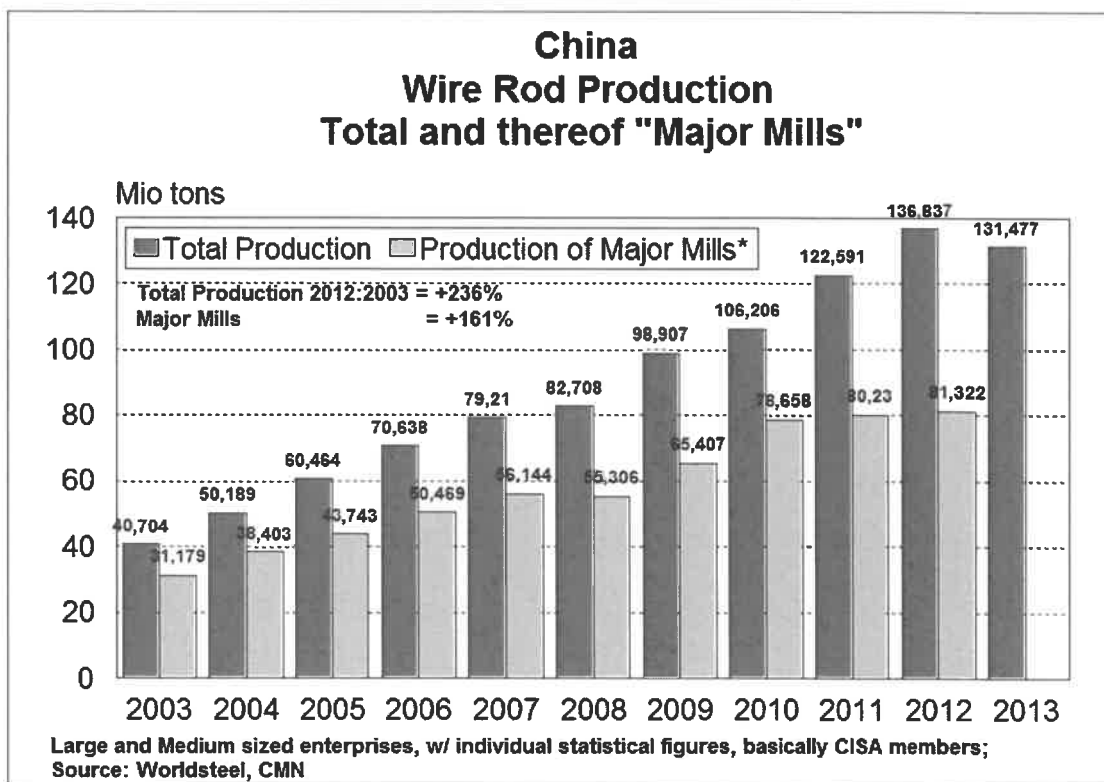
Graph 4.2(a): Global Crude Steel Production



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	120	161

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 20 index points from 2015 to 2016 and increased by 41 index points from 2016 to 2017. The rate of increase in total imports relative to total production volumes from 2015 to 2017 was 61 index points.

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 preliminary determination that there was a surge in the volume of imports of the subject product that is 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 domestic industry by production volume.

The Commission made a preliminary 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 only)	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 preliminary determination that the domestic industry is experiencing serious injury.

7. CAUSAL LINK

7.1 VOLUME OF IMPORTS AND MARKET SHARE

In considering whether there is 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.

7.6 Summary - Causal link

Taking the above into consideration, the Commission made a preliminary 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 suffered by the Applicant, as these factors were temporary and did not take place throughout the period of investigation.

8. SUMMARY OF FINDINGS

8.1 Unforeseen Developments and Effect of WTO Obligations

The Commission made a preliminary determination that unforeseen developments and the effects of the obligations incurred with regard to the subject product under the GATT 1994 led to the alleged surge in imports of the subject product, as per the provisions of Article XIX of GATT 1994.

8.2 Serious injury

The conclusion on injury indicators is as follows:

Table 9.2.1: 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 preliminary determination that the information analysed indicates that the Applicant is experiencing serious injury.

8.3 Surge of Imports

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

8.4 Causal link

The Commission made a preliminary 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. CRITICAL CIRCUMSTANCES

9.1 Requirements of Safeguard Agreement and SGR

In accordance with Article 6 of the Safeguard Agreement and SGR 17.1 a member may take a provisional safeguard measure pursuant to a preliminary determination in critical circumstances where delay would cause damage, which would be difficult to repair.

9.2 Information on critical circumstances

The volume of imports

Full year period 2013 to 2017: Volume of imports:

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, the increase from the period ending June 2013 to period ending June 2017 increased by 163 per cent 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.

Impact on the Applicant

1. Sales volumes decreased by 32 index points from 2014 to 2017.
2. Output decreased by 30 index points in total production from 2014 to 2017.
3. Market Share declined by 31 index points from 2014 to 2017.
4. Net losses remained even though they decreased from 2014 to 2017.
5. Employment decreased by 8 index points from 2014 to 2017.

9.3 Relief Sought

The Applicant requested the relief in the form of a safeguard duty in terms of section 11 (f) and 21.5 (a) of the Amended Safeguard Regulations. The quantum of relief required is such that the imported price of other screws fully threaded with hexagon heads made of steel is comparable to the unsuppressed price of the subject product by the applicant.

The Commission considered there were critical circumstances where a delay in imposition of provisional measures, would cause damage that would be difficult to repair. The Commission therefore made a preliminary determination to request the Commissioner for SARS to impose provisional payments.

10. PROVISIONAL MEASURES

10.1 In terms of the SGR 17.1, “The Commission may request the Commissioner for SARS, in terms of section 57A of the Customs and Excise Act, 91 of 1964, to impose provisional payments as soon as the Commission has made a preliminary determination that;

(a) there are critical circumstances where a delay would cause damage that it would be difficult to repair ; and

(b) there is clear evidence that increased imports have caused or are threatening injury.”

10.2 Duration of provisional measures

In accordance with section 17.2 of the SGR, the duration of the provisional measures shall not exceed 200 days. The duration of such provisional measures shall be counted as part of the overall time frame of the safeguard measures.

10.3 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.

The Commission decided to use 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 is 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. The Commission is of the view that this is a reasonable profit margin to use.

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.

The price disadvantage was calculated to be 42.09%.

11. PRELIMINARY DETERMINATION

The Commission made a preliminary determination that:

- There were unforeseen development;
- South African and other SACU member states have incurred obligations under the 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 should be imposed against all countries, except the following developing countries 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:

**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	Jamaica
Bulgaria	Jordan
Burkina Faso	Kazakhstan
Burundi	Kenya
Cambodia	Kiribati
Cameroon	Korea, Dem Rep.
Cape Verde	Kosovo
Central African Republic	Kyrgyz Republic
Chad	Lao PDR
Chile	Latvia
Colombia	Lebanon
Comoros	Liberia
Congo, Dem. Rep.	Libya
Congo, Rep.	Lithuania
Costa Rica	Macedonia, FYR
Côte d'Ivoire	Madagascar
Cuba	Malawi
Djibouti	Maldives
Dominica	Mali
Dominican Republic	Marshall Islands
Ecuador	Mauritania
Egypt, Arab Rep.	Mauritius
El Salvador	Mexico
Eritrea	Micronesia, Fed. Sts.
Ethiopia	Moldova
Nicaragua	Mongolia
Niger	Montenegro
Nigeria	Morocco

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