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**F. No. 22/03/2022- DGTR**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Trade Remedies**  
**4th Floor, Jeevan Tara Building, 5, Sansad Marg, New Delhi**

**FINAL FINDINGS**

**Case No. (SG) - 03/2022**

Dated: 29<sup>th</sup> May, 2023

**Subject: Bilateral safeguard investigation concerning imports of Ferro Molybdenum from the Republic of Korea under India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017.**

**A. BACKGROUND OF THE CASE**

1. F. No.22/03/2022-DGTR: Having regard to the India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 and Article 2.22 of the Comprehensive Economic Cooperation Agreement CEPA) between the Government of India and the Government of the Republic of Korea, The Indian Ferro Alloy Producers' Association, Premier Alloys & Chemicals Private Limited, Boon Metal & Alloy Corporation and Team Ferro Alloys Private Limited filed an application before the Director General of Trade Remedies (hereinafter referred to as the "Director General" or "Authority") in accordance with CEPA and Bilateral Safeguard Rules for initiation of a bilateral safeguard investigation and recommendation for suspension of tariff concessions concerning increased imports of Ferro Molybdenum (hereinafter referred to as the "the product under consideration" or "PUC" or "subject goods") from the Republic of Korea (hereinafter referred to as "Korea RP" or "subject country").
2. Based on *prima facie* evidence, the Director General initiated the investigation under Rule 4 to examine whether imports of Ferro Molybdenum constitute "increased imports", whether the same has caused injury to the domestic industry, and whether bilateral safeguard measures are required to be invoked (and if so, duration thereof). The notification initiating the investigation was issued vide Notification No. 03/2022 dated 30th September 2022 published in the Gazette of India.
3. The Director General has since completed the investigation and is recording the present findings for consideration by the Central Government.

**B. PROCEDURE**

4. The procedure described below has been followed with regard to the present investigation-
  - a. The Director General issued a public notice of initiation of investigation and the same was published in the Gazette of India, Extraordinary, dated 30<sup>th</sup> September 2022.

- b. The Director General sent a copy of the initiation notification dated 30<sup>th</sup> September 2022, to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, the Government of the Republic of Korea through the embassy of the Republic of Korea in India, the known producers and exporters in the subject country and known importers & consumers in India, and interested parties as mentioned in the application, in accordance with Rule 5(2) of the said Rules.
- c. Copy of the non-confidential version of the application filed by the applicants was sent to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, the Government of the Republic of Korea through the embassy of the Republic of Korea in India and the known producers and exporters in the subject country in accordance with Rule 5(3) of the Rules. A copy of the application was made available to interested parties, on request.
- d. The Director General forwarded a copy of the public notice initiating bilateral safeguard investigation to the following known producers/ exporters in Korea RP and provided them with an opportunity to provide relevant information by filing response to the questionnaire in the form and manner prescribed and making their views known in writing within thirty days in accordance with the Rules 5(4) of the Rules:
  - i. SeAH M&S
  - ii. Korvan Co. Limited
  - iii. Enertec Co. Limited
  - iv. Hwasung Metal Co. Limited
- e. In response to the questionnaire issued, SeAH M&S has filed the exporter's questionnaire response. The same has been considered for the purpose of the present final findings, to the extent considered relevant and necessary.
- f. The Director General sent questionnaires to the following known importers/users of the subject goods in India calling for necessary information in the form and manner prescribed and make their views known in writing within thirty days in accordance with Rule 5(5) of the Rules:
  - i. Advent Foundry & Allied Supplies Private Limited
  - ii. Asia Metals And Ferro Alloys
  - iii. Avtar Steel Limited
  - iv. Calcutta Metal Depot Private Limited
  - v. Chandan Steel Limited
  - vi. D.S Alloys Private Limited
  - vii. Dalini Metals and Alloys Private Limited
  - viii. ISMT Limited
  - ix. J Poonamchand and Sons Private Limited
  - x. JSW Steel Limited
  - xi. Kalyani Steels Limited
  - xii. Kothari Metals Limited
  - xiii. KR Metals LLP
  - xiv. Laxcon Steels Limited
  - xv. M M Ceramics and Ferro Alloys
  - xvi. Metal Alloys (India)
  - xvii. Metallic Ferro Alloys LLP
  - xviii. Namoh Alloys Private Limited
  - xix. Oswal Minerals Limited
  - xx. Phoolchand Bhagat Singh LLP

- xxi. Rajputana Stainless Limited
- xxii. RSM Super Metals LLP
- xxiii. Saarloha Advanced Materials Private Limited
- xxiv. Sanjay Commercial Company
- xxv. Singhania International Limited
- xxvi. SRC Chemicals Private Limited
- xxvii. Sunflag Iron and Steel Company Limited
- xxviii. Synergy Steels Limited
- xxix. Tata Steel Limited
- xxx. Team Remedies LLP
- xxxi. Viraj Profiles Limited
- g. In response to the questionnaire issued, the following importers/consumers have filed questionnaire responses:
  - i. Jindal Stainless Limited ('JSL')
  - ii. Jindal Stainless (Hisar) Limited ('JSHL')
  - iii. Saarloha Advanced Materials Private Limited
  - iv. JSW Steel Limited
  - v. Sunflag Iron and Steel Co.
- h. The Director General sent a questionnaire to the other known Indian producers of the product under consideration calling for necessary information in the form and manner prescribed and seeking their views in writing within thirty days. No other Indian producer has provided response to the questionnaire sent by the Director General. The applicants have filed their questionnaire response.
- i. The following parties have filed submissions during the course of the investigation. The same has been considered for the purpose of the present final findings, to the extent considered relevant and necessary: -
  - i. Government of the Republic of Korea
  - ii. Seah M&S
  - iii. Alloy Steel Producers Association of India ('ASPA')
  - iv. Jindal Stainless Limited
  - v. Jindal Stainless (Hisar) Limited
  - vi. JSW Steel Limited
  - vii. Saarloha Advanced Materials Private Limited
  - viii. Sunflag Iron and Steel Company Limited
- j. The Director General has considered 1<sup>st</sup> October 2021 – 31<sup>st</sup> March 2022 as the most recent period and 1<sup>st</sup> April 2018 – 31<sup>st</sup> March 2022 as the period of investigation.
- k. An oral hearing was held on 4th January 2023, in terms of Rule 5(6) of the Rules, where an opportunity was provided to all interested parties and the applicants to present their views. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any. The parties shared their non-confidential submissions with interested parties and were advised to offer their rebuttals.
- l. A list of interested parties was published on the DGTR website. The interested parties were advised to exchange the non-confidential version of their submissions with each other through email.
- m. Request was made to DGCI&S to provide the transaction-wise details of imports of the subject goods. The Director General has relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions.

- n. The submissions made by the interested parties during the course of the investigation, wherever found relevant, have been addressed by the Director General in this final findings.
- o. The Director General, during the course of the investigation, satisfied itself as to the accuracy of the information supplied by the applicants and the interested parties, which forms the basis of these final findings, to the extent possible and considered relevant & necessary.
- p. Wherever an interested party or the applicants have refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Director General has considered such party as non-cooperative and recorded these findings on the basis of the facts available.
- q. “\*\*\*” in the non-confidential version of the present findings represents information furnished by an interested party on a confidential basis and so considered by the Director General under the Rules.
- r. The Director General has used the following abbreviations in this final finding: -

SN	Abbreviation	Full description
1	FeMo	Ferro Molybdenum
2	Moly	Moly oxide
3	Applicants	Boon Metal & Alloy Corporation, Premier Alloys & Chemicals Private Limited and Team Ferro Alloys Private Limited
4	Applicant association	The Indian Ferro Alloy Producers’ Association
5	Interested parties	All interested parties except the applicant and applicant association.
6	Indian industry	Applicants, supporters and other producers of FeMo
7	POI	Period of investigation – April 2018 to March 2022
8	Most recent period	October 2021 to March 2022
9	Rules	India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017
10	CEPA	Comprehensive Economic Cooperation Agreement between the Government of India and the Government of Korea
11	DGCI&S	Directorate General of Commercial Intelligence & Statistics

### **C. SOURCE OF INFORMATION**

5. The period considered for the purposes of the present investigation, as notified in the notice of initiation is from 1<sup>st</sup> April 2018 to 31<sup>st</sup> March 2022 with the period 1<sup>st</sup> October 2021 to 31<sup>st</sup> March 2022 considered as the most recent period. Further, since the interested parties have raised concerns on whether imports have increased because of concessions, the Director General has also considered the import data from the period 2008-09 which is the period before the commencement of tariff concessions.
6. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide details of imports of the subject goods. The Director General has relied upon the DGCI&S data for computation of the volume and value of imports for



the period April 2008 to December 2022. It is seen that the product is transacted in different purities of Molybdenum. Therefore, the volume of imports has been determined on the basis of one equivalent Molybdenum content as examined below.

7. The rate of custom duty on the imports of FeMo after considering the concessions under the Comprehensive Economic Partnership Agreement (CEPA) is as follows. It is seen that the MFN rate on the product was lower than the tariff rate considered in the CEPA till the period 2012. The effect of tariff concession however started from 2014. The product is having a full tariff concession since 2017. For the purpose of the present findings, the period between 2009-10 and 2013-14 has been considered as “pre concession period”, the period between 2013-14 to 2015-16 as the “during the concession period” and the period from 2017-18 as the “post concession period”. The MFN duty and the rate of duty as per the Agreement and the relevant customs notification are as below.

SN	Year	MFN Rates	Korea RP	Custom notification no.
1	2009	5%	8.75%	152/2009 – Customs
2	2010	5%	7.50%	137/2010 – Customs
3	2011	5%	6.25%	123/2011 – Customs
4	2012	5%	5%	66/2012 – Customs
5	2013	5%	3.75%	54/2013 – Customs
6	2014	5%	2.50%	35/2014 – Customs
7	2015	5%	1.25%	60/2015 – Customs
8	2016	5%	0%	66/2016 – Customs

## **D. PRODUCT UNDER CONSIDERATION**

### **D.1 Submissions made by the interested parties**

8. The submissions made by the interested parties in respect of the product under consideration are as follows-
  - a. Indian industry is unable to maintain a uniform molybdenum content and provide a stable supply and after sale service in the market.
  - b. Indian industry is unable to meet the technical and metallurgical requirements of the user industry.
  - c. Product imported from Korea RP has higher ratio of roasted molybdenum which the Indian producers are not able to produce.
  - d. There is a difference in product manufactured by Indian industry and the imported product from the subject country because of different manufacturing process.
  - e. The product supplied by the domestic producers has high share of silicon, phosphorus or nitrogen content. For steel manufacturers, these should be lower.
  - f. Korean exporters are recognized for their high quality, reliability and consistency of supply with respect to the requisite molybdenum content of the product under consideration.
  - g. Various users in the present investigation have confirmed that Indian users have a preference for Korean products due to their high quality.

### **D.2 Submissions made by the applicants.**

9. The submissions made by the applicants in respect of the product under consideration are as follows -

- a. FeMo is an alloy which is formed by combining iron and Moly. It is a hardening agent and is found in many alloy steels that are heat treatable.
- b. FeMo comes in many grades, although predominantly it is produced in just two grades (which are defined in terms of purities), where the content of pure Moly is between 60% and 75%.
- c. Largest applications of FeMo are in ferrous alloys. Depending on the Moly content range, it is suited for machine tools and equipment, military hardware, refinery tubing, load-bearing parts and rotary drills.
- d. The steel industry is the largest user of FeMo accounting for approximately 80% of FeMo mined in the world.
- e. The Indian industry has supplied all the grades imported from Korea and there is no merit in the contention that technical and metallurgical requirements of the user industry are not met by Indian producers.
- f. The domestic industry has provided Moly content as required by the user industry. Biggest consumer in India, Jindal Stainless Limited and Jindal Stainless (Hisar) Limited are procuring their entire requirement from India and it shows that there is no issue with respect to quality supplied.
- g. The product produced by the Indian industry is a like article to the imported product.

### **D.3 Examination by the Director General**

10. The product under consideration in the present investigation is “Ferro Molybdenum” also described as FeMO in this notification, falling under the HS code 72027000 of the Customs Tariff Act, 1975.
11. FeMo is an alloy which is formed by combining iron and Molybdenum. FeMo is a hardening agent and is found in many alloy steels that are heat treatable. FeMo prevents corrosion in stainless steel, and when mixed with iron, it also strengthens and hardens into austenite. FeMo comes in many grades, although predominantly it is produced in just two grades (which are defined in terms of purities), where the content of pure Moly is between 60% and 75%.
12. The largest applications of FeMo are its use in ferrous alloys, and depending on the molybdenum content range, it is suited for machine tools and equipment, military hardware, refinery tubing, load-bearing parts and rotary drills. FeMo is also used in cars, trucks, locomotives and ships. In addition, FeMo is used in stainless and heat-resisting steel that are employed by synthetic fuel and chemical plants, heat exchangers, power generators, oil-refining equipment, pumps, turbine tubing, ship propellers, plastics and inside acid storage containers, tool steels, with a high percentage range of FeMo, are used in high-speed machining parts, cold work tools, drill bits, screwdrivers, dies, chisels, heavy castings, ball and rolling mills, rolls, cylinder blocks, piston rings and large drill bits.
13. The interested parties have submitted that the Indian industry suffers because of its inability to maintain uniform molybdenum content, supply stability after sale service and silicon, phosphorus or nitrogen content. The Director General notes that no evidence has been provided by these interested parties in support of their contention. It is seen that the Indian industry was earlier having 89% share in demand in the past (in 2015-16) and imports from Korea were extremely limited. It, therefore, does not appear that the present

increase in imports is due to the inability of the domestic industry to supply the subject goods as per the requirement of the downstream industry. Even in the present injury period, the market share of the Indian industry was 79% in 2019-20. It is also seen that one of the biggest consumers of the product in India, Jindal Stainless has sourced its complete requirements from the domestic market and has not resorted to imports. The Director General considered that it is not established that the surge in imports was due to the Indian industry's inability to provide the material required by the consumers.

14. It has been contended that the Korean producers supply product with more than 60% Moly content and the Indian industry cannot supply the same. No evidence has been provided by the interested parties to support their contention. The applicants have submitted evidence that they have produced and sold FeMo with both above and below 60% Moly content. Therefore, the contention of the interested parties cannot be accepted.
15. Like article has not been defined in the Bilateral Safeguard Rules. However, Rule 2 (2) of the Bilateral Safeguard Rules provides as follows:

*(2) Words and expressions used herein and not defined, but defined in the Customs Tariff Act, 1975 (51 of 1975) and the Customs Act, 1962 (52 of 1962) shall have the meanings respectively assigned to them in those Acts.*

16. Therefore, the Director General has relied on the definition of the like article as per the Customs Tariff (Identification and Assessment of Safeguard Duties) Rules which defines the like article as follows: -

*(e) "like article" means an article which is identical or alike in all respects to the article under investigation;*

17. On the basis of the information and evidence on record, the Director General holds that there is no known difference in the subject goods produced by the domestic industry and imported from Republic of Korea. The goods supplied by the domestic industry are comparable in terms of physical characteristics, manufacturing process, functions and uses, product specifications, distribution and marketing, and tariff classifications of the goods. The goods produced by the domestic industry are also technically and commercially comparable to the product being imported from Republic of Korea. The consumers have used and are using the two interchangeably. The Director General holds that the product manufactured by the applicants constitutes the like article to the subject goods.

## **E. THE DOMESTIC INDUSTRY**

### **E.1 Submissions made by the interested parties**

18. The submissions made by the interested parties in respect of the scope of the domestic industry are as follows –
  - a. There is a mismatch between the production data filed by the association and relied on by the applicants in the application.
  - b. The applicants should be asked to provide capacity of each domestic producer in India.
  - c. The reason for non-participation of other producers should be examined.

- d. There are a total of 15 producers of the product under consideration out of which only 3 participated in the investigation.
- e. The three applicant producers constitute 39-42% of the total production which is less than a major proportion.
- f. A list of all the producers in India has not been given by the applicants.
- g. Additional participation by 1 or 2 more producers would have made it a clear major proportion of more than 50% Indian production.
- h. Reason of non-participation of the remaining 12 domestic producers should be examined.
- i. Difference between capacity of the applicant domestic producers with that of other domestic producers show they are not representative of the domestic industry.
- j. Capacity of each domestic producer in India or estimates should be provided for the respondent to further comment on standing.
- k. Despite the support letters filed, performance of remaining 40% of the Indian production remains unaccounted for.
- l. WTO in case of US – Hot-Rolled Steel held that investigating authorities should either undertake examination of the industry as a whole or provide a satisfactory explanation as to why it is not necessary to examine the other parts of the domestic industry.
- m. Rule 4 does not provide for support by the Indian industry. The share of supporters in total domestic production should not be included while determining the standing of the domestic industry.
- n. Out of five producers who supported the application, only two are members of the association.

## **E.2 Submissions made by the applicants.**

19. The submissions made by the applicants in respect of the scope of the domestic industry are as follows –
  - a. The application has been filed by The Indian Ferro Alloy Producers' Association which is the apex association for the product under consideration. Around 10 producers of the product are members of the association.
  - b. The applicants have ascertained the total production based on the estimates of the association from the data collected from its members.
  - c. Share of Premier Alloys & Chemicals Private Limited, Boon Metal & Alloy Corporation and Team Ferro Alloys Private Limited is 42% of the total Indian production.
  - d. The application is supported by Lalwani Ferro Alloys Private Limited, Nortech Ferro Alloys Private Limited, Essel Mining & Industries Limited, Amar traders Limited and Rama Ferro Alloys & Finance Private Limited.
  - e. The supporters and the applicants constitute a 60% in the Indian demand.
  - f. Rule 2(f) of the Rules defines “serious injury” as ‘a significant overall impairment in the position of a domestic industry’. What is essential for the purpose of the present investigation is an examination of the economic position of the domestic industry. There is no legal requirement to examine the performance of the other Indian producers.
  - g. Annual Report of other domestic producers cannot be relied on to assess their performance with respect to the like article since they are all multi-product companies.
  - h. As regards the requirement of major proportion, reference is drawn to the Panel Report in case of India – Certain Measures on Imports of Iron and Steel Products

- wherein it was held that besides quantitative elements, the quality of information provided by the industry is also required to be seen.
- i. It has not been shown by the interested parties how the data provided by the domestic industry shows a different situation of the Indian industry than the one claimed by the applicants.

### **E. 3 Examination by the Director General**

20. Rule 2(b) of Bilateral Safeguard Measures Rules, 2017 states as follows:

*"the domestic industry" means the producers -*  
*(i) as a whole of the like or directly competitive goods operating in the territory of India; or*  
*(ii) whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;*

21. The application for initiation of the investigation was filed by The Indian Ferro Alloy Producers' Association along with the following producers: -
- a. Boon Metal & Alloy Corporation.
  - b. Premier Alloys & Chemicals Private Limited.
  - c. Team Ferro Alloys Private Limited.
22. Pursuant to the initiation of the investigation, the following other producers have supported the application. Further, these producers have provided information relating to their capacity, production and sales: -
- a. Amar Traders Limited.
  - b. Essel Mining & Industries Limited.
  - c. Lalwani Ferro Alloys Private Limited.
  - d. Nortech Ferro Alloys Private Limited.
  - e. Rama Ferro Alloys & Finance Private Limited.
23. The applicants submitted that considering the nature of the industry, there is no published information regarding the gross domestic production of the subject goods in India. None of the interested parties has submitted any evidence to dispute the claim of the domestic industry regarding the gross domestic production. It has been submitted by the other interested parties that the information provided by the association is different from the information considered in the standing table. The association has clarified that it does not maintain any production or sale record of its members and had given this information purely based on estimates and based on the experience of the key functionaries in the association. The association has estimated that the production of these producers is around 6000 MT. In order to examine if the applicants meet the requirement of standing, the Director General has considered the Indian production provided by the applicants as well as the association.
24. It is seen that 3 producers filed the application and 5 producers have provided data as supporters to the application.
25. It has been stated by the interested parties that only 3 producers out of 15 producers cannot be representative of the Indian industry. The Director General has examined the support letter filed by the other producers and it is seen that the capacities with the Indian

producers range from as low as 250 MT to as high as 2000 MT. It is seen that the applicant companies are the largest producers in India. While the collective production of 3 applicants constitutes 40% of the Indian production, the collective production of 5 supporting producers constitutes 20%, while the collective production of the remaining non-participating producers constitutes 40%. Six other producers have also filed support letter with the Director General. However, the support letters were received post filing of rejoinder submissions and at a very belated stage. These support letters have not been considered for this determination. It is also noted that the domestic producers in the present product are MSME companies.

26. The production estimated by the applicants has been considered for the purpose of ascertaining total Indian production. Director General has considered production reported by individual companies. Production of those domestic producers who are not before the Director General has been considered based on production assessed by the association. The company-wise production is as below: -

SN	Particulars	2018-19	2019-20	2020-21	Apr to Sep 21	Oct 21 to Mar 22
A	Applicants	2,572	2,183	2,376	1,397	1,107
1	Team Ferro Alloys Private Limited	***	***	***	***	***
2	Premier Alloys & Chemicals Private Limited.	***	***	***	***	***
3	Boon Metal & Alloy Corporation.	***	***	***	***	***
B	Supporters	1898	1266	1180	682	572
4	Lalwani Ferro Alloys Private Limited.	***	***	***	***	***
5	Nortech Ferro Alloys Private Limited.	***	***	***	***	***
6	Essel Mining & Industries Limited.	***	***	***	***	***
7	Amar Traders Limited.	***	***	***	***	***
8	Rama Ferro Alloys & Finance Private Limited	***	***	***	***	***
C	Other producers	1,719	2,344	2,383	1,112	1,119
D	Indian production	6,189	5,793	5,939	3,191	2,798
E	Share of applicants	42%	38%	40%	44%	40%
F	Share of supporters	31%	22%	20%	21%	20%

27. The share of the applicants in the Indian production in the period 2021-22 is 40%, whereas that of the supporters is 20%.
28. Several WTO decisions have been brought forward by the applicants and interested parties wherein the meaning of “major proportion” has been examined in anti-dumping measures. Article 4 of the Anti-dumping agreement provides as follows:

*4.1 For the purposes of this Agreement, the term "the domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that.....:*

29. The Director General notes that both the anti-dumping agreement and the bilateral safeguard rules define the domestic industry through the word “a major proportion”. Further, there are no WTO decisions which deal with the meaning of “major proportion” for fragmented industries in case of safeguard investigations. Therefore, the Director General has drawn reference to the WTO decisions in the case of anti-dumping measures to examine how the issue of “major proportion” has been dealt with by WTO.
30. WTO in the case of Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil held as follows: -

*7.341 In considering these different dictionary definitions, we note that the word “major” is also defined as "important, serious, or significant". Accordingly, an interpretation that defines the domestic industry in terms of domestic producers of an important, serious or significant proportion of total domestic production is permissible. Indeed, this approach is entirely consistent with the Spanish version of Article 4.1, which refers to producers representing "una proporción importante" of domestic production. Furthermore, Article 4.1 does not define the "the domestic industry" in terms of producers of the major proportion of total domestic production. Instead, Article 4.1 refers to producers of a major proportion of total domestic production. If Article 4.1 had referred to the major proportion, the requirement would clearly have been to define the "the domestic industry" as producers constituting 50+ per cent of total domestic production. However, the reference to a major proportion suggests that there may be more than one "major proportion" for the purpose of defining "the domestic industry". In the event of multiple "major proportions", it is inconceivable that each individual "major proportion" could – or must – exceed 50 per cent. This therefore supports our finding that it is permissible to define the "the domestic industry" in terms of domestic producers of an important, serious or significant proportion of total domestic production. For these reasons, we find that Article 4.1 of the AD Agreement does not require Members to define the "the domestic industry" in terms of domestic producers representing the majority, or 50+ per cent, of total domestic production.*

*7.342 There is nothing on the record to suggest that, in the circumstances of this case, 46 per cent of total domestic production is not an important, serious or significant proportion of total domestic production. Accordingly, we reject Brazil's claim that Argentina violated Article 4.1 of the AD Agreement by defining "the domestic industry" in terms of domestic producers representing 46 per cent of total domestic production.*

31. WTO in the case of European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China held as follows: -

*415. We recognize that obtaining information regarding domestic producers may be difficult, particularly in special market situations, such as a fragmented industry*

*with numerous producers. In such special cases, the use of "a major proportion" within the meaning of Article 4.1 provides an investigating authority with some flexibility to define the domestic industry in the light of what is reasonable and practically possible. The practical constraint on an authority's ability to obtain information regarding the domestic producers may also mean that, in such special cases, what constitutes "a major proportion of the total domestic production" may be lower than what is ordinarily permissible in a less fragmented market.*

*417. Finally, we turn to examine the interpretation advanced by the European Union that Article 5.4 of the Anti-Dumping Agreement provides important contextual guidance concerning the interpretation of the term "a major proportion" in Article 4.1 of that Agreement. Article 5.4, which contains the standing requirement for the initiation of an investigation, provides certain numerical benchmarks for evaluating whether a complaint to initiate an anti-dumping investigation has sufficient support by domestic producers. Specifically, Article 5.4 states that an investigation "shall not be initiated" unless the application "has been made by or on behalf of the domestic industry". It then provides that "[t]he application shall be considered to have been made 'by or on behalf of the domestic industry' if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support or opposition to the application." Furthermore, "no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry."*

32. WTO decision in the case of India – Certain Measures on Imports of Iron and Steel Products held as follows: -

*7.167. We note the cautionary words of the Appellate Body that, when the domestic industry is defined as the **domestic producers whose output constitutes a major proportion of total domestic production, if the proportion is not sufficiently high, then a qualitative element becomes crucial in establishing whether the domestic industry has been appropriately defined.** This situation may arise, for example, in the case of a fragmented industry with numerous producers, when there are practical constraints on an Director General 's ability to obtain information and therefore a "major proportion" may be lower than what would be ordinarily permissible in a less fragmented industry. This is not the situation in the present case. As noted above, the Indian competent Authority included in the definition of the domestic industry a proportion of the domestic producers' output that was high enough that it can constitute a substantial reflection of the total domestic production. Accordingly, the definition of the domestic industry would very likely satisfy both the quantitative and the qualitative elements of the definition in Article 4.1(c) of the Agreement on Safeguards. Japan has failed to demonstrate that, despite such high proportion, the domestic production as defined by the Indian competent Authority was not representative of the total domestic production in India.*

33. The Director General also notes that whereas the anti-dumping rules lay down a minimum requirement of 25%, no such requirement has been laid down in the case of



bilateral safeguard rules. Based on the WTO decisions and the Rules, a 25% share in total Indian production can be considered a “major proportion” in the case of a fragmented industry. However, the WTO decision additionally purposes a requirement on the Director General to ensure that the data provided by the participating producers does not reflect a distorted picture. Therefore, the performance of the applicants has been compared with the performance of the supporters and other producers.

SN	Particulars	2018-19	2019-20	2020-21	Apr to Sep 21	Oct to Mar 22
1	Capacity					
	Applicants	6,216	6,216	6,216	3,108	3,108
	Supporters	3514	3514	3514	1757	1757
2	Production					
	Applicants	2,572	2,183	2,376	1,397	1,107
	Supporters	1,898	1,266	1,180	682	572
3	Capacity utilisation					
	Applicants	41%	35%	38%	45%	35%
	Supporters	54%	36%	34%	39%	33%
4	Sales					
	Applicants	2,516	2,304	2,354	1,404	1,255
	Supporters	1,917	1,281	1,154	692	569

34. It has been contended that as per the annual reports of the other producers, their performance show improvement. The Director General notes that it has examined the annual reports of the other producers, and it is seen that they are multi-product companies and the annual reports reflect the performance of the company as a whole and the figures are not specific to the product under consideration and therefore, the contention cannot be relied upon.
35. Rule 2(b) of the rules defines the domestic industry as domestic producers as a whole or those domestic producers whose collective output constitutes a major proportion of the gross domestic production. The rules have not prescribed any mathematical figure with regard to the term major proportion. The Director General has therefore considered that any share in Indian production that is significant should be considered a major proportion. The production of participating applicant companies accounts for 40% of the Indian production. Further, the production of the supporting producers accounts for 20% of production in India. The applicant companies and the supporters together account for 60% of the production in India.
36. Having regard to the Rules, facts of the case and evidence on record, the Director General holds that the application satisfies the requirements of standing under the Rules and that the applicant companies constitute the domestic industry.

## **F. MISCELLANEOUS**

### **F.1 Submissions made by the interested parties**

37. Miscellaneous submissions made by the interested parties are as follows-
  - a. The applicants have claimed the entire adjustment plan as confidential.

- b. Despite being a mandatory requirement, the adjustment plan was absent in the application filed.
- c. Though the adjustment plan focusses on reduction of cost, there is limited scope for cost reduction due to low value addition in the product. The adjustment plan is unrealistic.
- d. The import data as per the application does not reconcile with Ministry of Commerce database.
- e. The applicants have not provided a complete list of the producers in India.
- f. Basic requirements of the CEPA have not been met as the applicants failed to demonstrate link between reduction of duty and increase in imports.
- g. The initiation notification does not even mention *prima facie* view on reduction of duties causing increased imports and such increase causing serious injury to the domestic industry.
- h. The duties were eliminated in 2017 and the applicants has been filed at such a belated stage.
- i. There is no legal or factual justification to choose a particular six-month period from the period of investigation.
- j. Safeguard measure is not warranted for 2 years due to insignificant nature of injury and unrealistic adjustment plan.
- k. The applicants have simply presented import volumes and prices without any consideration of the content of molybdenum therein.
- l. The information provided by the applicants does not take into account the possibility of increased imports due to change of import mix with the larger sales volume of products with low molybdenum content being imported now.
- m. Bilateral safeguard measures are extraordinary in nature and cannot be utilized as a shield of the industry.
- n. The contention of the applicants that the export price to India is lower as compared to export price to the rest of the world is incorrect as exports to India are of around 59-61% Moly content whereas the exports to other countries are of 65-67% Moly content.
- o. If the applicants are aggrieved by the pricing of Korean exports between India and other countries, bilateral safeguard measure is not the appropriate remedy to address issues relating to pricing.
- p. The applicants have requested that the import price and volume may be considered after due adjustments for Moly content. The applicants have not made any such adjustments in the application and has raised this issue at a belated stage.
- q. Hanwha Solutions Corporation referenced by the applicants as a producer of the subject goods is not a producer.
- r. Proposed adjustment plan of the applicants is impractical and lacks short-term plan for a 2-year period or less that is needed to make the domestic industry competitive.
- s. Formula based pricing of end product and formula-based purchase of raw material may be possible over a long-term period.
- t. The applicants have submitted that they will install new machineries and crushers to increase efficiencies, but they could have taken these steps in the last 10 years when the imports from Korea RP increased gradually.
- u. The applicants have not provided any evidence in support of their submission on exports from Korea RP.
- v. Request for safeguard measure for four years is unprecedented because they can be imposed for a period of 2 years only.

## **F.2 Submissions made by the applicants.**

38. Miscellaneous submissions made by the applicants are as follows-

- a. The adjustment plan of the domestic industry is a highly confidential document as it charts down the business strategy that would be followed by the industry to make them competitive against the subject imports.
- b. Basic raw material required for production of the product under consideration is Moly Oxide (also known as roasted molybdenum ore & concentrate) which is a relatively scarce resource. India and Republic of Korea do not have any resources of molybdenum and are wholly dependent on imports of roasted molybdenum ore & concentrate.
- c. Import of raw material attract basic customs duty of 2.5%. Current raw material price is more than Rs 2000 per KG and the incidence of customs duty of 2.5% comes to more than Rs 50,000 per tonne.
- d. Concessional customs duty applies in case of raw material imports from Chile and Thailand. Indian Industry is importing around 62% of its requirement from Chile and Thailand, whereas 38% requirement is still being met by the rest of the world. However, since Chile and Thailand are not the world's largest producers and suppliers of this product, and the producers therein have limited volumes, the Indian industry is not able to reap the benefit of customs duty concessions available to them in respect of Chile and Thailand.
- e. Korean Government has granted full duty concessions to the raw materials. This is not a natural advantage available to the Korean producers, but an artificial unfair disadvantage being faced by the Indian industry, leading to surge in Korean imports.
- f. The product under consideration is a high-priced product (selling in the range of Rs. 15 lakhs to Rs 20 lakhs per MT). The value addition from the raw material to the product under consideration is reasonable enough in absolute terms though low in percentage terms. The present customs duty difference between the Korean and Indian producers has created unfair advantage in favour of Korean producers and has led to surge in imports causing injury to the Indian industry.
- g. There are only two known producers of product in Korea, holding capacities far in excess to combined capacities of Indian industry. Capacity with SeAH M&S is 20,000 MT per annum which is more than that the total capacity of the Indian industry. Further, despite existing surplus capacities, as stated by the Korean Government, the Korean producers have further enhanced capacities. It is evident that these capacity enhancements have been done considering the Indian and global market opportunity, and at the cost of Indian industry. The Indian industry, which is already MSME, would become extinct.
- h. Import description shows gross and net weight of FeMo and Moly content. While certain transactions have been reported with the gross weight, other transactions have been reported with net weight of FeMo. Thus, importers have resorted to inconsistent way of reporting the import volumes. The DGCI&S has however consolidated the volume as reported by the importers. Such being the case, it was imperative to bring entire import volumes to one consistent level. Therefore, wherever gross weights have been reported, the applicants have considered the same. However, where net weight has been reported, applicants has converted it into gross weight, using Moly content mentioned in the import description.
- i. The contention of the interested parties that the initiation notification does not mention the *prima facie* view of the Director General on increased imports and injury is incorrect as the paras 5,6 and 7 clearly mention the *prima facie* view.

### F.3 Examination by the Director General

39. The present investigation was initiated by the Director General based on the data and information provided by the applicants, after reaching a *prima facie* satisfaction that there was sufficient evidence of increased imports causing serious injury to the domestic industry. Further, subsequent to the initiation, information has been sought from all the parties to the extent deemed necessary.
40. Rule 6 of the Rules deals with the confidentiality of information. Information provided by the interested parties on a confidential basis was examined with regard to the sufficiency of the confidentiality claims. On being satisfied, the Director General has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to interested parties. Wherever possible, parties providing information on a confidential basis were directed to provide the sufficient non-confidential version of the information filed on a confidential basis. The Director General made available the non-confidential version of the evidence submitted by various interested parties to all interested parties.
41. It has been contended that the duties were eliminated in 2017 and the application has been filed at a very belated stage. Article 2.21 of CEPA provides as follows: -

*“..... Transition period means a period for a good from the date of entry into force of this Agreement until **ten years** from the **date of completion of tariff elimination** or completion of tariff reduction, as the case may be for each good....”*

42. Further, Article 2.22 of CEPA provides as follows.

*“During the transition period only, if as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party alone constitute a substantial cause of serious injury or threat thereof to the domestic industry producing a like or directly competitive good, the Party may:*

*3 .... The passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination referred to in this footnote. If the increase in imports is demonstrably unrelated to such reduction or elimination, the determination referred to in this footnote shall not be made.”*

43. It is thus seen that the mere gap of time between the present surge in imports and the grant of concession per se cannot prevent an applicant from seeking redressal under the Rules and CEPA. The very purpose of providing transition period is defeated if it considers that the action can be invoked only in respect of surge in imports occurring immediately after grant of concession. Further, the CEPA specifically recognises that passage of time shall not prevent an applicant from seeking remedy against surge in imports. It is also seen that the imports of the product in fact started surging as soon as concession started, and the custom duty was completely eliminated. Further, while the

first increase in imports occurred during the period 2017-18, the imports further increased in 2020-21 and thereafter in most recent period. The imports increased significantly after the most recent period. It is therefore considered that the application has been filed in conformity with the provisions of CEPA and the Indian rules.

44. The interested parties have contended that there is no justification to choose a particular six-month period from the period of investigation to examine the imports and injury. The Director General notes that only the six-month period of Oct-21 to Mar 22 has not been considered for arriving at the final conclusion. The volume of imports has also been considered since the pre concession period, during concession, post concession and the most recent period to examine the trend of imports. Further, even the examination of the economic parameters has been conducted for four years since 2018-19.
45. As regards the submissions relating to difference in the import data between the data reported in the application and DGCI&S published data, the applicants had in its written submission stated that the weight reported as per DGCI&S published data cannot be relied upon, as certain import data shows gross weight of FeMo whereas other transactions report net weight. No interested party has provided any comments on the methodology provided by the applicants. Further, since any other interested party has not provided any methodology in this regard, the Director General has examined the transaction wise data procured and has arrived at the present determination based on the same. Analysis of the import data indeed shows different approach adopted by different importers in reporting the import volumes.
46. Some illustrative examples of imports from Korea for the month of September 2021 are given below which show how the volumes have not been reported at gross level. The Director General has considered the revised volume for the present investigation.

<b>BE No</b>	<b>Description</b>	<b>Quantity Reported in MT</b>	<b>Value Reported</b>	<b>Price as per reported volume</b>	<b>Quantity considered in MT</b>	<b>Price as per revised volume</b>
***	***	***	***	***	***	***
***	***	***	***	***	***	***

47. It is thus seen that it is the importers who have used inconsistent methodology for reporting the import volumes. While some transactions report the gross weight of the Molybdenum content, others report the net weight of Moly content. The domestic industry had converted various transactions into equivalent Molybdenum weight in order to ensure uniformity. The Director General has adopted the following methodology for the purpose of ascertainment of the volume of imports: -
  - a. Wherever gross weight has been reported, the same has been considered as it is and adopted as the weight of material imported.
  - b. Where the net weight has been reported as the import volume, the Director General has converted it into gross weight, by dividing the volume by the Molybdenum percentage. The same has been treated as the gross weight of the material imported.
48. As regards the contention that the comparison between exports price to India and the rest of the world is incorrect, the Director General notes that no evidence has been brought forward by the interested parties in support of the argument that the exports to India and

the rest of the world are of different Moly content. However, since the present investigation is a safeguard investigation, the comparison between the export prices to India and the rest of the world is not relevant for the final determination.

## **G. INCREASED IMPORTS FROM KOREA RP**

### **G.1 Submissions made by the interested parties**

49. The submissions made by the interested parties in respect of the increased imports are as follows: -
- a. Basic requirements of the CEPA have not been met as the applicants have failed to demonstrate link between reduction of duty and increase in imports.
  - b. There is no sudden and recent surge in Korean imports. WTO had in case of Argentina Footwear and US – Steel Safeguards held that the increase in imports must be recent, sudden, sharp and significant.
  - c. It is not sufficient to compare level of imports at the beginning and at the end of the investigation period. More weightages should be given to the most recent period.
  - d. There is no causal link between tariff reduction and increase in imports.
  - e. Recent increase in imports is not due to reduction in customs duties from 2010 to 2017.
  - f. Import data in a single quarter cannot be relied on for increase in imports as held in the WTO Panel Report in India – Certain Measures on Imports of Iron and Steel Products.
  - g. The increase in imports in Q3 of 2021-22 was due to deferred imports due to covid. There is no increase in imports in 2021-22 compared to 2020-21.
  - h. Q4 of 2021-22 shows a decline in imports in absolute terms and relative to domestic production. Increase in import in one quarter (Q3 of 2021-22) is insufficient.
  - i. Director General should examine existence of link between surge in imports and reduction/ elimination of tariffs. There is no correlation between the reduction in tariffs and import volumes.
  - j. Director General should exclude the imports made by the applicants while evaluating imports. The petition does not disclose whether any such imports were made.
  - k. Fluctuation in import volumes makes it clear that increase in imports is neither “sudden” nor “recent”. Imports have fallen in the last quarter and increase in a single quarter is insufficient.
  - l. Appellate Body in the Argentina – Footwear held that an increase in imports does not automatically show that the product is being imported in such increased quantities to cause or threaten to cause serious injury to the domestic industry.
  - m. The applicants’ claim of surge in imports in Q3 and Q4 of 2021-22 is not supported by latest quarterly data. Imports have infact decline in quarter 4.
  - n. The increase in imports in Q3 of 2021-22 was due to deferred imports due to covid. There is no increase in imports in 2021-22 compared to 2020-21.
  - o. Despite the reduction of duties every year starting from 2010, the import volumes did not increase from 2010 to 2017.
  - p. The increased imports are because of the increasing demand of steel in India and not due to any tariff concession.
  - q. The steel plants in India were either non-operational or partially operating in quarter 1 of 2021-22. The imports of FeMo were deferred during this quarter and there was an increase in imports in the quarter 3 of 2021-22.

- r. Import tariff became 0% in 2016-17 but there was no corresponding increase in import volumes from the Republic of Korea.
- s. Import volumes have remained consistently below the domestic sales which shows that the increase in imports is not sudden, sharp and significant.
- t. No evidence has been provided by the applicants in support of their claim of increased imports in the post period of investigation.
- u. Share of exports from the Republic of Korea RP to India and the rest of the world is inconsequential for the purpose of present finding.
- v. Increase in imports over a period of eleven years should be considered as normal and gradual increase. Demand of the subject goods has increased during this period because the production of alloy steel in India has increased.
- w. “Increased imports” do not mean ‘any increase in imports,’ rather it should be the “recent past” based on the following report of the Appellate Body in Argentina – Footwear (EC).
- x. Despite Jindal Stainless Limited and Jindal Stainless (Hisar) Limited procuring entire requirement from the Indian industry, they are opposing measures. This shows that purchasing decisions of consumers are not impacted by tariff concessions.
- y. Concessions cannot be a cause of injury as during the period from 2010 to 2017 despite the continuous reduction in the custom duties, volume of imports has been constant.
- z. There is a non-linear movement in the import volumes which shows that showcases that the increase in imports is not on account of tariff concessions under the Korea-India CEPA but due to other non-price factors.
- aa. Imports have increased because of capacity expansion by steel producers.

## **G.2 Submissions made by the applicants.**

50. The submissions made by the applicants in respect of increased imports are as follows-
  - a. The Director General may examine increased imports before and after tariff concession in order to ascertain whether there is increased imports and whether such increased imports are due to tariff concessions.
  - b. Imports were negligible in quantity when tariff concessions were first granted. As concessions increased, imports from the subject country increased.
  - c. Imports first increased in 2017-18 when custom duties were reduced to nil and thereafter in the most recent period. Imports have surged again in the current year, after the present period of investigation.
  - d. Despite more than sufficient capacities for the product in India, the product is being imported from Korea RP to the extent of almost 1/3rd of the demand for the product in the country.
  - e. Share has increased from almost zero percent in pre-concession period. Market share of Korean imports was 16% when duties were reduced to zero% and they now hold 36% share in the demand. Market share of the Korean imports has increased by more than 50% in the last 4 years.
  - f. Imports from Korea RP were only 16% in relation to Indian production when the concessions were granted but now are more than 60%.
  - g. Before concessions were given, 98% of import requirement in Indian market was met by countries other than Korea. Korea now commands 94% of India’s imports thus practically eliminating all other countries.

- h. Korea is not the largest exporter of the subject goods globally. With no significant consumption in the Republic of Korea, it is not even the largest producer of the subject goods. Korea holds no natural advantage in this product.
- i. Global exports from Korea RP have increased by only 13 times over the period, from 1,797 in 2009-10 to 23,287 in the year 2021-22. By contrast, Korea's exports to India have increased by almost 180 times.
- j. Article 2.22 of the India-Korea CEPA provides for imposition of bilateral safeguard measure in the event of imports in "increased" quantities. The requirement under the rules is not a consistent and continuous increase in imports. It is imports in "increased quantities".
- k. WTO in case of United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea held that it may not necessarily be the case that most recent trends are most significant trends and the word "recent" need not require that imports be increasing right up to the date of the determination.
- l. While the interested parties have argued that the increase in imports is not due to reduction in custom duty, they have brought forward no material to show other reasons for increased imports. Further, Article 2.22 of the CEPA Agreement makes it clear that the reduction of custom duty need not be the sole reason for increased imports.
- m. Out of the three participating companies, only one of the companies has imported insignificant volumes. While there is no such requirement under the law to exclude such imports, even if these imports are excluded, the data shall still show "increased imports" within the meaning of the Rules. The increased imports are not because of imports by one of the domestic producers.

### **G.3 Examination by the Director General**

51. The CEPA provides for an increase in imports as a basic prerequisite for the application of a bilateral safeguard measure. Further, to determine whether the imports of the product under consideration have "increased in such quantities" for the purpose of applying a safeguard measure, the rules require an analysis of the increase in the imports, in absolute terms or in relation to domestic production. Article 2.22 of CEPA provides as follows: -

*"During the transition period only, if as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party **in such increased quantities**, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party alone constitute a substantial cause of serious injury or threat thereof to the domestic industry producing a like or directly competitive good, the Party may*

- (a) *suspend further reduction of any rate of customs duty on the good provided for under this Agreement; or*
- (b) *increase the rate of customs duty on the good to a level not to exceed the lesser of:*
  - (i) *the MFN applied rate of customs duty on the good in effect at the time the measure is taken; and*
  - (ii) *the MFN applied rate of customs duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement."*



52. Rule 2 (c) of the Rules defines increased imports as follows: -

*(c) “increased imports” includes increase in imports from the Republic of Korea whether in absolute terms or relative to domestic production*

53. With regard to the nature of the increase in imports, the Appellate Body in Argentina—Footwear (EC), in contrast to the Panel, held that the increase in imports must have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. Relevant extract therefrom is as follows:

*“[W]e recall Article 4.2(a)’s requirement that ‘the rate and amount of the increase in imports’ be evaluated. In our view this constitutes a requirement that the intervening trends of imports over the period of investigation be analysed. We note that the term ‘rate’ connotes both speed and direction, and thus intervening trends (up or down) must be fully taken into consideration. Where these trends are mixed over a period of investigation, this may be decisive in determining whether an increase in imports in the sense of Article 2.1 has occurred. In practical terms, we consider that the best way to assess the significance of any such mixed trends in imports is by evaluating whether any downturn in imports is simply temporary, or instead reflects a longer-term change.*

*131. [T]he determination of whether the requirement of imports ‘in such increased quantities’ is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year — or five years ago. Again, and it bears repeating, not just any increased quantities of imports will suffice. There must be ‘such increased quantities’ as to cause or threaten to cause serious injury to the domestic industry in order to fulfill this requirement for applying a Safeguard measure. And 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’.”*

54. The Panel on US — Wheat Gluten, interpreted the phrase “in such increased quantities” as follows:

*“8.31 [A]rticle XIX:1(a) of the GATT 1994 and Article 2.1 [of the Agreement on Safeguards (“SA”)] do not speak only of an ‘increase’ in imports. Rather, they contain specific requirements with respect to the quantitative and qualitative nature of the ‘increase’ in imports of the product concerned. Both Article XIX:1(a) of the GATT 1994 and Article 2.1 SA require that a product is being imported into the territory of the Member concerned in such increased quantities (absolute or relative to domestic production) as to cause or threaten serious injury. Thus, not just any increase in imports will suffice. Rather, we agree with the Appellate Body’s finding in Argentina — Footwear Safeguard that the increase must be sufficiently recent, sudden, sharp and significant, both quantitatively and qualitatively, to cause or threaten to cause serious injury.”*

55. In *US — Line Pipe*, the Panel found, in a statement not reviewed by the Appellate Body, 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”:

*“[T]here 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 Director General’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 the investigated product ‘is being imported’ at such increased quantities at the end of the period of investigation, the requirements of Article 2.1 are met.”*

56. The analysis of the increased imports of the product under consideration has been conducted in light of the above-mentioned rules and WTO jurisprudence.
57. The Director General considers that the rules do not prescribe that there should be a consistent continuous increase in import up to the most recent period. The WTO panel in the *US — Line Pipe* found that there was no requirement of a determination that imports are continuously increasing. The only requirement is that the imports should have increased in the recent past.
58. The interested parties have contended that the volume of imports has not increased with an increase in tariff concession. The Director General has therefore examined the imports of the product under consideration before tariff concession, during the period of tariff concession and post-elimination of tariff.
59. As regards the contention that the imports made by the applicants should be excluded while ascertaining the import volume into India, the table below shows the volume of imports made by the applicants: -

SN	Year	Boon Metal & Alloy Corporation	Premier Alloys & Chemicals	Team Ferro Alloys	Imports from Korea in MT
1	***	***	***	***	2,361
2	***	***	***	***	2,967
3	***	***	***	***	2,919

60. It is seen that the volume of imports made by the applicants is insignificant considering gross imports from Korea and Indian demand for the product. The rules do not provide for exclusion of either a domestic producer who is importing the product, or the volume

of imports made by such domestic producer. No reason has been adduced by the interested parties to justify the exclusion of the domestic producer or the volumes of imports made by such domestic producer. The Director General has neither excluded the domestic producer from the scope of the domestic industry, nor the volume of such imports made by the domestic producer.

61. The Director General considered imports from Republic of Korea and other countries over the relevant period. In view of the arguments of the interested parties that the Director General should examine whether imports have surged as a result of tariff concession, the Director General examined the volume of imports before the start of the concession, and from 2009-10. The Director General also notes that the interested parties have not submitted any evidence to show any other reason for increase in subject imports. Further, since the interested parties contended that the surge in imports was only in one quarter, the Director General examined the volume of imports after March 2022 and for the period up to December 2022. Relevant information regarding the volume of imports over the years is given below.

a. Imports in absolute terms

62. The information regarding imports in absolute terms over the years is given below.

SN	Year	Imports into India in MT			Customs duty
		Korea RP	Other countries	Total Imports	Korea
1	2008-09	93	838	931	5%
2	2009-10	30	1,296	1,326	5%
3	2010-11	473	605	1078	5%
4	2011-12	551	768	1319	5%
5	2012-13	474	314	788	5%
6	2013-14	732	183	915	4.69%
7	2014-15	657	678	1335	3.44%
8	2015-16	728	123	851	2.19%
9	2016-17	716	89	805	0.94%
10	2017-18	1,598	83	1681	0%
11	2018-19	1,957	402	2359	0%
12	2019-20	2,361	310	2671	0%
13	2020-21	2,967	190	3157	0%
14	Apr 21 – Sep 21 (A)	1,872	280	2152	0%
15	Oct 21 – Mar 22 (A)	3,966	404	4370	0%
16	Apr 22 – Dec 22 (A)	4,279	1,330	5,609	0%

63. It is seen that: -
- Before the concessions started, the import volumes in 2009 were only 26 MT. However, during the period when the custom duties were in force, the volume of imports was in the range of 400-500 MT.
  - The imports doubled in 2017-18 when the custom duties were reduced to nil.

- c. The imports have further increased to more than 3500 MT in the most recent period of October 2021 to March 2022.
  - d. The Director General has additionally analysed the imports from April to December 2022 (the period after the most recent period) and it is seen that the imports have continued to increase.
64. The Director General notes that consideration of imports over the longer period covering the pre-concession, during concession, post-concession, most recent period and the period after the most recent period shows a significant surge in imports.
- b. Imports from Korea RP in relative terms.
65. The information regarding imports in relative terms over the years is given below. The Director General examined the subject imports in relation to gross imports in India, in relation to Indian production and consumption.

SN	Particulars	Imports from Korea in MT	Imports in relation to		
			Indian Demand	Indian Production	Total Imports
1	2018-19	1,957	23%	32%	83%
2	2019-20	2,361	28%	41%	88%
3	2020-21	2,967	33%	50%	94%
4	Apr 21 – Sep 21 (A)	1,872	22%	29%	87%
5	Oct 21 – Mar 22 (A)	3,966	39%	71%	91%

66. It is seen that: -
- a. Imports in relation to Indian demand have increased from 23% in 2018-19 to 39% in the most recent period.
  - b. Imports in relation to Indian production have increased from 32% to 71% in the most recent period.
  - c. The imports in relation to total imports have increased to 91% in the most recent period.
  - d. With the elimination of custom duties, the Korean imports have replaced the other imports in the market.
  - e. The applicants have contended that when considered over a longer period, the imports from Korea RP had a market share of only 1% to 10% when there were no concessions, but the market share has increased to around 40% in the most recent period.
  - f. Further the applicants have contended that the imports in relation to Indian demand and production have increased significantly when considered over the pre-concession, during concession, post-concession period. The table below shows the contention of the applicant.

SN	Year	Subject imports in relation to		
		Total Imports	Indian Demand	Indian Production
1	2008-09	10%	3%	5%
2	2009-10	2%	1%	1%
3	2010-11	44%	11%	15%

4	2011-12	42%	11%	14%
5	2012-13	60%	9%	10%
6	2013-14	80%	14%	17%
7	2014-15	49%	9%	11%
8	2015-16	86%	11%	13%
9	2016-17	89%	10%	11%
10	2017-18	95%	20%	24%
11	2018-19	83%	23%	32%
12	2019-20	88%	28%	41%
13	2020-21	94%	34%	50%
14	Apr 21 – Sep 21 (A)	87%	22%	29%
15	Oct 21 – Mar 22 (A)	91%	39%	71%

67. As regards the contention that the increase in imports in the most recent period is due to the arrival of material against orders deferred earlier due to Covid, the Director General notes that the imports have increased not only in the present recent period, but also after the start of concession and even after the present surge period. In fact, the volume of imports after the most recent period is materially higher than the volume of imports in the most recent period. Considering imports over the pre-concession, during concession and post-concession period shows a continuous increase in imports. In view of the above, the argument of the interested parties cannot be accepted.
68. It has been contended that the imports declined in quarter 4 of 2021-22. It is however seen that the imports have increased significantly after Q4, 2021-22. Further, a lot of interested parties have contended that imports declined in some quarters and increased in others. The Director General notes that requirement under the Rules is not “increasing imports” but “increased imports”.
69. It has been contended that the increase in imports is because of the capacity expansion by the steel producers. The Director General notes that imports have been examined for the pre-concession, during concession and post-concession periods. It is seen that the demand of the product under consideration has increased sharply in the period October 2021 to March 2022. However, the entire increase in demand has been met through Korean import even though there is a substantial surplus capacity available with the domestic industry. Further, no material has been brought forward to show that the users faced any quality issues with the product supplied by the Indian industry. The increase in imports in absolute volume and increase in market share in demand over the long period establishes that the increase in imports has no nexus with the factors listed by the interested parties.
70. The interested parties have contended that the Director General should examine the intervening trends as well and should not restrict examination to a mere comparison between the beginning and at the end of the period. The Director General has examined the volume of the imports over a period of more than 10 years which addresses the concerns raised by the interested parties.
71. As regards the contention that increased imports are because of increasing demand, Director General notes that it has examined the trend of imports over a substantially long

period to examine imports in absolute and relative terms and it is seen that the market share of imports has also increased. It is also seen that when the applicants had sufficient capacity to cater for the entire demand in the country, it cannot be accepted that the imports increased only because of the increasing demand in the country.

72. It has been submitted that the imports declined in some quarters and increased in others. The Director General notes that the rules do not require that there must be a continuous increase in imports. The consideration over a long period has ensured that the intervening trend of increase in some quarters and decline in some quarters is addressed.
73. The Director General concludes considering imports in pre concession, during concession, post concession and the most recent period, that imports from Korea RP have increased in absolute terms. The imports have also increased in relation to Indian production and consumption and total imports in the period April 2018 to March 2022. With the total elimination of tariff, Korean imports have started commanding majority share in imports of the subject goods into India. The increase in the imports with the rising tariff concession over the period shows the presence of co-relation between the custom duty elimination and increased imports. Further, no material has been brought forward by the interested parties to show any other reason for increase in subject imports. The increase in imports constitute increased imports as per the CEPA and the Rules. Therefore, the Director General concludes that the imports from Korea RP have increased.

## **H. INJURY TO THE INDIAN INDUSTRY**

### **H.1 Submissions made by the interested parties.**

74. The submissions made by the interested parties in respect of injury to the domestic industry are summarised below -
  - a. There is no significant change in capacity, production, capacity utilisation, domestic sales volume and value, and market share over the years.
  - b. The domestic producers cannot operate at optimum capacity and cannot improve profitability due to high fixed cost owing to surplus capacity.
  - c. Price undercutting is either negative or insignificant over the period of investigation.
  - d. Rise in price of Korean imports along with raw material prices cannot be seen as injury to the domestic industry.
  - e. There is no price suppression on the domestic industry prices due to Korean imports.
  - f. Losses in the last six months of 2021-22 is inconsequential.
  - g. Profitability of the Indian industry has improved substantially.
  - h. In quarter 2 of 2021-22, sales volume and profits of the domestic industry increased despite reduced gap between raw material price and price of Korean imports compared to quarter 1.
  - i. Sales of the product happens through bidding process and no information is available to competitors for undercutting.
  - j. The Director General should assess competition within the Indian industry in assessing whether injury is caused to industry.
  - k. The tariff concessions could not have caused the change in prices and the fluctuation in the prices is because of other factors,
  - l. The low-priced Chinese imports have also caused injury to the Indian industry.

- m. Other factors such as increase in raw material costs in 2021-22, high basic custom duty on import of raw material, depreciation of INR making raw materials costly have also caused injury.
- n. The Director General should also examine the impact of molybdenum shortage on the domestic industry.
- o. Domestic producers cannot operate at optimum capacity and cannot improve their profitability because of high fixed cost owing to significant surplus capacity with them.
- p. Decline in landed price was commensurate to the decline in cost of sales of the domestic industry till 2020-21. Rate of increase in landed price in 2021-22 was higher as compared increase in cost of sales.
- q. Rise in prices of imports is in accordance with the rise in raw material prices.
- r. PBIT of the domestic industry has increased by 19 times in 2019-20 to 2020-21. The applicants have shifted from deficit to surplus in cash profits.
- s. Foreign producers have achieved good economies of scale, and their efficient manufacturing and controlled processes are cost efficient which gives them advantage over the Indian producers.
- t. Korean producers book bulk order of Moly which provides them edge over the Indian producers.
- u. Indian FeMo producers are producing FeMo at small scales and do not have established process of producing quality products with consistence supplies.
- v. Submission of the applicants clearly show existence of an inverted duty structure, scarcity of raw materials, raw material price fluctuations, an inability to scale operations, etc are the reasons of the injury.
- w. The domestic industry is unable to reach optimal capacity utilization because of its excessive capacities and is evidently burdened by overhead costs.
- x. The applicants have admitted that the raw material is a scare resource and import attracts basic customs duty of 2.5% and the burden of these import duty is very high.
- y. Korean exporters have achieved higher integration and more cost-efficient processes of production as they utilize unroasted molybdenum as their primary raw material as opposed to the Indian industry which utilizes roasted molybdenum.
- z. There have been significant fluctuations in the raw material prices during the period of investigation due to short supply of the molybdenum globally.
- aa. There is no suppressing impact on the prices of the applicants as domestic selling price has declined commensurately with the decline in cost of sales till 2020-21 and when the cost of sales increased in 2021-22, the domestic industry was able to commensurately increase the selling price.
- bb. It will be misleading to conduct an analysis of injury based on the data of half year. If data from both halves of 2021-2022 is combined, it will show that that there is no injury to the applicants.
- cc. There is a clear improvement in the production and sales of the applicants in the year 2021-22.
- dd. There is a difference in the profitability information submitted in the application and written submission.
- ee. The applicants performed better in quarter 3 when the imports were high but the performance worsened during quarter 4 when the imports declined.
- ff. Korean producers were able to adjust their prices in accordance with raw material price changes, the Indian industry is plagued by a series of systemic factors owing to which it has been unable to adjust to changes in raw material prices.

- gg. The applicants have not established how increase in freight cost could have impacted their performance.
- hh. Substantial cause of injury to the applicants is due to customs duty of 2.5% on import of raw material.
- ii. Injury caused by the price of the imported product is not a relevant consideration in the evaluation of bilateral safeguard measures. Price of products originating from Korea RP is irrelevant for the purpose of determining the need for bilateral safeguard measure.
- jj. The applicants' ability to increase price commensurate with the increase in cost of sales shows that imports from Korea RP are not causing any adverse price effects to the domestic industry.
- kk. Producers in Korea RP have much higher capacity and can get the benefit of economies of scale and control their fixed costs. The benefit of economies of scale available to producers/exporters from Korea RP cannot be overcome by imposition of bilateral safeguard measures.
- ll. There is no co-relation between the increased imports and the performance of the domestic industry. When imports increased, the performance of the domestic industry improved and when imports declined, the performance of the domestic industry also declined.
- mm. Capacity of the Indian industry has increased from 15,000 MT to 19,800 MT and the market share has also remained at 68% or above during this period. This shows that the industry has not suffered injury.
- nn. The applicants have misguidedly by citing "annualized" data divided in half.
- oo. The applicants have not presented source of most of the data cited.
- pp. The applicants undertake a 10% value addition and that 90% of their production cost consists of its raw material cost for which they are entirely dependent on imports to procure its raw material. Hence, they cannot adjust to import competition as raw material cost optimization cannot be controlled by them.
- qq. The applicants were in profits even in 2020-21 when the import volumes of the PUC from Korea were at its highest.
- rr. Market share of the entire Indian industry is still at a robust 68% in 2021-22.
- ss. The requirement is to show that the imports of the subject good from Korea are the sole cause of the injury to the domestic industry considering the nature of bilateral safeguards, which is the exception to the core principle of non-discrimination grounded in Global Safeguard Measures.
- tt. WTO in case of Wheat Gluten has also held that to satisfy the requirement that increased imports "alone" cause serious injury, the Authority must exclude the effects caused by other factors in its analysis.
- uu. The applicants have requested for only 5% custom duty. The entire scheme of formula based pricing of the applicants will become futile if the price of the raw material increase by more than 5%.
- vv. The applicants have misinterpreted the actual meaning or intent behind Article 2.22 of the Agreement by stating that "injury caused by the increased imports need not be equal to or more than any other cause of injury."
- ww. Export price from the Republic of Korea to India and the rest of the world are on account of multiple factors like economies of scale, difference in molybdenum content, difference in timing of supply, power of the local currency, etc. An analysis of export price from Republic of Korea to India and rest of the world would not objectively determine that Korean imports specifically target the Indian market at low prices.



- xx. Injury due to export performance should also be examined.
- yy. The depreciation cost of the applicants have increased despite there being no capacity expansion.
- zz. The applicants recorded profits in the previous years even when the imports increased. This shows that there is absence of correlation between increased imports and decline in profitability.
- aaa. The annual reports of the other producers show that they have seen an increase in earnings before interest tax and depreciation.
- bbb. The injury to the Indian industry can also be on account of *interse* competition.

## **H.2 Submissions made by the applicants.**

75. The submissions made by the applicants in respect of injury are as follows-

- a. Korean producers have been selectively targeting Indian market. The FOB prices of exports to India have been typically lower than the average export price to third countries.
- b. In the most recent period, the selling price of the domestic industry are suppressed.
- c. The production and capacity utilization of the domestic industry has declined with the increased imports from the subject country.
- d. The increased imports have eroded the market share of the domestic industry resulting in decline in domestic sales.
- e. The capacity utilisation of the domestic industry fell steeply and was at lowest levels in the most recent period.
- f. The domestic industry had suffered losses in the base year itself when the second surge in imports happened. Losses increased in the subsequent year when the domestic industry tried to increase its market share by selling at prices in competition with the import price.
- g. The year 2020-21 saw an improvement in profitability as the domestic industry sacrificed its market share. The performance further improved in the H1 of 2021-22 as the imports declined sharply. However, the domestic industry has suffered losses again in the most recent period with the increased imports and decline in market share.
- h. Unlike a large-scale producer, a MSME producer cannot continuously suffer losses. Effect of import competition comes largely on the sales, and therefore can be found in volume parameters.
- i. If losses continue for a long period, producer will stop production. The producers would normally take any order only if there is some financial viability. Otherwise, they would curtail production rather than suffering financial losses.
- j. While the legal requirement is for Director General to examine injury to the domestic industry and not the Indian industry as a whole, even the data of the Indian industry shows that production increased till 2018-19 but has declined thereafter and domestic sales increased until there was a surge in imports but has declined thereafter.
- k. The contribution earned by the domestic industry is negative in the most recent period. The domestic industry is unable to recover what it is incurring as direct cost to produce the goods, leave aside recovery of the fixed expenses.
- l. The reason why the data shows negative price undercutting is solely because of significant changes in the price of the raw material and the product in this period.
- m. Even when the price of the product might have fluctuated due to changes in raw material prices, the fact is that imports surged, and the domestic industry suffered injury.

- n. The serious injury suffered by the domestic industry is due to tariff concession on finished product, and not due to customs duty on raw materials. The inverted duty structure has been caused by the present duty concession. If the duty concession is withdrawn, the Indian industry is competitive.
- o. The fact that the sales happen through bidding process itself shows that the consumers buy from the suppliers which offers lowest prices.
- p. Whenever the industry has tried to maintain its profits, it has lost market share, and, whenever the industry has tried to capture market, it has suffered losses.
- q. Footnote to Article 2.22 of the India – Korea Comprehensive Partnership Agreement states that the reduction in custom duty need not be the sole cause of the injury to the domestic industry.
- r. The only requirement is that the imports should be a substantial cause of injury. Reference is also drawn to the finding in Bilateral Safeguard Investigation concerning imports of Phthalic Anhydride wherein Director General took a similar opinion.
- s. Price fluctuations in raw material prices is equally impacting Korean producers as they import raw material. If there have been no increased imports from Korea, the domestic industry could have increased its prices with the increase in the raw material cost.
- t. As regards increased freight a cause of injury, the same impacted Korean producers also as they import raw material and export subject goods to India.
- u. Imports from other countries have been substituted by imports from Korea. Increase in imports from China is in low volumes and cannot cause injury. Share of Chinese imports to total demand has always remained 3% or less.
- v. Volume of exports by the domestic industry is negligible and therefore, export performance cannot be a cause of injury.

### **H.3 Examination by the Director General**

76. The information made available by the interested parties in their submissions, and imports information called by the Director General have been considered for the purpose of the present determination. The Director General notes that different interested parties have advanced similar arguments, albeit in different manner and language. The Director General has examined and addressed the submissions in the present findings. The examination herein below in respect of serious injury and causal link *ipso facto* deals with the submission of applicants and interested parties.

77. Serious Injury is defined under the Rules as follows:

*(f.) serious injury means a significant overall impairment in the position of a the domestic industry; and*

*(g) "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.*

78. Rule 7 of the Rules further provides as follows:

*The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the following principles, namely: -*

*(a) the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by increased imports of the originating good, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment; and*

*(b) the determination under this rule shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat thereof and when factors other than increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports of the originating goods.*

79. The following provisions of the CEPA are also relevant for analysis and examination of injury to the domestic industry and for evaluating the contentions raised by interested parties.

*“During the transition period only, if as a result of the reduction or elimination of a customs duty<sup>3</sup> under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party alone<sup>4</sup> constitute a substantial cause of serious injury or threat thereof to the domestic industry producing a like or directly competitive good, the Party may:*

*<sup>3</sup>A determination that an originating good is being imported as a result of the reduction or elimination of a customs duty provided for under this Agreement shall be made only if such reduction or elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. The passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination referred to in this footnote. If the increase in imports is demonstrably unrelated to such reduction or elimination, the determination referred to in this footnote shall not be made.*

*<sup>4</sup> For the purposes of certainty, the Parties understand that a Party is not prevented from initiating a bilateral safeguard investigation in the event of a surge of imports from the territory of non-Parties. For further certainty, the Parties understand that bilateral safeguard measures can only be imposed on the good of the other Party when the increase in the import of such goods from that other Party alone constitute a substantial cause of serious injury or threat of serious injury, to the domestic industry producing a like or directly competitive good.*

80. The Director General considers that evaluation of various injury parameters needs to be undertaken having regard to the peculiarities of different industries and situations. The Director General has examined the presence of serious injury to the domestic industry, having regard to the facts of the present case and the situation of the present industry.
81. The Director General has noted that the Indian industry in the present case comprises of producers in MSME segment. While the value addition in absolute terms is quite

significant, it is low in relation to the price of the input raw materials. The price of FeMo is normally fixed considering the prevailing prices of Moly.

82. It has also been contended by the interested parties that the sale of the product happens through the bidding process. The domestic industry has also accepted the contention of the interested parties. The Director General notes that the fact that the sale of the product happens through a bidding process shows that the preference of the users to buy the product from the supplier which quotes the lowest price. Further, no other justification has been brought forward by the interested parties on why the imports from Korea RP have increased. Therefore, it flows that the increase in the imports from Korea RP is because of the price advantage with the Korean producers. The rate of increase in imports from Korea RP, the decline in imports from other countries and market share of the Indian industry show that the Korean producers have outpriced the other suppliers in the market.
83. As regards the contention that the applicants' performance has been impacted because of the increase in the raw material cost due to depreciation of the Indian Rupee. The Director General notes that had the industry suffered due to the contended factor, the same would have applied to imports of all products from all countries and also on the product under consideration. Further, the depreciation in the currency is equally applicable for the Korean produces. Therefore, the contention cannot be accepted.
84. It has also been contended by the applicants that more than 90% cost of sales is variable cost and the producers are not burdened with high fixed costs. Therefore, the producers would normally take any order only if there is some financial viability i.e, if the quoted order is above the cost of production. If there is no financial viability, the producers would normally curtail production rather than suffering financial losses. Being MSME in nature, the producers cannot continue to inject funds in the business. Therefore, effect of import competition comes largely on the sales and production volume. The applicants have contended that the primary form of injury to the Indian industry can be found in volume parameters.
85. As regards the contention that the Indian producers are inherently less competitive because of the custom duty on raw material, the Director General notes that the Government of India has granted tariff concessions to Moly when imported from Chile and Thailand and it has been submitted by the domestic industry that around 70% of the imports happen through these sources. Therefore, it cannot be said that the Indian industry is less competitive because of custom duty. The Korean producers do not have any natural advantage of raw material. The scope of the present investigation is whether imports of FeMo have increased and whether the same has caused injury to the Indian industry, and if so, whether safeguard measures should be invoked.
86. As regards the argument that the performance of other producers in India shows improvement, the Director General has considered the information of other producers on ~~the~~ record. It is seen from the annual report of other companies that these producers are multi product companies and therefore reference to annual reports cannot be relied upon. Further, the information filed by five producers contains information on production, sales and capacity utilisation which show that they have also suffered on volume parameters.
87. As regards the contention that the price fluctuations are due to some other factors and not just imports, the Director General notes that the prices of molybdenum have fluctuated

significantly during the recent period and the landed price of imports and the cost of sales of the domestic industry have both moved in the same direction.

SN	Particulars	2018-19	2019-20	2020-21	Apr to Sep 21	Oct to Mar 22
1	Landed price	1,228	1,136	955	1,783	2,079
2	Cost of sales	***	***	***	***	***
3	Selling Price	***	***	***	***	***
	<b>Indexed</b>					
5	Landed price	100	93	78	145	169
6	Cost of sales	100	88	91	135	165
7	Selling Price	100	96	91	137	166

*UOM – Rs/KG*

88. It has been contended that the Korean producers are more integrated as they use unroasted molybdenum and therefore are more efficient as compared to the Indian producers. The Director General notes that the domestic industry could earn profits in the previous years shows that it can compete with the imports. Further, no information has been provided to the Director General to show the difference in cost on account of roasted or unroasted Moly. Therefore, the contention cannot be accepted.
89. The interested parties have argued that the applicants are suffering due to high capacities. The Director General considers that in a situation of sufficient or even high capacities, it is evident that any surge in imports shall cause serious injury. Even the Korean producers are holding capacities far in excess of their country's domestic demand. If the Indian industry has suffered while holding excessive capacities, it is due to the surge in imports despite such excessive capacities. The Director General has examined the difference between the selling price and the variable cost which is shown below: -

SN	Particulars	UOM	2018-19	2019-20	2020-21	Apr to Sep 21	Oct to Mar 22
1	Selling price	Rs/Kg	100	96	91	137	166
2	Variable cost	Rs/Kg	***	***	***	***	***
3	Contribution	Rs/Kg	100	226	112	147	63

90. As regards the contention that the Indian producers are burdened with fixed costs, the Director General has examined the data of the applicants. It is seen that the share of fixed costs in the total cost of the applicants is insignificant. Further, the contribution (difference between selling price and variable cost) of the applicants in the most recent period is lower than the contribution earned in the base year as well as immediately preceding period. However, the applicants have submitted that the relevant form of injury considering the present nature of the industry is volume injury.
91. It has been contended that the imports from other countries (particularly from China) have caused injury to the domestic industry. The Director General has examined the

volume of imports from China over the entire relevant period. The table below shows the imports of FeMo over the period of investigation: -

SN	Countries	UOM	2018-19	2019-20	2020-21	Apr to Sept 21 (A)	Oct 21 to Mar 22 (A)
1	Korea Rp	MT	1,957	2,361	2,967	1,872	3,966
2	China P Rp	MT	20	20	-	-	320
3	U Arab Emts	MT	140	40	80	40	2
4	Switzerland	MT	-	79	100	240	80
5	Hong Kong	MT	140	90	-	-	-
6	U S A	MT	40	-	-	-	-
7	Singapore	MT	40	20	-	-	-
8	Germany	MT	15	20	5	-	-
9	Brazil	MT	7	21	-	-	-
10	South Africa	MT	-	20	-	-	-
11	Canada	MT	-	-	5	-	-
12	Sweden	MT	-	-	-	-	3
13	Malaysia	MT	1	-	-	-	-
14	<b>Total</b>	<b>MT</b>	<b>2,359</b>	<b>2,670</b>	<b>3,157</b>	<b>2,152</b>	<b>4,370</b>

92. It is seen that in past, there were imports happening from the European Union, the United States of America and the United Kingdom as well. However, those imports have completely dried up now. It is seen that the imports from China were extremely low in volume almost throughout the period, barring the most recent period. In so far as the current period is considered, it is seen that whereas Korean imports were 3,562 MT, Chinese imports were only 320 MT (on annualised basis). The Director General has also examined the trend of imports over the period of investigation and found that there is no consistency in the imports from China. Over the entire period, imports from China have happened in only 8 months and are only 280 MT in total. Therefore, the volume of imports from China and other countries was insignificant in the most recent period to have caused injury to the domestic industry. In any case, the Director General has considered a sufficiently long period which shows that the imports from other countries are insignificant in volume.
93. It has also been submitted by the interested parties that the injury caused can be due to the *interse* competition. The Director General notes that it has examined the performance trend of the applicants and the supporters. When the production and domestic sales of both the applicants and supporters have declined with an increase in imports, it cannot be contended that the decline in these parameters is due to *interse* competition only.
94. It has been contended that the depreciation cost of the applicants has increased despite no increase in the capacity. Director General has examined the records maintained by the applicants and it is seen that the same is as per the allocation methodology in the books of accounts. However, the Director General has not accepted the depreciation cost claimed and has considered the revised information.
95. It has also been submitted by other interested parties that the return on capital of the applicants has increased significantly over the period of investigation. The Director General notes that return on capital employed is not a relevant factor of examining injury

to the Indian industry in the present investigation due to the nature of the product, the high value of the product and the low capital employed. In any case, the applicants have stated that the primary form of injury is the volume injury.

96. In analysing serious injury, all factors mentioned in the Rules as well as other factors which have been brought to the notice of the Director General and which are considered relevant for determination of serious injury, have been considered. The determination of serious injury thus is based on evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.

a. Capacity, production, capacity utilization and domestic sales.

97. Facts regarding capacity, production, capacity utilization and domestic sales of the domestic industry are given below.

SN	Particulars	UOM	2018-19	2019-20	2020-21	Apr to Sept 21 A	Oct to Mar 22 A
1	Capacity	MT	6,216	6,216	6,216	6,216	6,216
2	Production	MT	2,572	2,183	2,376	2,794	2,214
3	Capacity Utilisation	%	41%	35%	38%	45%	35%
4	Domestic sales	MT	2,516	2,304	2,354	2,809	2,509
5	Demand	MT	8,695	8,448	8,762	8,509	10,250
6	Imports	MT	1,957	2,361	2,967	1,872	3,966
7	Market share in demand	%	29%	27%	27%	33%	24%

98. It is seen that: -

- Capacity of the applicant companies has remained constant throughout the period of investigation. Capacity of the Indian industry is sufficient to cater to the entire demand in the country.
- Production and capacity utilisation declined in 2019-20 as the demand declined. The production and capacity utilisation increased in the year 2020-21 as the demand increased and imports declined. However, the increase in production was significantly low considering the increase in the demand.
- Production and capacity utilisation increased in April to September 2021 despite decline in demand as the imports also declined. With the increase in imports in October 21 to March 22, production and capacity utilisation have declined in the most recent period.
- The domestic sales of the industry declined in 2019-20 but increased thereafter in 2020-21. However, while the domestic sales increased, the market share did not increase as the imports also increased in this period. The domestic sales increased in Apr 21 to Sep 21 as the imports declined. The domestic sales have however declined in October to March 2022.
- The demand has increased considerably during the period from October '21 to March '22 as compared to the corresponding periods. However, the entire increased demand has been met through Korean import even though there is a substantial surplus capacity available with the domestic industry. The domestic sales of the industry have not increased due to the increase in demand.

- f. The demand of the subject goods in October 2021 to March 2022 (most recent period) has increased by 871 MT (actual basis) and 1,741 MT (annualised basis) as compared to April 2021 to September 2021. During this period, the imports increased by 1,047 MT (actual basis) and 2,094 MT (annualised basis). The rate of increase in imports is more than the increase in the demand and as a result, the domestic sales of the applicants have declined.
99. The applicants have contended that the Indian industry had a market share of 87% when the tariff concessions first started. The domestic industry market share remained in a similar range as the tariff concessions increased and reached full levels in 2016-17. The market share of the Indian industry however started declining thereafter as the Korean imports surged. Thus, the tariff concessions have led to significant decline in the market share of the Indian industry. It is seen that while the demand has grown, the market share of the domestic industry has declined.
- b. Market share of the domestic industry

100. Information regarding the market share of the domestic industry is given below:-

SN	Market share of	UOM	2018-19	2019-20	2020-21	Apr 21 – Sep 21	Oct 21 – Mar 22
1	Applicants	%	29%	27%	27%	33%	24%
2	Other producers	%	44%	41%	37%	42%	33%
3	Indian industry	%	73%	68%	64%	75%	57%
3	Korean imports	%	23%	28%	34%	22%	39%
4	Other countries	%	5%	4%	2%	3%	4%

101. It is seen that: -

- Market share of the applicants declined in 2019-20 and remained at almost the same level in 2020-21. The market share of the applicants increased in April to September 2021 when the imports declined, but has declined again in the most recent period.
  - The market share of the applicants has declined in the most recent period as compared to the base year and the preceding period. The market share of the applicants in the most recent period is the lowest over the entire period of investigation.
  - The market share of the Indian industry has followed the similar trend to that of the applicants. The market share declined in 2019-20, then further declined in the year 2020-21. The market share of the Indian industry increased in April to September 2021 but has declined again in the most recent period.
  - The market share of imports increased in 2019-20 as compared to 2018-19. The market share of imports increased again in 2020-21. The market share declined in April to September 2021 but has increased again in the most recent period. The market share of the imports from the subject countries has increased over the period of investigation.
- c. Inventory

102. Information regarding the market share of the domestic industry is given below: -



SN	Particulars	UOM	2018-19	2019-20	2020-21	Apr 21 – Sep 21	Oct 21 – Mar 22
1	Opening	MT	***	***	***	***	***
2	Closing	MT	***	***	***	***	***
3	Average	MT	29	77	107	110	92
4	Domestic sales	MT	2,516	2,304	2,354	2,809	2,509

103. It is seen that the closing inventory of the applicants increased in 2019-20 as the domestic sales declined. The closing inventory remained at almost same level in 2020-21 and Apr 21 to Sep 21 but has declined in October 21 to March 22. The average inventory of the domestic industry increased till September 2021. Even when inventories declined thereafter with curtailment of production, the level of inventories was nevertheless high.

d. Profit/loss

104. The facts with regard to profits, profit before interest, and cash profits are as follows: -

SN	Particulars	UOM	2018-19	2019-20	2020-21	Apr 21 – Sep 21	Oct 21 – Mar 22
1	Cost of Sales	₹/Kg	***	***	***	***	***
	Trend	Indexed	100	85	91	135	166
2	Selling Price	₹/Kg	***	***	***	***	***
	Trend	Indexed	100	96	91	137	166
3	Profit/(Loss)	₹/Kg	***	***	***	***	***
	Trend	Indexed	100	480	116	244	160
4	PBIT	₹/Kg	***	***	***	***	***
	Trend	Indexed	100	344	108	174	118
5	Cash Profit	₹/Kg	***	***	***	***	***
	Trend	Indexed	100	465	123	240	159

105. It is seen that the: -

- The applicants' profitability improved till 2019-20. The profit per unit declined in 2020-21 as the imports increased. However, the profit per unit improved in the period April to September 2021 as the imports declined.
- With the increase in imports in October 2021 to March 2022, the profit per unit of the applicants has declined again.
- The cash profits and profit before interest and tax have also followed the same trend. Cash profit and profit before interest and tax improved with the decrease in imports but have declined in the most recent period.
- It has however been contended that the considering the MSME nature and the value of the product under consideration, the real injury suffered in the form of volume injury.

e. Employment and productivity

106. Facts regarding employment and productivity is given below: -

SN	Particulars	UOM	2018-19	2019-20	2020-21	Apr 21 – Sep 21	Oct 21 – Mar 22
1	No. of Employees	Nos	129	130	150	141	141
2	Productivity per Employee	MT/ Nos	20	17	16	20	16
3	Productivity per Day	MT/ Days	8	7	7	8	7

107. It is seen: -

- The number of employees increased till the year 2020-21 but has declined thereafter.
- The productivity per employee declined till 2020-21 but increased in April to September 2021 as the production increased. The productivity per employee has declined again in the most recent period.
- The productivity per day declined in 2019-20 but has increased thereafter in 2020-21 and April to September 2021. The productivity per day has declined in the period October 2021 to March 2022.
- The applicants have not claimed injury in these parameters.

f. Price undercutting

108. Information regarding price undercutting is given below: -

SN	Particulars	UOM	Oct 21 – Mar 22
1	Selling Price	₹/Kg	***
2	Landed price	₹/Kg	2,079
3	Price undercutting	₹/Kg	***
4	Price undercutting	%	***
5	Price undercutting	Trend	(0-5) %

109. It is seen that the price undercutting on weighted average basis is negative. It has been contended that there is significant volatility in the prices of the product under consideration; and therefore, average price undercutting may not be a relevant parameter. The table below shows the price movement in a particular month: -

*Rs/KG*

SN	Month	Average price	Maximum price	Minimum price
1	April – 21	1,314	1,399	1,256
2	May – 21	1,419	2,037	1,176
3	June – 21	1,629	2,070	1,242
4	July – 21	1,707	2,392	1,231
5	August – 21	2,070	2,468	1,647
6	September – 21	2,019	2,441	1,262
7	October – 21	2,048	2,317	1,663
8	November – 21	2,050	2,285	1,874
9	December – 21	2,081	2,172	1,976
10	January - 22	2,038	2,127	1,899
11	February – 22	2,131	2,282	2,037

12	March - 22	2,139	2,510	2,016
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110. It is seen that the prices of the product under consideration have fluctuated significantly even in a particular month and therefore consideration of price undercutting on average basis may not be relevant.
111. The Director General also notes that the responding exporter have stated that the sale of the product happens through the bidding process which has been admitted by the applicants. The fact that the sale of product happens through bidding and no material has been brought forward to show any other reason in increase in imports, it has been contended that the imports from Korea happen because they are of low price.
112. It is noted that the considering the deteriorating performance of the applicants in terms of decline in domestic sales and production, and reduced market share due to the increased imports it is a *res ipsa loquitor* of the fact that price injury is eminent due to increased imports in view of tariff concession.

## **E. 6 Conclusion**

113. Based on above, the Director General concludes as follows: -
- The production and the capacity utilisation of the applicants have declined significantly.
  - Despite having sufficient capacity to cater the entire demand in India, the Indian industry is operating at significantly low-capacity utilisation.
  - The domestic sales and production of the applicants have remained at the same level over the period of investigation. While the demand has increased, the applicants have not been able to increase their domestic sales at the same rate.
  - The demand has ~~been~~ increased considerably during the period from October '21 to March'22 as compared to the corresponding periods. However, the entire increased demand has been met through Korean import even though there is a substantial surplus capacity available with the domestic industry. The imports have taken away the market share of the Indian industry.
  - The applicants and the Indian industry have faced a decline in their market share because of the increased imports from Korea RP.
  - The contribution of the applicants in the most recent period is lowest when seen over the period of investigation.
  - While the primary area of injury to the industry is in volume parameters, they have suffered a decline in profitability.
  - The imports from Korea PR are happening because they are priced lower.
114. Considering the performance of the domestic producers in respect of various parameters, it is concluded that the domestic industry has suffered serious injury as a result of duty concessions granted to Korean imports leading to increased imports of the product under consideration from the Republic of Korea at low prices.

## **I. CAUSAL LINK**

115. A comprehensive evaluation of the performance of the domestic industry, as brought out hereinabove, demonstrates that the domestic industry has suffered serious injury. It is therefore examined whether the injury to the domestic industry is largely due to duty concessions and consequent increase in imports from Republic of Korea. It was

examined if any factor other than increased Korean imports could have caused serious injury to the domestic industry. It is however expressly understood that the Korean imports need not be the sole cause of injury to the domestic industry. Industry might have been suffering injury due to other factors also and the same does not imply absence of injury to Korean imports.

i. Imports from other countries

116. As examined above, the imports from the other countries cannot be a cause of injury to the Indian industry.

ii. Demand for the product

117. Demand for the subject goods has increased over the period. Thus, there is no contraction of demand, which could have caused injury to the domestic industry.

iii. Developments in technology

118. No evidence has been brought forward to show that technology for production of the subject goods has undergone any significant change which could have caused injury to the domestic industry. Therefore, injury to the domestic industry cannot be attributed to these factors.

iv. Conditions of competition and trade restrictive practices

119. No evidence has been brought forward to show that there are conditions of competition or trade restrictive practices. Therefore, injury to the domestic industry cannot be attributed to these factors.

v. Changes in pattern of consumption

120. There has been no change in the pattern of consumption for the product, and thus, the domestic industry has not caused injury on this account.

vi. Export performance

121. The Director General has considered the segregated data only for domestic operations and therefore, performance in the export operations cannot be a cause of injury. the domestic industry.

vii. Performance of other products of the domestic producer

122. The data provided in the present application relates only to the performance of the subject goods. Therefore, performance of other products those are being produced and sold by the domestic industry are not a cause of injury.

viii. Productivity

123. The productivity of the domestic industry has followed the trend of production, and any injury caused is not on account of decline in productivity.

124. Based on the examination of the above, the Director General concludes that the applicants have not suffered injury due to any other factor. The following factors show causal link between the injury to the domestic industry and increased imports from Korea RP.

- a. With the increase in tariff concessions, imports from Korea RP have increased. The imports have increased in absolute terms and in relation to Indian production.
- b. The increased imports have taken up the market share of the domestic industry and the Indian industry as a whole.

- c. Due to the decline in the market share, the domestic industry has been seen a decline in their domestic sales and resultantly reduced its production.
- d. The imports from Korea RP enjoy tariff concessions and are therefore available at lower prices.
- e. The domestic industry has been forced to compete with the imports at low prices which has resulted in the domestic industry suffering decline in profits.
- f. The Director General thus concludes that there exists a causal link between the increased imports and the consequent injury to the applicants.

## **J. ADJUSTMENT PLAN**

125. It has been contended that the applicants did not file adjustment plan along with the application. The Director General notes that the applicants had provided the following in its application: -

*“The industry is working on various cost reduction measures to reduce its costs. Cost reduction measures are directed towards reduction in raw materials costs, and conversion costs. The petitioners would supplement the same during the course of the proposed investigations.”*

126. It was provided at the stage of initiation that the applicants will undertake efforts aimed at reducing cost. Therefore, the contention that no adjustment plan was provided cannot be accepted. It is also noted that the requirement of adjustment plan in the application is not with a view to decide on the need for initiation. At the stage of initiation only such information as is relevant for initiation is required to be considered. The adjustment plan is relevant for duration of duty at the time of final determination as provided under Rule 10, and not at the stage of initiation. The domestic industry in any case has given more elaborate explanation of the adjustment plan information contained in the application, after initiation of investigation and the same has been considered by the Director General.
127. The applicants have provided details of the adjustment plan proposed to be undertaken if the measures are imposed. The adjustment plan is focused on entering into long term contracts with the customers. It has been stated that at present, very limited customers buy the product under long term contract basis. Reduction in import volume will allow the industry to enter into such more contracts which will allow industry to increase its domestic sales and market share and follow formulae-based pricing of the final product linked to raw material. In addition, the adjustment plan also focuses on formulae-based purchase of raw material, increase in waste recovery, setting up of new machines etc. The Director General notes that the applicants have drawn an adjustment plan which will allow it to become competitive to imports.

## **K. PUBLIC INTEREST**

### **K.1 Submissions made by the interested parties**

128. The submissions made by the interested parties in respect of public interest are as follows-
- a. The steel industry has a value addition of 30-40% whereas the applicants have a value addition of only 5-10%. The imposition of bilateral measures will impact the steel industry.

- b. If bilateral measures are imposed, it will lead to disruption in supply of the product under consideration which will impact the steel industry.
- c. The impact on downstream products as quantified by the applicants is not substantiated.
- d. Technical and metallurgical requirements of the user industry are not accurately met by Indian producers.
- e. Indian steelmakers prefer Korean imports due to their uniformity of molybdenum, delivery time, supply stability, and after sale service.
- f. Value of the product under consideration is around ₹20,00,000 per MT and even 5% customs duty would imply impact of ₹100,000 per MT. The impact of this would be very high on the downstream steel producing user industry.
- g. China has a policy which penalizes exports of FeMo by not refunding VAT of 13%. With such policies in place, Korean imports provide a reliable source and consistent supply to the user industry in India.
- h. The exporters are only committed to meeting needs of Indian customers as a reliable supply chain partner providing quality products to the Indian market at a fair price.
- i. Several alloy steel producers are also small and medium scale producers therefore the contention that all consumers of subject goods are large scale industries is not correct.

## **K.2 Submissions made by the applicants.**

129. The submissions made by the applicants in respect of public interest are as follows-

- a. Indian industry has a capacity to cater to the entire demand in the country and therefore, the imports are unnecessary.
- b. Bilateral measures will only remove tariff concessions. The industry is not seeking any additional tariff against imports.
- c. Public interest is not confined to consumer industry alone and covers in its ambit the domestic industry of the product under consideration as well.
- d. It is in the consumers' interest to have a competitive domestic industry capable of supplying the product to the consumers in competition to fair priced imports.
- e. The product under consideration forms insignificant part of the cost of downstream industry and removal of tariff concession would have insignificant impact on them.
- f. The impact of Rs 100 increase in price of the product under consideration does not have even 1% increase in the price of the downstream product.
- g. Content of the product under consideration in the final product of the end products is negligible which implies that the product under consideration forms insignificant part of the downstream products.
- h. Domestic producers belong to MSME sector and provides direct and indirect employment to around 5000 people. Restoration of basic custom duties will allow the small producers to get time to sustain their business without negative contribution.
- i. Jindal Stainless Limited and Jindal Stainless (Hisar) Limited, biggest consumers in India, are procuring their entire requirement of the product under consideration from the Indian industry alone. This shows that the Indian industry provides material in desired quantities.
- j. Given the high volume of demand met by Indian industry in past, it cannot be said that the domestic industry was unable to provide the material required by the consumers.

### K.3 Examination by the Director General

130. There is no explicit requirement under the CEPA Agreement or the Rules to undertake public interest analysis. However, the Article 3.1 of the Agreement on Safeguards provides as below:

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

131. The Director General examined whether imposition of safeguard measures shall be in the larger public interest. Though Article 3.1 does not provide any guidance on the manner of evaluation, the same, however, requires, inter alia, evaluation of impact of the safeguard measures on various stakeholders, and taking a balanced view keeping in view competing interests of different interested parties.
132. The Director General issued gazette notification inviting views from all the interested parties, including applicants, exporters, importers, users and interested parties. The Director General sought information on, *inter-alia*, interchangeability of the product supplied by the Indian industry with the imports, ability of the users to switch sources and impact of the proposed measures on the users caused by removal of concessions.
133. The Director General notes that the present measures are not directed towards imposing any additional duty but only towards withdrawal of concession given earlier, that too in respect of imports from Korea alone. Imports from all other sources are totally unaffected by the proposed measures. Further, proposed measure would bring Korean imports at par with imports from other countries.
134. The Director General prescribed a user questionnaire in which the users are required to give information on cost on account of the product under consideration in the final cost and price of consumer's end products. The information provided by the users and by the applicants has been considered for the purpose of ascertain the impact of proposed measures.
135. As regards the argument that the imposition of the bilateral safeguard will lead to increase in the prices of the product under consideration and will impact the downstream industry, the Director General recognizes that the removal of concessions given to the product under consideration might affect the price levels of the product in India. However, the Director General has considered the impact of the increase in the prices of FeMo on the downstream product and it has been found that the impact will be insignificant on the downstream product and overall operations of the industry.

136. The share of the cost of the product under consideration in the turnover of the downstream products for the participating users is given below. It is seen that the cost of the product under consideration in the total turnover of the downstream product is insignificant. Therefore, it implies that the product under consideration forms a negligible part of the cost of the downstream product.

SN	Name of the company	Turnover of the products consumed (Rs./Lakhs)	Cost of PUC consumed (Rs./Lakhs)	Share
1	JSW Limited - Salem	***	***	0-5%
2	JSW Limited - Vijay Nagar	***	***	0-5%
3	Jindal Stainless (Hisar) Ltd.	***	***	0-5%
4	Jindal Stainless Ltd.	***	***	0-5%
5	Saarloha Advanced Materials Private Limited	***	***	5-10%
6	Sunflag Iron and Steel Co. Ltd.	***	Not provided	

Information in Rs Lacs as per the EQR filed by the users.

137. The Director General has additionally examined the impact of the proposed measures on the price of the downstream product. The present investigation is a bilateral safeguard investigation and considering the nature of measures, the Director General has considered the impact on the downstream product by taking into consideration an increase in the price of the product by 5%. It is seen that in majority of the case, the impact of the proposed measures on the prices of the downstream products, the impact is less than 1%. Therefore, considering the size of the downstream industry and the share of the product under consideration in the final cost of the downstream products, it is seen that the imposition of bilateral safeguard will immaterial impact on the downstream industry.
138. It is seen that there is no demand and supply gap in India. Against an estimated demand of 10,000 MT in the country, the Indian industry has the capacity of around 20,000 MT. Therefore, the removal of concessions will not lead to any shortage in the product in the country.
139. The imports of product from Korea RP have driven out the other imports, and imposition of bilateral measures will bring imports from various sources at par, thus encouraging imports from other countries. Director General also notes that there are a number of producers of subject goods in India which are likely to compete not just with each other but also with imports of like article in India. Therefore, a healthy competition between the domestic producers and imports will prevail in the Indian market.

## **L. CONCLUSIONS AND RECOMMENDATIONS**

140. Regarding imposition of bilateral safeguard measures, Rule 10 of India - Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 states as follows:

### *10. Final findings -*

*(1) The Director General shall, within eight months from the date of initiation of the investigation, or within an extended period not exceeding one year from the*



*date of initiation of the investigation, as the Central Government may allow, determine whether, – (a) the increased imports of the originating good under investigation has caused or threatened to cause serious injury to the domestic industry; and (b) a causal link exists between the increased imports of the originating good due to the reduction or elimination of a custom duty under the Trade Agreement and serious injury or threat of serious injury.*

*(2) The Director General shall also give his recommendation regarding bilateral safeguard measure which would be adequate to prevent or remedy serious injury and to facilitate adjustment.*

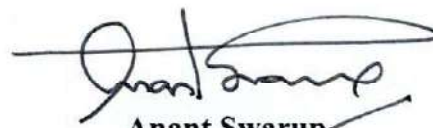
*(3) The Director General shall also make his recommendations regarding the duration of the bilateral safeguard measure: Provided that where the period recommended is more than one year, the Director General may also recommend progressive liberalisation of the bilateral safeguard measure at regular intervals during the period of application, adequate to facilitate adjustment.*

141. After examining the above, the Director General notes as follows: -

- a. There is no known difference in the subject goods produced by the applicants and imported from Republic of Korea. The applicants supply like article to the imported product.
- b. No evidence has been brought forward by the interested parties to substantiate that the product supplied by the Korean producers is of superior purity or quality as compared to the Indian industry.
- c. The application has been filed by the producers constituting 40% share in total production. Further, the supporters account of 20% share in the Indian production.
- d. The applicants satisfy the requirements of standing in terms of the Rules.
- e. Consideration of a substantial long period has ensured that the imports have been compared in the pre concession, during concession and post concession period.
- f. The imports of the product under consideration have increased in absolute terms and in relation to Indian production and total imports.
- g. The imports of FeMo increased when the duties were eliminated. The imports increased again in the most recent period and the period post the most recent period.
- h. The imports of FeMo have increased because of the tariff concessions. No reason has been brought forward by the interested parties to justify the increased imports.
- i. Imports of the product from Republic of Korea have increased and constitute increased imports within the meaning of the Rules and Korea-India CEPA.
- j. The Indian industry has sufficient capacity to cater the entire demand in the country. However, it continues to operate at low-capacity utilisation.
- k. The applicants have been unable to increase their domestic sales in line with the increase in the demand.
- l. The imports have increased and taken away the market share of the applicants.
- m. The applicants have seen a decline in the volume parameters such as market share and sales. Therefore, they have been forced to reduce their production.
- n. The demand has increased considerably during the period from October '21 to March'22 as compared to the corresponding period. However, the entire increased demand has been met through Korean import even though there is a substantial surplus capacity available with the domestic industry.
- o. The applicants have suffered a decline in profitability.
- p. The increased imports have caused serious injury to the domestic industry.
- q. No other factor as a cause of injury has been established by the interested parties.

- r. There exists a causal link between the increased imports and serious injury to the domestic industry.
- s. The product under consideration does not form a significant part of the operations of the downstream industry. Therefore, the impact of the bilateral safeguard measures on the downstream industry will be insignificant.
142. It is thus considered appropriate to recommend bilateral safeguard measure in terms of Rule 10 of India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017. Accordingly, the Director General recommends increasing the rate of customs duty on imports of subject goods originating in Korea RP to the lower of below:
- a. Most Favoured Nation applied rate of customs duty on the subject goods as on the date of application of Bilateral safeguard measure or
- b. Most Favoured Nation applied rate of customs duty on the subject goods as on the day immediately preceding the date of entry into force of India-Korea CEPA.
143. The measure is recommended for a period of two years as per table below from the date of issue of the notification to be issued by the Ministry of Finance in this regard.

Year	Bilateral safeguard measure
Year 1	Increase the rate of customs duty @ 100% to the level of Most Favoured Nation applied rate of customs duty
Year 2	Increase the rate of customs duty @ 75% to the level of Most Favoured Nation applied rate of customs duty

  
**Anant Swarup**  
**(Director General)**