

**To be published in Part-I Section I of the Gazette of India Extraordinary**

**F. No. 22/4/2023-DGTR  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Trade Remedies  
4<sup>th</sup> Floor, Jeevan Tara Building,  
5, Parliament Street, New Delhi – 110001**

**Dated: 29.04.2024**

**Case No - SG (QR) - 04/2023**

**FINAL FINDING**

**Subject: Safeguard (Quantitative Restrictions) investigation concerning imports of Low Ash Metallurgical Coke into India.**

**A. BACKGROUND OF THE CASE**

1. An application dated 04<sup>th</sup> April 2023 was filed before the Authorized Officer under Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter also referred to the “Act”) read with the Safeguard Measures (Quantitative Restrictions) Rules, 2012 (hereinafter also referred to as the “Quantitative Restrictions Rules” or the “Rules”) by BLA Coke Private Ltd., Jindal Coke Ltd., Saurashtra Fuels Private Ltd., Vedanta Malco Energy Ltd. and VISA Coke Ltd. (hereinafter also referred to as the “applicants” or the “domestic industry”) seeking imposition of safeguard measures in the form of quantitative restrictions on imports of “Low Ash Metallurgical Coke” (hereinafter also referred to as the “product under consideration” or “PUC” or “subject goods” or “Met Coke”) into India.
2. The applicants have alleged that the product under consideration is being imported into India in such increased quantities and under such conditions as to cause injury to the domestic industry that is producing like or directly competitive goods in India. For this reason, the applicants had requested for imposition of Safeguard (Quantitative Restrictions) as a measure to mitigate its injury, for a period of one year.
3. In view of the duly substantiated petition filed by the applicants and sufficient *prima facie* evidence submitted regarding recent, sudden, sharp and significant increase in imports of the subject goods and consequent serious injury to the domestic industry, a safeguard investigation against imports of the product under consideration into India under the provisions of Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 5 of the Quantitative Restrictions Rules, for examining the need for

imposition of safeguard measures in the form of quantitative restrictions, was initiated vide Notification No 22/4/2023-DGTR dated 30<sup>th</sup> June 2023.

## **B. PROCEDURE**

4. In accordance with sub-rules (2) and (3) of Rule 6 of the said Rules, a copy of the initiation notification dated 30<sup>th</sup> June 2023 and a copy of a non-confidential version (NCV) of the application filed by the applicants were forwarded to the Central Government in the Ministry of Commerce & Industry, the Governments of major exporting countries through their embassies in India, and the interested parties mentioned in the said application.
5. A questionnaire to be answered by the exporters / importers / domestic producers as prescribed under Rule 6(4) of the said Rules, was forwarded to the known interested parties with a request to make their views known in writing within 30 days from the date of issue of the Notice of Initiation.
6. In response to the Notification of Initiation the following interested parties filed a response to the exporters' questionnaire:
  - i. Balta GmBH
  - ii. BlueScope Steel (AIS) Pty Ltd.
  - iii. Cheongfuli (Xiamen) Co. Ltd.
  - iv. China National Minerals Co. Ltd.
  - v. PT. Detian Coking Indonesia
  - vi. PT. Kinrui New Energy Technologies Indonesia
  - vii. PT. Kinxiang New Energy Technologies Indonesia
  - viii. PT. Risun Wei Shan Indonesia
  - ix. Qingdao Sion Coke Rich International Trade Co. Ltd.
  - x. Risun Marketing Ltd.
  - xi. Sinochem International Corporation
  - xii. Union Yiwua International Trade Co., Ltd.
  - xiii. Xiamen Guqiying Supply Chain Co., Ltd.
  - xiv. Xiamen ITG Dynamic Co., Ltd
7. In response to the Notification of Initiation the following interested parties filed response to users' / importers' questionnaire:
  - i. Orissa Metaliks Private Ltd.
  - ii. Jayaswal Neco Industries Ltd.
  - iii. Tata Steel Ltd.
  - iv. Tata Steel Mining Ltd.
  - v. Sunflag Iron and Steel Company Ltd.
  - vi. Mukand Ltd
  - vii. ArcelorMittal Nippon Steel India Ltd.
  - viii. Balmukund Sponge and Iron Private Ltd.

- ix. Indian Metals and Ferro Alloys Ltd.
  - x. Narsingh Ispat Ltd.
  - xi. Neo Metaliks Ltd.
  - xii. SMC Power Generation Ltd.
  - xiii. Sree Metaliks Ltd.
  - xiv. Swati Concast and Power Private Ltd.
8. In response to the Notification of Initiation the following interested parties filed submissions:
- i. Alloy Steel Producers Association of India (ASPA)
  - ii. Balta GmBH
  - iii. BlueScope Steel (AIS) Pty Ltd
  - iv. China Chamber of Commerce of Metals, Minerals & Chemicals Importers and Exporters
  - v. Government of Indonesia
  - vi. Jayaswal Neco Industries Ltd.
  - vii. Mukand Ltd.
  - viii. Orissa Metaliks Private Ltd.
  - ix. Sunflag Iron and Steel Co. Ltd
  - x. Tata Steel Ltd &. Tata Steel Mining Ltd.
9. In response to the Notification of Initiation the following interested parties filed response to economic interest questionnaire:
- i. Domestic industry
  - ii. Narayani Coke Private Ltd.
  - iii. ArcelorMittal Nippon Steel India Ltd.
  - iv. Balmukund Sponge and Iron Private Ltd.
  - v. Balta GmBH
  - vi. BlueScope Steel (AIS) Pty Ltd
  - vii. Cheongfuli (Xiamen) Co. Ltd.
  - viii. China National Minerals Co. Ltd.
  - ix. Indian Metals and Ferro Alloys Ltd.
  - x. Narsingh Ispat Ltd.
  - xi. Neo Metaliks Ltd.
  - xii. Qingdao Sion Coke Rich International Trade Co. Ltd.
  - xiii. Risun Marketing Ltd.
  - xiv. Sinochem International Corporation
  - xv. SMC Power Generation Ltd.
  - xvi. Sree Metaliks Ltd.
  - xvii. Swati Concast and Power Private Ltd.
  - xviii. The Indian Ferro Alloy Producers' Association (IFAPA)
  - xix. Union Yiwua International Trade Co., Ltd.
  - xx. Xiamen Guqiyong Supply Chain Co., Ltd.
  - xxi. Xiamen ITG Dynamic Co., Ltd

10. The Authorized Officer has considered the most recent period as 1<sup>st</sup> April 2022 – 31<sup>st</sup> March 2023 and the period of investigation as 1<sup>st</sup> April 2019 – 31<sup>st</sup> March 2023.
11. A list of interested parties was published on the DGTR website to enable access of all non-confidential version (NCV) submissions made by all interested parties. All interested parties were advised to exchange the non-confidential version of their submissions with each other through email.
12. In accordance with Rule 6(6) of the Rules, the Authorized Officer provided an opportunity to the interested parties to present their views orally in a public hearing held on 17<sup>th</sup> January 2024 in hybrid mode i.e. both virtual and physical. The parties which wished to join online participated through Digital Video Conferencing. All the interested parties who participated in the oral hearing were requested to file written submission of the views presented orally. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties. The following interested parties had filed written submissions and rejoinder submissions post the oral hearing.
  - i. Domestic industry
  - ii. Alloy Steel Producers Association
  - iii. Arcelor Mittal Nippon Steel Ltd.
  - iv. Balmukund Sponge and Iron Private Ltd.
  - v. Balta GmBH
  - vi. BlueScope Steel (AIS) Pty Ltd.
  - vii. China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters
  - viii. European Commission
  - ix. Government of Indonesia
  - x. Indian Metals and Ferro Alloys Ltd
  - xi. Jayaswal Neco Industries Ltd.
  - xii. Mukand Ltd.
  - xiii. Narsingh Ispat Ltd.
  - xiv. Neo Metaliks Ltd.
  - xv. Orissa Metaliks Pvt. Ltd.
  - xvi. PT. Detian Coking Indonesia
  - xvii. PT. Kinrui New Energy Technologies Indonesia
  - xviii. PT. Kinxiang New Energy Technologies Indonesia
  - xix. PT. Risun Wei Shan Indonesia
  - xx. Russian Federation
  - xxi. SMC Power Generation Ltd.
  - xxii. Sree Metaliks Ltd.
  - xxiii. Sunflag Iron and Steel Co. Ltd.
  - xxiv. Swati Concast and Power Private Ltd.

xxv. Tata Steel Ltd.

xxvi. Tata Steel Mining Ltd.

13. The submissions made by all interested parties pursuant to the oral hearing or otherwise, to the extent the same are substantiated with evidence and considered relevant to the present investigation, have been appropriately considered by the Authorized Officer in this disclosure statement.
14. The Authorized Officer, during the course of the investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of this disclosure statement to the extent possible and verified the data/ documents submitted by the domestic industry to the extent considered relevant, practicable and necessary.
15. The information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claims. On being satisfied, the Authorized Officer has accepted the confidentiality claims, wherever warranted, and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non- confidential version of the information filed on confidential basis.
16. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the investigation, or has significantly impeded the investigation, the Authorized Officer considered such interested parties as non-cooperative and recorded this disclosure statement on the basis of the facts available.
17. Request was made to the Director General (Systems) to provide the transaction-wise details of imports of the subject goods for the period of investigation.
18. \*\*\* in this final findings represents information furnished by an interested party on confidential basis, and so considered by the Authorized Officer under the Rules.
19. The exchange rate adopted by the Authorized Officer for the subject investigation is 1US\$ = ₹ 81.06.

## **C. SCOPE OF PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **C1. Submissions by the other interested parties**

20. The following submissions were made by the other interested parties with regards to product under consideration and like article.
  - a. Since domestic industry is unable to produce Low Ash Metallurgical Coke with phosphorous content upto to 0.030% and size upto 30 mm with oversize limited to

- 5%, it should be excluded from the scope of the PUC. The exclusion was agreed by the domestic industry during the oral hearing.
- b. Ultra-Low Phos. Coke (ULP) [Phos:  $\leq 0.007\%$ , S:0.65%, FC:84-86%, 10-30mm]; Ultra Ultra Low Phos. Coke (UULP), [Phos:  $\leq 0.005\%$ , S:0.65%, FC:84-86%, 10-30 mm]; Ultra Low Phos. Coke Fines (ULPC) [Phos:  $\leq 0.007\%$ , S:0.65%, FC:85-89%, 0-6mm] should be excluded.
  - c. While the applicants agreed on exclusion of low phos coke having phosphorus content less than 0.03 and particle size upto 30 mm during the oral hearing, the condition of particle size upto 30 mm is not relevant and should not be considered.
  - d. Met coke with size upto 40 mm with 5% tolerance should be excluded as it is not available in abundant quantities domestically. Since only this size can be used in mini-blast furnaces and limited volume is imported, quantitative restrictions will have an adverse impact on the pig iron manufacturers as they will be forced to break bigger size coke to smaller sizes leading to increase in cost.
  - e. The domestic industry is not involved in production of coke fines / coke breeze. Coke fines supplied by the domestic industry have high ash and volatile matter content. The related party of one of the applicants itself imports coke fines to supply to the other interested parties. Thus, such coke fines with low ash content should be excluded from the scope of the product under consideration as agreed by the domestic industry during the oral hearing.
  - f. The met coke supplied by the Indian industry is of inferior quality as compared to imported coke. The domestic coke contains higher moisture leading to higher fuel demand, has lower coke strength after reduction and higher coke reactivity index, mean particle size is on lower side and the -30 mm and -25 mm fractions are on higher side, size of domestic coke was below norms set by Arcelormittal Nippon Steel India Limited. Using sub-standard quality of met coke in the production process results in reduced hot metal production. There are other safety concerns as well including taphole choking, coke rush, personnel safety, equipment damage, operational disruptions etc.
  - g. Considering of HS code 2704 for analysis of met coke import is not appropriate as it consists of various types of coal and the product under consideration is classified only under 2704 00 30.
  - h. HS code 2704 does not indicate the ash content. In India coke with low ash content contains ash up to 11%, with middle ash content contains up to 18% and with high ash content contains upto 25%. Since coke with up to 14% ash content can be used in blast furnaces. It seems that the applicants have incorrectly used customs data on 4-digit code to include all types of coke.

## **C2. Submissions by the domestic industry**

21. The submissions of the domestic industry with regard to the product under consideration and like article are as follows:

- a. The product under consideration in the present investigation is Low Ash Metallurgical Coke having ash content below 18%. In order to produce met coke with low ash content, the only requirement is low ash coking coal.
- b. The product under consideration is imported under various names such as coke, nut coke, semi-coke of coal, BF coke, foundry coke, coke breeze, metallurgical breeze coke, coke fines, coke dust, coke ash powder, coke powder and carbon coque / coque.
- c. The products imported under the names carboflux, carbon block, carbon anode butts, carbon raiser, carbon raised, bags, semi coke of lignite or peat, lignite special coke, non-activated charcoal, carbolux, CTF065 SASCARB are not a part of the product under consideration.
- d. The domestic industry has not manufactured ultra-low phos metallurgical coke with phosphorous content below 0.03% and size below 30 mm for use in ferroalloy applications due to economic unviability and such product may be excluded from application of quota when the importers show the use of said product for manufacturing of ferroalloys.
- e. Coke breeze / fines are not produced by any manufacture globally but is a by product generated while producing coke. Since the domestic industry has not produced low-ash coke breeze / fines, the same may be excluded from the scope of the product under consideration.
- f. As opposed to the contentions of the other interested parties, quality cannot be the reason for surge in imports. Further, in case the imports were of superior quality the prices of the product would have been higher.
- g. With regard to the submissions on exclusion of met coke with size upto 40 mm, the said product is being produced by the Indian industry and does not call for exclusion.
- h. For the purposes of the present investigation, the HS classification is only indicative in nature, as has been provided in the initiation notification. The information submitted is relevant only to the product under consideration and the application has in no manner reported any statistic on an article which is not representative of the product under consideration.
- i. Met coke is classified under the HS Code 2704 0030. However, it is also being imported under HS Codes 2704 0010, 2704 0020, 2704 0030 and 2704 0090. Accordingly, HS Code 2704 may be considered for notification of measures.
- j. As opposed to the submissions of the other interested parties, only transactions pertaining to low ash metallurgical coke with ash content below 18% have been considered for determination of increase in imports, and injury to the domestic industry.

### **C3. Examination by the Authorised Officer**

22. The product under consideration for the purpose of the present investigation is Low Ash Metallurgical Coke, that is, Metallurgical Coke having ash content below 18%. The product is commonly known as Met Coke or Coke in the market parlance. Metallurgical

Coke with high ash content, that is, ash content above 18% is outside the scope of the product under consideration.

23. The other interested parties have requested exclusion of ultra-low phosphorous low ash metallurgical coke with low phosphorous content upto 0.030% and size below 30 mm. The domestic industry has submitted that the production of such product does not need any new equipment or plant; and requires only a specific type of coking coal. The domestic industry has however accepted exclusion of metallurgical coke with low phosphorous content upto 0.030% and size upto 30 mm with oversize tolerance of 5%. The Authorized Officer notes that the domestic industry has not manufactured the said product stating commercial unviability of the same. Such product is used for manufacturing of ferroalloys. Hence, the Authorized Officer proposes to hold that ultra-low phosphorous metallurgical coke with phosphorous content below 0.03% and size upto 30 mm with oversize tolerance of 5% will not be subject to any quantitative restrictions.
24. With regard to the coke fine / coke breeze, the Authorized Officer notes that the domestic industry has agreed for exclusion of low ash coke fines / coke breeze, as the same is not produced by it. Accordingly, the Authorized Officer proposes to hold that the scope of product under consideration does not include low-ash coke fines / coke breeze, that is, coke fines / coke breeze with ash content of upto 18%.
25. The other interested parties have submitted that met coke with size upto 40 mm should be excluded from the scope of product under consideration. The Authorized Officer notes that the other interested parties have themselves stated that the said product is available in India and is being supplied by the domestic industry. The other interested parties have not substantiated their claims with regards to availability of such product in limited quantities. Accordingly, it is considered that the need for exclusion of the met coke with size upto 40 mm has not been substantiated.
26. With regard to the submissions of the other interested parties regarding the HS Codes, it is noted that the product under consideration is being imported under various HS Codes. The import data under 4-digit level at 2704 pertaining to metallurgical coke has been segregated on the basis of description of the product as 'low ash Metallurgical Coke having ash content below 18%' at 8-digit level.
27. The other interested parties have submitted that the quality of the product supplied by the domestic industry is inferior. The Authorized Officer notes that the other interested parties have not substantiated their claims by providing evidence for the same. Further, in case of superior quality product, a producer usually charges a premium as the users will not switch to an inferior quality product due to pricing policy. In the present case, the imports are undercutting the prices of the domestic industry and hence, the submissions with regard to superior quality of imports is not justified.

28. It is also noted that in past anti-dumping investigations pertaining to the product, the Authorised Officer had found that the domestic industry was producing like article to the imported product. In a safeguard investigation, it is required to be examined whether the domestic industry has produced like or directly competitive product, to the imported goods. No evidence has been placed by the interested parties to displace or dispute the conclusions reached in the past investigations. Further, no party has claimed that the goods produced by the domestic industry are not, competing with the imported products. Therefore, the Authorized Officer finds that the information on record does not indicate a difference in quality of the products.
29. On the basis of the information on record the following is the product under consideration for the present investigation

*“Low Ash Metallurgical Coke, that is, Metallurgical Coke having ash content below 18% excluding coke fines / coke breeze and ultra-low phosphorous metallurgical coke with phosphorous content up to 0.030% with size of 30 mm with 5% size tolerance for use in ferroalloy manufacturing”*

There is no known difference in the subject goods produced by the domestic industry and those imported into India. They 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. The consumers have used and are using the two interchangeably. The Authorised Officer proposes to hold that the product manufactured by the applicants constitutes like goods to the subject goods being imported into India in terms of Rule 2(e) of the Rules.

## **D. DOMESTIC INDUSTRY AND STANDING**

### **D1. Submissions by the other interested parties**

30. The following submissions were made by the other interested parties with regards to domestic industry and standing:
- a. In a safeguard investigation, the only condition for constitution of domestic industry is a major share in total production. There are no exclusions to be considered as that in an anti-dumping investigation. The Authorised Officer, in the safeguard investigation into imports of Isopropyl Alcohol held that there is no exclusion of a producer who imports the subject goods.
  - b. The Authorised Officer may re-examine the standing in the present case after including the producers that manufacture the subject goods as an intermediate product.
  - c. In order to determine standing, the production of all entities producing met coke, regardless of captive or merchant market, should be considered. The Appellate Body

- in US – Cotton Yarn held that while determining the major share of domestic production, captive consumers cannot be excluded. The captive producers import 73% of coking coal in India and produce majority of the product under consideration.
- d. Captive consumers of the product cannot be excluded for determination of total production of met coke in India. The applicants have relied upon the decision of the Authorised Officer and CESTAT decision in the anti-dumping investigation on imports of met coke. The definition of domestic industry under Safeguard Rules does not allow for consideration of two or more competitive markets where producers could be considered as separate industry, as opposed to the definition under the Anti-Dumping Rules.
  - e. While the applicants have claimed that the captive producers do not mention met coke as a product on their website, RINL and Sathavahana Ispat Ltd. have mentioned the product on their website. Sathavahana Ispat Ltd. and Bengal Energy Ltd. is engaged in sales of met coke in merchant market as evident from the final findings issued by the Authorised Officer in anti-dumping investigation on imports of met coke from Australia and China. In case, production of such producers is added to total domestic production, the share of applicants will be even lower.
  - f. A share of 33.46% cannot be considered as a major share in the total domestic production. The present industry is not a fragmented industry as evident from the fact that the applicants have provided a list of all domestic producers. A low share in domestic production will not permit representative and objective examination of serious injury to the domestic industry.
  - g. The applicants have not provided information regarding their share in total domestic production during April 2019 – March 2023. Standing should be determined based on the share in production during the complete injury period.
  - h. The share in domestic production of applicants in the anti-dumping investigation was higher than that in the present investigation. Further, the applicants in the anti-dumping investigation, are still operational (barring Gujarat NRE Coke Ltd) but have not participated in the present investigation. Since the information required in a safeguard investigation is less burdensome, it is not clear why other producers have not provided the information.
  - i. In Argentina – Poultry, the Panel held that major means important, serious, or significant and the domestic industry refers to domestic producers whose collective output constitutes more than 50% of domestic production. In EC-Fasteners (China), the Appellate Body held that a proportion of 36% of total domestic production is low, even in the context of the fragmented fasteners industry. In EC Steel Fasteners, the Appellate Body held that a major proportion should be understood as a relatively high proportion of the total domestic production. In the present investigation major share implies more than 51% of total domestic production, however, the applicants hold only 33.63% of the total domestic production.
  - j. In more than 35 safeguard investigations conducted by the Authorised Officer, the Authorised Officer has held major share as constituting more than 50% of total production. As per para 4.9.2 of the Manual of Operating Practices, total domestic production should consist of entire production in India including production for

domestic sales, exports as well as captive consumption. In anti-dumping investigation into imports of O-Acid, the Authorised Officer held that absence of actual merchant sales in the period of investigation should not deprive the company from being treated as domestic industry.

- k. While the applicants have identified supporters, there is no concept of supporters in a safeguard investigation. Thus, production of such producers cannot be considered for the purpose of determining standing.
- l. Supporters have not provided their data. The Authorised Officer must conduct a further examination into the state of performance of the additional producers and Indian industry as a whole. This is necessary since the sales of other domestic producers is higher than the sales of the domestic industry.
- m. The supporters have not provided information as per Trade Notice No. 13/2018.
- n. The applicants have admitted that the information regarding total domestic production is estimated, however, the basis of such estimation has not been provided.

## **D2. Submissions by the domestic industry**

- 31. Following submissions have been made by the applicants with regard to the domestic industry and standing:
  - a. The petition has been filed by BLA Coke Private Ltd., Jindal Coke Ltd., Saurashtra Fuels Private Ltd., Vedanta Malco Energy Ltd., and VISA Coke Ltd.
  - b. The petition has been supported by Bhatia Coke and Energy Ltd., Krishna Coke India Private Ltd., Mothersons Consolidate, M V International Ltd., Nilachal Carbo Metalicks Private Ltd., Tirupati Traders, Coromandel Met Coke Industries and Narayani Coke Private Ltd.
  - c. The applicants constitute 39% of Indian merchant production. Along with the supporters, the applicants account for 49% of the total production in India.
  - d. Contrary to the submissions of the other interested parties, Trade Notice 13/2018 is not applicable to safeguard investigations.
  - e. As opposed to the contentions of the other interested parties, the WTO Panel in Argentina – Poultry held that there is no need for the Members to define domestic industry as producers pertaining to more than 50% of domestic production. Appellate Body in EC-Fasteners (China) dealt with self-selection of producers.
  - f. While the other interested parties have submitted that the scope of domestic industry in an anti-dumping investigation was larger, there is no requirement for the constitution of domestic industry to remain the same in a safeguard investigation.
  - g. Contrary to the submissions of the other interested parties, the domestic industry has provided its production during the period of investigation as well total Indian production.
  - h. While production of Tata Steel Ltd. and members of Dhanbad association were considered for the purpose of standing while filing the petition, these should not be considered as Tata Steel produces for captive consumption and members of Dhanbad Association produce NPUC.

- i. As opposed to the submissions of other interested parties, production of Bengal Energy Ltd. and Sathavahana Ispat Ltd. to the tune of that for the merchant market have been considered in total Indian production. Mere listing of product by RINL does not mean that all steel manufacture recognize it as a product and show it on the their website.
- j. There are three types of producers in India which include MSME industry producing high ash met coke, organised sector and few MSME companies producing the like goods for merchant market and captive producers of the product.
- k. There are at least 17 producers of the product producing met coke captively. Steel manufacturers producing met coke for captive use must not be considered for the purpose of the present investigation as they are essentially consumers of the product, they do not recognize met coke as a product, they do not compete in the merchant market and are insulated from the merchant market situation.
- l. The steel manufacturers do not specify met coke as a product on their website. The merchant market prices for met coke vis-à-vis coking coal does not impact the steel manufacturers.
- m. Captive producers should not be treated as the domestic industry which is consistent as per the objective of safeguard laws, anti-dumping laws and practice of the Authorised Officer.
- n. In the anti-dumping investigation on imports of low ash metallurgical coke, producers who were captively consuming the product were not treated as part of the domestic industry.
- o. There are notable differences in the economics of merchant producers and captive producers. The merchant producers face competition from other merchant producers, both domestic and foreign, while captive producers faced no such competition. Merchant producers are required to gain a return on investment on the subject goods produced and sold in the market to maintain viability of their plant, the captive producers require profits and return on investment on the downstream product.
- p. As opposed to the contentions of the other interested parties, major share of domestic production has to be defined on case-to-case basis. The Authorised Officer has considered less than 50% as major share in safeguard investigations.
- q. The application has been filed by the major producers of like goods in India. All other producers are small in terms of individual production of the product.

### **D3. Examination by the Authorised Officer**

32. The submissions made by the domestic industry and other interested parties with regard to the domestic industry and their standing were considered and the main issues raised were definition of domestic industry, meaning of major proportion and the locus standi of the applicants.

**Domestic industry:** Section 9A4(b) of the Foreign Trade (Development and Regulation) Act, 1992 defines domestic industry as:

*“(b) domestic industry means the **producers of goods** (including producers of agricultural goods) –*

*(i) as a whole of the **like goods or directly competitive goods in India; or***

*(ii) whose **collective output of the like goods or directly competitive goods in India constitutes a major share of the total production of the said goods in India.**”.*

33. The Agreement on Safeguards under Article 4 i.e. Determination of Serious Injury or Threat Thereof has defined that for the purpose of this agreement:

*(c) in determining injury or threat thereof, a domestic industry shall be understood to mean the producers as a whole of the **like or directly competitive products** operating within the territory of a Member, or those whose collective output of the **like or directly competitive products** constitutes **a major proportion of the total domestic production** of those products*

It is noted that comprehending the precise delineation of the term "a major proportion of the total production" as stipulated within the safeguard agreement necessitates a thorough comprehension of the contextual framework of production so as to ascertain what constitutes total domestic production and thereby a major proportion.

34. It is noted that neither the safeguard agreement nor the FTDR Act defines the term production. The term domestic industry in the agreement on safeguards has been defined under the Heading Serious Injury and therefore the interpretation of the term production and a major proportion cannot be done in isolation.

35. It is noted that though the Agreement on Safeguards and FTDR Act is silent with regards to the definition of the term production but there are other statutes encompassing such definitions which include, among others, the Factories Act of 1948, the Special Economic Zone Act of 2005, the Central Excise Act of 1944, the Consumer Protection Act of 1986, the Beedi and Cigar Workers Act of 1966, the Standard of Weights and Measures Act of 1976, and the Foreign Trade Policy. Notably, the definitions of production articulated within these statutes exhibit substantial variations. These diverse laws and regulations have attributed differing meanings to the concept of production, as discernible from the disparate interpretations evident across various legislative provisions. It is further noted that the determination of production's meaning necessitates due consideration of the specific laws and regulations in question, including the definitions and interpretations proffered therein, alongside an examination of the underlying objectives and purposes for which said laws were promulgated. Of particular

relevance is the observation that under excise law, the completion of certain ancillary activities, such as packaging, labeling, or treating goods for consumer marketability, suffices to qualify as production. However, such activities do not necessarily fulfill the criteria for production under safeguard law or FTDR Act. Therefore, imposition of a universal definition of the term production would be untenable and needs to be determined or ascertained on a case-by-case basis with underlying objectives of the different statutes.

36. In the Agreement on Safeguards under Article 4.1(c) the domestic industry has been referred to as producers of the like or **directly competitive products**. While there is no issue with respect to like goods, the Agreement stipulates that the goods shall be directly competitive. Since, the domestic industry has been defined under the heading *Serious Inujury or Threat Thereof*, the purpose of the determination of the domestic production shall mean to be those domestic goods which are in direct competition with the imports and facing serious injury or threat thereof.
37. While arguments have been posited advocating the inclusion of captive production within the ambit of total domestic production, it is noted that such goods, by their nature, do not enter the merchant market and thus do not directly compete with imported products. Captively produced goods, not being in competition with imports, do not meet the criteria delineated for directly competitive goods under the Agreement, Act and associated Rules.
38. Moreover, a strict literal interpretation of the term "total domestic production," divorced from the overarching purpose and legislative intent encapsulated within the Act, engenders ambiguity. The potential for ambiguity arises in situations where the majority (80%) of a like article is produced captively, with only a minority portion of the domestic production by the domestic producers (20%) being in the merchant market and thus facing competition from the imported product under consideration. Such an interpretation of total domestic production to include captive production would render the domestic producers constituting the 20% minority share of total domestic production, who are actively engaged in merchant market sales and thus directly competing with the imported product under scrutiny, devoid of any recourse under the Law. This outcome would be antithetical to the underlying purpose and intent of the FTDR Act, which is designed to redress serious injury inflicted upon domestic producers by sudden sharp and significant import surges.

39. In *US – Lamb*<sup>1</sup>, the Appellate Body concurred with the finding of the Panel that, in the context of an investigation in which the relevant like product was defined as lamb meat, the term "domestic industry" could not be interpreted as including growers and feeders of live lambs. The Appellate Body began by identifying the analytical approach towards defining "domestic industry"

*"[A] safeguard measure is imposed on a specific 'product', namely, the imported product. The measure may only be imposed if that specific product ('such product') is having the stated effects upon the 'domestic industry that produces like or directly competitive products'. (emphasis added) The conditions in Article 2.1, therefore, relate in several important respects to specific products. In particular, according to Article 2.1, the legal basis for imposing a safeguard measure exists only when imports of a specific product have prejudicial effects on domestic producers of products that are 'like or directly competitive' with that imported product. In our view, it would be a clear departure from the text of Article 2.1 if a safeguard measure could be imposed because of the prejudicial effects that an imported product has on domestic producers of products that are not 'like or directly competitive products' in relation to the imported product. Accordingly, the first step in determining the scope of the domestic industry is the identification of the products which are 'like or directly competitive' with the imported product. Only when those products have been identified is it possible then to identify the 'producers' of those products."*

40. It is further noted that the Authorised Officer in the past has also underscored the same principle while excluding the producers of SEZ from total domestic production while determining the standing in terms of major proportion under safeguard agreement in the matter of safeguard investigation concerning imports of "Solar Cells whether or not assembled in modules or panels"<sup>2</sup> into India which is as under:

*"Though section 2(i) of SEZ Act does not specifically mention about DTA clearances by a SEZ unit as an import in the DTA, but such clearances are subjected to duties like Anti-dumping duty, Countervailing duty and Safeguard duty as applicable in accordance with section 9A and section 8B of the Custom tariff Act, 1975. Section 30 of SEZ Act, 2005 stipulating collection of applicable Anti-dumping, Countervailing and Safeguard duties requires filing of a bill of*

---

<sup>1</sup> Appellate Body Report, *US – Lamb*, paras. 86-87

<sup>2</sup> [https://www.dgtr.gov.in/sites/default/files/Solar-Final\\_Finding-English\\_0.pdf](https://www.dgtr.gov.in/sites/default/files/Solar-Final_Finding-English_0.pdf)

*entry which validates the fact that such DTA clearances are in fact to be treated as imports. Therefore, the following is concluded:*

- (i) The fundamental objective of establishing SEZ units is promotion of exports governed by a specific SEZ Act, 2005. The area of SEZ are excluded from the definition of DTA under section 2(i) of SEZ Act, 2005. Supply of goods from DTA to SEZ constitutes exports.*
- (ii) DTA sale of goods manufactured by a SEZ unit can be made only on submission of import licence, as applicable to the import of similar goods into India. Sale or clearance of goods from SEZ to DTA is subject to various duties i.e. Anti-dumping duty, Countervailing duty and Safeguard duty imposed as per section 9 and 8B respectively as per Custom Tariff Act, 1975 and levied as per Section 30 of SEZ Act, 2005.*
- 126*
- (iii) ( EOU's are governed by specific Foreign Trade Policy provisions and its sales to SEZ units are considered as export. The Foreign Trade Policy provisions also apply to DTA units as well as to those who wish to undertake imports/exports. Further DTA clearances by an EOU are liable for payment of applicable Excise duties/taxes. They operate outside the SEZ territories quite analogous to normal DTA units in the same ecosystems*
- (iv) Therefore, on the basis of the above, I hold that the provision of Sales to DTA by a SEZ unit as an exception with features varying in different cases, does not justify a SEZ unit to be considered as a domestic producer in the context of trade remedial measures keeping in view the context of the larger framework of SEZ Act, 2005.*

*Therefore, the scope of DI in this investigation is restricted only to the producers i. e. M/s Indosolar Limited (EOU) and M/s Jupiter Solar Power Limited, which includes the EOU unit also, since they are physically located in DTA governed by Foreign Trade Policies though with export orientation. (v) With the exclusion of 3 SEZ units, the DI is now restricted to M/s Indosolar Limited and M/s Jupiter Solar Power Limited which collectively account for 38% of the total domestic production in the DTA”.*

41. It is further noted that even the references sought from the decisions of WTO reports establish important principle regarding the inclusion and assessment of captive consumption in domestic industry production for safeguard investigations. The Appellate Body has also acknowledged that captive consumption can be included in production calculations. However, it emphasized the need for proportionality. What is inferred through a reading on the decisions of WTO panel and appellate body reports is that the captive consumption shouldn't automatically be added, it needs justification. Authorities must assess the proportion of captive consumption relative to total production. Only significant proportions that distort the analysis should be excluded. Including disproportionately large amounts of captive

consumption could artificially inflate the domestic industry's size and its apparent injury from imports. This could lead to unjustified safeguard measures harming legitimate trade.

42. In consonance with the precedent and to maintain coherence in interpretation, it is affirmed that captive production, not being in competition with imports, does not contribute to injury faced by domestic producers *engaged in direct competition* with imported goods. Hence, in determining total domestic production within the present context, only producers vending like goods which are directly competitive and are subject to the injurious effects envisioned under the law are factored. Therefore, a major proportion of the like or directly competitive goods constituting the domestic industry in the facts of the present case is assessed based on the production of the industry in the merchant market excluding the captive production.

43. As regards the issue of major proportion, it is noted that The Panel in *US –Wheat Gluten*<sup>3</sup> addressed the link between the phrase "major proportion" and the question of data coverage *"The Agreement expressly envisages that, in certain circumstances, the 'domestic industry' may consist of those domestic producers 'whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products'. This implies that complete data coverage may not always be possible and is not required. While the fullest possible data coverage is required in order to maximize the accuracy of the investigation, there may be circumstances in a particular case which do not allow an investigating Authorised Officer to obtain such coverage."*

44. The Panel in *US – Lamb*<sup>4</sup> also pointed out that an incorrect determination of what constitutes the "domestic industry" will likely vitiate also the representativeness of data related to such incorrectly determined domestic industry:

*"This lack of representativeness is likely compounded by the fact that the USITC defined the domestic industry broadly as including growers and feeders, as the conclusions drawn from the data pertaining to only a small proportion of US growers and feeders are central to the USITC's overall finding of threat of serious injury."*

---

<sup>3</sup> Panel Report, *US – Wheat Gluten*, paras. 8.54-8.56

<sup>4</sup> Panel Report, *US – Lamb*, para. 7.219

45. Based on the above precedents and interpretations established by the World Trade Organization (WTO) Appellate Body, it can be deduced that the concept of "a major proportion" in defining the domestic industry does not adhere to a strict threshold. Rather, the crux lies in ensuring that the data provided by domestic producers is sufficiently representative to evaluate the criteria of serious injury and the potential threat thereof.
46. As regards the contention of major proportion in view of the standing of the domestic industry under Article 4 (c) of the Safeguard Agreement, it is noted that Article 4 of Agreement on Safeguard Measures reads as under:
47. "For the purposes of this Agreement:
- a)"serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;
  - b)"threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and;
  - c) In determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of Those products.
48. As can be seen from the above, Article 4.1(c) of the Agreement on Safeguards provides two options for the definition of the "domestic industry" (i) "the producers as a whole of the like or directly competitive products"; or (ii) the producers whose output constitutes "a major proportion" of the total domestic production of the like or directly competitive products. It is noted that unlike anti-dumping agreement, the Agreement on Safeguards does not provide any specific percentage or share of the domestic production, which would meet the requirement of "a major proportion". Neither does it establish any methodology or procedure that competent authorities must follow for determining a major proportion of the total domestic production. The consideration as to what constitutes "a major Proportion" depends on the specific circumstances of each case.

49. "The Appellate Body has also clarified, in the context of a similar provision in the Anti-Dumping Agreement, that the term "major proportion" means "a relatively high proportion of the total domestic production". The term "major proportion" has both "quantitative and qualitative connotations". The qualitative element aims to ensure that "the domestic producers of the like product that are included in the definition of domestic industry are representative of the total domestic production". The Appellate Body has stated that there is "an inverse relationship" between the proportion of total production included in the domestic industry and the existence of a material risk of distortion in the definition of domestic industry and in the assessment of injury.
50. Specifically, "the lower the proportion, the more sensitive an investigating Authorized Officer will have to be to ensure that the proportion used substantially reflects the total production of the producers as a whole". At the same time, "the higher the proportion, the more producers will be included, and the less likely the injury determination conducted on this basis would be distorted".
51. Further the Panel in US - Wheat Gluten addressed the link between the phrase "major proportion" and the question of data coverage: "[T]he Agreement expressly envisages that, in certain circumstances, the 'domestic industry' may consist of those domestic producers 'whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products'. This implies that complete data coverage may not always be possible and is not required. While the fullest possible data coverage is required in order to maximize the accuracy of the investigation, there may be circumstances in a particular case which do not allow an investigating Authorized Officer to obtain such coverage.
52. The Panel in US - Lamb made clear that a national Authorized Officer is not under an obligation to collect information from all domestic producers so as to ensure the representativeness of the data used for its final determination. Nevertheless, the Panel invoked, among other things, the need for a "statistically valid sample. "Major proportion relates to the representativeness of the data pertaining to the condition of the industry. "
53. Hence, the primary concern for an investigating Authorized Officer lies in the condition of the industry, and the data utilized should sufficiently reflect the true status of domestic

producers. This entails both quantitative and qualitative analyses. It could be argued that when the data coverage of domestic producers falls below 50%, there is a heightened risk of inaccurately assessing serious injury, however in absence of any percentage threshold it is the quantitative and qualitative analyses that acquires primacy.

54. In the current investigation, the applicants previously furnished a roster of producers detailing their production capacities and respective shares in the overall domestic production. Subsequently, a revised list has been provided by the applicants wherein certain industries have been excluded from the scope of domestic producers for the product under consideration, either due to their status as traders or their non-production of the subject goods. Upon revising such data, the percentage share of the applicant producers in total domestic production rises to 53%, while that of supporters ascends to 14%. Even if the argument raised by other interested parties regarding percentage thresholds is considered, the applicant producers still comprise 53% of the total domestic production and when combined with the supporters, their collective percentage share reaches 67% as per the revised data, thereby meeting the criteria for standing of the domestic industry.

55. However, at this juncture, even though the domestic industry has provided a revised production data, the Authorized officer does not take it into consideration as it has been revised at the fag end of the investigation i.e. post issuance of the disclosure statement. Nevertheless, the Authorized Officer, in alignment with the jurisprudential framework delineated by the World Trade Organization (WTO) concerning Article 4(c) of the Safeguards Agreement, maintains that the applicant producers encompass a blend of large-scale enterprises and Micro, Small, and Medium-sized Enterprises (MSMEs). This composition resembles the roster of non-participating producers, thereby rendering the applicant industry sufficiently representative to delineate the current state of domestic producers in its entirety. Further, it is worth noting, that no specific percentage threshold has been defined by the legislature concerning the standing of the domestic industry under the principle of major proportion, as outlined in Article 4(c) of the safeguards agreement. Rather, it is the representativeness of the industry that requires scrutiny to ensure that the applicant industries accurately reflect the prevailing conditions of the existing industry, thereby enhancing the precision of the injury determination process. In the instant investigation, the amalgamation within the cohort of applicant producers mirrors the extant state of the industry, satisfying both qualitative and quantitative analyses. Consequently, it

cannot be precluded on grounds of standing pursuant to the principle of major proportion as outlined in Article 4(c) of the safeguards agreement. In light of the foregoing, the Authorized Officer holds that the applicant producers indeed constitute a major proportion as stipulated under Article 4(c) of the Safeguard Agreement.

## **E. CONFIDENTIALITY**

### **E1. Submissions by other interested parties**

56. The following submissions have been made by the other interested parties with regard to confidentiality.
- a. The applicants have claimed excessive confidentiality as aggregate data for sales value, employees, productivity per day, inventories, PBIT, interest / finance cost, depreciation and amortisation expense have not been shared.

### **E2. Submissions by the domestic industry**

57. The following submissions have been made by the domestic industry with regard to confidentiality:
- a. As opposed to the submissions of the other interested parties, actual information regarding prices, cost and profitability would allow the customers to negotiate on the prices of the applicants and would have an adverse impact on the performance of the petitioners. Hence, the same has not been shared.

### **E3. Examination by the Authorised Officer**

58. With regard to confidentiality of the information, the Rule 7 of the Rules provides as follows:

***“Confidential information-***

*(1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 6, and sub-rule (5) of rule 9, any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Authorised Officer and not be disclosed without specific authorisation of the party providing such information.*

*(2) The Authorised Officer may require the parties providing information on confidential basis to furnish non confidential summary thereof and if, in the opinion of the party providing such information, such information cannot be summarised, such party may submit to the Authorised Officer a statement of reasons why summarisation of such information is not possible.*

*(3) Notwithstanding anything contained in sub-rule (2), if the Authorised Officer is satisfied that the request for confidentiality is not warranted or the supplier of the*

*information is unwilling either to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information unless it is demonstrated to its satisfaction from appropriate sources that such information is correct.”*

59. The non-confidential version of the evidence submitted by various interested parties has been made available by directing the interested parties to share the non-confidential version of the submissions with each other through e-mails.
60. The domestic industry has provided some information in its application on confidential basis and has requested that it be treated as confidential. The domestic industry has also provided a non-confidential version (NCV) of its application, as required under the Rules. Further, the domestic industry has submitted reasons justifying their claim of confidentiality of this information.
61. Some of the interested parties have claimed that the applicants have claimed excessive confidentiality by not providing aggregate data regarding profitability, interest / finance cost, depreciation and amortization expenses. The Authorized Officer holds that sharing of confidential parameters will have an adverse impact on the business interests of the domestic industry and provide competitive advantage to the competitors and consumers. It will allow the customers to evaluate whether they are paying higher or lower prices other than customers and it may lead to customers demanding lower prices. Further, as a practice, the Authorised Officer has allowed interested parties to claim such information as confidential, on good cause being shown. In view of the same, the Authorized Officer has accepted the confidentiality claimed by the domestic industry.
62. The information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the confidentiality claims have been accepted, wherever warranted and such information has been considered confidential and not disclosed to other interested parties.

## **F. MISCELLANEOUS ISSUES**

### **F1. Submissions by other interested parties**

63. The following miscellaneous submissions have been made by the other interested parties:
  - a. The applicants have not produced substantive evidence for initiation of the investigation and the Authorised Officer has not carried out appropriate and enough scrutiny to the facts available.
  - b. The domestic industry is a habitual user of trade remedies and intends to limit import competition by permanently seeking trade remedial measures.
  - c. The applicants have not disclosed the source of import data. The import data seems unreliable as the applicants have stated that certain descriptions have not been

considered as imports of the product under consideration. However, published DGCI&S data does not disclose the description of the product.

- d. Since the volume of imports prior to 2019-20 was higher than the imports in the injury period, determining quota based on imports in 2019-20, 2020-21 and 2021-22 will severely impact the availability of the product under consideration in India. The Authorised Officer may kindly consider three representative years prior to 2019-20.
- e. The applicants have not provided clarification regarding the duration for measures requested in post-initiation submissions. In case, the measures requested are for more than one year, an adjustment plan should be provided by the applicants.
- f. There is no legal basis to determine quota without including the surge period. There has been a recent increase in demand for the product under consideration, quota which is not representative of demand-supply gap will be detrimental to the downstream industry.

## **F2. Submissions by the domestic industry**

64. The following miscellaneous submissions have been made by the domestic industry:
  - a. The other interested parties have not pointed out the evidence which has not been provided by the domestic industry.
  - b. As opposed to the contentions of the other interested parties, the Authorised Officer recommended anti-dumping duty only after conducting a detailed investigation and concluded that the exporters are engaged in unfair trade practices.
  - c. The applicants have provided DGCI&S published data, however, the Authorised Officer will rely on DGCI&S transaction by transaction data.
  - d. Contrary to the submissions of the other interested parties, historical data is irrelevant in the present investigation and quota should be based on the past practice of the Authorised Officer.
  - e. The applicants have requested measures for a period of one year.
  - f. It is a consistent practice of the Authorised Officer to determine quota based on previous three years.

## **F3. Examination by the Authorised Officer**

65. With regards to the contention that the investigation was initiated based on information unsubstantiated with evidence, it is noted that the applicants have provided a duly substantiated application, based on which the present investigation was initiated. The investigation was initiated only after *prima facie* satisfaction regarding the existence of sufficient evidence. No evidence has been provided by interested parties to dispute any material information provided by the domestic industry at the stage of initiation, or to dispute the *prima facie* conclusions drawn by the Authorized Officer at such stage.
66. The other interested parties have submitted that the domestic industry is a habitual user of trade remedies. It is however, noted that the domestic industry has filed an application with substantive evidence of increased imports, due to unforeseen developments, causing

serious injury to the domestic industry. The remedial measures will be taken as per the safeguard rules on case by case basis.

67. With regards to the source of import data, as stated in the procedure part hereinabove, transaction-wise data received from DGCI&S has been relied upon for the purpose of the present investigation.
68. The other interested parties have submitted that the quota should be based on imports prior to 2019-20. The Authorized Officer notes that the practice of the Authorised Officer is to determine quota based on average imports in three years prior to the surge period. The imports may have been higher prior to 2019-20. However, the market situation has changed post COVID-19. The demand in India has also changed substantially pre and post COVID-19. The Authorized Officer would recommend any measures as per prevailing rules.

## **G. INCREASE IN IMPORTS**

### **G1. Submissions by the other interested parties**

69. The following submissions have been made by the other interested parties with regard to increase in imports:
  - a. The Appellate Body in Argentina – Footwear held that the increase in imports should be recent, sudden, sharp, and significant, both quantitatively and qualitatively. Thus, such requirements must be cumulatively satisfied, and it is not sufficient if only one or two of these criteria are met.
  - b. The Authorised Officer must determine surge based on the complete injury period and not just the previous year. The Appellate Body in US –Lamb held that entire trend for the period of investigation should be taken into consideration, rather than isolating the data of the most recent period and evaluating it separately.
  - c. Imports from Poland did not undergo any sudden, sharp and recent increase as opposed to imports into India from other countries. The applicants have not explained how increase in prices of coal leads to increase in imports from Poland to India. Imports from Russia have declined over the injury period and imports from all other sources are also declining.
  - d. The exporter from Poland has exported under long-term agreement and such exports have not been impacted by any unforeseen development. The imports from the exporter actually declined and was lowest during the most recent period. Thus, Poland / exporter should be excluded from imposition of quantitative restrictions.
  - e. Imports have primarily increased from China, thus, Quantitative Restrictions on all imports into India is not the appropriate remedy.
  - f. Imports have increased majorly from China. The exports from China had declined in 2020-21 and 2021-22 due to COVID-19 but as soon as the economy recovered,

the exports from China increased. Such increase was also due to the reason that demand for met coke had increased in Indian steel industry.

- g. There is no surge in the volume of imports since imports did not increase in comparison to the total period of investigation. Increase in imports during the most recent period is only due to normalization of trade post COVID-19. The imports have actually declined as compared to imports in 2016-17, 2017-18 and 2018-19.
- h. The imports from Indonesia account for a very low share of total imports. The price of imports from Indonesia fluctuated with the market condition but remained stable overall.
- i. Imports into India have increased due to increase in production of crude steel.
- j. The imports in 2020-21 and 2021-22 declined due to effect of COVID-19. The imports in India increased by only 20% as compared to 2019-20 which is normal rate of increase considering the growth in demand.
- k. Since Rule 9 of the Safeguard (QR) Rules states that the Authorized Officer should recommend the extent and nature of Quantitative Restrictions adequate for prevention of serious injury, the Authorised Officer may exclude a specific country from imposition of Quantitative Restrictions. Even the global safeguard (tariff-rate quota) may be imposed against specific country.

## **G2. Submissions by the domestic industry**

70. The following submissions have been made by the domestic industry with regard to increase in imports:
- a. There is a sudden, sharp, and significant increase in imports of the product under consideration as a consequence of unforeseen developments.
  - b. The share of the product under consideration has increased significantly in relation to the production and consumption in India.
  - c. Imports have primarily increased from China, Australia, Indonesia, Switzerland, Singapore and UAE. However, Switzerland, Singapore and UAE do not have manufacturing facilities, hence, such imports are transshipment of goods.
  - d. As opposed to the contention of the other interested parties, the imports from China have increased significantly even when compared to 2019-20, which was not impacted by COVID-19.
  - e. The demand for the product under consideration has increased by 5% as compared to the previous year while the imports have increased by 46%. Thus, such increase is not due to increase in production of steel.
  - f. As opposed to the submissions of the other interested parties, the imports from Indonesia have increased significantly in India and is priced below the raw material cost of the domestic industry.
  - g. As opposed to the submissions of the other interested parties, there is no requirement that the imports should have increased from all sources.
  - h. There is no provision under the Act or the Rules to exclude imports from a particular country or exporter from the purview of the present investigation.

### G3. Examination by the Authorised Officer

#### G.3.1. Meaning of “increased quantity”

71. Under the provisions of Section 9A of the Act, safeguard measures may be invoked where a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. As per Rule 2(c) of the Quantitative Restrictions Rules, "increased quantity" includes increase in import, whether in absolute terms or relative to domestic production.

#### G.3.2. Increase in imports in absolute terms

72. The volume of imports over the period of investigation was as follows.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Australia	MT	1,44,573	18,002	1,16,925	2,55,530
Bahrain	MT	453	552	1,711	-
Bhutan	MT	-	-	91	100
Chile	MT	-	11,364	11,800	12,408
China PR	MT	3,13,567	32,690	82,431	8,29,732
Colombia	MT	3,99,682	5,22,275	4,39,508	4,39,850
Egypt	MT	42,675	-	-	-
Finland	MT	40,812	-	-	-
Germany	MT	3	-	-	-
Hong Kong	MT	3,565	56	1,934	-
Indonesia	MT	1,50,521	1,34,267	76,956	2,56,699
Iran	MT	17,384	610	-	-
Italy	MT	-	32	-	-
Japan	MT	4,19,909	3,79,058	3,45,603	3,00,245
Korea RP	MT	-	-	36,371	-
Malaysia	MT	597	-	-	-
Netherland	MT	-	-	38,418	-
New Zealand	MT	-	291	-	-
Oman	MT	-	-	-	10,000
Poland	MT	7,49,967	9,56,636	10,53,358	8,60,925
Puerto Rico	MT	4,000	-	-	-
Qatar	MT	956	2,842	5,031	3,367
Russia	MT	3,22,561	1,18,850	44,710	85,144
Saudi Arab	MT	-	-	-	237
Singapore	MT	1,76,351	51,878	25,112	1,98,182
South Africa	MT	-	-	-	312
Spain	MT	259	97	94	-
Switzerland	MT	46,019	1,96,647	2,03,074	2,09,586
UAE	MT	24	5,831	2,558	53,112
UK	MT	87	98	229	225
USA	MT	-	-	653	0

Ukraine	MT	-	-	25,000	-
Venezuela	MT	940	504	218	-
<b>Total</b>	<b>MT</b>	<b>28,34,905</b>	<b>24,32,580</b>	<b>25,11,786</b>	<b>35,15,654</b>

73. It is seen that the volume of imports declined in 2020-21, as compared to 2019-20. The same may be attributable, at least partly, to the effects of Covid-19, as claimed by other interested parties. However, thereafter, the imports increased on a year-on-year basis, upto the most recent period. However, the imports increased by 40% during 2022-23 as compared to 2021-22. Further, the volume of imports in 2022-23 was higher than that in all the earlier years. The imports increased by 24% in 2022-23 as compared to the base year.
74. The other interested parties have submitted that imports have increased from China only and the same is due to normalization of business post COVID-19. It is however seen that the imports from China increased by 907% as compared to the previous year. Further, even when compared to the base year, such imports have increased by 165%. Since 2019-20 was not impacted by COVID-19, it cannot be said that the increase in imports is only due to normalization of Indian economy. Further, in any case, the total imports of the product under consideration into India have increased. The increase is not merely from China. In fact, China was not the largest supplier of coke in the Indian market and constituted only 11% of total imports over the investigation period (12.58 lac against total imports of 112.95 lacs, cumulatively from all sources in the investigation period). Further, as compared to total increase in imports by 6,80,749 MT in 2022-23 as compared to the base year, imports from China account for an increase of 5,16,165 MT. The rest is on account of increase in imports from, *inter alia*, Australia, Indonesia and Switzerland.
75. The other interested parties have submitted that imports from Indonesia account for a small share in the Indian market and the price of such imports have remained stable. It is however seen that the imports from Indonesia have increased by 234% in 2022-23, as compared to the previous year. Thus, there is a clear increase in imports from Indonesia. The domestic industry has submitted that (a) there was further increase in imports from Indonesia after the investigation period, (b) exports to India constitutes majority of its exports, (c) the price of imports from Indonesia is below the raw material price of the domestic industry.

Particulars	Units	2019-20	2020-21	2021-22	2022-23
Import Volume from Indonesia	MT	1,50,521	1,34,267	76,956	2,56,699
Import price from Indonesia	₹/MT	22,024	22,574	35,340	37,142
Cost of RM	₹/MT	18,427	15,713	24,539	39,312

76. With regards to the contention that the imports from Poland has declined and the exporter has exported under long-term agreement, it is seen that imports from Poland did decline

in 2022-23. However, despite this decline, imports from Poland continue to account for a significant share (24%) of the total imports. Article 2.2 of the Agreement on Safeguards provides that “*safeguard measures shall be applied to a product being imported irrespective of its source*”. The only exception is in respect of developing countries, having import volumes below the prescribed levels. However, the imports from Poland do not fall under such exception. Imports were significant in relation to total demand in the country, accounting for a share of 14%. Therefore, an adequate case has not been made out for exclusion of the imports from Poland from the scope of levy. In view of the same, no exclusion can be made for imports from Poland.

### G.3.3. Increase in imports in relative terms

77. The volume of imports have also been examined in relation to Indian production and consumption over the period. It is seen that the imports have increased significantly in relation to domestic production and consumption.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Imports from various sources (As per DGCI&S data)	MT	28,34,905	24,32,580	25,11,786	35,15,654
Sales by applicants	MT	***	***	***	***
Trend	Index	100	90	93	106
Sales of Other Domestic Producers	MT	***	***	***	***
Trend	Index	100	80	113	104
Total Indian Sales	MT	***	***	***	***
Trend	Index	100	84	106	105
Total Merchant Demand	MT	***	***	***	***
Trend	Index	100	85	97	115
Total Merchant Installed capacities in India	MT	***	***	***	***
Trend	Index	100	100	100	100
Imports in relation to					
Imports in relation to Indian Merchant Sales	%	***	***	***	***
Trend	Index	100	103	84	119
Imports in relation to Indian Demand	%	53%	53%	48%	57%

It is seen that:

- the imports in relation to merchant sales have increased by 41% in relation to the preceding year.
- the imports in relation to consumption have increased by 18% in relation to the preceding year.

It is also seen that the above increases in imports in relation to production and consumption is despite existence of sufficient capacities with the Indian industry. It is thus seen that there has been a sudden, sharp, significant increase in imports in the recent period.

## **H. Unforeseen Developments**

### **H1. Submissions by other interested parties**

78. The following submissions were made by the other interested parties with regard to the unforeseen developments.
- a. The domestic industry has not provided any justified reasons for claiming unforeseen development as Russia-Ukraine conflict has been settled and no logical connection between the development and increase in imports has been provided.
  - b. While the domestic industry has submitted that coking coal prices in Australia have remained low, the same is not true. There has been a significant increase in coal prices even in Australia.
  - c. The increase in prices of Australian coal had similar impact on the Indian market, global market and local market in Australia.
  - d. The prices of coal had increased globally and not just for India, even the Indonesian producers purchased coal at increased prices. Thus, it does not amount to unforeseen development.
  - e. Even if increase in price of coal is considered as unforeseen development, it is applicable in case of imports from countries like Australia and China and not for all countries.
  - f. The price of coking coal increased prior to Russia-Ukraine conflict, hence, the same cannot be the reason for increase in coal prices. Prices of coking coal has declined in 2022-23 and is further expected to decline in 2024. The purchase price of coal for the applicants have declined during 2022-23.
  - g. The coal prices declined in 2020 due to supply constraints resulting from COVID-19. The price of coal showed volatility in 2021 and 2022 due to recovery of global economy. The price of coal has started declining again in 2023.
  - h. Coal prices increased due to strong demand of coal which was foreseen. Since increase in coal prices applied globally, the prices in India followed the same trend.
  - i. Since India is also a major producer of coking coal, the fact that the producers which procure coal locally were not affected is without merit.
  - j. Increase in freight rates happened in 2021 and declined thereafter. Further, freight rates have affected both imports of coking coal as well as met coke in India. The Authorised Officer in safeguard investigation into imports of PVC Suspension Resins held that increase in freight rate impacts both raw material as well as imports of finished goods, thus, neutralizing the injurious impact.
  - k. Miniscule quantity of coking coal was imported by the domestic industry during 2021-22 and 2022-23. Any increase in international coking coal prices and freight prices should not cause serious injury to the domestic industry.

- l. The factors identified by the domestic industry are not unforeseen. The inherent disparity in natural resources, such as coal, between various countries are ordinary geographical variations. Increase in freight rate as well cannot be considered since freight rates are bound to fluctuate due to demand-supply dynamics.
- m. The applicants have submitted that Chinese producers have benefitted by procuring Russian coal as no sanctions were placed by China on imports from Russia. India also did not place any sanction on imports of coal from Russia and the domestic industry was also free to do so. As opposed to this, the report of International Energy Agency shows that the Indian industry has benefitted from imports of Russian coal.
- n. The applicants have not provided information to establish that import surge has occurred due to effect of obligations undertaken by India under the GATT. Appellate Body in Korea - Dairy held that WTO Members must comply with both the Agreement on Safeguards as well as Article XIX of the GATT prior to imposition of safeguard measures.
- o. The evidence submitted by the domestic industry to show unforeseen development pre-dates the unforeseen developments.
- p. Surge in imports is mainly from Australia and China. Such surge is not due to unforeseen development but only due to expiry of anti-dumping duty on such countries.
- q. Appellate Body in Argentina-Footwear held that unforeseen development means unforeseen or unexpected at the time of entry into force of WTO Agreement on Safeguards and at the time of incurring tariff concessions. The domestic industry has not explained how increase in price of coal or freight were unforeseen at the time of entry in force of WTO Agreement on Safeguards.
- r. The increase in volume of imports is due to tariff concessions offered by India under FTAs. The Panel in India – Iron and Steel Products held that providing concessions on customs duty is not an obligation incurred under the GATT.
- s. Imports have increased due to absence of customs duty for a period of 6 months. Reduction in customs duty cannot be considered as unforeseen development. The Authorised Officer in safeguard investigation into imports of Flexible Slabstock Polyol considered Indo-Singapore CECA as a reason for increase in imports and held that the same is not an unforeseen development.
- t. The exemption on imports of Met Coke has been withdrawn on 19<sup>th</sup> November 2022. Thus, the primary reason for increase in imports does not exist and thus, there is no need for imposition of measures.
- u. The situations identified by the domestic industry are temporary in nature and unforeseen developments claimed did not exist in the most recent period.

## **H2. Submissions by the domestic industry**

79. The following submissions were made by the applicants with regard to the unforeseen developments causing increase in imports:
  - a. The imports have increased in India as a consequent of unforeseen development.

- b. The Appellate Body in Argentina – Safeguard Measures on imports of footwear noted that unforeseen developments are unexpected developments and not unpredictable development.
- c. The increase in imports is a consequent effect of the Russia-Ukraine conflict which led to significant increase in international price of coal and higher cost of production in India. The cost of production of producers in countries which had coal locally available did not increase commensurate to international price of coal.
- d. Contrary to the claims of the other interested parties, Russia-Ukraine conflict is ongoing. Since met coke was being imported into India at prices below the raw material cost of the domestic industry, the importers were motivated to import met coke.
- e. A number of countries-imposed restrictions on imports from Russia leading to decline in demand of Russian coal and as a consequent decline in prices of Russian coal.
- f. Due to decline in Russian supply of coal, demand for coal from other countries increased leading to increase in price of coal.
- g. Coking coal in countries such as Australia and China is available domestically and the producers in such countries did not face increase in cost of production to the extent faced by Indian producers.
- h. The other interested parties have not provided any evidence of price of coking coal in Australia. The landed price of imports from Australia is lower than the cost of raw material of the domestic industry.
- i. Coking coal is available in China at prices below the international prices.
- j. Chinese producers started importing cheaper coking coal from Russia at prices below the international prices.
- k. As opposed to the submissions of the other interested parties, the unforeseen development identified by the producers is based on increase in cost of coal without commensurate increase in landed price of met coke.
- l. Due to disparity between the cost of production in India and the producers situated in countries where coking coal was available domestically, exporters were able to export subject goods at lower prices.
- m. As opposed to the contention of the other interested parties, the price of coking coal has increased in India post Russia-Ukraine conflict. However, the landed price of subject goods has not increased commensurate to increase in cost of coal. While the cost of sales of the domestic industry has declined post most recent period, landed price declined more.
- n. The cost of production of the Indian producers increased due to increase in freight rates, however, the producers in countries where coal was available domestically did not face such increase.
- o. As opposed to the submissions of the other interested parties, freight rates have remained high in 2022-23.
- p. Due to geographical closeness of China to Russia, the Chinese producers have been able to import coal through rail routes from Russia.

- q. Import of coal by China from Russia have tripled post the Russia-Ukraine conflict while import from Russia into other countries have declined.
- r. While India has also imported coal from Russia, the price of such imports is higher than the import price in China.
- s. Chinese producers have set up plants in Indonesia to take advantage of Australian coking coal as cost of procurement of Australian coal in Indonesia is less than that in China.
- t. Indonesia has exported mainly to India and Vietnam.
- u. The other interested parties have not provided data for prices of coal in Indonesia. Indonesia has imported coal from Russia at prices below the international prices.
- v. Contrary to the submissions of the other interested parties that the evidence for unforeseen development is for a period pre Russia-Ukraine conflict, the evidence provided pertains to post Russia-Ukraine conflict period.
- w. As opposed to the submissions of the other interested parties, the imports have surged from Indonesia as well which were not subject to any anti-dumping duty.
- x. Contrary to the submissions of the other interested parties, the increase in imports is not due to FTA concessions as imports from China also surged and there are no FTA concessions applicable to China. The imports from Indonesia increased only in the most recent period, while concession was given in 2019.

### **H3. Examination of the Authorised Officer**

- 80. The submissions made by the domestic industry and other interested parties with regard to the unforeseen circumstances were considered and the Authorized Officer finds that:
- 81. Article XIX of GATT obligates the investigating authorities to examine “unforeseen developments” that led to the increase in imports and the consequent serious injury to the domestic industry. Further, Rule 9(1) of the Rules also provides that increased imports must be as a result of unforeseen developments as under:

*“The Authorised Officer shall, within eight months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether, as a result of unforeseen developments the increased imports of the goods under investigation has caused or threatened to cause serious injury to the domestic industry, and a causal link exists between the increased imports and serious injury or threat of serious injury.”*

- 82. The Authorised Officer notes that the increase in imports must be on account of developments that were unforeseen or unexpected. Further, the development must have been unforeseen at the time of incurring the obligations, that is, accession to WTO, resolving to abide by the commitments under various WTO Agreements, and providing tariff concessions.

83. The applicants have submitted that the unforeseen development leading to increase in imports of the product under consideration in India was Russia-Ukraine conflict, increase in global freight rates and the Chinese producers have benefitted due to sanctions imposed by countries on imports from Russia.

### H.3.1. Coking Coal availability globally

84. The domestic industry has submitted that there are two types of coal that are mined globally. These are thermal coal and coking coal. While thermal coal is available widely in India, coking coal is not available in India. Production of met coke requires coking coal, and thermal coal is not useful for the purpose. In order to produce met coke, the Indian industry is totally dependent upon imports of coking coal.

85. Coking coal is widely available in countries like Australia, China, Russia and Indonesia. Some quantity of coking coal is also available in countries such as USA and Canada.

86. The other interested parties have submitted that that the price of coal and other natural resources may change due to limited availability and the same cannot be classified as unforeseen development. It is however noted that while the prices of raw materials may fluctuate, it is reasonably expected that the prices of met coke would also vary accordingly and proportionately in a normal market situation. Therefore, the price movement of coal and coke were examined during the investigation period. It is seen that in the present investigation, there was increase in cost of coking coal, without commensurate increase in landed price of met coke. Since coking coal commands 90% of the cost of production of met coke, the price of met coke should have increased commensurate to increase in cost of coking coal. However, the difference between the cost of raw material of domestic industry and landed price of coke has declined over the period of investigation.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Cost of RM	₹/MT	***	***	***	***
Trend	Index	100	85	133	213
Landed price of Coke	₹/MT	***	***	***	***
Trend	Index	100	88	157	179
Difference	₹/MT	***	***	***	***
Trend	Index	100	106	339	-79

It is thus seen that there has been a very significant decline in the difference between the price of coal and coke in the most recent period. The domestic industry submitted that this decline in the difference is the cause of increased imports and serious injury to the domestic industry. The domestic industry has further submitted that this decline in the difference was due to the fact that Indian industry was faced with increase in coal price materially higher than the increase in the coal price faced by the foreign producers. Since these foreign producers faced

increase in coal price materially lower than the Indian industry, these foreign producers were able to export much higher volumes than in the past, leading to increased imports and serious injury to the domestic industry.

### **H.3.2. Russia-Ukraine Conflict leading to increase in prices of coal**

87. The information provided by the domestic industry shows that due to the Russia-Ukraine conflict, the prices of coking coal increased globally. The domestic industry has provided evidence showing that Russia was the third largest producer of coking coal and second largest exporter of coking coal prior to the Russia-Ukraine conflict.
88. Due to the Russia-Ukraine conflict, a number of countries imposed restrictions on imports of coal from Russia. Due to this, the demand for Russian coal declined in these markets. This constrained Russian producers to sell coal at a lower prices in the markets where they were able to get the orders. At the same time, this created an additional burden on other coking coal producing countries. The demand for coking coal from other countries increased due to this shift in procurement of coal by a number of consumers globally. This led to disproportionately significant increase in the prices of coking coal by suppliers in countries other than Russia.
89. The domestic industry has submitted that it primarily imports coal from Australia. Due to the situation identified hereinabove, the landed price of coal for the Indian industry increased. Resultantly, the cost of production of the domestic industry increased. It has been further submitted that coking coal accounts for approximately 90% of cost of production of met coke.
90. It is seen that while the coking coal prices increased globally, the price of coking coal in certain countries did not increase commensurate to increase in international prices in countries where it was not available domestically, or who were not able to source coal from Russia at comparable prices. Thus, producers in Australia, Indonesia and China did not face increase in cost of production commensurate to increase in cost of production of producers in India.
91. Due to the disparity between the cost of production in India and producers situated in countries where coking coal was either available domestically, or who were able to source Russian coal at comparatively lower prices, the foreign producers, largely in China, Indonesia and Australia were able to undercut the prices of Indian industry in the market and were able to export significantly higher volume of material in the Indian market. Resultantly, the subject goods have been imported into India at prices below the cost of sales and selling price of the domestic industry, leading to increased imports. The petitioner has claimed that they have not imported coal from Russia citing higher freight cost.

Particulars	Units	2019-20	2020-21	2021-22	2022-23
Landed price of imports	₹/MT	20,872	18,294	32,830	37,381
Selling Price	₹/MT	***	***	***	***
Trend	Index	100	104	157	202
Cost of sales	₹/MT	***	***	***	***
Trend	Index	100	89	124	197
Difference between import price and					
Selling price	₹/MT	***	***	***	***
Trend	Index	-100	2,203	-215	3,060
Cost of sales	₹/MT	***	***	***	***
Trend	Index	100	128	-814	691

92. It is seen that whereas landed price of imports was higher than the selling price and cost of sales of the Indian industry in the year preceding the most recent period, the difference reversed in the most recent period, leading to surge in imports.

93. With regard to submissions by the other interested parties that price of coking coal has increased in Australia, the Authorized Officer considers that the relevant consideration is how the prices of metcoke have moved and whether the same have moved in tandem with the prices of coal. Comparison of the cost of raw material of the domestic industry and the landed price of imports of metcoke from Australia shows that the landed price of metcoke imported from Australia was below the raw material cost of the domestic industry except in year 2021-22.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Cost of RM	₹/MT	***	***	***	***
Trend	Index	100	85	133	213
Landed price of imports from Australia	₹/MT	17,699	8,816	34,655	36,083
Difference	₹/MT	***	***	***	***
Trend	Index	100	947	-1,390	444

### H.3.3. Chinese producers have disproportionately benefitted from Russia-Ukraine Conflict

94. The domestic industry provided information showing that the Chinese producers have significantly increased imports of Russian coal post the Russia-Ukraine conflict. While Chinese producers already have access to low priced domestic coal, they have procured coal from Russia at lower prices in order to benefit from the lower landing price at which

Russian coal was selectively available to the Chinese producers. While India has also increased its procurement of Russian coal, the advantage available to the Chinese producers – both volume and price account far outstripped the benefit availed by Indian industry. This has led to lower cost of production of the Chinese producers enabling them to export higher quantities of met coke at lower prices in markets such as India.

95. The Authorised Officer has taken cognizance of the submissions made by the domestic industry that the landed price of imports of Russian coal into China was lower than the landed price of imports of coking coal by rest of the world. Further, the quantity of coking coal imported into China from Russia has increased by 2.8 times as compared to the period prior to the Russia-Ukraine conflict.

Particulars	UOM	Pre-Conflict*	Present**
Russian exports to China			
Volume	MT	***	***
Value	In Lakhs	***	***
Price	₹/MT	***	***
Global imports except imports into China			
Volume	MT	60,06,14,011	39,65,30,737
Value	In Lakhs	5,17,84,161	8,75,97,015
Price	₹/MT	8,622	22,091

\*Annualised figures based on April 2019 – March 2022

\*\*Annualised figures based on April 2022 – October 2023

#### H.3.4. Increase in Global Freight Rates

96. The domestic industry has further stated that since it is totally dependent upon import of coking coal, the cost of procurement of coking coal increased significantly due to increase in freight rates. However, the producers in the countries where coking coal was available locally did not face this increase, as these producers do not pay for ocean freight for such procurement.
97. The domestic industry further submitted that whereas the freight costs were higher in both 2021-22 and 2022-23, the higher freight costs in 2021-22 did not cause any damage to the Indian industry for the reason that the increase price of met coke in this period allowed the Indian industry to bear the increased cost of coal. However, in 2022-23 whereas the cost of coal increased because of these two factors, price of coke did not increase due to producers such as Chinese offering coke at lower prices.
98. The other interested parties have submitted that freight rates declined post 2021. It is however seen that domestic industry has submitted report by UNCTAD regarding freight rates on coal. The evidence on record shows that the freight rates remained high till May

2022. Although, the freight rates declined post May 2022, the same increased once again in early 2023 due to Russia-Ukraine conflict.

### **H.3.5. Advantage of domestic coal availability and Dual advantage of China for buying cheaper Russian Coal and freight**

99. It is noted that the Chinese producers have imported low priced coking coal from Russia via rail routes. Hence, the cost of procurement for the Chinese producers was much less than that of any other producer who have imported coal through sea routes.
100. Other interested parties have submitted that even Indian producers have imported coal from Russia and benefitted from such imports. The Authorised Officer notes that the domestic industry has submitted that the landed price of imported Russian coal into India was much higher than the landed price of imports into China.

### **H.3.6. As a result of obligation incurred at the time of entry into GATT**

101. With regard to effect of obligations, the Appellate Body, in Argentina – Footwear, noted that this phrase simply means that it must be demonstrated, as a matter of fact, that the importing Member has incurred obligations under the GATT 1994, including tariff concessions. It is further noted that India incurred obligations with respect to the product under consideration under the GATT. The product under consideration is one of the products listed under the Schedule of Concessions, and thus, India incurred obligations with respect to the product under the provisions of GATT. In view of the same, it is considered that the requirements of Article XIX with regard to effect of obligations is satisfied.

### **H.3.7. Increase in imports as a result of removal of ADD, customs duties and FTAs.**

102. **Removal of ADD:** With regard to issues raised regarding the removal of ADD in November 2021 and the impact of same felt in 2022-23, the ADD was in force against imports from China and Australia. However, the increase in imports is not just from Australia and China even imports from Indonesia have witnessed a major surge. Thus, removal of ADD cannot be said to be the reason for increase in imports into India.
103. **Customs Duty:** The Authorised Officer proposes that the increase in imports was not due to removal of customs duty. The Central Government vide Notification No. 26/2022 dated 21<sup>st</sup> May 2022, removed the customs duty on imports of the product under consideration in India. However, such customs duty was restored vide Notification No. 59/2022 dated 18<sup>th</sup> November 2022. The Authorised Officer notes that the increase in imports is majorly from Australia, China PR and Indonesia. The subject goods from Indonesia are imported duty free under Customs Notification No. 41/2019 – Customs. Thus, removal of customs duty should not have led to increase in imports from Indonesia.

Further, the subject goods can be imported from countries such as Japan, Korea RP and members of ASEAN nations, duty free. However, imports from such countries have not shown any major increase. Major imports into India are from countries such as Poland and Colombia, however, the imports from such countries did not increase even after removal of customs duty. Thus, it is evident that the increase in imports is from the countries where the raw material, that is, coking coal was available domestically and not from countries from where the subject goods can be imported duty-free.

104. **FTAs:** The Authorised Officer proposes that the increase in imports is not due to FTA in force. This is evident from the fact that major increase in imports is from Australia, China PR and Indonesia. The subject goods can be imported from Indonesia, duty free under Notification No. 41/2019 – Customs dated 31<sup>st</sup> December 2019. While the customs duty was reduced to 0 in 2020, the imports have increased only during the most recent period and hence, the FTA cannot be considered as a reason for increase in imports into India. Further, India and China PR have not entered into a Free Trade Agreement with respect to the product under consideration. Thus, the increase in imports from China PR also cannot be a result of concessions under the FTA.

### H.3.8. Increase in imports due to surge in steel demand

105. The Authorised Officer notes that the other interested parties have submitted that the imports into India have increased due to increase in demand of steel. The Authorised Officer proposes that the merchant capacities in India are enough to cater to the merchant demand in India. Given that the Indian industry is operating at low-capacity utilization, the increase in demand could have been catered by the domestic industry. Hence, the increase in demand in India cannot be the reason for increase in imports especially when the Indian industry has enough capacities and is operating at a low-capacity utilization.

Particulars	Unit	2022-23
Merchant Capacity	MT	***
Merchant Demand	MT	61,86,991
Difference	MT	***

106. Further, the demand in India has increased by 19% during the most recent period as compared to the previous year, however, the imports have increased by 40%. Thus, the increase in imports is much more than the increase in demand.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Imports into India	MT	28,34,905	24,32,580	25,11,786	35,15,654
Imports into India	Indexed	100	86	89	124
Demand in India	MT	53,82,045	45,64,092	52,02,880	61,86,991
Demand in India	Indexed	100	85	97	115

107. Having regard to the facts on record, the imports of the product under consideration have increased as a result of unforeseen developments and not due to other factors as mentioned above.

### **SERIOUS INJURY AND CAUSAL LINK**

#### **I. Serious Injury to the domestic industry**

##### **II. Submissions by the other interested parties**

108. The following submissions were made by the other interested parties with regard to injury to the domestic industry.
- a. The information on total capacity is unreliable as the total Indian capacity has remained stable throughout the injury period, the capacities of the domestic industry have increased.
  - b. The market share of the domestic industry declined merely by 1% between 2021-22 and 2022-23, while installed capacity, production, domestic sales and profits of the domestic industry increased during the most recent period as compared to 2019-20. The capacity utilization of the domestic industry declined only due to increase in capacities.
  - c. The domestic industry has performed better during the most recent period as compared to the base year in terms of profitability. The Authorised Officer terminated the anti-dumping investigation into imports of Metronidazole as the profitability of the domestic industry declined only during the second half of the period of investigation and it was profitable throughout the injury period.
  - d. While the landed price increased by 15% as compared to 2021-22, the selling price of the domestic industry increased by 66%. Hence, price undercutting is on account of extreme increase in selling price of the domestic industry.
  - e. Since price undercutting was negative in 2019-20 and 2021-22, domestic industry cannot claim injury due to price undercutting.
  - f. The data provided by the domestic industry does not seem reliable as both landed price of imports and selling price of the domestic industry has increased but price undercutting has turned positive.
  - g. There is no price suppression / depression as the cost of sales of the domestic industry declined more than decline in selling price in 2020-21 as compared to 2019-20, further, the selling price increased more than increase in cost of sales during 2021-22.
  - h. The increase in cost of production identified by the applicants was not caused by imports into India.
  - i. The applicants are comparing performance in 2020-21 and 2021-22 with the performance in the period of investigation, however, 2020-21 and 2021-22 were abnormal period due to impact of COVID-19 which is evident from the annual

reports of the applicants. All applicants have performed better than the base year as per their annual reports.

- j. The landed price of imports was highest during 2022-23 and thus, cannot be claimed to be a reason for losses to the domestic industry. While the landed price was lowest in 2020-21, the profitability was the highest.
- k. The profitability parameters of the domestic industry have improved in 2022-23 as compared to April-December 2022. Thus, the domestic industry is on a positive trajectory.
- l. The Authorised Officer must analyse the profitability of the domestic industry month by month during the most recent period. The domestic industry has earned adequate profits in three months in April 2023 – December 2023.
- m. Price effect is irrelevant in a safeguard investigation and hence, pricing behaviour of imports cannot be considered. The Safeguard Rules state that when any factors other than increase in imports is causing injury to the domestic industry, such injury shall not be attributed to imports.
- n. The applicants have not provided evidence to demonstrate that the prices in Chinese and Australian markets have not moved in tandem with the international prices.
- o. There is no causal link between increase in imports and injury to the domestic industry. The domestic industry undertook capacity expansion in 2022-23 and the depreciation as well as salaries and wages increased. Causation should be determined by excluding self-inflicted effects of interest, wages and depreciation.
- p. There should be a separate analysis of imports from Poland and these imports should not be clubbed with imports from China. The causal link should be evaluated separately as imports from Poland has not caused injury to the domestic industry.
- q. The loss of market share cannot be attributed to imports from Poland, which declined by 18%, in comparison to decline of 2% in market share of domestic industry.
- r. The injury to the applicants, if any, is due to increase in price of coal and freight rates, increase in exchange rates, interest and depreciation, and not due to imports.
- s. The credit rating of Mahalaxmi Ennore Coke & Power Pvt. Ltd., Vimla Fuels and Metals Private Limited and Genus Paper and Coke Limited shows that they have earned profits during FY 2023.
- t. India has become a net exporter of the met coke in 2021 due to better realization of price. The Authorised Officer must examine the export trend of the domestic industry to determine the cause of injury.
- u. The data submitted by the domestic industry is unreliable since capacity of the domestic industry increased in 2021-22 by 2%, however, the capital employed increased by 50%. While capacity increased in 2022-23, the capital employed declined.
- v. The applicants have not provided post period of investigation data as committed during the oral hearing.
- w. The applicants have not provided revised data for April 2022-March 2023.

## **I2. Submissions by the domestic industry**

109. The following submissions were made by the domestic industry with regard to injury.
- a. The domestic industry has suffered serious injury due to increase in imports into India.
  - b. Contrary to the submissions of the other interested parties, the imports during the most recent period are even higher than the imports in 2019-20. Such period was not impacted by COVID-19. Imports have further increased in April-December 2023.
  - c. The imports have increased in absolute as well as in relation to domestic production and demand in India.
  - d. The increase in demand as well as the market share of the Indian industry has been taken over by imports. While the demand has increased by 13%, imports have increased by 46% over the injury period.
  - e. While the Indian industry catered to the majority share of demand in India in the previous year, the imports have taken over the majority of the Indian market during the most recent period.
  - f. As opposed to the contention of the other interested parties, imports from Poland cannot be considered separately from other imports.
  - g. The imports were undercutting the prices of the domestic industry even though the domestic industry has sold at financial losses.
  - h. The price of imports was below the selling price as well as cost of sales of the domestic industry during the most recent period.
  - i. Due to the low-priced imports, the domestic industry was forced to sell at prices below the cost of sales.
  - j. In a normal business cycle, the price of met coke changes with change in price of coking coal. However, in 2022-23, the landed price of subject goods has not increased commensurate to increase in price of coking coal. The difference between the cost of raw material and landed price of the subject goods has declined.
  - k. The domestic sales of the domestic industry have not increased commensurate to increase in capacities or demand in India, while production and capacity utilization declined.
  - l. The plants of two of the petitioners were shut down post the most recent period due to inventory pile up and lack of market share.
  - m. The selling price of the domestic industry has not increased commensurate to increase in its cost of sales.
  - n. The domestic industry has incurred losses, cash losses and recorded a negative return on investment in the most recent period. Even during the post most recent period, the domestic industry has incurred losses, cash losses and negative return on investment.
  - o. Due to the surge in imports at prices below the cost of sales of the domestic industry, the profitability of the domestic industry has suffered significantly.
  - p. While the landed price increased during 2022-23, such increase was much lower than the increase in raw material prices of the domestic industry.
  - q. Landed price of met coke cannot be considered in isolation to price of coking coal since coking coal commands for 90% cost of production of the subject goods.

- r. The other interested parties have not followed a consistent approach in comparing to most recent period, some parameters have been compared to previous year and others to the base year.
- s. Surge in imports happened in 2019-20 as well due to which the domestic industry suffered injury. The domestic industry could not reach the Authorised Officer at that time since the subsequent year was impacted by COVID. Since the increase in imports is recent, the injury to the domestic industry is also recent due to such surge in imports.
- t. As opposed to the contention of the other interested parties, the annual reports of the petitioners show decline in performance in 2022-23 as compared to 2021-22.
- u. As opposed to the submissions of the other interested parties, the data for post period of investigation has been provided and circulated vide email dated 25<sup>th</sup> January 2024.
- v. Contrary to the submissions by other interested parties, the domestic industry has filed revised data for April 2022 – March 2023 on 3<sup>rd</sup> August 2023.
- w. Contrary to the submissions of the other interested parties, the decline in profits of the domestic industry is higher than the increase in interest and depreciation cost. Further, the EBIDTA of the domestic industry has declined. Thus, the injury is not due to increase in interest and depreciation cost.
- x. Since the Authorised Officer has verified the data of the domestic industry, no arguments can be made regarding the reliability of the information provided.
- y. The facts of the present case are different from the anti-dumping investigation on Metronidazole relied upon by other interested parties, wherein the Authorised Officer held that profitability of the domestic industry declined only temporarily but it has earned sufficient profits during the period of investigation. However, in the present investigation, the domestic industry has been suffering continuous losses.
- z. Contrary to the submissions of the other interested parties, there is no requirement under the law to undertake month-wise profitability analysis.
- aa. Credit rating of a company depends upon overall performance of the company and not with regard to performance of the subject goods. The companies identified by other interested parties are multi-product companies and are involved in exporting to other countries.
- bb. Contrary to the submissions of the other interested parties, the capital employed has increased as a new producer started production in 2021-22.
- cc. As opposed to the contentions of the other interested parties, the injury cannot be due to exchange rates as both coke and coal were equally impacted by it.
- dd. Contrary to the submissions of the other interested parties, India is a net importer of subject goods and not an exporter. In any case, the petitioners have segregated the performance of the company with regards to domestic operations only.

### **I3. Examination by the Authorised Officer**

110. The Authorised Officer is required to examine whether the increased imports of the product have caused or are threatening to cause serious injury to the domestic industry of like or directly competitive products. As per Section 9A(4) of the Act, serious injury

means an injury causing significant overall impairment in the situation of a domestic industry, while threat of serious injury means a clear and imminent danger of serious injury. Rule 8(a) of the Quantitative Restrictions Rules provides as under for determination of injury.

*"The Authorised Officer shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the following principles, namely: (a) in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Authorised Officer 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 goods concerned in absolute and relative terms, the share of the domestic, market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment;"*

111. In view of the above, the parameters relating to injury have been analysed hereinbelow.

### **I.3.1. Assessment of demand/consumption**

112. For the purpose of the present investigation, demand or apparent consumption of the product in India has been determined as the sum of domestic sales of like product produced by the Indian producers and imports of the product under consideration into India.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Domestic industry sales	MT	***	***	***	***
Trend	Index	100	90	93	106
Other producers sales	MT	***	***	***	***
Trend	Index	100	80	113	104
Imports into India (as per DGCI&S Data)	MT	28,34,905	24,32,580	25,11,786	35,15,654
Demand	MT	***	***	***	***
Trend	Index	100	85	97	115
Installed capacities	MT	***	***	***	***
Trend	Index	100	100	100	100

113. It is seen that the demand for the product has increased in the most recent period. Further, demand in the most recent period was higher as compared to the demand in any other period. However, so significant was the increase in the volume of imports of the subject goods that whereas the demand increased by 19% in the most recent period as compared to the previous year, the imports increased by 40%, which is more than the entirety of the increase in demand. Thus, the growth in consumption was encapsulated by imports of the subject goods.

### I.3.2. The rate and amount of the increase in imports in absolute and relative terms

114. Analysis of information contained hereinabove with regard to the increased imports and table below clearly shows that imports of the product under consideration have increased in both absolute terms and in relation to production and consumption in India. It is seen that both the rate and amount of increase in imports over the injury period is significant.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Imports in absolute terms	MT	28,34,905	24,32,580	25,11,786	35,15,654
Increase in imports	MT		(4,02,325)	79,206	10,03,868
Rate of increase in imports	%		-14%	3%	40%

### I.3.3. Market share

115. The market share of the domestic industry, other Indian producers and imports of product under consideration was as follows.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Domestic industry	%	***	***	***	***
Trend	Index	100	106	94	89
Other Indian producers	%	***	***	***	***
Trend	Index	100	93	117	90
Indian industry as a whole	%	***	***	***	***
Trend	Index	100	100	111	91
Imports into India	%	53%	53%	48%	57%
Demand	%	100%	100%	100%	100%

It is seen that the market share of the domestic industry as well as Indian industry as a whole declined in 2022-23 as compared to 2019-20, 2020-21 as well as 2021-22. The market share of imports has increased significantly in India in the most recent period. It is seen that the imports have taken away the market share of the Indian industry.

116. The domestic industry contended that the Indian industry holds capacities sufficient enough to meet the entire demand for the product in the country. It is however seen that majority of the demand was catered by the imports, while the Indian industry catered to a minority share.

117. The other interested parties have claimed that the imports from Poland have reduced and thus, cannot be the reason for decline in market share. It is however noted that injury is required to be examined in respect of imports of the product under consideration from all

sources, and not imports from a particular country. Thus, imports from Poland have to be seen cumulatively with imports from all other countries.

#### **I.3.4. Price undercutting**

118. It was examined whether imports of the subject product were priced below the selling price of the domestic industry and causing price undercutting in the market. Table below shows the factual position.

Particulars	Unit	Amount
Net sales realisation	₹/MT	***
Landed price	₹/MT	37,381
Price undercutting	₹/MT	***
Price undercutting	%	***%
Price undercutting	Range	10-20

119. It is seen that the imports were undercutting the prices of the domestic industry. The price undercutting is significant and positive.

120. The other interested parties have submitted that the price undercutting was negative in the previous years. It is noted that the price undercutting was negative during 2019-20 and 2021-22. However, during the most recent period, the imports started undercutting the prices of the domestic industry. This increased the demand for the imported goods, leading to increased imports, and created a strain on the prices and market share of the domestic industry.

#### **I.3.5. Price suppression / depression**

121. It was examined whether the imports of the subject goods were suppressing or depressing the prices of the domestic industry. For the purpose, the trends in the costs and prices were examined over the injury period. The table below shows factual position.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Cost of sales	₹/MT	***	***	***	***
	Indexed	100	89	124	197
Landed price	₹/MT	20,872	18,294	32,830	37,381
	Indexed	100	88	157	179
Selling price	₹/MT	***	***	***	***
	Indexed	100	104	157	202

It is seen that in 2020-21, the cost of sales of the domestic industry declined. However, the domestic industry was able to increase its selling price in this period, as the imports declined

in this period. Though the price of imports was lower, such imports did not create a pressure on the volumes or prices of the domestic industry due to covid related disturbances. Thereafter, in 2021-22, both the cost of sales and the selling price of the domestic industry increased. Even then, the increase in selling price was higher than the increase in cost of sales, as the import prices increased even beyond the levels kept by the domestic industry. Since the price of imports was higher, such imports did not create a pressure on the volumes or prices of the domestic industry. The domestic industry in fact was able to increase its volumes in proportion to increase in consumption. During 2022-23, the cost of sales increased by \*\*%. However, the increased influx of imported goods prevented the domestic industry from increasing its prices in tandem with the cost of sales. The large volume of goods entering the market at cheaper prices prevented the domestic industry from increasing its prices in tandem with the increase in costs. The domestic industry was able to increase its prices only by \*\*%. Therefore, during the most recent period, the imports prevented price increases, which otherwise would have occurred.

### I.3.6. Comparison of raw material cost and landed price

122. Since coking coal accounts for the major cost of production of the subject goods and commands approximately 90% of the cost of production, it was examined whether the landed price of the subject goods have moved in tandem with the cost of coking coal.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Cost of RM	₹/MT	***	***	***	***
Trend	Index	100	85	113	213
Landed price of Coke	₹/MT	20,872	18,294	32,830	37,381
Difference	₹/MT	***	***	***	***
Trend	Index	100	106	339	-79
Mark-up	%	***	***	***	***
Trend	Index	100	117	208	-42

123. It is seen that the price of coking coal has increased in India over the injury period. The landed price of met coke has also increased in India. However, the difference between the cost of raw material of the domestic industry and landed price of met coke has declined steeply. Further, it is seen that compared to a mark-up of \*\*\*-\*\*\*% in the previous years, the mark-up between the raw material cost and landed price of coke become negative during the most recent period. Considering that a producer would have to incur conversion costs, selling, general and administrative expenses and would also normally earn a reasonable profit; a negative mark-up is grossly insufficient to sustain any business.

### I.3.7. Capacity, production, capacity utilization and domestic sales

124. The performance of the domestic industry with regard to installed capacity, production, capacity utilization and domestic sales over the injury period were analysed.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Capacities	MT	***	***	***	***
Trend	Index	100	100	103	110
Production	MT	***	***	***	***
Trend	Index	100	80	113	104
Capacity utilization	%	***	***	***	***
Trend	Index	100	80	110	95
Domestic sales	MT	***	***	***	***
Trend	Index	100	90	93	106

It is seen that

- a. the installed capacities with the domestic industry have increased over the injury period. The domestic industry submitted that in light of increasing demand, some of the domestic producers have set up or increased their capacities. It is seen that the demand for the product in the country increased by 15%. The domestic industry increased capacities by 10%.
- b. production, capacity utilization and domestic sales of the domestic industry declined during 2020-21. The same was in view of Covid and decline in demand during this period.
- c. During 2021-22, the production, capacity utilization and sales recovered. The landed price of imports in this period were relatively higher. Resultantly, the domestic industry was able to increase its sales, and consequently production and capacity utilization.
- d. In 2022-23, the period when the imports of the product surged, production capacity utilization and domestic sales of the domestic industry suffered again. While the sales of the domestic industry increased by 15%, such increase was not commensurate with the increase in demand, which increased by 22%.

### **I.3.8. Inventories**

125. The inventory position of the domestic industry over the period of investigation was as below.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Opening Inventory	MT	***	***	***	***
Closing Inventory	MT	***	***	***	***
Average Inventory	MT	93,478	71,287	82,241	1,09,285
Trend	Index	100	76	88	117

It is seen that the inventories with the domestic industry increased over the injury period. The inventories have increased by 33% in the most recent period as compared to the previous year, and by 17% as compared to the base year. Further, the inventory holding period of the domestic industry has also increased by 10% as compared to the base year.

### I.3.9. Employment and Productivity

126. Employment and productivity situation of the domestic industry was as follows.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
No of employees	No.	***	***	***	***
Trend	Index	100	94	123	116
Productivity per employee	MT/No.	***	***	***	***
Trend	Index	100	85	92	89
Productivity per day	MT/Day	***	***	***	***
Trend	Index	100	80	114	135

It is seen that the number of employees and productivity per day have increased over the injury period. The productivity per employee has dipped, since the production did not increase in tandem with the increased capacities and employment.

### I.3.10. Profit / Loss

127. The profitability of the domestic industry was as follows:

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Profits/Losses	₹/MT	(***)	***	***	(***)
	Indexed	(100)	252	646	(79)
Cash profits	₹/MT	(***)	***	***	(***)
	Indexed	(100)	658	1,493	(36)
Return on investment	%	(***)	***	***	(***)
	Indexed	(100)	1,352	1,941	(45)

128. The domestic industry has submitted that it suffered injury and financial losses in 2019-20 due to closure of blast furnace by Neelachal Ispat Nigam Limited (“NINL”). NINL was a public sector iron and steel manufacture and had its own captive coking coal plant. However, NINL was forced to operate coke oven plant even after shutting down the steel plant, in order to prevent damage to the same. Thus, it had no other option other than to sell met coke in the merchant market. MMTC and NINL started selling met coke in the merchant market at low prices, thereby driving the price down in the market. The price offered was extremely low due to which the domestic producers of the product were

forced to sell at lower prices in order to compete in the market. Thus, the domestic industry incurred losses during the period.

129. It is seen that the domestic industry has suffered financial losses in the most recent period as compared to the previous year. The profitability of the domestic industry has declined steeply. While the domestic industry was earning profits, cash profits and adequate return on investment in the previous year, the profitability of the domestic industry has crashed in the most recent period. The domestic industry has incurred cash losses and a negative return on capital employed.
130. Some of the opposing interested parties have submitted that the losses to the domestic industry is due to increase in interest and depreciation costs. It is however seen that the profitability of the domestic industry has declined much more than the increase in depreciation and interest cost. While depreciation and interest cost increased by Rs. 783 lacs and Rs. 1906 lacs, the profitability declined by Rs. 55,656 lacs from year 2021-22 to most recent period. Hence, the decline in profitability cannot be due to increase in the said costs. Further, the EBIDTA of the domestic industry has declined steeply in the most recent period, as compared to 2021-22 and with the surge in imports in this period.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
EBIDTA	₹/MT	***	***	***	***
Trend	Index	100	1,128	2,203	147
	Rs lacs	***	***	***	***
Trend	Index	100	1,012	2,040	156

### **I.3.11. Shut down of plant due to imports**

131. The domestic industry has submitted that plants of two of the petitioners were shut down due to inventory pile up and lack of market share. The producers were unable to sell their product in the market and were forced to completely shut down the production.

### **J. Non-Attribution Analysis**

132. As per Rule 8(b) of the Rules, the Authorised Officer is required to determine whether increased imports were a cause of the serious injury or threat of serious injury to the domestic industry. Therefore, for the purpose of causal link assessment, all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry were examined, and it was ascertained whether the increased imports of the subject goods were one of the primary causes of serious injury to the domestic industry. In addition, it was examined whether factors other than increased imports were a cause of injury to the domestic industry. While there are no laid down "other factors" that are required to be evaluated, it was examined whether factors such as developments

in technology, export performance, productivity, contraction in demand, possible dumping of the product, were principal cause of injury to the domestic industry.

**J1. Contraction in demand**

133. It is noted that there is no contraction in demand of the subject goods in the country.

**J2. Pattern of consumption**

134. No interested party has alleged that there has been a change in the consumption pattern for the goods.

**J3. Conditions of competition and trade restrictive practices**

135. The investigation has not shown that conditions of competition or trade restrictive practices have changed.

**J4. Development in Technology**

136. It is seen that there is no significant change in technology.

**J5. Export performance of the domestic industry.**

137. The injury analysis is limited only to domestic performance and for the product under consideration.

138. The other interested parties have submitted that the performance of other Indian producers have improved; and, thus, the Indian industry is not suffering injury. The other interested parties have relied upon the credit ratings of the producers. It is noted that the credit ratings do not provide the correct picture regarding the performance of the producer in respect of product under consideration. Further, the evidence on record shows that some of the producers mentioned by the other interested parties are engaged in exporting the product. Since the data with regard to performance of product under consideration in the domestic market was not available, the same has not been considered by the Authorized Officer.

## ADJUSTMENT PLAN AND PUBLIC INTEREST

### **K. Adjustment Plan**

#### **K1. Submissions by the other interested parties**

139. The following submissions were made by the other interested parties with regard to adjustment plan.
- a. The applicants have not provided an adjustment plan. There is no exception to the requirement of the adjustment plan even if the measures are requested for less than one year. In a number of safeguard investigations, including those on Phthalic Anhydride, Cold Rolled Flat Products of Stainless Steel, Not alloyed Ingot of Unwrought Aluminium and Flexible Slabstock Polyol, the Authorised Officer has held that the adjustment plan submitted by the domestic industry was not viable or lacks evidence.
  - b. In the absence of an adjustment plan, the initiation is erroneous as the accuracy and adequacy of the evidence provided has not been examined.

#### **K2. Submissions by the domestic industry**

140. The following submissions were made by the domestic industry with regard to adjustment plan.
- a. The domestic industry has requested measures only for a period of one year. Accordingly, no adjustment plan has been submitted.
  - b. The findings of the Authorised Officer stated by the other interested parties were those where measures were requested for more than one year.

#### **K3. Examination of the Authorised Officer**

141. Rule 9 of the Safeguard Measures (Quantitative Restrictions) Rules, 2012 states as follows.

*“9. Final findings.-- (1) The Authorised Officer shall, within eight months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether, as a result of unforeseen developments the increased imports of the goods under investigation has caused or threatened to cause serious injury to the domestic industry, and a casual link exists between the increased imports and serious injury or threat of serious injury and recommend --*

*(iv) the duration of imposition of quantitative restrictions and where the duration of imposition of quantitative restrictions is more than one year, the progressive liberalisation adequate to facilitate positive adjustment.”*

142. According to Rule 9, the Authorized Officer shall provide for progressive liberalization adequate to facilitate positive adjustment in case measures being recommended are for a period of more than one year. Since the measures requested by the domestic industry are for a period of one year, there is no requirement for providing an adjustment plan.

## **L. Public Interest**

### **L1. Submissions by the other interested parties**

143. The following submissions were made by the other interested parties with regard to public interest.
- a. Imposition of measures is not in public interest as it will artificially alter the demand-supply situation, offset comparative advantages, induce inefficiency in manufacturing, disrupt export competitiveness, increase cost of production artificially and force inconsistency in decision making by downstream industry.
  - b. The applicants are unable to fulfill the demand in India and any measures will cut the source of regular supply to the consumers.
  - c. The production of domestic industry is only half the total demand in India. The maximum capacity utilization of the domestic industry has been only 52% during the period when anti-dumping duty was in force. Thus, the Indian industry will not be able to fulfil the demand in India.
  - d. While the applicants have claimed high capacities in the country, the production volume is very low. It cannot be assumed that all producers are operating at less than 50% capacity utilization.
  - e. The demand for the product under consideration is expected to increase in India which will lead to further increase in the demand-supply gap.
  - f. Imposition of measures will not be in public interest as met coke is an important element to produce iron, steel, aluminium, titanium and silicon. The quality of met coke influences the efficiency, productivity and overall cost of steel production.
  - g. While the applicants have submitted that captive producers are insulated from market situations, the cost of production of captive producers have also increased during the most recent period due to increase in prices of coal. If measures are imposed, captive producers who also import met coke will be adversely impacted.
  - h. Imposition of quantitative restrictions may have an adverse impact on the performance of the steel manufacturers. Increase in prices of met coke will lead to increase in price of steel making the Indian industry uncompetitive globally.
  - i. Imposition of measures will impact export competitiveness of the downstream industry as it will not be able to import product under consideration for production of product meant for exports without application of quota.
  - j. Increase of 10% in the landed price of met coke will have an impact of 3-5% on the total cost of pig iron, 2-3% of total cost of alloy steel, 3-5% on total cost of rounds and billets. An increase of 50% in the landed price of met coke will have an impact of 18-25% impact on the total cost of Pig Iron, 10-11% of total cost of alloy steel and 18-20% of total cost of rounds and billets.

- k. The applicants are already enjoying the benefit of 5% customs duty on imports of met coke from Indonesia.
- l. The Government of India has already provided relief to the producers of met coke by removing the import duty and Agriculture Infrastructure and Development Cess on imports of coking coal.
- m. The Authorised Officer in methyl acetoacetate held that imposition of safeguard duty is not in public interest and hence did not impose any duties in the said case.
- n. A Memorandum of Understanding has been signed between the Government of India and Russian Federation regarding coking coal. This MoU will help the steel manufacturers in procuring high quality coking coal from Russia. Thus, any measures on met coke will be against the vision of the government.
- o. In case of imposition of quantitative restrictions the import volume will be capped at 2.69 million MT which is 8,50,000 MT less than the demand in Indian market. Such demand would be catered by the Indian industry. However, Indian industry has produced only 1.04 million MT and thus, it is unclear if the Indian industry will be able to fulfil the demand in India.
- p. The domestic industry is not impacted by volume of imports but only by the price of imports. Thus, limiting the total volume of imports is not an appropriate remedy.
- q. Quantitative restriction will disrupt the target of Ministry of Steel to achieve capacity of 300 million tons and production of 255 million tons of crude steel by 2030-31.
- r. Government has implemented PLI 1.0 scheme for specialty steel and is working towards PLI 2.0. Any restriction on imports of met coke will be detrimental to government vision.

## **L2. Submissions by the domestic industry**

144. The following submissions were made by the domestic industry with regard to public interest.
- a. There will be no price effect on the downstream industry as no duty will be levied pursuant to the present investigation.
  - b. The product under consideration is not a raw material but only a source of energy. The cost of product under consideration is not a substantial cost in for the downstream industry.
  - c. The impact of imposition of measures on imports of the product under consideration will be negligible.
  - d. Fair prices will be maintained in India as there are a number of producers in the market which compete *inter se* in India.
  - e. There is no demand-supply gap as the merchant capacities in India are more than the merchant demand.
  - f. The quota determined by the Authorised Officer will majorly impact only Australia, China and Indonesia. Typical suppliers such as Poland, Columbia and Russia will get quota more than their imports in the most recent period.
  - g. The major segment of the industry is catered by captive producers. Thus, imposition of measures on imports will not impact such industry.

- h. The plants of two of the petitioners were shutdown due to increase in imports into India at prices below the cost of sales of the domestic industry.
- i. The measures requested are for only a period of one year.
- j. There was no adverse impact on the downstream industry during the period where anti-dumping duty was in force on imports from Australia and Indonesia.
- k. The Indian industry provides employment to 12,500 people directly and 62,500 people indirectly. In case of unviability of operations, livelihood of a number of people will be lost.
- l. As opposed to the contention of the other interested parties, imports from Indonesia are duty free under Notification No. 41/2019 – Customs dated 31<sup>st</sup> December 2019.
- m. As opposed to the contention of the other interested parties, the Authorised Officer in methyl acetoacetate concluded in the abovementioned investigation that the performance of the domestic industry has not deteriorated and increase in imports was not due to unforeseen development.
- n. Even if concessions have been provided by the Government of India, such concessions did not have any positive impact on the performance of the domestic industry.
- o. Contrary to the submissions of the other interested parties, the Government of India has always promoted domestic manufacturing in India.

### **L3. Examination of the Authorised Officer**

145. Article 3.1 of the Agreement on Safeguards states as follows:

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

146. In view of the aforesaid, there is a need to examine whether imposition of safeguard measures shall be in 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 measures on various stakeholders, and taking a balanced view keeping in view competing interests of different interested parties.
147. With regard to the submissions of the other interested parties, that there is demand-supply gap in India, it is noted that the domestic industry is operating at low-capacity utilization even though there is ample of demand in India. Further, the merchant capacities in India

are higher than the total merchant demand in the country. Further, the volume of imports shall be regulated only to the extent of surge in imports in 2022-23. The extent to which the volume shall be regulated shall be very easily made up even by the petitioning domestic industry. Accordingly, imposition of measures would not lead to scarcity of availability of product in India.

Particulars	Volume
Merchant demand in India (2022-23)	61,86,991
Merchant capacity in India (2022-23)	63,69,455
Demand-Supply Gap	(1,82,464)

148. It is noted that met coke is important in the production process of a number of products such as iron, steel, ferro alloys, chemicals etc. Since met coke is not a principal raw material and is not a significant cost to the downstream industry, any change in cost of met coke would not have unbearable impact on the costs of the downstream industry.

149. The information on record shows that even if the prices of met coke increase post imposition of measures on imports of the product, the impact of such measures will be negligible.

Particulars	Unit	Rate
Price of downstream product		
Hot Rolled Coil Steel	₹/MT	62,138
Hot Metal (for pig iron)	₹/MT	41,000
Selling price of domestic industry	₹/MT	41,675
Total production by Indian merchant producers	MT	26,99,115
Total Imports into India	MT	36,39,492
Captive Production	MT	2,29,44,282
Total Consumption (total production + Imports)	MT	2,92,82,889
Share of merchant producers	%	9%
Average margins in previous three years / increase in prices	₹/MT	2,081
Selling price in case of increase in price	₹/MT	43,756
Consumption of Met Coke for		
Hot Rolled Coil Steel	Kg/MT	304
Merchant Share in Hot Rolled Coil Steel	Kg/MT	28
Hot Metal (for pig iron)	Kg/MT	357
Merchant Share for hot metal	Kg/MT	33
Impact		
Hot Rolled Coil Steel	₹/MT	58
Hot Metal (for pig iron)	₹/MT	68
Hot Rolled Coil Steel	%	0.09%

Hot Rolled Coil Steel	%	0.17%
-----------------------	---	-------

150. It is also noted that there is a history of trade remedial measures on the imports of the product. However, none of the users have demonstrated an adverse impact of the earlier measures on their performance. Therefore, there is no basis to conclude that the imposition of measures would adversely affect the performance of the downstream industry.

151. The Authorised Officer takes cognizance of the submissions made by the domestic industry that the product is either manufactured by the producers for selling in the merchant market or is captively consumed. The captive market for the product is much bigger than the merchant market. Any imposition of measures will not impact the larger segment of the market.

Segment	Consumption				Segment-wise Share %	
	Gross (KT)	Captive (KT)	Merchant (KT)	% Merchant Share	Overall	Merchant
Steel	***	***	***	11%	89%	54%
Pig Iron	***	***	***	47%	5%	14%
Zinc, Soda Ash & Others	***	***	***	100%	2%	11%
Ferro Alloys	***	***	***	100%	1%	8%
Foundry	***	***	***	100%	1%	4%
Others	***	***	***	100%	2%	9%
Total	38,320	31,586	6,734		100%	100%

152. The domestic industry has submitted that there are a number of producers in the Indian market which compete *inter se*. Accordingly, the prices will remain fair and competitive in India.

153. The essential facts gathered during the course of the investigation, and as established on the basis of information received from various sources are hereby being disclosed in order to enable various interested parties to offer their comments on these facts so gathered. The Authorized Officer will, however, make the final determination on various aspects of the investigation on the basis of the comments received thereof from the interested parties to this disclosure statement to the extent they are relevant.

## **M. Post Disclosure Submissions**

### **M1. Submissions by the other interested parties**

154. The following submissions were made by the other interested parties with regard to disclosure statement.
- a. Since the domestic industry imports coal from Australia, there should not be any adverse impact of Russia - Ukraine Conflict especially as India has not imported coal from Russia due to high freight cost.
  - b. While the Authorized Officer has placed heavy reliance on prices of coking coal, in a safeguard investigation, it is necessary to analyse the global supply of subject goods and import restriction policy in other countries.
  - c. Indonesian producers also faced impact of high freight cost as it has similar distance with Russia and Australia as that of India. The Indonesian producers are also dependent heavily upon imported coking coal.
  - d. The domestic industry was able to increase its production, sales while the market share of domestic industry faced a marginal decline, hence there is no injury to the domestic industry.
  - e. The price of imports as well as selling price of the domestic industry has increased in 2021-22 and 2022-23. The cost of sales of the domestic industry has increased due to which its profitability has declined. Thus, serious injury to the domestic industry is due to internal factors.
  - f. The injury caused to the domestic industry was not due to imports but due to shutdown of NINL and met coke sold in the merchant market by NINL and MMTC at low prices.
  - g. There is no price suppression since the landed price has increased more than increase in selling price of the domestic industry in 2022-23 as compared to 2019-20.
  - h. Increase in prices of coking coal does not have a direct relationship with dynamics of increase in imports of met coke and cannot be considered as an unforeseen development.
  - i. Since Indian companies have bought Russian coal at favorable prices, they could not have suffered from excessively high prices of raw material. Jindal Coke Limited has bought coking coal from Jindal Steel and Power Limited which may have been mined by its related entity in Mozambique.
  - j. The names of producers whose production has been taken into account for determining the total Indian domestic production, total domestic production of met coke in India, methodology for determining total production, share of applicants in such total production and names of producers who are considered ineligible have not been shared in the disclosure statement.
  - k. While the Authorized Officer has proposed to conclude that exclusion of captive production is not of directly competing article, the captive producers are also producers of like product in India. Therefore, such producers should be considered eligible. The term 'directly competitive article' is meant to cover article that may

not be like article per se but is competing with the product under consideration. Thus, 'directly competitive article' referred to in the Rules is with regard to the product being manufactured and not regarding the producer of the product whether captive or merchant.

- l. The Authorized Officer has misinterpreted "or" in the definition of domestic industry with "and". Each component of the definition has to be read independently. The two conditions "like article" and "directly competitive goods" are not mandated to be fulfilled together.
- m. While the Authorized Officer has relied upon the Appellate Body Report in US-Lamb, the case is not applicable to the present investigation as the issue in the case was regarding the product while the issue in the present investigation is regarding the producer of the product.
- n. The facts of safeguard investigation into imports of Solar Cells is not applicable on the present investigation as domestic producers producing the subject goods for captive production cannot be treated on an equal footing as that to the producers situated in the SEZ.
- o. While the Authorized Officer has relied upon a number of statutes, only a general reference has been made to them. None of the statutes provide for any special treatment for domestic producers engaged in production of goods for captive production.
- p. There is no WTO Appellate Body Report in India-Safeguard Measures on Certain Hot-Rolled Flat Products of Stainless Steel and the citation provided by the Authorized Officer refers to Appellate Body Report in China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum.
- q. Even if the production of captive consumers is excluded, the production of producers which are producing for merchant and captive market should be considered.
- r. The Authorized Officer has not given an examination on the submissions made by the association regarding standing of the domestic industry.
- s. Increase in price of coal cannot be termed as an unforeseen development since increase in price of exhaustible natural resource, which has limited availability is expected. Further, it is normal that the domestically available natural resource will experience lower rate of increase in prices.
- t. While the domestic industry itself opted to import higher price coal from Australia as compared to Russia, it has justified by stating that the freight rate was higher for importing from Russia. This implies that the non-availability of coal from Russia at low prices was due to high freight rates and the same cannot be termed as an unforeseen development.
- u. Even if increase in price of coking coal is considered as an unforeseen development, it cannot be the reason for increase in imports. The Authorized Officer in Bare Elastomeric Yarn, held that there is a difference between unforeseen development leading to serious injury and unforeseen development leading to increase in imports.

- v. The impact assessment by the Authorized Officer is not appropriate as it has considered only hot rolled coil steel as downstream product and not pig iron, billets and rounds. The Authorized Officer has assumed that the selling price of the domestic industry would be fixed at a particular rate after imposition of measures, such assumption is not economically viable and legally impermissible. While the Authorized Officer has considered that 304 kg of met coke is required for production of hot rolled coil steel, actually 400-500 kg of the same is required.
- w. The Authorized Officer has considered that the major demand will be fulfilled by captive consumers but has failed to consider that not all consumers of the product have captive met coke plants.
- x. Determination of quota based on volume of imports in last three years excluding the surge period is incorrect and the period of investigation cannot be bifurcated between the surge period and previous three years. There cannot be a consistent practice to fix quota since there have been only two safeguard (QR) investigations in India.
- y. While considering the last three representative years for fixation of quota, the current period representative of the actual demand-supply gap, that is, 2023-24, is already excluded. Exclusion of 2022-23 will result in entirely unrepresentative fixation of quota.
- z. The increase in imports in the surge period is offset by considering average imports in previous three years.
- aa. Surge period should not be excluded for determination of quota since the demand for steel has increased leading to increase in demand for met coke in India. The demand for steel is expected to increase further. In both safeguard (QR) investigations, that is, IPA and PVC, the Authorized Officer considered the growth of demand while fixing quota.
- bb. The disclosure did not consider and address the submission of Balta which demonstrated that exclusion of import from an individual country from the scope of safeguard measure is permissible. Accordingly, Poland should be excluded from the scope of the measures.
- cc. The petitioners do not hold major share of the total Indian production as it should be more than 51% of the total share of production in India.
- dd. It appears that there is no injury to the other 20 domestic producers constituting 67% of the total production in India and therefore, they are not before the Authorized Officer.
- ee. The petitioners have not provided the actual figures of some parameters as per Trade Notice No. 10/2018 dated 7<sup>th</sup> September 2018 whereas the Authorized Officer has accepted the confidentiality claims in violation of the Trade Notice.
- ff. There is no increase in imports from Indonesia in such increased quantities in absolute terms or relative to domestic production so as to cause serious injury to the domestic industry.
- gg. As per the market intelligence, the domestic industry is importing the subject goods in reasonable quantities. Thus, increase in imports should be attributed to the imports made by the petitioners themselves which is causing injury to them.

- hh. The Authorized Officer should clearly provide the evidence of how Russia-Ukraine conflict, increased global freight rates and the alleged advantage of Chinese producers have specifically impacted the Indian market.
- ii. The petitioners are comparing the imports in POI with the imports in abnormal period i.e. 2020-21 and 2021-22 which is unreasonable and unjustifiable.
- jj. The Authorized Officer may opt for the previous years before COVID-19 pandemic to analyze the injury to the domestic industry.
- kk. The profitability of the domestic industry during 2022-23 have improved as compared to base year 2019-20, thus, it the performance of the domestic industry has improved showing that there is no injury to the domestic industry.
- ll. The Authorized Officer shall confirm in the final finding that the measures, will be for one year only and no further extension would be granted by way of mid-term or sunset review as no viable adjustment plan has been submitted.
- mm. The increase in imports is interim and is not being made with the intention to cause injury to the domestic industry. The petitioners themselves provide that the increase in imports is temporary.
- nn. The petitioners are at present not able to fulfill the demand of the Indian industry and the imposition of the safeguards measures would cut the source of regular supply and cause negative impact on the public interest of India.
- oo. Authorized Officer must reconsider its decision not to exclude met coke with size upto 40 mm from the scope of the product under consideration.
- pp. The Authorized Officer has not evaluated the contention of AMNS that met coke supplied by the domestic industry is of inferior quality.
- qq. Under Section 9A(4)(b) of the FTDR Act read with the Agreement on Safeguards, the domestic industry is defined as producers of “directly competitive goods” and not “directly competing goods”.
- rr. If only “directly competing” producers can be considered to be a part of the domestic producers, then EOUs should be excluded since they do not directly compete with imports. Yet in the solar safeguard investigation, the Authorized Officer included EOUs within the scope of the domestic industry even though the EOUs did not compete with the imported goods.
- ss. In US – Cotton Yarn, the Appellate Body explained the difference between competitive and competing. The Appellate Body held that even if the producers are not directly competing with another, the mere possibility to compete is sufficient to include the production quantity of those producers in the ‘total domestic production’. The captive producers are in a competitive relationship with the imported goods despite no sales in the merchant market.
- tt. Vertically integrated producers may also enter the merchant market as done by Neelachal Ispat Nigam Ltd. due to shutdown of its steel plant.
- uu. In Dominican Republic – safeguard measures, the Panel held that it is not permissible to define the domestic industry based on only a limited portion of the producers of the product.

- vv. The import volumes during the most recent period is 35,15,654 MT, whereas the import volumes during 2013-14 was 39,26,125 MT. The import volumes during the most recent period are less than the import volumes that existed a decade ago.
- ww. The domestic industry imports high priced coking coal from Australia, when cheaper alternatives are available. Due to the expensive raw materials sourced, the cost of production of met coke is higher than the import price of met coke. However, this is a circumstance that is unique to the domestic industry and is not a general unforeseen development.
- xx. Since India has not placed any sanctions against imports from Russia, it is not appropriate to conclude that only Chinese producers have benefitted from Russian coal.
- yy. The price of coking coal has declined between April 2022 to March 2023, thus, the submission that price of coking coal has increased should not be taken into account.
- zz. There is an abnormal increase in the cost of production of the domestic industry by 97% from the base year to the most recent period. The landed price of met coke increased by 79% during this period. The injury to the domestic industry is because of the increase in its raw material costs.
- aaa. The domestic industry increased its installed capacity during the most recent period, which may have led to an increase in cost of production.
- bbb. There is no factual basis of the impact of only Rs. 68/MT determined by the Authorized Officer on the prices of Hot Metal (Pig Iron). The Authorized Officer must disclose the evidence it has relied upon to arrive at such a number. The true impact on the downstream users is far higher.
- ccc. The Ministry of Steel targets 300 million MT of steel production by 2030-31, any measures imposed will set India back by a few years.
- ddd. The Authorized Officer is requested to extend the coverage of the exclusion to include low ash metallurgical coke with phosphorous content up to 0.030% with size of 30 mm. A tolerance of up to 5% for size in the definition of the scope of product exclusion.
- eee. There is no dedicated tariff item under which imports of Metallurgical Coke with ash content less than 18% can be specifically classified. It is not clear as to how the import data obtained from the DGCI&S can be relied upon for the purpose of the present investigation.
- fff. The domestic industry has limited its comments to the availability of met coke with size upto 40 mm, and has provided no comments regarding the quantities in which it is available. The limited availability of 'LAM Coke of upto 40 mm' will severely impact the operations of pig iron producers that use mini blast furnaces.
- ggg. The Authorized Officer has not substantiated upon the changes observed in the market conditions and the demand of the product under consideration post-Covid, and how fixing the quota based on the average imports in the three years prior to the surge period is justified.
- hhh. The domestic industry has consistently operated at less than half its capacity. Even when the anti-dumping duty was in effect on imports from China and Australia, the domestic industry was unable to increase its capacity utilization.

- iii. The respondents also apprehend that even if the domestic producers increase their production to meet the domestic demand, it may not be commensurate to the increase in demand for LAM Coke in India.
- jjj. Met coke is a major raw material for producing finished goods such as ferro alloys, steel, and pig iron. India is a major producer and exporter of these downstream products.
- kkk. There are significant differences in the data recorded in the disclosure statement and the data submitted by the domestic industry.
- lll. The Authorized Officer has claimed excessive confidentiality regarding the aggregate data of the domestic industry.
- mmm. Increase in prices of coking coal pre-dates the Russia-Ukraine war. The reports referenced by the domestic industry underscored this point.
- nnn. The domestic industry was well aware of tight supply of coking coal since mid-2021. The domestic industry was also aware since 2021 that the impact of limited supply and freight related challenges drove coking coal prices to record high levels between mid-2021 and February 2022. February 2022 was the month in which Russia invaded Ukraine whereby it is self-evident that the coking coal and freight related effects on prices were already an aged phenomenon by then.
- ooo. The cost of raw materials borne by the petitioners cannot be reasonably compared to the landed price of imports or be expected to move identically since India lacks natural reserves of coking coal and heavily relies on imports. The cost structure for domestic producers is inherently influenced by additional factors such as ocean freight costs and cannot be considered comparable to the cost of production of exporters.
- ppp. The grievances of the domestic industry are solely related to the cost of production and price of imports from China, and has no bearing on the legal standard for imposition of a safeguard measure.

## **M2. Submissions by the domestic industry**

155. The following submissions have been made by the domestic industry post issuance of the disclosure statement.
- a. Ultra-low phosphorous metallurgical coke with phosphorous content below 0.03% and size below 30 mm for use in ferroalloy applications only should be excluded. The importers must show bona fide use of the product in order to import the product without application of quota.
  - b. Coke fines and Ultra-Low Phos Coke have been excluded from the scope of the product under consideration but are included in the import data. It must be excluded for calculating the proposed quota.
  - c. There is huge difference between the volume of imports as per the market intelligence of the petitioners and the volume of imports given in disclosure statement. The difference is due to the fact that the volume of imports given in the disclosure statement includes coke fines and ultra-low phos coke.

- d. The petitioners request the Authorized Officer to clarify that the price of coking coal did not increase for foreign producers which are situated in countries where coking coal is available domestically.
- e. The other interested parties agreed during the oral hearing that Ukraine-Russia conflict is an unforeseen development. Due to the said unforeseen development, the imports of product under consideration have increased in India and have caused serious injury to the domestic industry.
- f. Since coking coal accounts for 90% of the cost of production of met coke, the prices of met coke should move in tandem with the cost of coking coal. However, during the surge period, the landed price of met coke have not increased commensurate to the increase in coking coal prices causing serious injury to the domestic industry.
- g. While the Indian industry has also imported some quantities of Russian coking coal post Russia-Ukraine conflict, the quantities are very low and the price of such imports is higher than price of imports into China.
- h. Chinese producers have invested in Indonesia to take advantage of Australian coal. Since Australia is closer to Indonesia as compared to China, the cost of procurement of Australian coal is much lesser in Indonesia as compared to China.
- i. Due to disparity between the prices of global coking coal and domestically available coking coal, the Australian met coke industry was able to produce met coke at lower prices and export the same at low prices to India.
- j. Most of the domestic producers purchase coking coal based on published prices. Due to increase in imports of met coke into India, the domestic industry was not able to utilize the high price coking coal purchased as the domestic industry was forced to reduce production during the most recent period. Hence, even when the price of coking coal declined, the cost of production of the domestic industry remained high.
- k. In case imports had not surged, the domestic producers would have got orders and would have consumed coal, as planned. Surge in imports of met coke leading to non-availability of orders led to significant stock piling of coal.
- l. The imports have surged from multiple countries. Countries such as Japan and Poland have lost volumes and will benefit from the proposed measures.
- m. The petitioners account for major share in domestic production. Barring the applicants and supporters the other domestic producers include those which are interested in export market and trading along with manufacturing the product.
- n. One of the other domestic producer has captive coal mine and since low ash coking coal is not available in India, it is a producer of high ash met coke which is NPUC in the subject matter.
- o. The imports of the product under consideration have increased even post period of investigation.

### **M3. Examination by the Authorized Officer**

156. The Authorized Officer has considered the submissions placed on record by all the interested parties including the Governments of various countries, domestic industry,

exporters, importer, users and other interested parties. The Authorized Officer has already made detailed examination in this final finding. Only fresh submissions are being dealt with in this section of the final finding.

157. While the other interested parties have claimed that the injury to the domestic industry cannot be due to Ukraine-Russia conflict as Indian producers have not imported Russian coal, the Authorized Officer notes that the injury to the domestic industry is due to increase in imports of the product under consideration due to the unforeseen circumstances, that is, Russia-Ukraine conflict. The Russia-Ukraine conflict led to decline in supply of coking coal from Russia due to sanctions placed on such imports by a number of countries. As a collateral effect, the demand for coking coal from other countries increased leading to increase in prices of coking coal globally. Since met coke prices did not increase commensurate to increase in the price of coking coal the delta between met coke and coking coal declined leading to surge in imports of met coke.
158. Contrary to the argument that Indonesian producers also face impact of high freight cost due to similarity in distance from Russia and Australia, it is noted that Indonesia accounted for a major supplier of coking coal to India in 2019-20. Although Indonesia was exporting huge quantities of coking coal to India, exports of coking coal from Indonesia to India have declined while exports of met coke from Indonesia to India have increased. Indonesia benefitted from the Russia-Ukraine conflict as coking coal prices increased globally, however, prices of met coke did not increase commensurately as the Indonesian producers had access to domestic coking coal and the delta between coal and coke declined, the Indonesian producers started exporting met coke to India. Hence, it cannot be said that the Indonesian producers are dependent upon imported coking coal and bear high freight cost for the same similar to the Indian producers.
159. The Authorized Officer notes that because of the unforeseen development of Russia-Ukraine conflict, the price of coking coal increased globally. However, the price of coking coal did not increase commensurate to the price of global coking coal in countries where the same was available domestically. Since Australia has abundance of domestically available coking coal, the producers in Australia had comparative advantage over producers from other countries and especially India where the producers are largely dependent upon imports of Australian coal. The Australian producers were able to produce low-priced met coke and were able to export the same to India in such increased quantities and at low-prices to cause serious injury to the domestic industry.
160. The Authorized Officer takes cognizance of the fact that the injury to the domestic industry during 2019-20 was due to sale of met coke by NINL in the merchant market at low prices and such injury was not due to imports into India which is also stated by the domestic industry. However, the same is not the case in the surge period, that is, in 2022-23. The injury to the domestic industry during 2022-23 was due to increase in imports into India due to unforeseen development.

161. It is also noted that though domestic producers in India might have imported coking coal from Russia at some favorable prices but Russian coking coal constitutes an insignificant share of total imports of coking coal into India. The contention of other interested parties that Jindal Coke Limited may have purchased coking coal from its related entity, the Authorized Officer notes that Jindal Coke Limited has not purchased coking coal from Jindal Steel and Power Limited which is claimed by the domestic industry and verified by the Authorized Officer.
162. The Authorized Officer notes that the Indian producers have purchased coking coal at high prices but were not able to utilize the same for production of met coke due to increase in volume of imports of met coke into India. When the coking coal prices declined, the cost of production of the domestic industry remained high as it had inventories of coking coal purchased at higher prices. In case, the imports had not surged in India, the domestic industry would have been able to consume the coking coal purchased and sell met coke in the market during the same period. Thus, the economies of the domestic industry have been adversely impacted due to surge in imports of met coke.
163. With regard to the submission on impact assessment, the Authorized Officer notes that since the present investigation is regarding imposition of measures in form of quantitative restrictions and not for imposition of duty, such restrictions will not adversely impact the downstream industry such as pig iron, steel etc. Further, since the product being used by ferroalloy industry has already been excluded from the scope of the measures, there will be no impact on such industry. Further, the measures are recommended only for a period of one year and there is no demand-supply gap in India which may lead to scarcity of the product or arbitrary pricing in India. Further, while quantitative restrictions will lead to lower volume of imports into India, the quota quantified by the Authorized Officer takes into account the demand-supply situation. There will be adequate supply of the product under consideration in India even after imposition of quantitative restrictions.
164. The contention of other interested parties regarding granting of country specific quota and exclusion of Poland from the safeguard (QR) measure is already addressed in the findings above. It is further reiterated that contrary to the contention, the notification no. 12/2021 – Customs (NT) dated 1<sup>st</sup> February 2021 clearly states that tariff rate quota may be global or country specific but the present investigation is not regarding tariff rate quota but is regarding quantitative quota. The present investigation has been initiated under the Foreign Trade (Development and Regulation) Act, 1992 and not under the Customs Tariff Act, 1975. Rule 11 of the Safeguard (Quantitative Restrictions) Rules, requires that the measures have to be applied on a non-discriminatory basis.
165. The contention of the other interested parties that the import of the product under consideration by the petitioners itself in reasonable quantities is responsible for the injury to the domestic producers is not tenable. Further, the other interested parties have not submitted any evidence regarding imports by the domestic industry. The Authorized

Officer notes that the domestic industry has not imported the product under consideration during the period of investigation. In any case, imports by the domestic industry does not disqualify them from filing a petition for safeguard measures.

166. The contention of the other interested parties that the domestic industry suffered due to purchase of expensive Australian coking coal despite the availability of cheaper alternatives is merely a claim without any evidence. As noted in paragraph above while coking coal from Australia accounted for major share of the Indian imports of coking coal. Further the, domestic industry has stated that the grade or variety of coking coal is imported based on the technical requirements of the product under consideration's production. It cannot be substituted with the cheaper alternatives of lower grade or type.
167. The contention of the other interested parties regarding exclusion of ultra-low phos met coke is accepted. The product excluded from the scope of product under consideration is "low ash metallurgical coke with phosphorous content up to 0.030% with size of 30 mm with 5% size tolerance for use in ferroalloy manufacturing". Further, the submissions with regard to import data and segregation methodology considered by the Authorized Officer, it is noted that DGCI&S data was procured at 4-digit level and was analyzed based on the description of the product under consideration. The transaction pertaining to only low ash metallurgical coke with ash content below 18% have been considered.
168. The Authorized Officer notes the submission made by the domestic industry that the imports of the product under consideration consists of the product excluded from the scope of product under consideration, that is, ultra-low phos metallurgical coke with phosphorous content upto to 0.030% with size of 30 mm and coke fines/breeze. The Authorized Officer notes that the imports already considered are excluding the imports ultra-low phos metallurgical coke with phosphorous content upto to 0.030% with size of 30 mm and coke fines/breeze.
169. With regard to the contention that met coke of 40 mm size used for blast furnaces should be excluded from the scope of the product under consideration, the Authorized Officer notes that the other interested parties have themselves submitted that such product is being manufactured and supplied by the domestic industry. With regard to quality of the product, the Authorized Officer notes that the landed price of imported met coke is below the selling price of the domestic industry. However, a premium quality product is normally sold at higher prices and not at lower prices as in the present situation. Thus, it cannot be said that the imported product is of a higher quality. Accordingly, no exclusion is required in this regard.
170. Regarding difference in data and the reasons for the same, it is noted that this difference was due to the revised submissions and verification of the data by the Authorized Officer.

171. Regarding the confidentiality in the disclosure statement for not providing aggregate data, it is stated that the major trends affecting the relevant economic parameters have been provided to all the interested parties. The interested parties were free to comment on the same. Therefore, there is no adverse impact of such confidentiality on any interested party.
172. With regard to the submissions of the other interested parties that the measures should not be extended after one year, the Authorized Officer notes that the present investigation is only for imposition of quantitative restriction and not extension of the same.
173. The other interested parties have submitted that vertically integrated producers may also enter the market. The Authorized Officer notes that Neelachal Ispat Nigam Limited entered the merchant market only due to closure of its steel plant. Further, the evidence on record shows that it was forced to sell met coke in the merchant market only to maintain its coke oven plants which has to be operated continuously. Further, there was an adverse impact on the merchant producers of the subject goods since Neelachal Ispat Nigam Limited sold the subject goods at very low cost. Further, the closure of steel plant and entrance of such producers into the merchant market is a speculative argument and the Indian industry whether merchant or captive has to be seen as it exists.
174. The Authorized Officer notes the submissions by the other interested parties regarding not considering the submissions with regard to standing. The Authorized Officer notes that the standing of the domestic industry is determined based on the most recent period and not over the complete injury period. This has been the past practice of the Authorized Officer and the same has been followed in the present investigation. Other issues regarding standing of the domestic industry has been dealt appropriately in the relevant sections.
175. The interested parties have raised an argument through comments on the disclosure statement with regard to interpretation of the term like or directly competitive under Article 4.1(c) wherein it has been submitted that the use of the word “or” under Article 4.1(c) should not be read as “and” which indicates that the goods produced should either be like or directly competitive and should not be both. It is noteworthy that the World Trade Organization (WTO) Panel in the case of United States – Safeguard Measure on Imports of Large Residential Washers had the occasion to address a comparable issue. In its deliberations, the Panel made the following observation:

*“In making that determination, we do not need to exhaustively define what "like" under Article 4.1(c) could or could not mean, especially considering the drafters chose to not define the term in the Agreement on Safeguards. Instead, we need to determine whether Article 4.1(c) precluded the USITC from finding that imported and domestic parts were like products, given its finding that the two did not compete. Interpreting Article 4.1(c) in the context of Article 4 as a whole suggests to us that products that are not in any type of competitive relation with each other could not cause serious injury or threat*

*thereof to one other. In particular, we note that Article 4.1(c) opens with the phrase "in determining injury or threat thereof", which, along with overall context provided by Article 4, specifically Articles 4.2(a) and 4.2(b), suggests that the domestic industry must be defined in a manner that allows the investigating authority to determine whether increased imports have caused or are threatening to cause serious injury to that industry. To the extent an investigating authority finds that two products are not in any competitive relation, we do not see how a domestic industry that is defined in a manner that excludes the possibility of subsequently determining that increased imports have caused or threatened to cause serious injury to that domestic industry (defined on the basis of producers of the like product, which here is covered parts) would be consistent with Article 4.1(c)."*

176. The interpretation provided by the WTO panel in the dispute underscores the importance of considering competition within the safeguard investigation process. This aspect is crucial in defining both the product under consideration and, consequently, the domestic industry. The definition of domestic industry within the Safeguards Agreement commences with the phrase "in determining injury or threat thereof," empowering the Authorized Officer to assess the competitiveness of the product in question. This assessment is integral to determining whether injury has occurred.
177. In view of the above and to maintain coherence in interpretation, it is affirmed that captive production, not being in competition with imports, does not contribute to injury faced by the domestic producers engaged in direct competition with imported goods. Hence, in determining total domestic production within the present context, only producers vending 'like' goods which are 'directly competitive' and are subject to the injurious effects of surge in imports envisioned under the law are factored. Therefore, a major proportion of the 'like' or 'directly competitive' goods constituting the domestic industry in the facts of the present case is proposed to be assessed based on the production of the industry in the merchant market excluding the captive production.
178. With respect to the disclosure surrounding the concepts of competitiveness and competition, and the reliance placed upon the Appellate Body Report in the case of United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan, it is important to acknowledge that the aforementioned case pertained to measures imposed under the Agreement on Textiles and Clothing. However, it is important to note that the Agreement on Textiles and Clothing was terminated in 2005 and is no longer in effect. Secondly, the interpretation provided by the Appellate Body was in a different context and also the text of the Agreement on Textiles and Clothing is different than the text of the Agreement of Safeguards.
179. Conversely, the present investigation concerns a safeguard measure under the Safeguards Agreement. Notably, the World Trade Organization (WTO) Panel in the case of United States – Safeguard Measure on Imports of Large Residential Washers addressed a similar issue under Article 4.1(c) of the Safeguards Agreement. Given that the current

investigation also involves a safeguard measure, the aforementioned WTO decision holds greater relevance and significance compared to the defunct Agreement on Textiles and Clothing.

180. Therefore, it is more appropriate to place reliance and consideration on the WTO decision pertaining to safeguard measures, as it directly aligns with the context and nature of the current investigation, whereas the Agreement on Textiles and Clothing is no longer applicable.
181. The other interested parties have submitted that if low priced imports are found to be impacting the domestic industry, appropriate remedies should be anti-dumping measures or anti-subsidy measures. The Authorized Officer notes that the injury to the domestic industry is due to sudden, sharp, significant and recent surge in imports due to unforeseen developments.

## **N. CONCLUSION**

182. Based on the analysis of the application, it is seen that:
  - a. There has been a sudden, sharp, significant and recent increase in imports of the product under consideration into India.
  - b. There has been significant increase in imports in absolute and relative terms is due to unforeseen developments.
  - c. The imports of the product under consideration were undercutting the prices of the domestic industry and caused a strain on the selling price of the domestic industry in the domestic market.
  - d. The market share of imports of the product under consideration has increased in India.
  - e. The domestic industry started suffering serious injury in the most recent period on various parameters like financial profits, cash profits, negative return on capital employed.
  - f. The serious injury to the domestic industry is due to increase in imports of product under consideration into India.
  - g. Imposition of safeguard measures, in the form of quantitative restrictions, would be in public interest. It will prevent serious injury to the domestic industry while having a bearable impact on the downstream industry as the demand of the subject goods would continue to be met by way of imports as well as sufficient capacities with the Indian industry.

## **O. RECOMMENDATION**

183. In view of the aforementioned analysis, it is concluded that:
  - a. The product under consideration, that is, low ash metallurgical coke has been imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry manufacturing the like article.

- b. The domestic industry has started suffering serious injury in the most recent period.
- c. The existing circumstances justify imposition of quantitative restrictions in order to prevent the domestic industry from further serious injury.

184. Accordingly, the Authorized Officer recommends the following measures:

- (i) The imports of the product under consideration are regulated and permitted not beyond the levels as mentioned in the table below. This quantum has been derived in terms of Rule 9(1) of the Safeguard Measures (Quantitative Restriction) Rules, based on an average of imports in the three representative years during the period of investigation, that is, 2019-20, 2020-21 and 2021-22 without considering the surge period, that is, 2022-23. However, the quota has been adjusted and increased in line with the increase in demand and highest capacity utilization of the domestic industry during the period prior to the surge period recommended in the table below are after keeping in view the demand-supply, demand growth and the capacity utilization of the domestic industry.
- (ii) The product under consideration, if produced in other developing countries (barring that mentioned in table below), shall not be subject to the measures recommended since the same are below the threshold prescribed under the Rules.
- (iii) The Directorate General of Foreign Trade (DGFT) had issued a Notification bearing file no. 01/92/180/106/AM-11/PC-VI/PRA dated 31<sup>st</sup> January 2013 wherein it had notified a list of developing countries under Section 9A(4)(a) of the FTDR Act, 1992. This notification was based on the Notification issued by the Department of Revenue. However, the Authorized Officer has noted that the list of developing countries has been subsequently revised by the Department of Revenue vide Notification No. 19/2016-Customs (N.T.), dated 5<sup>th</sup> February 2016. In case of imports from the developing countries listed under the said Notification No. 19/2016-Customs (N.T.), do not exceed 3% individually and 9% collectively, such imports will not attract quantitative restrictions in terms of Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992.
- (iv) The Authorized Officer recommends imposition of Quantitative Restriction on imports of Low Ash Metallurgical Coke.
- (v) The imports would be permitted through the EDI ports only to facilitate electronic / real-time monitoring of the allocated quota. The quota would be monitored on quarterly basis. The total imports allowed in any quarter shall not exceed the total of that quarter and the next quarter. Any unutilized quota for a quarter shall be added to the next quarter. This would ensure that the exporters and the associated importers would be able to regulate the volumes smoothly. Thus, allocation of quota in such a manner would ensure that users, importers and exporters do not suffer any undue hardship. If necessary, further modalities for governing such

Quantitative Restrictions may be notified, in accordance with relevant legal provisions.

- (vi) Accordingly, the Authorized Officer, in accordance with Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992, recommends imposition of quantitative restrictions on the imports of the following product for a period of one year from the date of the notification under the FTDR Act.

*“Low Ash Metallurgical Coke, that is, Metallurgical Coke having ash content below 18% falling under the HS Code 2704 excluding coke fines / coke breeze and ultra-low phosphorous metallurgical coke with phosphorous content up to 0.030% with size of 30 mm with 5% size tolerance for use in ferroalloy manufacturing”*

Figures in MT					
Country	Q1	Q2	Q3	Q4	Total
Australia	25,638	25,638	25,638	25,638	1,02,553
China PR	39,323	39,323	39,323	39,323	1,57,292
Colombia	1,24,886	1,24,886	1,24,886	1,24,886	4,99,542
Indonesia	33,182	33,182	33,182	33,182	1,32,729
Japan	1,04,990	1,04,990	1,04,990	1,04,990	4,19,960
Poland	2,53,168	2,53,168	2,53,168	2,53,168	10,12,672
Qatar	810	810	810	810	3,239
Russia	44,591	44,591	44,591	44,591	1,78,365
Singapore	23,239	23,239	23,239	23,239	92,955
Switzerland	40,887	40,887	40,887	40,887	1,63,549
UK	38	38	38	38	152
Others	22,831	22,831	22,831	22,831	91,325
Total	7,13,583	7,13,583	7,13,583	7,13,583	28,54,334

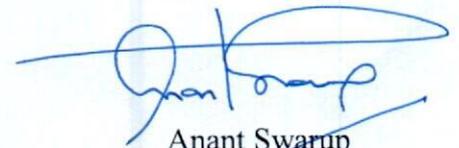
**List of developing countries.**

1. Afghanistan
2. Albania
3. Algeria
4. Angola
5. Armenia
6. Azerbaijan
7. Bangladesh
8. Belarus
9. Belize
10. Benin

11. Bhutan
12. Bolivia (Plurinational State of)
13. Bosnia and Herzegovina
14. Botswana
15. Brazil
16. Bulgaria
17. Burkina Faso
18. Burundi
19. Cabo Verde
20. Cambodia
21. Cameroon
22. Central African Republic
23. Chad
24. Comoros
25. Congo
26. Costa Rica
27. Côte D'Ivoire
28. Cuba
29. Democratic Peoples Republic of Korea
30. Democratic Republic of the Congo
31. Djibouti
32. Dominica
33. Dominican Republic
34. Ecuador
35. Egypt
36. El Salvador
37. Eritrea
38. Ethiopia
39. Fiji
40. Gabon
41. Gambia
42. Georgia
43. Ghana
44. Grenada
45. Guatemala
46. Guinea
47. Guinea Bissau
48. Guyana
49. Haiti
50. Honduras
51. Iran (Islamic Republic of)
52. Iraq
53. Jamaica
54. Jordan

55. Kazakhstan
56. Kenya
57. Kiribati
58. Kyrgyzstan
59. Lao Peoples Democratic Republic
60. Lebanon
61. Lesotho
62. Liberia
63. Libya
64. Madagascar
65. Malawi
66. Malaysia
67. Maldives
68. Mali
69. Marshall Islands
70. Mauritania
71. Mauritius
72. Mexico
73. Micronesia (Federal State of)
74. Mongolia
75. Montenegro
76. Morocco
77. Mozambique
78. Myanmar
79. Namibia
80. Nepal
81. Nicaragua
82. Niger
83. Nigeria
84. Pakistan
85. Palau
86. Palestine
87. Panama
88. Papua New Guinea
89. Paraguay
90. Peru
91. Philippines
92. Republic of Moldova
93. Romania
94. Rwanda
95. Saint Lucia
96. Saint Vincent and the Grenadines
97. Samoa
98. Sao Tome and Principe

99. Senegal
100. Serbia
101. Sierra Leone
102. Solomon Islands
103. Somalia
104. South Africa
105. South Sudan
106. Sri Lanka
107. Sudan
108. Suriname
109. Swaziland
110. Syrian Arab Republic
111. Tajikistan
112. Thailand
113. The former Yugoslav Republic of Macedonia
114. Timor-Leste
115. Togo
116. Tonga
117. Tunisia
118. Turkey
119. Turkmenistan
120. Tuvalu
121. UAE
122. Uganda
123. Ukraine
124. United Republic of Tanzania
125. Uzbekistan
126. Vanuatu
127. Viet Nam
128. Yemen
129. Zambia
130. Zimbabwe



Anant Swarup  
Authorized Officer