PUBLIC FILE VERSION

FILE NOTE

RECORD OF MEETING

Date: 05 July 2016

Location: Canberra

Attendees:

<u>OneSteel Manufacturing Pty Ltd</u>

[redacted] – Manager Trade Development

[redacted] – Trade Measures Manager

<u>Anti-Dumping Commission</u>

Ms Catherine Gladman – Director Ops 5

Mr Justin Wickes – Director Ops 2

Mr Jukka Mantynen – Director Ops 4

Mr Sanjay Sharma – Case Manager

Ms Phillipa Crouch – Assistant Director

Mr Bora Akdeniz – Assistant Director

Issues Discussed

On 5 July 2016, the applicant, OneSteel Manufacturing Pty Ltd (OneSteel) met with the Anti-Dumping Commission (the Commission) in relation to two current subsidy investigations INV 322 (steel reinforcing bar) and INV 331 (rod in coils) exported to Australia from the People's Republic of China (China).

The following issues were discussed at the meeting:

- The progress of the investigations to date;
- The public body tests;
- The pass-through of benefits of upstream raw materials;
- Benchmark prices for upstream products.

A 'Public Record' version of documents provided by OneSteel to the Commission during the meeting is attached.

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Reinforcing bar & Steel Rod in Coils exported from China
Subsidy Investigation Nos. 322 & 331

Briefing – Canberra, 5 July 2016

Provision of goods - Programs 1 to 4

The tests…

"Public body" or "Private body… directed to perform governmental function"

The "subsidy" test…

Subsection 269T(1):

"subsidy, in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves: …

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; …"

So… the first question is to determine, whether:

- ***"public body"; <u>or</u>***
- ***"private body entrusted or directed by that government or public body to carry out a governmental function."***

Possible outcomes…

- ***State Invested Enterprises = Public bodies (strong precedents in support)***
- ***Private companies (Non-SIEs)***

? Public bodies? (apply the indicia in DS379); or

? Private bodies? (apply subsection 269T(1) and the indicia in DS379)

DS379 Indicia…

“Indicia 1 - where a statute or other legal instrument expressly vests government authority in the entity concerned;

“Indicia 2 - where there is evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority; and

“Indicia 3 - where there is evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions”

DS379 at [318].

Conferral of benefit…

Subsection 269T(1):

"subsidy, in respect of goods exported to Australia, means:

(a) a financial contribution:

…

that involves:

…

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; …

If that financial contribution … confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

So, the first necessary to consider whether:

- *Pass-through of benefit of upstream products sold in arm's-length transactions between unrelated parties; or*
- *Pass-through of benefit of upstream products transferred between related parties*

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Pass-through of benefit of upstream products sold in arm's-length transactions between unrelated parties

Dumping and Subsidy Manual

"18.3 PRACTICE

"In considering whether there is "pass-through" the Commission will examine the transactions that take place between the input product on which the subsidy is paid and the final exported product….

"In most cases, upstream subsidies will be investigated up to one level immediately preceding the point of producing the exported goods…

"However, there may be some few cases where it is appropriate to move up an additional stage."

SCM Agreement

'subsidy bestowed directly or indirectly upon the manufacture'

Appellate Body (US — Softwood Lumber IV)

"In our view, it would not be possible to determine whether countervailing duties levied on the processed product are in excess of the amount of the total subsidy accruing to that product, without **establishing whether, and in what amount, subsidies bestowed on the producer of the input flowed through, downstream, to the producer of the product processed from that input**. Because Article VI:3 permits off setting through countervailing duties no more than the subsidy determined to have been granted … **directly or indirectly**, on the manufacture [or] production … of such products, it follows that Members must not impose duties to offset an amount of the input subsidy that has not passed through to the countervailed processed products. Rather, '[i]t is only the amount by which an **indirect subsidy granted to producers of inputs flows through to the processed product, together with the amount of subsidy bestowed directly on producers of the processed product, that may be offset through the imposition of countervailing duties**. …

"in cases where logs are sold by a harvester/ sawmill in arm's-length transactions to unrelated sawmills, it may not be assumed that benefits attaching to the logs (non-subject products) automatically pass through to the lumber (the subject product) produced by the harvester/sawmill."

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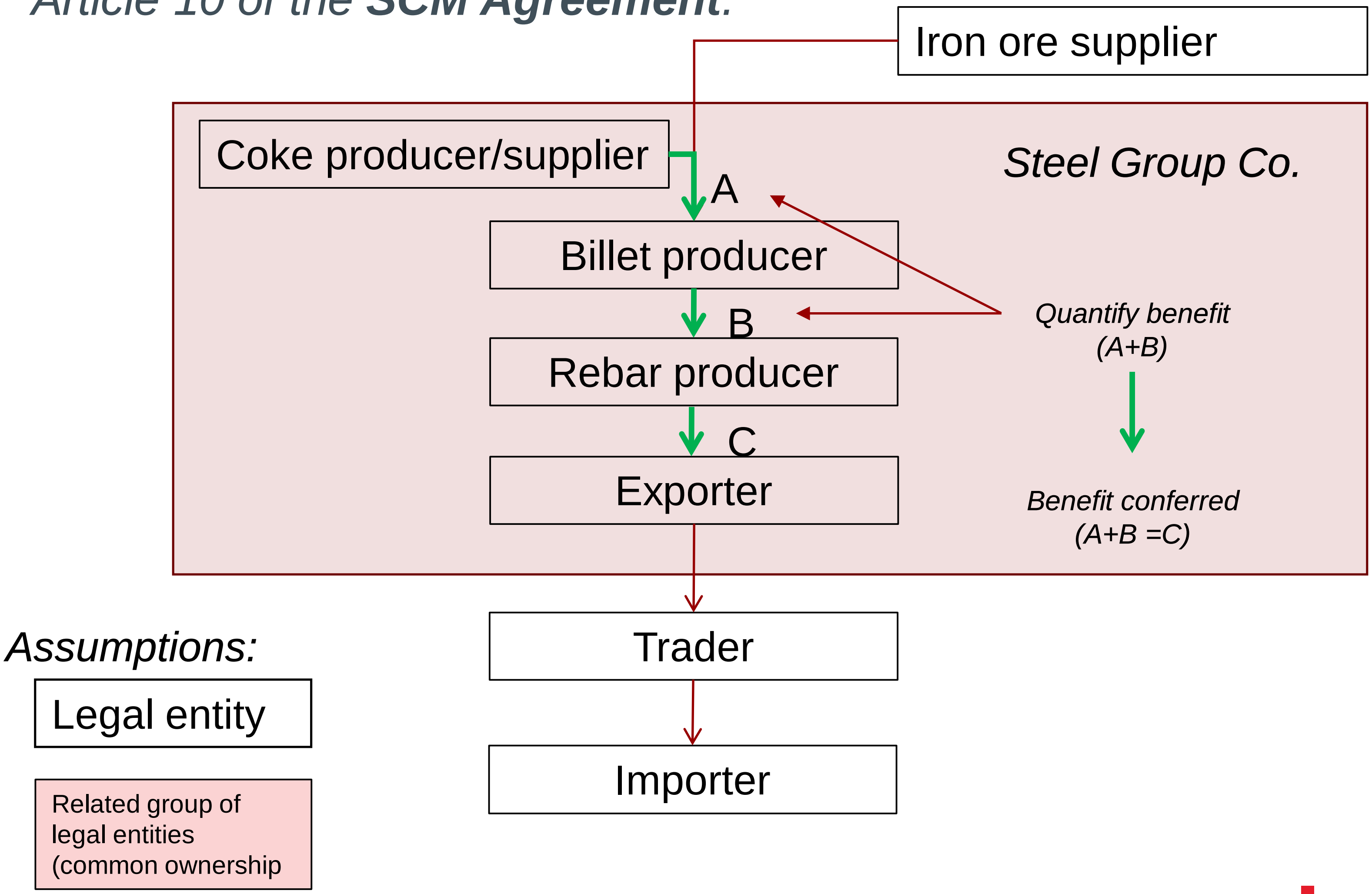
Pass-through of benefit of upstream products transferred between related parties

Scenario 1: Related legal entities

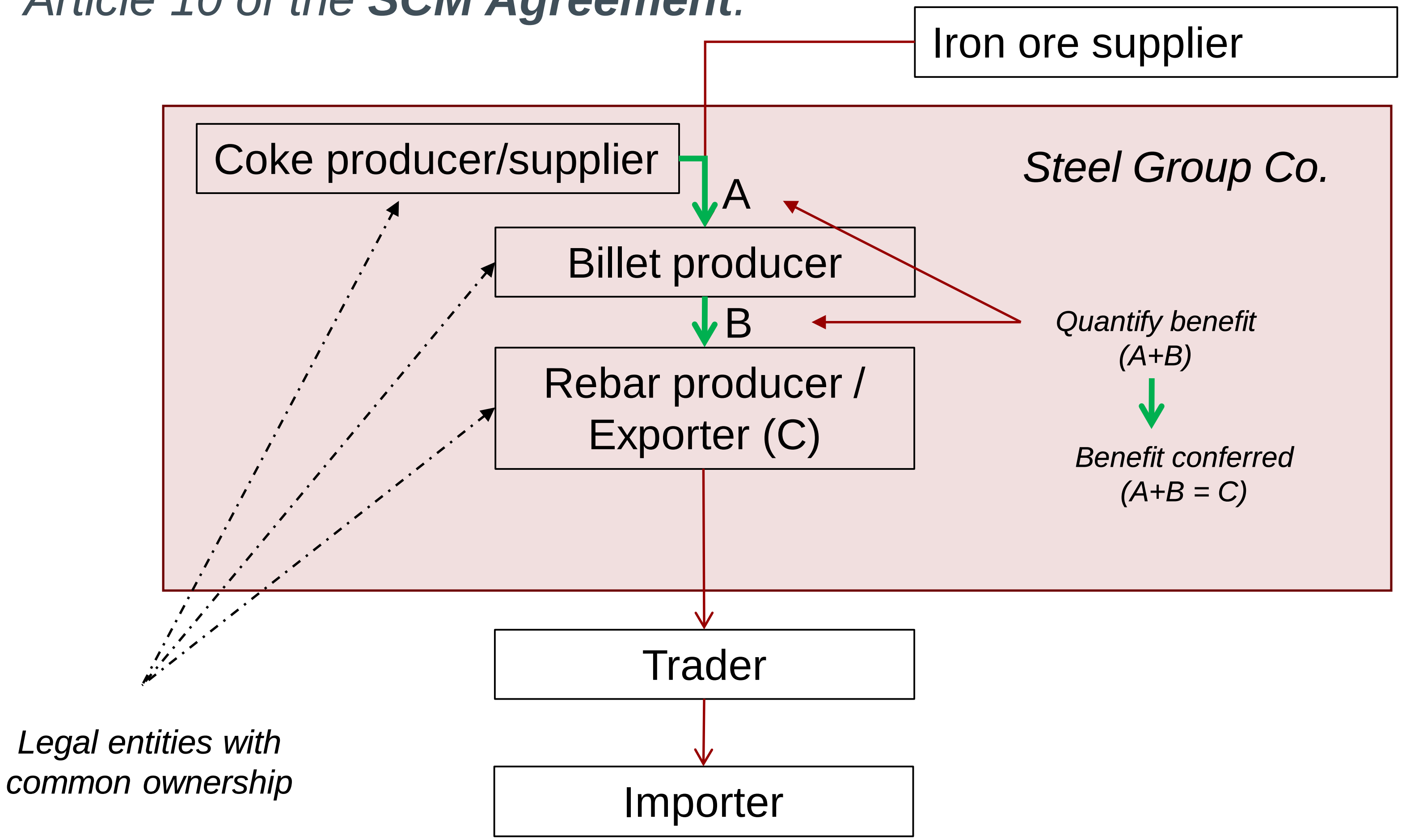
*Pass-through is deemed to have occurred between related parties under Article 10 of the **SCM Agreement**.*



Pass-through of benefit of upstream products transferred between related parties

Scenario 2: Related legal entities + accounting entity

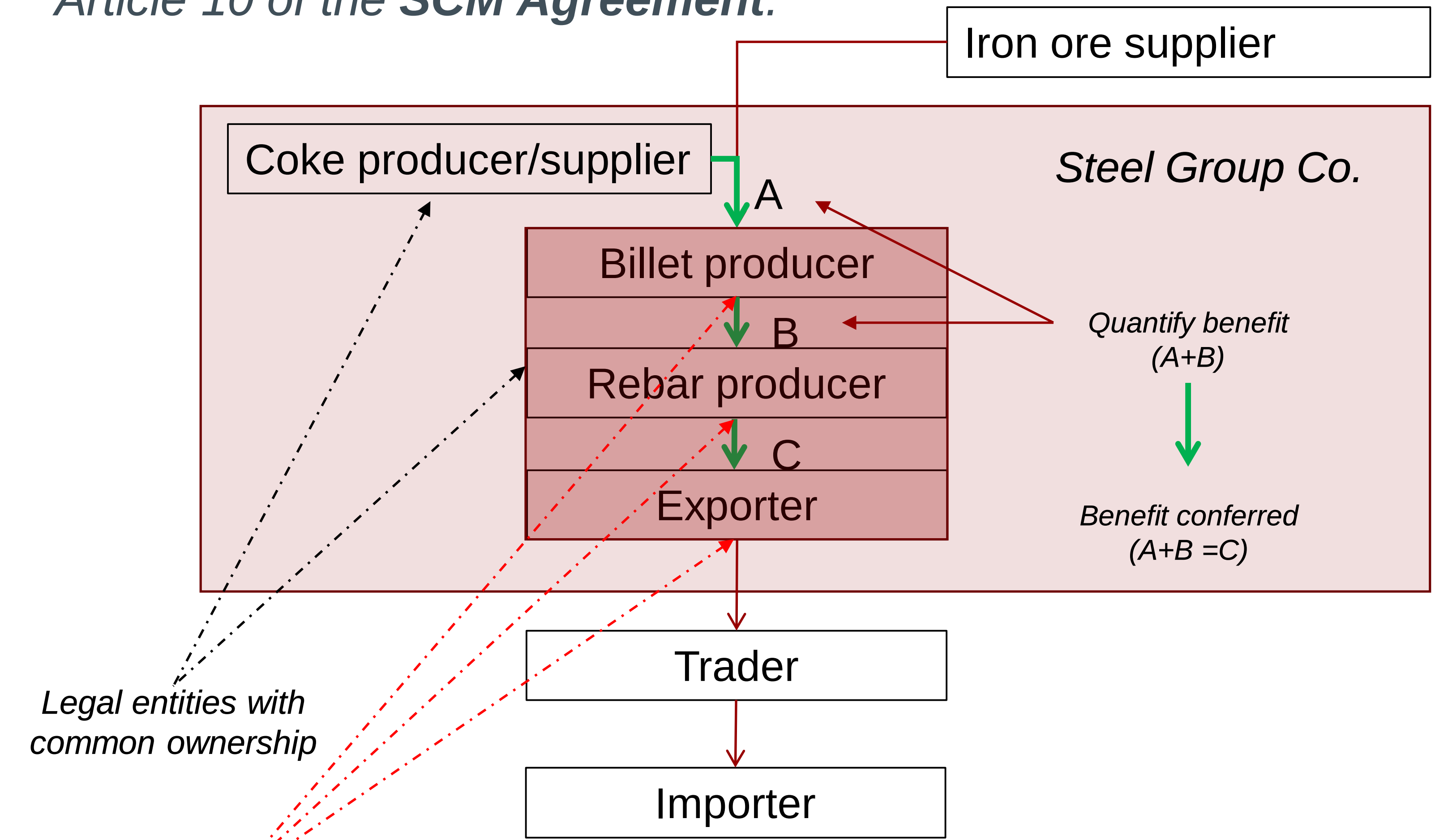
*Pass-through is deemed to have occurred between related parties under Article 10 of the **SCM Agreement**.*



Pass-through of benefit of upstream products transferred between related parties

Scenario 3: Related legal entities + accounting entities

Pass-through is deemed to have occurred between related parties under Article 10 of the ***SCM Agreement****.*



Business/accounting divisions within legal entity

Authority for the proposition: ***US – Softwood Lumber IV****, where pass-through was presumed between business entities being the tenure-holding timber harvesters and sawmills used in that case to produce lumber, before being sold to unrelated lumber remanufacturers*

Coking coal and metallurgical coke benchmarks

- Caution must be used when selecting an appropriate competitive market benchmark at three levels:
  - are the benchmark prices comparable to the domestic Chinese supplies – model matching?
  - are the benchmark prices in fact Chinese subsidised goods?
  - are the benchmark prices influenced or affected by Chinese subsidised prices?

I. MODEL MATCHING – care must be taken to compare 'like' with 'like'

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II. CHINESE EXPORTS

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III. INFLUENCE OF CHINESE PRICES

Refer to NON-CONFIDENTIAL ATTACHMENT.

China exporting coke at below cost hurting Indian producers

Kunal Bose
December 1, 2014 Last Updated at 22:32 IST

What has for long remained a source of despair for the Indian steel industry is now taking a heavy toll on local merchant producers of metallurgical coke, used as a fuel and reducing agent in blast furnaces. Imports from China are playing spoilsport for both, but more so for met coke. Indian Steel Association president Chandra Shekhar Verma says the government should act swiftly by way of hiking import duty or imposing anti-dumping duty on evidence that the exporting nation is offering steel products or steel-making ingredients below production cost to rid itself of surpluses. Any prevarication on import duty revision puts local manufacturers at a disadvantage.

Indian steelmakers are at the receiving end due to progressive reduction in import duty on steel from South Korea and Japan, on the basis of comprehensive economic partnership agreements (CEPA) and tricks played by Chinese producers to avoid paying export duty, with Customs officials looking the other way. India is one of the countries experiencing steel price undercutting by China, which is on course to export a record volume, well in excess of 80 million tonnes (mt) in 2014. Because of relatively low prices at home, Chinese mills have turned aggressive sellers in the world market. Verma says this cannot but entangle China in trade conflicts with a number of importing countries. Because of the of market size here, the rapidly expanding Indian steel industry can perhaps fight off Chinese incursions but with some bruises.

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In the case of metallurgical coke, however, unrestricted imports from China at prices well below cost of production in originating country and here have already claimed the viability of Indian merchant producers. Fully integrated steel groups like SAIL, Tata Steel and JSW have their own cokeries. But a host of small steelmakers, foundries and chemical units get supplies of coke from merchant producers, underlining their strategic importance. Now with their back to the wall, leading merchant met coke makers like Saurashtra Fuels and Gujarat NRE have opted for corporate debt restructuring (CDR). In all such cases, CDR has been sought due to extreme financial stress caused more by "external factors than internal causes," says a banker involved in restructuring exercise.

Industry officials are seeing "diabolical designs" in China principally targeting India for "dumping of met coke". Chinese export of met coke in the first nine months of 2014 more than doubled year on year to 5.78 mt, India alone received a-third of that. In the global seaborne market for met coke, China origin products became a dominant feature since January 2013, when the country dispensed with a 40 per cent export duty and quota restrictions. No doubt frowning by World Trade Organization that there should not be export restrictions on industrial materials had a bearing on Beijing dropping the tax. Equally important, it was concerned about flat domestic demand when there was large overcapacity in met coke. This is because Chinese steel production till October at 685.5 mt showed a growth of only 2.2 per cent.

Chinese met coke makers needed removal of export tax to be able to sell their products in the world market leading to better capacity use. But their strategy providing for pricing met coke at a discount of at least $30 a tonne to production cost of $220 a tonne based on ruling coking coal fob price of $113 a tonne is sounding death knell for Indian producers, says Gujarat NRE chairman Arun Jagatramka. What helps Chinese industry to keep production cost low is the "benefit of more efficient inland port logistics" than available here. "We are telling New Delhi that while production cost here is a lot higher at $240 a tonne than in China, the Indian market is receiving large quantities of met coke from its northern neighbour at ridiculously low prices," says Jagatramka.

In many ways, present dumping of met coke is a repeat of what happened in 1997-98 when "artificially low-priced Chinese material" flooded the market here and in the process a good number of local cokeries went out of business. The industry would have suffered more but for imposition of anti-dumping duty in October 1998. Domestic met coke users then opposing anti-dumping duty had a shock waiting for them as in a few years Chinese exporters raised the price from $80 a tonne to up to $480. "Once the 12 mt capacity domestic industry is brought down to its knees, Chinese price shock will be there once again," warns Jagatramka.

COKE FIGHT

- The Indian Steel Association says the government should hike import duty or impose anti-dumping duty
- Any prevarication on import duty revision puts local manufacturers at a disadvantage
- Indian steelmakers are at the receiving end due to reduction in import duty on steel from South Korea and Japan

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