

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3- SUB-SECTION (i)]

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#### NOTIFICATION

F.No. 22011/10/2016/Pt- VIII

Date: 13<sup>th</sup> December, 2016

**Subject: Safeguard Investigation concerning Imports of “Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)” into India- Final Findings-Reg.**

GSR---.Having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 thereof.

#### I. PROCEDURE

1. An updated application has been filed before me on 19/04/2016 under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, by (i) M/s. Vedanta Limited – Aluminium & Power, Bhurkamunda, Distt. Jharsuguda-738202, Odisha (ii) M/s Bharat Aluminium Company Ltd. (BALCO), Aluminium Sadan, Core -6, Scope Office Complex, Lodi Road, New Delhi-110003 and (iii) M/s Hindalco Industries Limited, Century Bhavan, 3<sup>rd</sup> Floor, Dr Annie Besant Road, Worli, Mumbai 400030 for imposition of safeguard duty on imports of “Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)” into India to protect the domestic producers of “Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)” against serious injury /threat of serious injury caused by the increased imports of “Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)”. They have also requested for imposition of provisional safeguard duty in view of steep deterioration in performance of the domestic industry as a result of increased imports of “Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)”.
2. In order to satisfy the requirements under Rule 5 of the said Safeguard Rules, the information presented by the applicant was verified to the extent considered necessary. The non-confidential version of verification report is kept in the public file. Having been satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of “Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)” into India was initiated vide Notice of Initiation dated 19<sup>th</sup> April, 2016 and published in the Gazette of India, Extraordinary on the same day.
3. A copy of the Notice of Initiation dated 19<sup>th</sup> April, 2016 along with copy of non-confidential version of the application filed by the domestic industry were forwarded to the Central Government in the Ministry dealing with Commerce and other Ministries concerned, Governments of major exporting countries through their embassies in India, and other interested parties as mentioned in the application filed by domestic industry, in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Questionnaires were sent to the known interested parties as per the information available with a request to make their views known in writing within 30 days of the initiation notice.

#### **4.1 Domestic Producers/Importers (M/s):**

- a. Alom Extrusions Ltd.
- b. Alom Extrusions Ltd.
- c. Anam Electrical Manufacturing Company
- d. Anamica Conductors Pvt Ltd.
- e. Anvil Cables Pvt Ltd.
- f. Apar Industries Ltd.
- g. APS enterprises
- h. Associated Aluminium
- i. Bharat Aluminium Company Ltd.
- j. Bhoruka Aluminium Ltd.
- k. Century Metal Recycling Pvt Ltd.
- l. Continental Engines Ltd.
- m. Deepak Cables
- n. Diamond Cables Ltd.
- o. Gloster Cables
- p. Gupta Power Infrastructure Ltd.
- q. Haryana Conductors
- r. Havells India Pvt Ltd.
- s. Hind Aluminium Industries Ltd.
- t. Hindalco Industries Limited
- u. Hindusthan Vidyut Products Ltd.
- v. Hiren Aluminium
- w. J M Industries
- x. J&K Aluminium
- y. Jindal Aluminium
- z. KEI industries Limited
- aa. KJV
- bb. Lumino Industries
- cc. Madras Aluminium Company Ltd.
- dd. Manaksia Ltd.
- ee. Master India
- ff. Masters India Pvt Ltd.
- gg. Metal Powder Co Ltd.
- hh. National Aluminium Company Ltd.
- ii. Noida Aluminium
- jj. North Eastern Cables & Conductors
- kk. Paramount Communications Ltd.
- ll. Polycab Wire Pvt. Ltd.
- mm. Prem Cables Limited
- nn. Rajasth an Cables & Conductors
- oo. Ravin Cables Pvt. Ltd.
- pp. Smita Conductors
- qq. Sterlite Industries Limited
- rr. The Metal Powder Company Limited (Mepco)
- ss. Universal Cables Ltd.
- tt. Valco Industries Ltd.
- uu. Venkateshwara Wires Pvt Ltd.
- vv. Vijay Electricals

#### **4.2 Known Exporters (M/s):**

- a. Alcan Primary Metal
- b. ALBA
- c. ALCOA
- d. Almandi Aluminium Corporation
- e. Alva Aluminium Ltd.

- f. AOSTAR
- g. Bahrain Alloys Manufacturing Co.
- h. BHP BILLITON/ BHP Billiton Limited
- i. BHP Billiton Plc.
- j. CHALCO
- k. Dubai Aluminium Co Ltd.
- l. Euroasian Ventures Fze.
- m. Glencore
- n. IRALCO
- o. Lucky Alloys Limited
- p. MINL Limited (Manaksia)
- q. Nanjing Welbow Metals Co. Ltd.
- r. O&S Metallimport GMBH
- s. Phoenix Steel Mills Ltd
- t. Rio Tinto Inclia
- u. Shanghai Zhengyu Special Alloys
- v. Shenzhen Aida Aluminium Alloys
- w. Trafigura
- x. Unigems Impex Ltd.
- y. United Aluminium Industry Co. Ltd
- z. Universal Corporation

#### **4.3 Government of Exporting Countries/ Foreign Delegation**

- a. Embassy of UAE
  - b. Embassy of Malaysia
  - c. Embassy of Russian Federation
  - d. Embassy of South Africa
  - e. Embassy of Oman
  - f. Embassy of Qatar
  - g. Embassy of Baharain
  - h. Embassy of Thailand
  - i. Embassy of Kingdom of Saudi Arabia
  - j. High Commission of Australian
  - k. High Commission of Nigeria
  - l. High Commission of the Republic of Singapore
  - m. European Union Delegation to India.
5. Either request to consider as an interested parties or submissions were received from the following parties:
- a. All India Aluminium Secondary Manufacturers Association
  - b. All India Non-Ferrous Metal Industries Association
  - c. Aluminium Extruders' Council(ALEX)
  - d. Associated Aluminium Industries Pvt. Ltd., Mumbai.
  - e. Cable & Conductor Manufacturers Association
  - f. CMR Nikkei India Pvt. Ltd.
  - g. CMR Toyotsu Aluminium India Pvt Ltd.
  - h. Dynamic Cables Pvt. Ltd.,
  - i. Electrical Centre,
  - j. Global Aluminium
  - k. GTL Limited
  - l. Indian Electrical and Electronics Manufacturers' Association (Ieema)
  - m. Indo Alusys Industries Ltd.
  - n. JSK Industries Pvt. Ltd.
  - o. KEC International Ltd.,
  - p. KJV Alloy Conductors Pvt. Ltd.,
  - q. Maharashtra Conductor Association
  - r. Metal Recycling Association Of India

- s. Opal Industries
- t. Oswal Cables Pvt. Ltd.
- u. Paragon Industries Ltd.
- v. Sargam Metals Pvt Ltd.
- w. Shree Balaji Alumnicast Pvt. Ltd.
- x. South Asia Forum for Energy Efficiency
- y. Sree Sumangala Metals & Industries (P) Ltd.
- z. Sturdy Industries Limited, 28, Ashoka
- aa. Supertech Forgings (India) Pvt. Ltd.
- bb. Thakur Electricals and Engineers Pvt. Ltd.
- cc. Vedanta Limited, Aluminium & Power
- dd. Virgo Aluminium Ltd.
- ee. Western Metal Industries Pvt. Ltd.
- ff. Hero Motorcorp Ltd. Gurgaon
- gg. Endurance Technologies Pvt. Ltd., Aurangabad.
- hh. Rockman Industries Ltd. Ludhiana.
- ii. Trans Solution, Indore.
- jj. Shiv Enterprises, Indore.
- kk. Kalpataru Power Transmission Limited, Gujarat.
- ll. Alco Electrostrips Pvt. Ltd., Bhopal.
- mm. Adinath Electricals Pvt. Ltd., Jaipur.
- nn. Shashi Cables Ltd., Lucknow.
- oo. White Metal Limited, Noida.
- pp. Indian Foundry Organization, Bengaluru.
- qq. JM Industriess, Maharashtra.
- rr. Press Metal Berhad, Malaysia.
- ss. Hydro Aluminium Asia Pte. Ltd. Singapore.
- tt. Ministry of Industry and Trade of the Russian Federation, Moscow.
- uu. United Company RUSAL, Russia
- vv. Economic Division, Taipei Economic & Culture Centre in India.
- ww. Director of Trade Defence, Directorate General of Foreign Trade, Ministry of Trade, Republic of Indonesia
- xx. Ministry of Trade & Industry, Arab Republic of Egypt

6. All the above requests were accepted and the parties who forwarded their submissions were also accepted as interested parties. Some of the interested parties requested for grant of extension for filing their reply to the notice of initiation. Their requests were accepted and they were granted extension.
7. The Domestic Industry has made a request for immediate interim relief by way of provisional safeguard duty in their application filed. In support of the same they have submitted details of their precarious condition based on listed economic parameters showing existence of critical circumstances being faced by them and prayed that in case provisional safeguard duty is not levied they would face irreparable damage, difficult to repair.
8. The request made by the domestic industry for imposition of provisional safeguard duty was examined and it was prima facie found that there exist critical circumstances which warranted imposition of provisional safeguard duty in order to provide interim relief to the domestic industry from suffering irreparable damage, which could have been difficult to repair.
9. Accordingly, the Preliminary Findings for Provisional safeguard duty was issued under Rule 9 (2) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 21<sup>st</sup> April, 2016 and was published in the Gazette of India on the same day i.e. 21<sup>st</sup> April, 2016.
10. Provisional safeguard duty has not been imposed by the Central Government.

**II. POST INITIATION SUBMISSIONS:** The submissions received in response to the initiation notice but prior to the Public Hearing are summarized as under:

#### A. M/s Indian Electrical & Electronics Manufacturers' Association

- a. With increase in basic customs duty (BCD), LME and other factors, the landed cost of imports has significantly increased (>13%).
- b. The capacity utilization for the plants other than SEZ have a very good utilisation (approx. 80%). The SEZ plant of Vedanta is meant for exports only and should be excluded from the capacity utilisation figures & injury margin.
- c. In the recent Budget, the BCD on aluminium was increased from 5% to 7.5% which has already put enormous pressure on the downstream aluminium users. The conductor manufacturers are not able to pass on this increased cost because the prices of most of their contracts are firm up due to tariff based competitive bidding practice being followed for transmission lines.
- d. Petitioners are also beneficiary of depreciation of US dollar vis-a-vis Indian Rupees because their realization is in INR. Exchange rate \$ = INR, which was @ Rs 50 about three years ago, is presently @ Rs 68.
- e. The LME price itself has moved upwards from USD 1500 level to USD 1650, giving much higher realization to the domestic producers.
- f. Aluminium suppliers from China or Middle East are fixing their selling price of Aluminium metal at international price on the basis of LME price. Their prices are not cheaper/ lower as alleged by the domestic producers.
- g. Chinese or Middle East manufacturers have no natural source at their disposal and hence, they import basic alumina whereas the primary producers in India have the natural advantage of local bauxite of one of the best quality and coal.
- h. The salary and wages costs of employees are 40 to 45% higher for Middle East manufactures compared to India. The importer in India, apart from this, pays customs duty, clearing charges and also bears transportation charges from the port till their factory.
- i. Due to increase in BCD, they are already facing an acute inverted duty structure problem. The finished products are eligible for import on the basis of Project Import under Chapter 98, where the basic import duty is 5% instead of the merit rates of duties on conductors and cables.
- j. The contracts are awarded on L-1 basis and presently Indian manufacturers have started losing their market share to their Chinese counterparts. The duty on aluminium has been increased to 7.5% in addition to duty on steel increased to 10% plus Minimum Import Price mechanism, while the duty on conductor remains at 5% under Chapter 98. Chinese manufacturers have started quoting in India with duty of 5% under Chapter 98.
- k. If safeguard duty is imposed, the Indian conductor & cable manufacturers will be forced to close down as the Chinese & other foreign conductors and cables will flood the Indian market. The aluminium producers will stand to lose the lucrative domestic market where they enjoy 7.5% protection due to the basic customs duty on imported aluminium and accordingly hike their prices to match import parity.
- l. The costing of Indian conductor manufacturers with present rate of duty on aluminium is already higher than Chinese costing. However, if the duty were to be increased on aluminium due to additional 5% safeguard duty it will make the Indian manufacturers far costlier than Chinese.
- m. While increased duty on steel has injured the industry, duty increase on aluminium will kill the aluminium demand for power sector in India as imports of finished conductor/cable will increase.

This approach will further harm the Indian conductor & cable manufacturers through inverted duty structure, which is contrary to the "Make in India" initiative of the Government of India.

- n. The duty increase will be considered by the primary aluminium producers while pricing their products for domestic market and the price of finished aluminium products of the domestic manufacturers will be higher than the international market price. This will make the import of finished products more lucrative thereby making the downstream industry unviable and eventually close down affecting employment.
  - o. Any increase in customs duty will also result in higher cost for consumers, mostly, common man. It will have a contagion effect adversely impacting the government agenda of 24X7 power to all and rural electrification program.
  - p. The aluminium producers have not given the correct factual information of their internal working. Their so-called injury is self-inflicted, and not caused due to the imports as alleged by them.
  - q. All the petitioners have recently put up additional capacities much greater than the domestic market. The cost of the interest & depreciation on account of the expansions undertaken primarily for exports is what is actually hitting their financials.
  - r. A huge investment of 1.2 million tonnes of aluminium by Vedanta is specifically for a SEZ. This investment was made quite a few years ago, but has not been effectively operational due to their group's problems on account of bauxite from Niyamgiri mines etc. However, the SEZ's investment and associated costs of interest & depreciation has been considered in their profit and loss.
  - s. The contention that their injury is on account of low prices of imports is not correct because the SEZ was any way meant to be used only for exports. If the capacity of the SEZ was to be removed in the calculation of capacity utilization, then the aluminium producers' capacity utilization would be almost 80% of what has been presented.
  - t. The aluminium producers are not willing to sell on deemed export basis to the conductor & cable manufacturers because they do not wish to match the international LME + Premium prices on duty free prices. Aluminium producers are better off physically exporting, because they get export benefits, while in the deemed export business, they do not get these incentives.
  - u. The conductor & cable manufacturers are forced to import Aluminium on duty free basis. Over 100000 mts. of Aluminium are being imported for consumption of conductors industries meant for exporting the finished products.
  - v. There is an increase in export of conductors, which are classified under HS Code 7604 2910, 7604 1000 & 7604 9000. If the cable industries' exports are included, it can be concluded that the entire import of ingots into India is against exports of aluminium downstream products. Hence, the proposed Safeguard duty should not cover aluminium ingots.
- B. M/s. Thakur Electricals & Engineers Pvt. Ltd.; Electrical Centre; Sturdy Industries Ltd.; GTL Limited; Maharashtra Conductor Association (SSI)**
- a. They strongly oppose imposition of safeguard duty as the primary producers will be taking the advantage by increasing the price of aluminium ingots in domestic market to the quantum of safeguard duty.
  - b. In last February 2016 budget, government has already increased custom duty on imports of aluminium from 5 to 7.5%. Aluminium primary producers have increased the basic prices of their entire product after the increase in custom duty.
  - c. The custom duty on the finished goods like conductor cable have been kept same. Industry is already facing the heat of import competition. If safeguard duty is allowed on imports then small scale industries will face huge competition from imports of finished goods

- d. There is very limited quantity of imported aluminium ingots, apart from imports against advance licenses.
- e. Aluminium Primary producers are exporting roughly 25-35% of their material every month and they do not need protection.
- f. Whatever customs duty rate or safeguard duty rate prevailing, primary producers will increase the prices accordingly as per import parity formula. The burden will ultimately come on government especially for electrical sector. The cost of infrastructural projects will also increase drastically as 40% of the share is of aluminium. The SME sector will be badly affected and may fall sick due to exploitation of primary producers of aluminium.

**Additional points made by M/s Sturdy Industries Ltd.**

- g. Indian producers form a cartel & cut their production output & export the material. Aluminium raw material has to be purchased only on advance payment from NALCO/BALCO whereas international suppliers extend credit.
- h. Some special grades are imported only.
- i. Export based units can survive on basis of imports only otherwise they will die. Exports of aluminium secondary products like cables, conductors and rods will reduce drastically.

**Additional point made by Maharashtra Conductor Association (SSI)**

- j. The measure will have negative impact on inflation as aluminium is used in various industries.

**C. M/s Super Tech Forgings (India) Pvt. Ltd**

- a. Aluminium prices in India are at par with the import prices. If import prices increase domestic aluminium producers will also increase the prices creating extra burden on the end users.
- b. All the State Discoms, Power Utilities are the main users of Aluminium products. Automobile sector is one of the largest consumers of Aluminium products. Burden of the duty will directly fall on their industry and indirectly to power sector and automobile manufacturers.
- c. They, the SSI units have very limited resources and 90% funds are used in the procurement of aluminium. Their cost of production will rise due to the increase in prices.

**D. M/s Jindal Aluminium Ltd.**

- a. They are leading manufacturers of aluminium extrusions in the country and also manufacture aluminium flat rolled products. Their main raw material is aluminium ingots which are sourced from primary producers in India. They also import under the advance licence as per entitlement against the quantity exported.
- b. The allegation that imported material is cheaper is totally incorrect. The domestic prices of aluminium are unreasonably high and more than international prices as the pricing mechanism of primary producers is unfair and is designed in such a way that it exploits the user industry by taking advantage of the monopolistic situation prevailing in the industry. Aluminium is traded all over the world on a common reference which is London Metal Exchange (LME). In India, primary producers adjust their prices based on prevailing (LME rate + Main Japanese Port (MJP) Premium + Customs duty) x exchange rate + clearing and forwarding charges. The cost so derived in US Dollar is valued at highest exchange rate. Although they don't incur both MJP and customs duty, it is an added margin to them. In case, if any of these component changes, the domestic prices of aluminium are increased for the user industry. For an Indian consumer the landed cost of

imported material will be same as locally sold material of the petitioners.

- c. In the recent Union Budget the customs duty was increased from 5% to 7.5% and imports have already become costlier by about 3%. The increase has already put enormous pressure, since immediately after this, the aluminium prices were increased by Rs 3500/- MT by all the primary producers of the country. The hike in customs duty increased the cost of aluminium for the users in India and parity between imported and local metal remained the same.
- d. Imposing additional safeguard duty will not help curb imports. The domestic prices will be increased by DI when the safeguard is imposed and the parity between local prices and import prices will again be the same. The safeguard duty will increase the cost of aluminium for Indian users. Imports will continue unabated.
- e. If the petitioners really want to stop/ reduce imports, they've to price their products cheaper to that of the imported material. They've ample scope to do that and earn reasonable profits.
- f. The primary producers are continuously expanding / enhancing their installed capacity almost every alternate or 2/3 years.
- g. Cost of aluminium manufacturing is considered to be the lowest in India as compared with any other country as the main raw material i.e. bauxite ore is abundantly available in the country.
- h. Comparing the prices in the domestic market, producers of primary metal/ aluminium in India are additionally enjoying a privilege of more than 10% in comparison to the landed cost of imported aluminium by way of custom/ import duty, special duty, cess, insurance clearing charges etc. on the international price (LME prevailing in the market).
- i. Petitioners have already benefited due to depreciation of US dollar vis-a-vis Indian Rupees because their realization is in INR. About one year back, one US\$ was = Rs.62 and presently one US\$ is = Rs.67. USD was @ Rs.44.50 in 2011 which has depreciated to Rs 66.50, now. This means at a LME price of say 1500 USD per ton in 2011 giving INR 66,750 per ton realization in 2011 is today giving INR 99750 per ton — a benefit of Rs 33,000 per ton due to exchange fluctuation alone.
- j. LME price itself has moved upwards from USD 1500 level to USD 1670 giving much higher realization to the domestic producers.
- k. The DI has selected the year 2011-12 to misrepresent the current situation. The prices of aluminium in 2011-12 were at its peak at USD 2317 PMT which in comparison was USD 1592 PMT in 2015-16. Aluminium is prone to volatility and fluctuation like any other commodity. The aluminium prices are lower currently but, it's a business cycle and the Domestic Industry should tackle the situation by reducing their cost and increasing operational efficiencies. The base year should be taken as 2007-08 when situation was also similar to prevailing now and no safeguard duty was imposed at that time.
- l. DI's last petition for safe guard duty was rejected by DG, Safeguard in October, 2014, there is no change in situation and the reasons for rejection are applicable even now. They seek safeguards whenever metal prices soften as happened in 2009 & 2014.
- m. The applicants' claim of incurring huge losses is totally incorrect. The petitioners are not considering production of downstream products like extrusions, rolled products, billets, wire rods, alloy ingots etc. which is also part of their production/ smelting capacity. These products are made out of the hot aluminium metal. Considering this, they are achieving 100% of their capacity.
- n. The actual reason for worsening of their financial situation is due to increased incidence of depreciation and interest caused by the mind boggling investment for enhancement of production capacities undertaken.



- o. Petitioners are continuing huge investments in expanding their present capacities further or planning Greenfield projects.
- p. The DI's investment plans are in complete contradiction of the situation projected by them. Vedanta is ramping up the production of their aluminium smelter in Orissa from 5 lacs MT to 8 lacs MT and investing in second smelter in Korba. The decision to ramp up the capacity and planning new capacities also confirms that the current sluggish situation is a temporary phenomenon.
- q. Primary producers first give preference to maximise the production of their downstream products to maximise profits.
- r. The measure will adversely affect the interests of Indian industry as the import of finished aluminium products will increase.
- s. It will give free hand to primary producers to increase the prices of the metal.
- t. In the year 2015-16 the DI has earned huge profits. Perhaps Vedanta and Balco are having some loss but it is not because of aluminium prices but more because of not allotting them bauxite mines by Govt. They have made excessive investment without arranging raw material i.e. bauxite without which they are not able to run their plant and it is lying idle incurring depreciation and interest which is a major reason for their loss. Profits of Hindalco have come down due to high incidence of interest and depreciation since they have added capacity of 10.5 lakh tones of aluminium in last 2 years involving huge investment. If depreciation and interest are taken out of their balance sheet, they will be having large profit.
- u. None of injury factors are applicable in case of aluminium industry in India. Neither production of any applicant has come down nor they are suffering loss nor there is any retrenchment of manpower.
- v. All the producers are working almost to their full capacities. Production of all the producers is increasing every year. Their capacity utilization is more than 90%.
- w. Production quantity of their downstream products like extrusions, billets, rolled products, wire rods, slabs, alloy ingots etc. has to be considered in their total production while considering capacity utilization
- x. Hindalco has increased their production capacity by almost 10.5 lakh tonnes in last 2 years, Vedanta has increased their production capacity from 5 lakh tonnes to 7.5 lakh tonnes, Balco from 2 lakh tonnes to 3.5 lakh tones to maximize their profits.
- y. There is no injury to the DI as they are having almost nil inventory at the end of the year and they are able to sell their entire production at market price during the same year.
- z. Though there is increase in imports but at the same time there is increase in domestic sale of aluminium metal which is much more than the imports. As the DI is able to sell even their increased production, there cannot be any injury to them.
- aa. Whatever quantity is being imported is mainly against advance licence by the user industry.
- bb. The measure will cause serious injury to many downstream manufacturers who are dependent for their existence on the aluminium producers and will also render many small and medium aluminium units, sick, increase unemployment and ultimately make aluminium products expensive for general public.
- cc. LME prices are increasing day by day. LME price was USD 1450 PMT before 6 months and has

already touched USD 1675 PMT at present.

- dd. If safeguard duty is imposed, imports of downstream products such as extrusions, rolled products, utensils, cables, conductors etc. will increase since import of these items will be cheaper than import of aluminium ingots. This will force thousands of industries to close down their shutters and lakhs of employees will be thrown out of the job.
- ee. Aluminium utensils are used in large quantities by middle class, lower middle class and poor people in the villages and rural areas. If safeguard duty is imposed, the price of aluminium metal will go up considerably.
- ff. Manufacturing cost of aluminium in India is the lowest in the world; DI is having reasonably good profit and they do not require any protection.
- gg. Primary aluminium companies, all over the world are also faced with the same difficult situation.
- hh. The data relating to production and also installed capacities are factually incorrect/false and seem to have been considered for part of the products manufactured by the applicants with an intention to mislead. The applicants have selectively considered HS code 7601 only as PUC whereas they also produce rolled products, foils, extrusions also using bulk of their smelting capacity for these products.
  - ii. The capacity utilization should be calculated by taking the quantity of hot metal produced and quantity of only ingots should not be considered to arrive at correct figures of capacity utilization.
- jj. Primary producers first give preference to maximise the production of their downstream products such as aluminium rolled products, foils and extrusions etc. to earn more profits. Thus, no "injury" is caused to them by increased imports. The Indian consumers are compelled to import more, as very less quantity of ingots is made available to them by the applicants. Consumers in India have to face shortage of metal for first 10-12 days of every month.
- kk. The production of the petitioners has actually increased and not decreased, as claimed. Most of them are operating at close to 100% of the installed capacity & there are no grounds for "serious injury".
- ll. DG, Safeguard should investigate the production records of the petitioners to verify the accuracy of production and utilization of capacity given in the petition.
- mm. The installed capacity shown by the petitioners is not fully in operation. Vedanta's 1.25 million tonne smelting plant in SEZ Jharsuguda is not fully on stream due to power and alumina issues.
- nn. Nalco, one of the leading players in the industry has not joined them in the petition.
- oo. In a situation where the price of a commodity is uniform, all over the world, the buyer is free to source his requirements from anywhere.
- pp. Whenever, there is improvement in LME prices or foreign exchange rates, the prices by the applicants are also raised although their cost remains the same.
- qq. This increase in LME prices has already given the DI considerable benefit.
- rr. The petitioners have complained of the declining Premium which affected their realisations but the reality is that premium which shot up unreasonably has gradually settled to its normal level. Even though primary metal is produced in India itself, still this premium is added to LME prices to arrive at selling price though it has no relevance to manufacturing cost.
- ss. The profitability of primary producers is comparable with Middle East producers.

- tt. The petitioners have complained of sharp erosion in profitability due to lower realisations and sudden increase in imports leading to underutilized capacities.
- uu. Hindalco is making reasonable "Profits before depreciation, interest and tax" and is increasing their capacities regularly. The actual reason for depressed profits in case of Hindalco is increase in depreciation and interest by 178% since 2011-12 due to massive expansion of capacities. It's also admitted by the company that their newly commissioned Mahan smelter and Aditya smelter are running at full capacity.
- vv. In case of Vedanta their capital employed in the aluminium segment alone increased by huge 234% in increasing the capacities which has significantly increased their depreciation and interest.
- ww. Balco has decided to restart the rolling mill which was shut down 11 months back only due to low LME prices. This indicates to improving situation so far as prices are concerned that present condition is not as gloomy as being projected.
- xx. Nalco which has progressed well with a systematic and disciplined expansion strategy is not affected by imports and is making reasonable profits.
- yy. None of the producers have retrenched any employee in last 2 decades due to reduction in production.
- zz. Demand of aluminium metal is growing at the rate of 8-10% per annum and DI's production is also growing. Their level of employment has also kept on increasing which is confirmed by data furnished by them.
- aaa. The cost of production in Middle East & their prices are not low as claimed. They import alumina and hire manpower at a very high cost which are major cost elements in manufacturing aluminium. The primary producers in India have the natural advantage of local bauxite of one of the best quality. The suppliers from Middle East are also fixing their selling price at international price on the basis of LME as is done by Indian producers.
- bbb. The slowdown and sluggish market situation affects all the units in aluminium segment, be it primary producers or downstream industry. It has affected China too.
- ccc. The import of aluminium into the country by the secondary aluminium manufacturers and processors is mainly against their export entitlements. User industry is forced to import aluminium against their Advance License, since the petitioners don't want to supply aluminium against these licenses and quote much higher prices compared to imports.
- ddd. There cannot be an injury to DI as there is small increase in imports.
- eee. Price undercutting: Unalloyed ingots & alloyed ingots are not identical products. Alloyed ingots are sold at higher price and should not be taken for comparison purpose. Alloy ingots are not manufactured by the applicants and should not be included in the total imports.
- fff. There is a marginal increase of 78% in last 4 years in imports which is not excessive. The petitioners' own production has also increased by 76%, their domestic sales have increased by 40% and exports increased by 336%.
- ggg. The request for imposition of safeguard duty is with intention of making extra profits by increasing the local prices.
- hhh. Petitioners have claimed of rising imports from China but the import from China in 2015-16 was a mere 2.68%.

- iii. The submitted data relating to production is false. The production of hot metal & quantity despatched, stock of the finished goods at the end of each financial year, production capacity, cost of manufacturing and selling prices/net realisation and LME Price+ premium may be verified. Total production of DI may be compared with the total import.
- jjj. The applicants are exporting under a pre-planned long term strategy for various reasons and are not forced to exports to liquidate their inventories as claimed. In exports they have better realization since they are getting export benefits like MEIS as well as EPCG benefits. Hindalco transfers a major portion to its associate company Novelis. The existing capacities of Indian manufacturers are much more than the domestic demand.
- kkk. The applicants have not given many important data or given indexed data in the name of confidentiality. The financial position has been indexed to the figures of the year 2011-12 which cannot be treated as bench mark.
- lll. Figures of opening and closing stocks, cost of sale has all been indexed to confuse the affected parties.
- mmm. The applicants have claimed a capacity utilization of 47% -48%. Including the quantities of captive consumption gives a capacity utilization of 64.8 % in 2014-15 and 63.7% in 2015-16. A thorough enquiry should be conducted to ascertain the actual capacity utilization of the applicants.
- nnn. The applicants have themselves claimed increases in employment and productivity.
- ooo. The industry which increase the wages by 150%, keep hiring additional employees, has no unutilized capacities, can't be treated as under threat.
- ppp. The financial situation has been shown on a declining trend at many places by bench marking it to year 2011-12 to mislead. The profitability of DI has slightly been affected with relation to year 2011-12 due to global recession and has nothing to do with imports.
- qqq. The downstream industry is passing through one of the worst phase due to low demand, rising interest cost, depreciation of rupee and global recession and squeezing margins.
- rrr. All the producers are able to sell entire quantity of metal produced by them in a year.
- sss. Safeguard duty will be counterproductive for revival of economy; will increase costs of all aluminium products; will not stop import of aluminium ingots; will increase import of secondary products like extrusions, rolled products, foils etc.
- ttt. As per a news item released by Aluminium Association of India about financial results of NALCO, a leading manufacturers of aluminium metal in the country, Nalco has remained profitable by successfully handling the market downturn; have achieved 14% higher production compared to the previous year 2014-15.
- uuu. Hindalco has posted strong March quarter results driven primarily by its aluminium business. Company's capacity expansion is done and it will become free cash flow positive after several years. Its Earning Before Income Tax was higher compared to preceding quarters. They have achieved highest ever production and plants are running at full capacity. Profit has gone down due to increase in depreciation and finance cost by 30%. Net Profit for quarter IV of FY 2016 was 113% higher vis-a-vis quarter IV of FY 2015. PBITDA was higher by 49% in Quarter IV as compared to quarter III of FY 2016. M/s Hindalco has achieved Rs.607 crores Net profit after Tax despite low LME price.

**E. M/s Indo Alusys Industries Ltd.**

- a. They are extruders & manufacturers of aluminium profiles.

- b. The petition has been filed with self motive to reap all profits of secondary manufacturers of aluminium, who are completely dependent on them and are struggling for their survival in vulnerable and volatile market conditions.
- c. The measure will become a cause of sickness for many aluminium units and making aluminium products expensive for consumers, resulting unemployment and inflation.

**F. M/s Paragon Industries Ltd.**

- a. They are manufacturer of aluminium rolled products including aluminium foils
- b. Any additional duty will cause serious injury to all downstream manufacturers of aluminium and will result in closure of many small & medium aluminium units.
- c. This will increase in unemployment and will expedite more and more imports in the country.

**G. M/s Opal Industries**

- a. Unwrought aluminium producers are keeping substantially high price than import price by creating artificial shortage.
- b. The domestic pricing formula is LME price + Premium + import Duty + import cost + 3 to 4 %. In 2013, 2014 upto mid 2015 premium was charged at USD 300 to USD 450 and they earned hefty margin. If they sell at parity or 2% less than formula, there is no scope of unwrought aluminium import.
- c. Now LME is high and import duty is at 7.5 %. Prices have been increased of unwrought aluminium by 13% compared to December, 2015.
- d. The DI is selling unwrought aluminium above production cost and is exporting cheaper by 18 % than domestic price.

**H. M/s Cable and Conductor Manufacturers Association of India**

- a. They represent mainly small & medium sized industries in the country engaged in manufacture of cables and conductors for power transmission, distribution lines and projects under constructions.
- b. The petition for duty protection was filed by the private sector companies. M/s National Aluminium Company Ltd., (NALCO), being Public Sector undertaking has not joined to the petition.
- c. The petition was filed in February, 2016 and was updated and filed on 19th April, 2016. The recommendation was given for 5% Safeguard duty within few days of revision in application without hearing the user industry although petitions were rejected in the past in two instances.
- d. The data submitted by the petitioners are far away from the truth and not reliable to take hasty decision for recommendation.
- e. The user industry have already faced increase of 2.5% customs duty in the last Union Budget which has already put enormous pressure on the downstream aluminium users, particularly their members who have booked orders from State Electricity Boards and PGCIL on long term firm price basis. The increase cannot be passed on due to tariff based competitive bidding practice being followed for transmission lines.
- f. The petitioners are also benefiting from the depreciation of Indian rupee against US Dollar. Exchange rate per one USD was Rs. 50 about 3 years ago, and now it has risen to Rs.67 per 1 US dollar. The LME price of USD 1600 per ton 3 years ago = Rs. 80,000/ Mt., will realize Rs.107,

200/Mt. which shows no effort gain of Rs. 27,200/Mt.

- g. The aluminium is sold in international market at price fixed with reference to LME, hence the argument of import made by domestic users at cheaper price is baseless.
- h. Chinese and Middle Eastern countries have to import bauxite or alumina and coal (basic raw materials for making primary aluminium) due to not having resources in their countries, as opposed to huge resources available in India at disposal of the domestic smelters/petitioners.
- i. The wage structure in China and Middle Eastern countries is also much higher than India by 40% and in spite of this the suppliers in China and Middle Eastern countries are fixing their price of aluminium metal at international price on basis of LME index. Their price is not lower as alleged by the Petitioners. The importers in India have to pay customs duty and clearing charges at the port of import
- j. The conductor manufacturers are also facing inverted duty structure issue. The finished conductor is eligible for import on the basis of Project Import under Chapter 98, where the basic import duty is 5% instead of merit rate of duty on conductor/cable. This industry is qualifying for contracts on L1 basis. Under Project Imports, the overseas competitors get advantage of inverted duty and qualify L1 status depriving domestic conductor manufacturers on uneven level playing field. Rate of 7.5% customs duty itself is a big challenge to be met to face competition.
- k. The additional 5% safeguard duty burden, if imposed, will kill the domestic conductor industry and flood of conductors and cable will start coming in from China and other countries.
- l. The petitioners are pocketing the customs duty and addition duty protection whatsoever given will also go in to their pockets.
- m. Comparing international price and domestic smelters selling prices show that the net realization value including Customs duty and un-conditional discounts being offered by smelters in India is lower than domestic smelters selling prices.
- n. Proceeding carried out by DG Safeguards is in violation of principle of Natural justice. DG Safeguards has not even waited for the mandatory period to lapse and issued its preliminary Findings in haste. This deprived the interested parties of their right to participate at the critical stages of the investigation.
- o. Directorate General (Safeguards) did not have complete and comprehensive information when the Preliminary Findings was issued.
- p. Domestic Industry had sought undue and unwarranted protection in years 2009 & 2014 and the proceedings were terminated/ safeguard duty was not recommended. There is no change in the overall economic and financial condition of the Applicants.
- q. The Directorate General (Safeguards) could not have proceeded with the investigation and come out with Preliminary Finding as no adjustment plan was filed by DI.
- r. The Preliminary Finding is silent on the issue of public interest. Aluminium is one of the most important raw materials used by the core sectors of the economy i.e., cable & conductor, automobile, consumable, utensils, packaging, & housing sectors. Any action of the Government to make aluminium expensive will adversely affect the downstream industries.
- s. Power sector consumes 40% of the total consumption in India. Aluminium constitutes more than 70% of the total cost of cable & conduction. Any increase in cost of basic raw material by way of imposition of safeguard duty will adversely affect the viability of this sector & competitiveness of Indian manufacturers of end products. Cost increase in power would impact all. Imposition of safeguard duty will adversely affect more than 3000 cable & conductor manufacturing units who

arc employing about two million employees.

- t. As value addition of most of the downstream products is quite low, imposition of safeguard duty would result in increase in imports of the finished downstream products thereby closing down the downstream industries.

**I. M/s Global Aluminium Pvt. Ltd.**

- a. They are leading aluminium extruders having value added facilities like anodizing, powder coating and semi fabrication.
- b. The application by the primary produces has been filed with an ulterior motive to earn unreasonable and undue profits by causing serious injury to many downstream manufactures of aluminium that are dependent for their existence on these large scale aluminium producers.
- c. Any extra imposition of safeguard duty will render many small and medium aluminium units sick, increase unemployment and ultimately make aluminium products expensive for general public.

**J. M/s Virgo Aluminium Ltd.**

- a. They are manufacturers of aluminium rolled products.
- b. The measure will result in serious injury to many downstream/ secondary manufacturers of aluminium rolled products.
- c. They are having dependence on non alloyed aluminium and large scale primary aluminium producers.
- d. In the current Budget, the Government has already increased customs duty by 2.5% on non alloyed aluminium.
- e. By introducing extra safeguard duty, it will make many small and medium aluminium units below par, increase unemployment and ultimately make aluminium products expensive for general public.

**K. M/s Manaksia Aluminium Company Limited**

- a. They are secondary manufacturers of aluminium flat rolled products including value added products like pre painted aluminium coils.
- b. The petition is a blatant attempt by DI to reap undue and unreasonable financial benefits by causing serious injury to the operations of secondary aluminium manufacturers who source their basic raw material from them.
- c. The measure will drive numerous secondary aluminium manufacturers out of business, increase unemployment causing undue hardship to consumers of aluminium products due to unnecessary hike in aluminium prices.
- d. The secondary aluminium manufacturers are suffering due to the low rate of import duty on aluminium flat rolled products which allow cheap imports of bare and pre-painted aluminium coils, from countries like China to flood the Indian market.
- e. Presently, aluminium scrap is subject to a basic custom duty of 2.5% which was 0% earlier. This has contributed to substantial additional input costs for secondary manufacturers, who are presently suffering cash losses.

**L. M/s Aluminium Extruders' Council (ALEX)**

- a. A similar and detailed investigation was done in 2014 and in the final finding dated 7.10.2014 wherein safeguard duty on the imports of "Not alloyed Ingots of Unwrought Aluminium" was not recommended.
- b. The real intension of the petitioners is to increase profit from domestic sales.
- c. The Indian producers unlike the practice worldwide have an Indian price for aluminium. Also, unlike the LME based pricing which is market driven and transparent, the Indian prices are declared by the producers.
- d. Petitioners calculate the domestic price based on the landed cost of imports. Therefore, the safeguard duty is really meant to increase the prices in India and will impact the Indian industry including the extrusion industry and the end consumers.
- e. Though petition states that the consumers of the petitioner companies are in an industry where they operate on the principles of "pass through", they do not follow the LME + premium pricing followed by the entire Aluminium industry worldwide.
- f. In India the pricing is based on the domestic rupee price including import duty of 7.5%. Thus, every increase in import duty directly adds to the profitability of the petitioners. Why should the petitioners charge custom duty for their domestic sales.
- g. The safeguard duty petition is only made for increasing the petitioners' profit from domestic sales.
- h. Petitioners have admitted that their profitability has been reduced due to the fall in the LME price and the premiums, and not because of competition from the import of PUC.
- i. The petitioners have specified that the reduction in the LME and the premiums are on account of the global demand supply situation which impacted their pricing and not due to the PUC on which they claim a safeguard duty.
- j. Excess production globally at 1.3 million is about 2% of the world production which is not a very big number.
- k. M/s Vedanta's Jharsuguda Plant- 2 with 1.25 million ton capacity is located in a SEZ has also been included while calculating the total India capacity. This 1.25 million ton plant is not operational because Vedanta has no bauxite and alumina to run this plant.
- l. The data furnished in the petition shows that the indexed cost for domestic sales is higher at Rs.131 compared to Rs.95 for exports. The cost of goods for exports should have additional cost on account of the packaging and shipping cost.
- m. The index cost of exports by the petitioners is shown as Rs. 95 whereas the indexed basic cost for imports is shown as Rs. 125 (without duty). This means that the petitioners are exporting at much lower prices to the customer out of India.
- n. Calculation of price undercutting is not a valid calculation as there is no separate calculation for large volume of duty free imports.
- o. Production of secondary aluminium which is done by using scrap has been included to calculate the market share of the petitioners though scarp imports do not fall under the PUC.
- p. Exports from India for the PUC increased from 147K in 2011-12 to 644K in 2015-16, the captive consumption of the petitioners has reduced by almost 70K MT in 2015-16 compared to last year.



- q. M/s Nalco are not a part of this petition.
- r. The condition of the extrusion manufacturers is very precarious; as many as 40 extrusion units have already closed down. There is a threat of imports of extrusions from China into India. The safeguard duty on PUC will increase the cost of production in India and sales of extrusion in India will be at higher cost compared to cheaper imported extrusions due to the duty difference.
- s. The measure will lead to a situation where large number of extruders will have to close operation and lakhs of people will become jobless.

**M. M/s Western Metal Industries Pvt. Ltd.**

- a. They manufacture aluminium slugs falling under 76169990 of Customs Tariff required for packing which is a secondary product made from unwrought aluminium.
- b. Safeguard duty, if imposed on unwrought aluminium, may lead to increase in imports of intermediary products, made from unwrought aluminium, resulting in serious injury to the domestic industry. Safeguard duty, if imposed on unwrought aluminium, should also be applicable on imports of intermediary products made from unwrought aluminium, helping the domestic industry to survive.
- c. Vedanta Limited is a unit situated in SEZ and is permitted to supply limited quantity in the Domestic Tariff Area (DTA). It needs to be proved by the Applicant that all of them together satisfy the definition of Domestic Industry.
- d. The production quantity of the applicants has increased over a period of time and their share in the domestic market has also went up from 28% to 31% in the year 2016.
- e. The Applicants are the dominant producers of the commodity under investigation, thus, alleged injury to domestic industry does not justify imposition of safeguard duty.
- f. Reduction in profitability is a function of several factors and thus cannot be the only aspect on the basis of which injury to the domestic industry is ascertained. Several times, availability of incentives on export and period of incentives could temporarily affect the profitability.
- g. The figures provided, whether before or after tax, also need to be clarified, rather both figures should be provided by the Applicants.
- h. The issue of cooling down of Chinese economy or reduction in fuel cost of Middle East manufacturers cannot be considered as a cause of injury.
- i. Each country has certain advantages and disadvantages. Bauxite may be available in ample quantities in India, but is to be imported by the Middle East for manufacture of the commodity.
- j. China also imports substantial quantities of aluminium and thus the cooling down of the Chinese economy straightaway cannot result in increase in exports from China so as to cause an injury to domestic industry. In case any such instances are there, it should be treated as a dumping activity.
- k. If the incentives are given by the various Provincial Governments of China regarding electricity the enquiry should be under Section 8C or Section 9 of the Customs Tariff Act and not for imposing safeguard duty.
- l. The price of the commodity under investigation is based on prices prevalent on the London Metal Exchange (LME), and cannot be influenced by a manufacturer.
- m. In India the price of the commodity under investigation are decided by the entire domestic industry, based on the prices prevalent on LME, exchange rates prevalent from time to time,

- premium claimed by them and level of duties, on import of the commodity.
- n. When the metal market was and would be at the peak, the benefit is already received or can be received and the reduction in profitability cannot be a cause for levy of safeguards duty.
  - o. Prices show a certain "cyclical" behaviour throughout the world commodity markets. If, for a particular period, the commodity prices are at a lower level, such cause cannot be treated as an injury.
  - p. In the FY 2014-15 and 2015-16, aluminium (not alloyed) has been imported up to 343 tons and 432 tons respectively. Similarly, there is export of this commodity.
  - q. The claim of the Applicants that they control 50% of the domestic production needs to be confirmed.
  - r. The exact nature of alleged injury, its seriousness and its effect have not been demonstrated/proved by the Applicants.
  - s. The steps planned by DI and effects thereof on their profitability, upgradation of technology, benefit of scale of manufacture, reduction in overheads and implementation timelines need to be made public.
  - t. The confidentiality claim, if any, of the data or information is not justified, the Applicants being "Public Limited Companies".
  - u. In case the safeguard measure is taken, the scope of the enquiry may be expanded by including all products which are covered by Chapter 76.
  - v. The safeguard duty will result in increase in prices of the domestically sold Aluminium and thus manufacturers of products from aluminium would suffer substantial and irreparable injury by surge/increase in the import.
  - w. The effect of imposition of Safeguards Duty for the second stage purchasers/manufacturers should also be considered.
- N. M/s Century Metal Recycling Private Limited; Sree Sumangala Metals and Industries (P) Ltd.; Shree Balaji Alumnicast Pvt. Ltd.; Sargam Metals Private Ltd.; CMR Nikkei India Private Limited; CMR Toyotsu Aluminium India Pvt. Ltd.**
- a. They are one of the producers of aluminium alloys in India.
  - b. There is significant fall in London Metal Exchange (LME) price from \$2204/MT in Feb'12 to \$1535/MT in Feb'16. The fall in prices has been exacerbated by global demand slowdown, notably China, with surplus global capacities.
  - c. As there are opportunities available for increasing the per capita consumption, India has become the target for supply of aluminium alloys and there is a notable surge in imports of aluminium.
  - d. More than 5L MTPA of aluminium alloys is consumed in India in various castings for automobile component manufacturing.
  - e. Aluminium alloys are imported under HS code 7601 and compete with the downstream alloy manufacturers in the country.
  - f. Aluminium alloy imports from Malaysia, Thailand and Middle Eastern countries hurt the viability of domestic alloy manufacturers. It is essential that these imports should be stopped and domestic manufacturing should be encouraged.

- g. The measure will support all the alloy manufacturers in the country and will result in domestic growth & generate more employment opportunities. Action for the support of both primary and downstream industry may be taken.

**O. M/s All India Aluminium Secondary Manufacturers Association**

- a. The Association represents Small Scale Industries (SSI) involved in manufacturing various aluminium products such as aluminium utensils, extrusions, aluminium closure stock, converted foils for packaging and aluminium hardware items from Telangana and Andhra Pradesh states.
- b. The imposition of safeguard duty/ provisional safeguard duty will be against the interest SSI units involved in manufacturing secondary aluminium products.
- c. This will increase the cost of raw material being consumed by their member industries considerably.
- d. It is surprising to note the Government is imposing safeguard duty only on primary aluminium metal and not on all products of aluminium.
- e. Primary producers of aluminium in India are already having large profit. They are able to sell the entire quantity produced by them during the same year. Their production of aluminium is increasing every year.
- f. Government has already increased import duty on aluminium metal by 2.5% ad valorem in the budget for 2016-17.
- g. The Rupee has depreciated by nearly 10% in last 6 months from Rs.62.50 to Rs.66.50 per dollar. Due to this reason also, primary producers have increased price of aluminium metal.
- h. Price of aluminium is being fixed based on the LME prevailing in the international market. Import of aluminium metal also takes place based on the LME price prevailing in the international market. Thus, there cannot be cheap imports of aluminium metal in the country.
- i. Price of aluminium metal has gone up by USD 235 PMT between December, 2015 and April, 2016 and due this primary producers have already increased price of aluminium metal by Rs.7,500 PMT in April,2016 and is likely to go up further by Rs.5000 PMT. Hence, the total increase will be about 10%.
- j. SSIs involved in manufacturing secondary aluminium products will be hit very hard due to the price increase. If Govt. levies safeguard duty, it will kill the SSIs involved in manufacturing various aluminium products in the entire country who are giving employment to lakhs of people.
- k. They suggest that Govt. should levy export duty on export of aluminium metal from the country.

**P. M/s Metal Recycling Association of India (MRAI); South Asia Forum for Energy Efficiency (SAFE)**

- a. MRAI is a national association, representing the interest of India's ferrous and non-ferrous metals recycling industry with over 510 members, including most regional metals trade associations. Their collective strength comprises of over 7000 small, medium and large enterprises, directly & indirectly employing 17.5 lakh people.
- b. SAFE was established as a joint initiative of World Energy Council (WEC) — Indian Member Committee and the Energy Saving Commission of World Foundry Organization (WFO), UK.
- c. The aluminium recycling industry is engaged in the production of aluminium alloy ingots for the automobile sector.

- d. They welcome the notice of initiation of safeguard investigation.
- e. Recycling of aluminium scrap saves energy and protects environment. The energy consumption in recycling is only 500 units per ton compared to 14000 units per ton for production of primary aluminium. There are practically no carbon emission in recycling. The industry has been found by UNFCCC to be eligible for carbon credits under Clean Development Mechanism Scheme (CDM) vide UNFCCC Project 10166.
- f. There are more than 150 domestic manufacturers of aluminium alloy falling mostly in MSME sector with a capital investment of more than Rs.20,000 crores and providing direct employment to approx. 100,000 workmen.
- g. The sector is producing nearly 500,000 tons of aluminium alloy for automotive use and 180,000 tons of deox for the steel sector for deoxidation in steel melting. Most of the critical auto components, which were being imported earlier, are now being manufactured in India due to the manufacture of automotive aluminium alloy within the country.
- h. The import of aluminium alloy ingot falling under HS 760120 is allowed duty free from Thailand and Malaysia under FTAs with these countries. Coupled with the fact that there is an import duty of 2.5% on import of the primary raw material for manufacture of aluminium alloy ingots, namely aluminium scrap falling under HS 76020010 has resulted in huge financial losses to the manufacturers of aluminium alloys.
- i. A largest manufacturer of aluminium alloy, has suffered a decline in its PBT. Two other companies established in joint venture collaboration with two leading Japanese companies, have suffered huge losses, while one company is completely bankrupt. Other major players in the aluminium alloy industry are also suffering a decline in their profits and the overall profitability of the industry has gone down.
- j. The huge surge in imports of aluminium alloy ingots from various countries including duty free imports from Thailand and Malaysia have increased tremendously on year-on-year basis by almost 55%.
- k. They support the levy of safeguard duty of 5% on PUC and they are also in favour of imposition of provisional safeguard duty.
- l. Aluminium alloy (HS760120) is used for manufacture of automobile components as it increases fuel efficiency and reduces vehicular emissions. It is generally produced by recycling scrap and is both energy saving and environment friendly. Many of their members deliver aluminium alloys in liquid form which methodology has been approved by UNFCCC under Clean Development Mechanism and is eligible to Carbon Credits.
- m. The aluminium alloy industry suffers from inverted duty structure since the basic raw material namely, aluminium scrap attracts import duty of 2.5% while the finished goods can be imported duty free from FTA countries like Thailand and Malaysia. Also, China recently introduced 30% VAT rebate on recycled aluminium alloy which effectively gave a cost reduction of at least 2% to the Chinese companies. Thus, the Indian manufacturer suffers a cost disadvantage. The imposition of 5% safeguard duty on aluminium alloy ingots (HS 7601) is essential to provide a level playing field.
- n. Fear that if the price of aluminium alloy is increased due to levy of safeguard duty, it might lead to greater import of automobile components is wholly misplaced. All major automobile OEMs negotiate prices directly with indigenous manufacturer for aluminium alloy. Any possible increase in domestic prices of aluminium alloys post levy of safeguard duty, would be a pass through for the auto component manufacturers. Rather, it will lead to much better and bigger indigenisation of automobile components.

- o. While all types of aluminium alloy for auto and other engineering applications are being manufactured in India, such as ADC12, AC4B, etc. yet aluminium alloy (A356.1) required for production of aluminium wheels is not produced in India. The levy of safeguard duty on aluminium alloy will ensure that adequate technology for manufacture of aluminium alloy A356.1 is developed indigenously.
- p. The overall profitability of the industry has gone down from 3.36% PBT in 2012-13 to less than 0.5% PBT in 2014-15 to even lower/ negative PBT in 2015-16 due to the fact that 2.5% import duty on aluminium scrap was introduced from May 2013 coupled with the fact that aluminium alloy is being dumped from FTA countries and also from China due to increased fiscal incentives by local governments. Aluminium scrap prices are not related to fluctuation on LME as scrap prices are not controlled by LME.
- q. The extremely low / negative profitability in the industry and the fact that most of the manufacturers are in MSME Sector, is creating stress on the large bank loans advanced to the industry.
- r. The proposed provisional safeguard duty be levied for 200 days immediately to save the domestic industry from closure.

**Q. M/s All India Non-Ferrous Metal Industries Association**

- a. They represent the non-ferrous industries in various forums.
- b. The safeguard investigation does not include cables and conductors which consumes the largest quantity of aluminium in the country. This will increase the raw-material cost for cable and conductor manufacturers while offering no protection on finished goods.
- c. This discourages the downstream manufacturing sector which generates the most employment in the aluminium industry.
- d. It will encourage import of finished goods by putting the local downstream manufacturer at a significant disadvantage and making it uncompetitive.
- e. It is mentioned in the safeguard investigations that Middle East smelters get advantage on account of cheaper energy sources. However, in a recent interview given by the CEO of Vedanta Ltd., one of the petitioners, he has clearly mentioned that India enjoys tremendous advantage of producing aluminium due to ready availability of bauxite as well as access of cheap coal to generate power. Maybe due to local issues these may not be readily available as on date to some plants, this however should not be the reason for which the downstream industry in India has to pay more.
- f. Imposition of safeguard duty will amount to penalizing the companies who process aluminium in India.
- g. One of the petitioners, M/s. Vedanta Ltd. has put up an aluminium plant in a SEZ zone. This capacity has to be removed from the calculation of domestic installed capacity. The SEZ plant is only for export and hence cannot be included in the domestic capacity.
- h. The export of aluminium being more than the import of aluminium, India is a net exporter of aluminium. Safeguard duty will not stop import against exports.
- i. While the actual import figures have shown a jump over the years, as a percentage of consumption, it has hardly changed. It is incorrect to say that imports are eating into domestic sales in a big way.
- j. If downstream industries are rendered uncompetitive, then the unemployment in these units shutting down would be more than the unemployment in DI.

- k. The aluminium pricing is determined by an open and transparent mechanism namely the LME. There have been instances in the past when the LME has been very high and the petitioners have made very good profits. Commodities are always subject to cycles. The government should take care of the downstream industry as well.
- l. As a lot of orders of secondary industry are at a fixed price in which no safeguard duty element is factored in, downstream manufacturer would be severely handicapped.

**R. M/s Apar Industries Ltd.**

- a. They are > Rs. 5000 crores company engaged in the manufacture of aluminium based conductors, cables & industrial oils in India and are exporting their manufactured products. They are also supplying products to Central & State Transmission & Distribution Utilities against their deemed export & firm price duty paid pricing link to LME base tenders/awards.
- b. Their sales are in the three categories of deemed exports, domestic and physical exports.
- c. If a safeguard duty is imposed, then the imports made against deemed exports are not exempt from safeguard duty. This would put tremendous financial burden on the Indian suppliers, and also give a huge advantage to Chinese suppliers of aluminium conductors.
- d. Safeguard duty be exempted from Advance Licenses against deemed exports.
- e. The Utility companies have to submit their bid as BOOT (Build/Own/Operate/Transfer) basis. In competitive bidding once price is firmed up, no variation in duties or taxes can be claimed. The quotations are being sent approximately 6 months in advance to the execution starting dates. In this case if safeguard duty is levied, the Indian conductor manufacturers will stand to lose heavily for the orders on hand and there will be complete confusion on how to quote for future.
- f. The local aluminium producers are not offering supplies on deemed export basis.
- g. The period of investigation in question is confusing as in February, 2016 the basic customs duty was enhanced from 5% to 7.50% in Union Budget and the impact of safeguard duty would be 12.50% (5+7.50) or 10% (5+5).
- h. Major imports are made by industry for execution of physical and deemed export orders for which raw materials are importable under DEEC scheme on duty free basis. The import made against export orders by the industry needs to be subtracted from the data provided by the petitioners.
- i. M/s Hindalco, Balco are themselves importers of the subject goods and hence cannot seek safeguard protection. Some high tech products manufacturing is having requirement of Ultra High Purity of Aluminium, i.e. Al. contents >99.85%, which is not produced on regular basis and some of the elements control is not maintained by any of the domestic smelters/petitioners and therefore is bound to be imported. If the quantity of imports made are deducted/adjusted, the ratio will change.
- j. The incidence of safeguard duty would result in a proportional increase in the cost to the conductor manufacture. On the other hand, the imported conductors, particularly from China, would not have any increase in costs & accordingly would swamp the Indian conductor market resulting in massive losses to the conductor industry in India. This will create huge unemployment & social unrest besides resulting in sick industries in India.
- k. Petitioners have restricted the data up to period January, 2016 to suppress current scenario/facts. The factually applicable duty is 7.5% and not 5% mentioned in petition.
- l. M/s NALCO, a Public Sector Undertaking, is not a participant with the petitioner.

- m. Petitioner have added import of scrap in production comparative data with own + NALCO. Inclusion of import scrap (under 7602) is not relevant as petition pertains to HSN Code 7601. If Petitioners want imposition of safeguard duty on scrap, they need to submit fresh petition. Downstream industries of cable & conductor are not importing scrap at all because it's low grade/ low purity material not suitable in high grade conductivity and resistivity. Hence, the percentage of injury to Petitioner will be less.
- n. The petitioners production data is not authentic as compared with data from Ministry of Mines. Wrong data has been given to show lower production & underutilization of capacity and to establish injury. Petitioners have not revealed the data sources for all India production.
- o. Indexed data of opening and closing stock is presented erroneously.
- p. Petitioner's data are not reliable as sales volume mentioned by Petitioners are higher than the production of respective period, and there is no question of underutilization.
- q. One of the petitioners have done capital investment in SEZ about Rs. 13000 Crores for approved capacity of 1.25 MTPA. The investment is not in line with Indian market/demand. The Indian demand/market data is not appropriately represented by DI.
- r. While calculating total demand, only duty paid imports should be considered.
- s. The data do not justify any injury to the petitioner.
- t. The duty free imports are purely against Advance License. Duty paid imports trend is negative. Purchase from petitioner itself is huge in last two years.
- u. Petitioner has shown increase in cost of domestic sales whereas same has been down in export, cost structure won't be different for domestic & export.
- v. Petitioners' sales price, is in continually increasing trend over & above duty paid imported price. It is also higher than NALCO local prices.
- w. Pricing in India is at a substantial premium over the LME pricing prevailing in other markets. Drops in LME prices are unrelated to import competition and do not justify the imposition of safeguard measures.
- x. The Petitioners' capacity utilization/ capital investment is not in line with market demand; Petitioners' own inefficiency lead to higher cost structure resulting in higher domestic prices.
- y. Ordering pattern for cables & conductors by the EPC companies/ SEBs etc. follow an international competitive bidding procedure. If safeguard duty is imposed one will not be able to meet the costing of international market of cable and conductors.
- z. Cost of employee is consistently higher year after year which is not in line with no. of employee.
- aa. Abnormal increase in interest cost is not because of blockage in working capital but it's merely due to higher borrowing at high rate of interest for capital investment.
- bb. A news published in April, 2016 mentions Vedanta's kicking up of the idle aluminium capacity in SEZ, six extensions given to SEZ since 2007 and its seeking further extension of the approval, SEZ's running at depleted capacity for want of power.
- cc. Hindalco Business Outlook based on annual report of FY 2014-15 refers to strong volumes and realizations, increase in aluminium demand by 38 % in last five years; increase in cost of sales out of three major factors of rising coal prices, declining bauxite quality & rising logistics on account

of diesel price deregulation; rise in export due to rising global demand. Hence, unutilized capacity is not the reason for rising cost of sales & increase in exports is not due to reduction in local demand.

- dd. Petitioner has shown inappropriate interpretation related to downstream industries having no injury.
- ee. As bidder contracts are based on L-1 Tender/EPC base; therefore, private power industries will suffer heavy injury & will not be able to compete with other government entities.
- ff. Impact on cable & conductor industries shown in petition is absolutely wrong. Major contracts of conductor industries are on firm price base and any additional cost won't be absorbed by ultimate buyer leading to injury to conductor industries. In variable price base, there is no clause of safeguard duty effect and this is cost to conductor business only.
- gg. Custom duty has already been increased from 5% to 7.5% in current year
- hh. Import duty on conductor is 10% therefore, it would be a case of inverted duty.
- ii. Volume of import scrap is merely used in utensil industries, safeguard duty should be only on scrap.
- jj. Exports of aluminium from India are in line with import of aluminium in India and therefore, business cycle is healthy.
- kk. There is considerable difference in cost of domestic sales & cost of sales of export. Costs have been intentionally loaded to domestic pricing & not to export pricing. Capacity utilization of petitioner against production is not appropriate because existing capacity & further enhancement is not in conjunction with overall market demand therefore, capital investment/capital employed haven't benefited the petitioner. The huge investment leads to high cost structure of petitioner resulting in high selling price.

**S. M/s Lumino Industries Ltd.; JSK Industries Pvt. Ltd. ; Venkateswara Wires Pvt. Ltd.; KEI Industries Limited; Indian Electrical & Electronics Manufacturers Association; Adinath Electricals Pvt. Ltd.; Kalpataru Power Transmission Ltd.**

- a. Petition though made out to be submitted by 3 companies, is actually submitted by two corporate groups; National Aluminium Company Limited (NALCO), a Navratna Company, is not a party to the petition.
- b. PUC include alloy ingot (76012010) which is mostly made from scrap. These are imported into India by automobile manufacturers or their ancillary units. These are also imported under FTA. Petitioners have added import volume of scrap based products just to inflate the numbers and should be excluded from the import data.
- c. About 90 % of Ingots imported are against Duty Free License as export incentive to import raw material and safeguard duty will not stop such imports.
- d. The installed capacity as given by DI in their petition includes Vedanta's 1.2 million tons capacity created in their SEZ unit to cater to global market. The facility was to produce metal for export using resources from Nyamagiri hills which got embroiled in agitation by tribal community leading to ban on bauxite mining. The capacity in SEZ should not be clubbed with domestic capacity. Reason for its idling has nothing to do with domestic demand or import. If the 1.2 million SEZ capacity is excluded, utilization is around 80% as against 48 % claimed by the DI.
- e. The captive consumption should be treated as domestic sale only because metal transferred for captive consumption is used to manufacture value added products like wire rod, rolled products



- etc.
- f. The demand has grown 29% over the base year. During the same period growth in import is nominal.
  - g. Duty protection will help DI raise their selling price in India by getting higher import parity price for quick and undue profit. Ultimately the end customer will pay higher price which cannot be passed on to anyone.
  - h. An increase or decrease in selling prices of aluminium could lead to slowing down of Electrification Programme.
  - i. Information given on impact on consumers is totally untrue. Any increase in duty, will only result in their selling price being increased on the basis of import parity. Granting duty protection by safeguard at the expense of large number of consuming industries is against public interest.
  - j. Price volatility is inherent in the metal business which has linkage with LME. LME is market price discovery mechanism. It is not something which applies to Indian metal producers only.
  - k. Customs duty on aluminium metal has already been increased from 5 % to 7.50 % in 2016-17 budget. Any further increase in metal price will result in inverted duty structure and make the consuming industries uncompetitive for survival. Eventually, finished products will get imported directly. Large number of small and medium scale industries will have to close down.
  - l. The petition refers to falling "Premium" but it is never considered to be a profit increasing factor. Premium levels fell from the manipulated higher levels after LME initiated regulatory action. This is applicable to all producers across the globe and is not specific to Indian producers/market.
  - m. China's & Middle East Governmnets' support to their industry by way of subsidy holds the prices whereas the DI is requesting government to facilitate implementing an increase in price to improve profitability.
  - n. Indian producers have much bigger advantage of having bauxite and coal locally compared to Middle East producers having advantage of subsidized gas. Middle East producers are dependent on imported alumina. They sell their products with price reference to LME and not at lower prices.
  - o. The DI has benefitted from favourable exchange rate movements as the actual selling price is in Indian rupees.
  - p. Fall in global commodity price, excess capacity and such other issues raised by the petitioners, are structural issues to be addressed by the industry and seeking higher protection as short cut to improve profitability will only result in harming the aluminium based industry as a whole.

**T. M/s Associated Aluminium Industries Pvt. Ltd.**

- a. They are manufacturers of aluminium wire rods (Ch. 7605). Ingot is the key raw material in manufacturer of their products with primary aluminium often constituting >90% of cost of production (COP).
- b. Imposition of safeguard duty on products under Chapter 7601 alone shall lead to inverted duty structure for value added products which shall threaten their capacity utilization and profitability.
- c. The imposition of safeguard duty on ingots only excluding value added products shall severely impact manufacturers engaged in this segment. This will render downstream units uncompetitive; will encourage imports of finished goods and thousands of people run risk of losing their jobs.

- d. Conversion cost of wire rods from ingots, usually, is less than 5% of the cost of ingots. Hence, imposition of Safeguard duty @5% (or higher) only on ingots but not on wire rods shall, potentially, throw all wire rod manufactures in India out of business - as it would make enormous economic sense to directly import wire rods (at 5% less duty than Ingots) than buying ingots locally (at 5% higher duty) and converting into wire rod. India produces more than one million tons per annum wire rod, hence viability and interests of this crucial segment must be protected.
- e. If safeguard duty is considered for ingots, then wire rods be treated at par for imposition of safeguards.

**U. M/s Polycab Wires Pvt. Ltd.**

- a. They are cable manufacturer. Safeguard duty will be detrimental to the growth of the cable industry.
- b. The reforms in the Power Sector have resulted in adequate order for all the cable manufacturers and have resulted in strong demand of metal, both indigenous and on imports.
- c. During the last two years the scrap import has increased due to the increase in automobile sector and duty differential of 5% between import duty on scrap (2.5%) and primary metal (7.5%).
- d. Due to the wrong pricing policy, the local producers are not able to capture the scrap consumers due to huge duty differential.
- e. Local producers are not providing metal to any of the consumer who is exporting the metal as this results in loss of duty factor which is being charged by primary producer.
- f. Local producers are not willing to provide the pricing mechanism which is being followed globally as the material is being sold on average pricing formula which totally benefits the producers. When the price is on rise the producers are not willing to supply and in event of fall in prices the producers do not revise their prices.
- g. In case a consumer want to buy under the Advance License there is no supplier in the domestic industry and consumer has no choice but to import.
- h. The domestic aluminium industry follows an import parity pricing model. They charge the industry and local users multiplying factor of 7.5% duty (increased in the recent budget from 5%).
- i. The safeguard measure would prejudice the legitimate commercial interests of other enterprises contrary to the public interest and will cause inflation.
- j. The consumers are being charged the increased exchange rate. The fuel price has reduced by 70% whereas the local producers are not reducing the freight prices.
- k. M/s Nalco, one of the leading producers has not joined the petitioners hence their claim of qualifying as DI is questionable.
- l. The reduction in production and profits of DI is not due to imports but due to reduction of LME and MJP prices in international market. In the last five years the MJP price has risen resulting in amassing huge profits to local producers. MJP has recently dropped but no other country has imposed or increased the import duty.
- m. Reduction in profitability and loss is further attributed to expansion, over expansion resulting in increased interest cost and internal restructuring by the companies. The losses claimed by the DI are mainly because of not getting bauxite mines and coal allocation from the Government and heavy interest burden on their unplanned and huge capital expenditures.

- n. Import duty on secondary aluminium alloys and re-melted aluminium ingots, aluminium scrap is presently @ 2.5% as against primary aluminium @ 7.5% which is impacting the sales of PUC in the country. In case these are excluded from safeguards than the imports will further increase.
- o. Net imports after deducting the import against export entitlement should be evaluated. Import data seems to include all the products covered under Chapter 76. Indexed data is provided instead of absolute data so as to make comparison impossible.
- p. The special automobile grades like ADC 12 which are not produced by DI and are also being imported in huge quantities should be considered separately while evaluating imports of PUC.
- q. While M/s Nalco exports alumina, Vedanta is importing alumina from the same port, which should be looked into to bring down the cost of DI.
- r. Because of unavailability of bauxite for its Lanjigarh project Vedanta is also loading its cost of unutilized Capex and thereby showing losses.
- s. Petitioners are using bulk of their smelting capacity for value added products to earn higher profits. The Indian consumers are compelled to import due to shortage of good quality and quantity of ingots by DI.
- t. Product quality from DI is inferior (equivalent to commercial grade with low conductivity and purity) while imported ingots with high purity and conductivity are available.
- u. There is no injury due to imports but is largely attributed to falling of the LME and MJP price inducing a fall of the selling price of the producers.
- v. Market share of DI has increased proportionately with increased imports. Marginal increase in imports is likely to be linked to exports and purchases under ICB at zero duty for notified power projects.
- w. The energy costs of foreign producers have always been substantially lower and this cannot be considered "unforeseen".
- x. Imported PUC comes at very low freight costs while DI charges high freight cost.
- y. Any imposition of safeguard duty will lead to closure of user industries leading to loss of employment & economic activity in the country and import of value added products like cable.
- z. The basic custom duty on finished goods is from 0% to 7.5% whereas aluminium also attracts 7.5% BCD. Profit margin of conductor, cable and capacitor manufacturer are extremely slim. If safeguard duty is imposed then imports of conductor, cable and capacitor, particularly from China would swamp the Indian market, having adverse effect on the downstream manufacturers, creating huge unemployment and social unrest, resulting in sick industries.
- aa. Imposition of Safeguard duty would result in a proportional increase in the cost to the cable & conductor manufacturers and the imported cables & conductors would swamp the Indian market.
- bb. Safeguard duty will prove counter productive for the Indian aluminium producers due to closure of user industries.
- cc. Safeguard duty will be counterproductive of revival of the economy as it will increase cost of products and affect the demand across all sectors of the economy including infrastructure, automobiles etc.

V. M/s **Hind Aluminium Industries Limited**

- a. There are more than 400 conductor manufactures in India generating a lot of employment. Conductor industry operates in a highly competitive market with usually low single digit operating margins making it impossible for them to absorb the additional cost.
- b. Indian conductor manufacturers have inherent disadvantages v/s their global peers emanating from economies of scale, price volatility, higher interest costs and CST @2% which is not applicable on imports.
- c. Imposition of safeguard duty only on raw materials but not on conductors shall increase cost of production by 5% which shall make it unviable to produce conductors in India. This will lead to a flood of imports from countries like China and the Middle East.
- d. If safeguard duty is considered on primary aluminium, then an even higher duty should be considered on conductors to encourage the local industry. Otherwise it is almost certain that it will shut down.

**W. M/s Oswal Cables Pvt. Ltd.**

- a. They are manufacturers of aluminium conductors, cable etc. and aluminium ingot / rods are their principal raw material.
- b. The petition is filed by the three companies namely Vedanta, Balco and Hindalco in the guise of the representatives of the domestic industry whereas they are in private sector. One of the main producers in the country, the public sector undertaking M/s National Aluminium Company Ltd. (NALCO) is not party to petition.
- c. The petition is a cartel made to gain undue advantage under the cover of safeguard duty and avoid fair competition.
- d. In the recent Budget, basic customs duty has been increased from 5.0 to 7.5 % and it has already added hardship. Any further increase by safeguard duty will result in inverted duty structure.
- e. If the safeguard duty is imposed they will suffer great hardship; huge losses; would be forced for retrenchment of the workforce. It would be grossly deterrent to the growth of the industry and will make the consuming industry uncompetitive resulting in increased imports of finished goods. Large number of SSI units like them would be badly hit.
- f. Most of the import of aluminium metal in the country is against duty free licenses offered as export incentive (to import duty free raw material) against exports and safeguard duty will have no impact on such imports. It will hit the domestic aluminium using industry making raw material dearer.
- g. The petitioners have put misleading data by clubbing the import of alloy ingots which is made from scrap and can be imported duty free from ASEAN.
- h. Growth in domestic demand has been highly positive over the period vis-à-vis nominal growth in imports of aluminium metal.
- i. Under the cover of the safeguard duty, DI intend to gain undue profit by raising the prices. The captively consumed production should also be considered as domestic sales.
- j. The capacity utilization of the DI is fairly good and they have unduly shown less capacity utilization by adding capacity utilization of units located in SEZ (meant for export only) as well as non-created capacity due to socio-legal issues.
- k. Industry consumes about 60% aluminium, most of which goes in the power sector - the core

infrastructure sector for the growth of the economy of the country. The burden of increase in costs due to imposition of safeguard duty will ultimately be passed on to this most crucial sector. The Rural Electrification, Power Transmission System up-gradation etc. of Govt. of India / State Govts. would be hit hard.

- l. The petitioners are not concerned with higher capacity utilization or taking cost reduction measures but to unduly increase their profits under the cover of safeguard duty.
- m. Their industry employs a large workforce and substantial financial exposure of more than 1.5 lakh crore rupees which would also be severely affected by imposition of safeguard duty.
- n. The volatility in LME price of aluminium is no issue as it is not country specific but a global phenomenon. The issue raised about premium on LME prices of aluminium is absolutely vague and has got no relevance to support the cause of imposing safeguard duty. Premium is not meant for the profit but just to cover the logistics and value addition costs.
- o. The Indian producers have big advantage of cheaper raw material locally whereas globally most of the producers of aluminium depend on imports at higher prices.
- p. Benefits have accrued to DI due to favourable exchange rate INR vis-à-vis USD as the actual selling price is arrived in Indian rupees by the domestic producers.
- q. Falling global prices, excess capacity etc. are no solid grounds to substantiate injury to the local industry. These issues require to be solved by the petitioners by achieving efficiency in operations, modernization and cost-cutting measures as well as to focus on consumption growth.

**X. M/s Dynamic Cables Pvt. Ltd.; Smita conductors Pvt. Ltd.; KJV Alloy Conductors Pvt. Ltd.; Alco Electrostrips Pvt. Ltd.; Shiv Enterprises; Trans Solution.**

- a. Ingots falling under chapter heading No. 7601 and/or wire rods under chapter heading 7605 are the key raw materials in manufacturer of their products i.e. conductors falling under chapter heading No. 7604 with primary aluminium often constituting >80% of cost of production.
- b. Imposition of safeguard duty only on ingots and not on wire rods shall severely affect smaller conductor manufactures like them.
- c. Conversion cost of wire rods from ingots is usually less than 5% of the cost of ingots. Hence, imposition of safeguard duty only on ingots but not on wire rods shall throw all wire rod manufactures in India out of business - as it would make enormous economic sense to directly import wire rods than buying ingots locally and converting into wire rod in India.
- d. Smaller conductor manufacturer would find it impossible to import wire rods directly due to working capital limitations and underlying risk on account of price volatility. They shall be forced to buy locally at much higher differential between ingots and wire rods.
- e. Larger players in conductor industry shall be able to import wire rods directly gaining undue advantage. Smaller players without any orders will face closure.
- f. Ingots and wire rods, both being raw material to conductor manufacturers, may be treated at par for simultaneous imposition of safeguard duty. Safeguard duty may also be imposed on conductors (CTH 7604).

**Y. M/s KEC International Limited**

- a. They manufacture power cables ranging up to 220kv. They are also engaged, in execution of engineering, procurement and construction (EPC) contracts for power transmission lines.

- b. As a part of power transmission line projects in India, they procure aluminium conductors from Indian manufacturers.
- c. The conductors contain about 70% to 80% aluminium, thereby the cost of the conductors is predominantly dependent upon the aluminium price. In a typical power transmission line project conductor comprises of about 30% of total project cost. Any increase in aluminium prices will have serious impact on profitability of overall project.
- d. Generally EPC projects are awarded on competitive bidding basis and the margins for EPC contractors are very low.
- e. Of late, power utilities in India are insisting for fixed price contracts and price increase in the conductors cannot be passed on to the power utilities.
- f. Power cables comprise of around 60% of aluminium. Power cables industry operates on wafer thin profitability and possibility of passing on the increase in cost is highly remote.
- g. Since China has tax rebate on value added products of aluminium, there is a high possibility of increased exports from China. Cables industry in India may have to wind up their operations.
- h. Petition is actually submitted by two corporate groups and M/s National Aluminium Company Limited (NALCO) is not a party to the petition.
- i. The DI is exaggerating the situation to get increased duty protection. Their intention is to get higher import parity price from customers and increase profitability at the expense of consuming industry. Customs duty on aluminium metal is already increased from 5% to 7.50 % in budget and all the domestic aluminium producers have increased their prices to that extent.
- j. Fall in global commodity price, excess capacity etc. raised by the petitioners are structural issues to be addressed by the industry.
- k. Granting any increase in duty protection by safeguard at the expense of large number of consuming industries is against public interest.

**Z. M/s Masters India Pvt. Ltd.**

- a. The representation is only by M/s Hindalco, Balco and Vedanta and not by M/s Nalco.
- b. The petitioners claims their operation in loss, but on regular intervals they are commissioning new plants and expanding capacities.
- c. Aluminium pricing is linked to LME, which is either low or high on account of global demand and supply situation, so there could be loss or even profit.
- d. With the increase in custom duty to 7.5% from 5% the price of aluminium products was also eventually increased by DI taking it at par with import pricing. DI should keep lower prices so that no import can be done.
- e. For the benefit of MSME safeguard duty should be imposed on import of all aluminium products from Free Trade Agreement countries and only on import of all aluminium finished products like aluminium extrusion, circles, aluminium sheets in finished shape and foils in all gauges, and aluminium wire rod from all countries specially from China.
- f. MSMEs will not be able to survive if their rights are not protected as they have limited resources.

**AA. Russian Federation, Ministry of Economic Development**

- a. They express concern regarding the recommendation of imposition of 5 % duty.
- b. There is lack of evidence for satisfaction of the requirements by the petitioners concerning the initiation of the investigation and the imposition of a provisional measure.
- c. The primary ingots commodity (A7E, P1020, Au content > 99%) and all alloys (Alu content < 99%) are both falling within the scope of investigation. The products within the heading 7601 are not interchangeable because billets and alloys have different processing and end use.
- d. The product under consideration is wrongly determined. India is a net exporter of commodity 76011010 and net importer of commodity 76012010.
- e. The volume of import has been miscalculated in the petition.
- f. The volume of import has not increased in relation to the total Indian production. During the period 2011-2016 demand increased by 659, 3 MT or by 29 %. In the same time total Indian production increased by 676 MT or by 46.25 % and production of the petitioners increased by 76.22 %. Therefore, the volume of import in relation to the production has not increased.
- g. The WTO dispute settlement (particularly the Panel Report on imports of footwear in Argentina) makes it clear that the notion "such increased quantities" means not only mathematical end-to-end point comparison of the volume of import with the previous year or for the five year period. The Article 2.1 WTO Agreement on Safeguards and the Article XIX:1(a) GATT imply *that* increase in imports "must have been unexpected, sharp enough and significant enough both quantitatively and qualitatively".
- h. The factors defined as "unforeseen development" were not so unexpected and unforeseen as it is stated by the applicants.
- i. Reduction of world prices of aluminium began in 2011 and the drop of aluminium consumption in China was quite predictable and represents a long term tendency, outlined in 2011.
- j. Forecast of increasing capacities in the Middle East was undertaken in 2010 by the US Ministry of the Interior in its Middle East geological Survey.
- k. The increase in imports has been stipulated by a significant consumption growth in India rather than any unforeseen developments.
- l. Since 2007, China and India are considered the leaders in terms of growth of aluminium consumption. India is leading in the pace of growth of aluminium consumption due to the demand on this metal in electric industry, engineering, transport, automotive industry and packaging.
- m. DI's stated factors' analysis in Petition does not allow to give well-reasoned arguments that the Indian industry has been seriously injured.
- n. From 2011 till 2016 the reduction in domestic producers' share made up 1.53 % and could be explained by the increase in production costs and by the cheap imports from China.
- o. Price undercutting: High Indian aluminium prices result from the high costs of production. Producers are associating high costs with environmental charges, whose volume doubled on the 29 of February, 2016.
- p. The main reason of Indian producers' decrease in profit is due to the market aluminium prices crash and the simultaneous high energy costs in India. These reasons combined are leading to the loss of revenue. The production at Korba will be re-started in July, 2016
- q. The petitioners are carrying their business related to the production of other metals. The activity in

these domains could cause negative financial results.

- r. The valuation of domestic industry profits decrease must cover the analysis of the influence of decline in aluminium prices by 30% from the second quarter 2014-2015 till the third quarter 2015-2016 alongwith the analysis of the high production costs, financial investments in capacity expansion and in share investments and payments per interests for using credits.
- s. The petitioner's data shows that the inventory decreased by 51%, if compare 2011-12 and 2015-16. It means that the consumption has increased in India and that the domestic industry has not suffered serious injury.
- t. Causal link: Aluminium is an exchange trade commodity and the price depends significantly on the supply and demand in global market. As company representatives of DI claim, external factors had a negative impact on the aluminium industry financial results. Under the present oversupply in the global market, aluminium price sharply declined and led to reduction of aluminium selling, profits reduction and became a major factor of damages. As per DI submissions, it follows that the summary of process utilizations in Indian companies increased to 40% from 2011 till 2016 and the overall production grew by 48.5%, the number of staff tends to growth and increased by 5%. The period of investigation is characterized by significant increase of cheap imports from United Arab Emirates, South African Republic and Oman and also by cheap import of fake-semis from China.
- u. There is an absence of serious injury for the DI and the negative impact on financial results of Indian companies stems from the aluminium world prices. The increase in imports is stipulated by the aluminium consumption growth in Indian downstream industry and have no unexpected developments preconditions.

#### **BB. Russian Federation, Ministry of Industry and Trade**

- a. There is a lack of significant increase in imports of the PUC in comparison with domestic production of the like product.
- b. The proportions of imported and domestic PUC in total consumption was more or less on the same level in comparison with previous periods. Share of Indian product in consumption decreased by no more than 3% up to 85%, resulting obvious negative impact on Indian producers.
- c. The share of import in consumption during years 2011 - 2016 was pretty much stable, and there was a market redistribution between the domestic industry and other producers.
- d. There is no evidence of growth of imports of aluminium in comparison with the domestic production of the PUC in India to the extent it may cause serious injury to the DI.
- e. There should be an unexpected and dramatic increase in imports of the PUC in order to justify the initiation of the safeguard investigation. In accordance with case law of the WTO Dispute Settlement Body, the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively. The growth of imports of the PUC in years 2015-16 cannot be regarded as sharp and significant.
- f. The 'extraordinary nature' of the domestic response depends on the fact that the increased imports were unforeseen or unexpected. The DI failed to submit any facts that may be regarded as unforeseen developments. The increase in imports of PUC absolutely cannot be regarded as unforeseen and unexpected because, for instance, a drop in the growth rate of the economy of China was not unexpected and it was largely forecasted by experts.
- g. The Directorate failed to indicate in the preliminary findings evidences of the existence of a serious injury. There is no increase in imports of the PUC in absolute or relative terms in comparison with volumes of the domestic production of India on the level which may cause a serious injury to DI.



- h. With regard to the share of imports of the PUC in the domestic market of India, from 2011-12 to 2015-16, it slightly increased to meet the demand for aluminium on the Indian market. In period from 2011 to 2016, the level of sales of the domestic industry increased by 40%, while the level of sales of all producers of the like product in India increased by 23%.
- i. In period from 2011 to 2016 there was a significant 76% increase in production of the PUC by the domestic industry, which indicates a positive dynamic of development of the industry. The Directorate made a technical mistake by comparing the production capacity of all Indian producers and an overall consumption were compared with the production capacity of the applicants and not with production of the PUC of all Indian producers in total.
- j. The capacity utilization of the Indian producers remained as high as 87% in year 2015-16.
- k. The data concerning profit and loss of Indian producers are non-transparent. Profit of the domestic Indian industry was already negative (-4%) in years 2012-14. Thus, the presumable serious injury to the domestic industry may occur not in 2015-16, but earlier. Decrease in profitability of the DI may be the result of continuous growth of capacity utilization without yet reaching a cost recovery.
- l. Despite increase in capacity utilization there is a 51% decrease of the level of stockpiles of PUC in 2015-16 fiscal year in comparison with 2011-12 fiscal year indicating a stable position.
- m. There is significant increase in productivity from 77 tons per person in 2011-12 up to 129 tones per person per year in 2015-16 and there was an increase in the employment rate of 11% during the period under investigation.
- n. The DI has stable share in the consumption of PUC which demonstrate the absence of significant deterioration and no serious injury has been caused to the DI.
- o. Indian producers are exporting the product at lower prices than the sales price for the PUC on the domestic market. The alleged injury to the domestic industry could be caused by a loss ratio of export sales of the PUC as there is an unprecedented increase in exports from India.
- p. Economic data clearly indicate the absence of a causal link between increased imports and the alleged damage to the domestic industry of India.
- q. A provisional safeguard measure may be taken only in critical circumstances where delay would cause damage which it would be difficult to repair. Given that no evidence regarding the critical state of the domestic industry caused by sudden and sharp increase of import was submitted, imposition of a provisional safeguard measure violates Article 6 of the SG Agreement.

#### **CC. United Arab Emirates**

- a. The scope of PUC artificially inflates the import data which is misleading, since it includes the data of alloyed ingots not produced by the applicants. The import data should be based only on imports pertaining to the not alloyed ingots.
- b. The products are not interchangeable products with respect to consumers or producers. The tariff classification is only indicative but not alone a determinative/ decisive factor. Scope of the PUC should be narrowed.
- c. The definition of the DI refers to those producing "like" or "directly competitive product", while the applicants are not producing "alloyed ingots" and the "alloyed ingot" is not "directly competitive" to "not alloyed ingots" that are not interchangeable.
- d. There is no relative increase of imports in relation to the Indian domestic production of the

product under consideration, as the percentage of import with respect to India production remained almost the same or decreased. There is no such increase of imports that might cause or threaten to cause serious injury.

- e. The DG, Safeguards failed to adequately address the binding requirement of '*unforeseen developments*' and nothing in the report can qualify as unforeseen developments within the meaning of Article XIX of the GATT 1994.
- f. There is no positive evidence that the alleged increased imports are causing or threatening to cause serious injury to the applicants. The applicant's data clearly reveals that there is no overall impairment in the position of the applicants.
- g. There is an increase of more than 40% in the installed capacity of DI.
- h. There is a significant increase in the production and sales of the applicants by more than 76% & 70% respectively. There is better capacity utilization and a noticeable decrease of the level of inventories for the recent period of investigation. There is also a noticeable amelioration of the level of employment for the period of investigation.
- i. The domestic industry market share including other Indian producers is not only dominating more than 2/3 of the Indian market but they are keeping their market share intact. The imports market share in the Indian domestic market is less than 15%.
- j. The facts reported, in particular the improvement of various economic indicators during the last year of the period of investigation evidently undermines any claim of threat of serious injury.
- k. Given these facts and legal grounds, it is very obvious the applicants are not suffering from serious injury or threat of serious injury.
- l. There is no causal link between increased imports and the alleged serious injury. The DG Safeguards failed to conduct the non attribution analysis and no impairment in the DI of the PUC has been caused by an increase of imports. The DG Safeguards failed to provide " a reasoned and adequate explanation, that injury caused by factors other than increased imports is not attributed to increased imports".
- m. Factors other than increased imports are the cause of any alleged injury to the applicants.
- n. The pricing methodology of a primary metal is a decisive factor as it is vitally based on the London Metal Exchange (LME) price which is a global reference price. LME price is a major influence on the financial situation of any producer of the product under consideration all over the world and not only India. The premium represents a very small percentage of the selling price of the PUC. The LME price fluctuates depending on the global trends in demand and worldwide economic conditions.
- o. The London Metal Exchange aluminium prices registered upward and downward movements during the period of investigation. The low LME aluminium price in 2013 together with increasing costs has put pressure on all aluminium companies around the globe who ultimately suffered financial issues.
- p. The applicants clearly recognize that the low LME pricing drastically impact their financial performance. Therefore, there could be no connection between the increase of imports and the alleged serious injury is related to LME pricing fluctuations during the period of investigation. The DG Safeguards did not conduct an "objective examination" based on "positive evidence".
- q. The excessive treatment of the injury information of DI on strictly confidential basis significantly affects the rights of defence of interested parties.

- r. The injury information of DI does not support a finding of serious injury or threat of serious injury as there is no significant overall impairment in the position of the DI.
- s. No critical circumstances exist that justify imposition of provisional safeguard duties.

#### **DD. European Union**

- a. The DI has to be defined by reference to products that are like or directly competitive. Ingots, billets, wire bars and wire rods are much more than merely different forms of the product. The product scope contains products that have different applications and are not interchangeable, thus cannot be considered as directly competitive. Ingots are not directly competitive with wire rods, as the former need to undergo several steps of transformation to become the latter.
- b. The imports and their impact on the situation of the domestic industry need to be analysed separately for the three different products. A separate analysis should be carried out for the different products covered by investigation.
- c. The imports have been increasing gradually all along since 2011/12. However, in terms of market share, imports increased by 4% only, over the period and reached a still rather modest share of 15% of total Indian demand.
- d. The market share of the DI remained relatively stable at around 50% during the overall period.
- e. The main injury indicators show an increasing trend. The production volume increased by 76%, sales by 32% and capacity by 40%. The capacity utilisation rate increased by 10 percentage points but remains at a low 48%. Market share remained largely stable at around 48% against an increase in demand of 29%, over the same period.
- f. The only decreasing indicator is profits, which seem to turn into losses in 2015/16. However, since the data provided is in indexes, it is difficult to know at which level the losses are.
- g. The results before interest and taxes in 2015/16 are positive. In view of the rather favourable development of all the other injury indicators, the decreasing profits seem difficult to explain and suggest that other factors than imports have had an impact on the situation of the domestic industry.
- h. No information concerning other factors has been provided in the complaint.
- i. The capacity utilisation was at a very low 38% at the beginning of the period in 2011/12. Subsequently, despite the increase of imports, the capacity utilisation rate increased to reach 48% in 2015/16.
- j. It is difficult to explain why the industry decided to increase its capacity by nearly 30% over the period analysed instead of optimising the use of the existing capacity. Furthermore, no information was provided regarding the investments made in order to increase capacity and their impact on the situation of the domestic industry.
- k. According to the information provided in the complaint, import prices appear to undercut domestic prices. However, import prices merely follow the trend of the LME. Prices of the domestic industry, on the other hand, remained far above the LME level throughout the period analysed. At the same time cost of sales increased by 30%. No explanation for this increase in cost of sales has been provided. This may be the result of inefficiencies of the domestic industry as it was not able to reflect decreasing raw material prices in its sales prices.
- l. There is increase in wages by 150%, while the number of employees increased by only 5% but no explanation for this rather remarkable increase in wages has been provided.

- m. The investigating authority may analyse carefully all other factors having a bearing on the situation of the applicants, in order to ensure an objective analysis.
- n. The petitioners have given no explanation on the calculation methodology for the request of imposition of safeguard duty of 20%. Since the information on undercutting is provided in indexes only, it is not possible to see, if the proposed measure is related to the alleged undercutting.
- o. The criteria for imposition of safeguard measures do not seem to be met. The DI's difficulties in terms of profit are clearly not caused by the increased imports, but due to the development of the production capacity; the apparent inefficiency of the applicants as shown in the low capacity utilisation rate; the increase of cost of production and the enormous increase in wages.

**EE. Taipei Economic and Cultural Center in India**

- a. Taiwan merely exported less than 1,000 tonnes unwrought aluminium to India annually during 2013-2015, which accounts for 0.14%-0.17% of India's total import volume on the concerned products.
- b. Taiwan's export of unwrought aluminium to India do not cause or threaten to cause serious injury to India's domestic industry. Therefore, Article 9(1) of the WTO Agreement on Safeguards shall be applicable to Taiwan. Government of India released Notification No 19/201A-Customs (NT) dated 5 February 2016 and Taiwan was excluded for the exemption of safeguard measures. Government of India may grant Taiwan developing country status in India's domestic safeguard laws.

**FF. M/s Ravin Cables Ltd.**

- a. In the description of product as "Unwrought Aluminium (Aluminium not Alloyed and Aluminium Alloyed) the HS Code for both products has not been mentioned.

**GG. M/s Paragon Industries Limited**

- a. A similar investigation was done in 2014 and investigation was terminated.
- b. Products under Customs Heading 7601 include alloy ingot (76012010) mostly made from scrap. The same is not DI's target market and should be excluded from import data.
- c. A very significant quantity is imported against duty free licence and any additional duty will not impact these imports.
- d. The fact has been suppressed by petitioner that Vedanta's Jharsuguda Plant with 1.25 million ton capacity is located in a SEZ meant to cater global market. The capacity should not be clubbed with domestic capacity to determine utilization. If the 1.2 million SEZ capacity is excluded from the capacity utilization, the capacity utilization is around 80%. Vedanta has no bauxite and alumina to run the plant and the same is not operational.
- e. Hindalco commissioned their Mahan and Aditya plants and claim that plants are running at capacity.
- f. Petitioners calculate the domestic price based on the landed cost of imports unlike the LME based pricing practice worldwide which is market driven and transparent. Every increase in import duty would add profitability of the petitioners.
- g. Petitioners admit that their profitability has been reduced due to the fall in the LME price and the premium and not because of competition from the imports.
- h. The conditions of secondary producer is very precarious as many of extrusions and rolling unit

have already closed down. The safeguard duty on base metal will increase the cost compared to cheaper imported downstream product due to the duty difference.

- i. The fall in global commodity price, low capacity utilization and other issues are structural issues.

#### **HH. M/s Indian Foundry Organization (IFO)**

- a. The production of the foundry industry is around 10 million tons.
- b. There are more than 150 domestic manufacturers of aluminium alloy falling mostly in MSME sector with a capital investment of more than Rs.20,000 crores and providing direct employment to approx. 100,000 workmen.
- c. Recycling of aluminium scrap saves energy and protects environment. The energy consumption in recycling is much less compared to production of primary aluminium. There are practically no carbon emissions in recycling.
- d. IFO has received representations from a large number of metal recyclers supporting the levy of safeguard duty on aluminium falling under HS 7601.
- e. The import of aluminium alloy ingot falling under HS 760120 is allowed duty free from Thailand and Malaysia under FTAs. There is an import duty of 2.5% on import of the primary raw material for manufacture of aluminium alloy ingots, namely aluminium scrap falling under HS 76020010. It has resulted in huge financial losses to metal recyclers and manufacturers of aluminium alloys.
- f. IFO recommends the levy of safeguard duty of 5% on PUC including imposition of provisional safeguard duty.

#### **II. M/s Hydro Aluminium Asia Pte. Ltd.**

- a. Any safeguard duty would seriously and adversely affect their legitimate business interests and would render their supply uncompetitive vis-a-vis their competitors in Indian market.
- b. DG Safeguards may not confirm its provisional safeguard measures or any final measures and may terminate the present safeguard investigation in view of the serious adverse impacts of such safeguard duties on the large number of users of the subject goods in India including them.

#### **JJ. M/s Hero MotoCorp Limited**

They are one of the end users of the subject goods in India.

#### **KK. M/s Shashi Cables Ltd.**

- a. There is no justification for proposed safeguard measure.
- b. With imposition of safeguard duty on aluminium ingots, Indian primary producers will be able to increase prices of their product.
- c. With wire rod escaping the safeguard duty, these will be imported at 5% lower rates than the rod from Indian smelters or secondary producers. Approximately, 300 small units will collapse under the weight.
- d. Either no safeguard duty be imposed or it should be levied simultaneously on aluminium rods.
- e. Hot metals production in 2015-16 has increased over 2014-15 and in 2016-17 over production in 2015-16. These increases have to be seen in the light of continuing slowdown in the global economy and in the backdrop of much reduced conductor demand.

- f. Processing aluminium is a highly capital intensive activity requiring long gestations and developers of these projects should have the capacity to bear the financial stresses.
- g. Aluminium metal is a commodity, traded globally at LME and other exchanges. In good times the Indian producers work out their prices as per LME indices taking full advantage but when the competition is fierce they want downstream users to pay higher than the market determined prices by way of safeguard duties.
- h. Manufacturers elsewhere unlike Indian producers may not even have access to ores, minerals and coal etc.
- i. The ad-hoc measure of safe guard duties will complicate and distort the market place, instead the tariff be increased from a high of 7.5% to 10%.
- j. There is no case for levy of Safeguard duty on import of aluminium metal.
- k. If safeguard duty is to be levied, it should apply to wire rods as well which most aluminium producers treat as primary, otherwise interest of smaller manufacturers in domestic conductor industry will be jeopardised.

**LL. M/s White Metal**

- a. They are one of over 300 secondary aluminium extruders in the country.
- b. The industry is intertwined in a manner that any decision in isolation taken in favour of primaries will immediately impact not only the viability but may result into collapse of many units in the country due to current import duty structure and onslaught of material entering country from China and other FTA countries.
- c. The production in India is approx. 1.5 million tonnes presently, whereas the production and consumption in China has crossed 7 million tonnes. The main factors that contributed to this disparity were industrial growth and non-availability of adequate quantity of aluminium. Higher rate of duty impacted imports and did not allow the downstream activity to flourish in the country.
- d. With advent of industrialization and setting up of shops by various multinationals, it has become imperative to make available quality aluminium raw material to the manufacturers.
- e. Safeguard duties on raw material will be highly damaging, rather the Government should bring safeguard duties on downstream products to save the small and medium industry. This is needed as some of the countries like China, are extending high export incentives, which in turn are creating pressure on downstream industry in the country.
- f. Primary raw material is generally traded with a link to London Metal Exchange and therefore, it should not be a matter of concern to any segment of the industry.
- g. As an Extruder, they do import certain grades of billets due to quality constraints from the domestic producers.
- h. The total production of billets in the country is far below the installed capacity of aluminium extrusion, thus, forcing producers to opt for production (which is largely substandard) within the unit or rely on imports to fill the gap for quality billets.
- i. Import of primary metal in the country takes place against advance licenses to fulfil the obligation of exports, where benchmarking of pricing is done based on the prices prevailing at LME.

- j. Since, there is no mechanism currently available in India to source metal without taxes at LME price, de facto there is a necessity to import the material.
- k. Further, the data indicated does not bifurcate primary metal with secondary metal, therefore, the true assessment is difficult to arrive.
- l. The 78% increase projected could be on account of secondary metal largely being consumed by casting industry where the growth is phenomenal due to growth of automotive industry in the country.
- m. Billets are required by the industry starting with diameter of 5 inch up to 14 inch with a gap of 1 inch. Each consumer's requirement is unique in size depending on equipment. To manufacture each size, different moulds are required for which the primary producers are reluctant to invest in all the sizes, particularly 5" citing productivity constraints.
- n. Billet requirement in the country is over 3.5 lacs tonnes per annum. Due to non-availability of billets, per force, people resort to imports of either billets or scrap as the need may be.
- o. It is a necessity for an extruder to import certain types of billets having high quality needs and not manufactured in the country.
- p. It is established that no serious injury will be caused to the domestic industry as the detailed analysis of 78% increased import demolishes the claim of serious injury as projected.
- q. On the contrary, imposition of safeguard duty on raw material will cause serious injury to the secondary extrusion manufacturers who are in small and medium sector due to increase in their input cost.
- r. The increase of 76% of domestic production shows a healthy sign for the DI. Global financial meltdown had impacted all segments of industry.
- s. The DI's inventory is at a highly satisfactory level. Declining inventory is a healthy sign for the producers.
- t. Countries such as UAE, Malaysia, South Africa, Oman and Thailand do not produce primary metal. Qatar and Bahrain are producers of billets and imports are miniscule. Mentioning of all these countries is an indicator of the fact that data projected is incorrect.
- u. The import of secondary metal for casting and scrap has increased and it will continue to increase with the growth of automotive and other industries and this cannot be linked to the DI.
- v. The only other Indian manufacturer, who has not participated is M/s NALCO, therefore, it is very important to ascertain the correctness of figures of sales of other Indian producers.
- w. The pace with which the capacity expansion of primary metal has taken place, the downstream sector has not grown with same speed because of the various constraints being faced by the industry.
- x. The current projection of utilisation is misleading as for every capacity expansion there is a road map which defines the capacity utilisation based on individual company's strategy. It is very important to have that data from the DI.
- y. The prices at LME have come down, but it cannot be the reason for current losses as the cost of Indian producers is much below the world bench mark. It is a matter of analysing the balance sheets for various heads such as depreciation to ascertain the real causes.

- z. All producers are linking their price to landed cost of imported metal based on LME, therefore, profitability is a factor of international pricing and no country or producer can remain immune to that.
- aa. Return on investment in extrusion industry is perhaps the lowest and the industry is fighting for survival.
- bb. No fresh duty on import of unwrought aluminium be imposed as it will seriously jeopardize the operation of the secondary aluminium industry, especially the large number of extruders in the country.
- cc. There is a fit case of imposition of safeguard duty on import of aluminium extrusions, particularly from China, in light of the incentives on exports being offered from such countries.
- dd. Unlike other countries, there is no duty difference between primary and downstream products in India.

**MM. M/s J M Industries**

- a. If safeguard duty is increased for aluminium, local cost of aluminium is likely to increase which may increase demand for substitute product like wood, plastic etc.
- b. At present, import duty on finish aluminium products is nil which will affect their export which will not be competitive. Due to all such expected problems there will be adverse effect on all aluminium industries for their survival.

**NN. Kingdom of Saudi Arabia**

- a. Under article 9.1 of the WTO Agreement on Safeguards, a safeguard measure cannot be imposed on imports of a product originating in a developing country member if its share of imports does not exceed three per cent and provided that developing country members with less than a three per cent import share collectively account for not more than nine per cent of total imports.
- b. The imports of the product under consideration from the Kingdom of Saudi Arabia account for significantly less than 3 percent of total imports into India during the period from 2011-12 onwards till 2015-2016. As the Kingdom of Saudi Arabia is a developing country WTO Member, its exports should be excluded from the scope of any safeguard measure in India.
- c. The Kingdom of Saudi Arabia is not included in the developing country Members to which the measure is not applied under article. In line with the obligations of India under Article 9.1 of the Agreement on Safeguards, imports from Saudi Arabia may be exempted from any safeguard measure India may impose.

**OO. Govt. of Indonesia**

- a. In accordance with Article 9.1 Agreement on Safeguard, the authority shall exclude developing countries from safeguard measures as long as its share of import of the product concerned in the importing member does not exceed 3 % provided that developing members with less than 3 per cent import share collectively account for not more than 9 % of total imports.
- b. Indonesia's share of imports is negligible (less than 3% of India total imports) and the accumulation of other developing countries is less than 9%. DG Safegaurds may maintain the conclusion in partX of the Preliminary Findings in its Final Findings.

**PP. M/s EEPC India (formerly Engineering Export Promotion Council)**



- a. The EEPC represents a large number of manufactures who are engaged in production of aluminium based products.
- b. Contention that import of PUC has significantly gone up from 2011- 12 till 2015-16 is misleading. The import as percentage of total production has not gone up. It was 13% in 2011-12 which went up to 17 % in 2013-14 and again came down to 15% in 2015-16.
- c. The contention that domestic industry is getting harmed by increasing export is false.
- d. Import made under export promotion duty free scheme has not been segregated. A very small and insignificant quantity is being imported under duty paid route.
- e. The DI is unwilling to supply the PUC to the exporters at international price.
- f. Cheap Chinese import are not harming the DI as PUC is not being imported from China in significant quantity under duty paid scheme.
- g. All domestic aluminium producing companies including the govt. sector, M/s NALCO are posting handsome profits. The Government Sector Company NALCO has not joined the demand for safeguard duty protection. The claim of private sector producers is motivated to make undue profits.
- h. The domestic industry has not lost any market share to imports. Rather if they extend the international price under duty free scheme, the exporters of finished products who are forced to import their requirement will be more than willing to procure the same from domestic suppliers.
- i. It may also be noted that the domestic industry is using the international price plus premium plus import duty multiplied by the USD to Re exchange rate as the basis of pricing their products and getting huge benefit on account of depreciating rupee.
- j. If safeguard duty is imposed, DI will increase their product price on the basis of higher landed cost of imported metal.
- k. There are many small manufactures & exporters who are using the PUC in small quantities. They will be most severely hit since they do not have sufficient volume or financial ability to import the PUC under duty free scheme.
- l. Any increase in duty of PUC (raw-material) without commensurate increase in import duty of finished /semi finished goods will result in an inverted duty structure which will severely harm the large number of domestic aluminium consuming industries.
- m. Any increase in duty will severely affect the competitiveness of the small manufactures which is against the GOI policy.

**QQ.M/s Federation of All India Aluminium Utensils Manufacturers**

- a. The absolute figures, installed capacity and production submitted by the applicants may be analyzed taking into consideration the actual of imports into India and also the exports out of India of the PUC.
- b. DI's production & capacity utilization have increased during the period under investigation and hence no injury has been caused to them.
- c. The percentage of imports to production during the period under investigation was 27.33% in the year 2011-12, peaked to 33.19% in the year 2013-14 and has fallen to 26.99% in 2015-16 evidencing that no injury has been caused.

- d. The percentage of exports to production has increased in the period under investigation.
- e. Applicants by way of excessive exports have maintained a restrictive supply and thereby monopolistically determined domestic selling prices causing injury to downstream secondary manufacturers.
- f. The exports of the PUC out of the country may be analysed in tandem with the imports. There is higher increase in exports compared to imports. Rather, injury has been caused to the downstream secondary manufacturers as DI has maintained a restrictive supply and thereby monopolistically determined domestic selling price. Due to this reason downstream secondary manufacturers of aluminium products are forced to import.
- g. The imports into India were at a higher price compared to exports.
- h. Article XIX of GATT 1994 mandates investigation as to whether the application of safeguard measure would be in public interest.
- i. Any safeguard measure would unjustly enrich the applicants as they would increase the domestic selling prices.

### **III. PUBLIC HEARING**

1. A public hearing was held on 29<sup>th</sup> September, 2016. The interested parties, along with the Domestic Industry made oral submissions at the time of public hearing. In terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, all the interested parties who participated in the public hearing were requested to file written submission of the views presented orally.
2. Copy of written submissions filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.
3. All the views expressed by the interested parties in their written submissions in pursuant to the public hearing held on 29<sup>th</sup> September, 2016 were examined and have been taken into account in making appropriate determination. The non confidential version of the information received or acquired has been kept in the public file.
4. A brief summary of the written submissions filed by the interested parties after public hearing are as under:

#### **A. M/s Ravin Cables Limited**

- a. The applicable rate of duty on project imports under chapter 98 is 5% whereas the rate of import duty on most of the components of the electrical industry is 7.5 %.
- b. The government should provide duty protection to finished goods such as cables, conductors, transformers or any other product group which uses aluminium as a primary raw material to nullify the incidents of inverted duty structure.
- c. The government should not allow import of transformers, cables and conductors and any other products (currently manufactured in India) under chapter 98.
- d. Export tax be levied on export of aluminium so as to increase supplies into the local market.
- e. The aluminium industry should supply aluminium at fixed prices and in line with LME contract

offering so as to protect the interest of the downstream industries in the cases where they either entered into fixed price contracts or quoted against fixed price bids.

- f. The aluminium industry should supply duty free materials on LME rates, without seeking undue premiums against export/deemed export orders.
- g. The aluminium is raw material for thousands of downstream industries and their competitiveness should not be affected negatively.
- h. The implications of proposed imposition of safeguard duty may be evaluated before duty protection is given.
- i. In the year 2009 petition concerning the present PUC & other products was filed but withdrawn later. In the year 2014, petition in the case of not alloyed ingots of unwrought aluminium was rejected by DG Safeguards.
- j. As M/s Nalco, despite being major aluminium producer, is not party to the present petition this petition doesn't represent the entire Domestic Industry.
- k. There are a number of anomalies in the petition. No separate data for duty free imports under advance authorization has been provided.
- l. In some cases, indexed figures are provided on the ground of confidentiality. Hence, no comparison is possible.
- m. The petition has been filed with a mala fide intention of profiteering, at the cost of public at large.
- n. PUC is a basic raw material to many downstream industries and is sold at LME based prices across the globe. Hence, the local prices of PUC have necessarily to be linked to the international prices to make the downstream industries globally competitive.
- o. Import of PUC at a competitive price is not prejudicial to the public interest.
- p. PUC being a basic raw material, levy of safeguard duty on imports thereof will have a cascading effect on downstream industries, which will set inflationary trend across the economy.
- q. Petitioners have not reduced their prices, in spite of fall in LME prices and premium of PUC, by taking undue advantage of Rupee depreciation.
- r. Petitioners are controlling production much below their installed capacities through cartelization despite demand, so as to maximize their own profits to the detriment of public at large.
- s. Petitioners are not providing better commercial terms in respect of sale of PUC, which their overseas counterparts are providing. Consequently, users of PUC are forced to import PUC from overseas market for their own survival in the domestic and international market.
- t. Production of PUC by petitioners is increasing, both in absolute terms and in relative terms to all India production.
- u. Percentile of all India imports of PUC to all India production is ranging from 13% to 15% over the period of investigation. Hence, there is no sudden, sharp and significant surge in imports of PUC.
- v. Petitioners production is increasing, despite increase in imports.
- w. There is no substantial increase in imports vis-a-vis increase in production (on all India basis) in absolute terms.

- x. Exports of petitioners have substantially increased, both, in absolute terms and in terms of percentile to their production. Domestic operations of Petitioners are not affected by increase in imports.
- y. Export of Petitioners is higher than all India imports, both in FY 2014-15 and FY 2015-16.
- z. All India exports of PUC are substantially more than all India imports of PUC in FY2014-15 and FY 2015-16. Hence, there will be no impact of so called surge in imports over the Petitioners.
- aa. Both, sales (in absolute terms) and the market share of the petitioner companies have been increasing in spite of so called surge in increase in imports.
- bb. Petitioners have substantially increased their installed capacities over the period of investigation.
- cc. Installed capacity of the Petitioner is higher than all India demand.
- dd. Petitioners have improved their capacity utilization from 41% to 48%, that too, on the expanded base of installed capacity.
- ee. Both indexed sales and indexed production figures are consistently increasing.
- ff. Indexed inventory turnover ratio has improved from 1 to 3.45. Fall in the inventory holding is not due to surge in imports, but, due to production being lower than sales.
- gg. Level of employment is reducing from FY 2013-14 to FY 2015-16. During the same period, productivity per employee has improved considerably. Both these factors, taken together, augur well for the petitioners.
- hh. There is marked and sustainable improvement in the domestic sales, exports, production, installed capacity & its utilization and market share of the petitioners, both, in absolute and relative terms, as against the overall industry performance, despite their selling prices being higher than the global benchmark.
- ii. Profitability of the petitioners is lower due to heavy interest cost on account of substantial expansion of the installed capacity, operational set-backs, natural calamities, power and coal shortages, recession in both global and Indian economies and not attributable to the so called surge in imports.
- jj. There is no causal relationship between the so called surge in imports and the deterioration, if any, in the operating performance of the Petitioners.
- kk. Petitioners have filed application with the intention to profiteer by raising their prices of PUC in domestic market to the detriment of the public at large.
- ll. As per the press interview of MD, Hindalco in May, 2016 India's aluminium demand has moved into double digits; their revenues will not be lower than the current levels; margins of Hindalco will be improving; Aluminium price on LME are seen range bound. Premia of aluminium are expected to stay where they are; with the help of higher volumes, Hindalco will offset the impact of weak realization; there is increase in demand for aluminium and stabilization of aluminium prices and premium on LME. Hence, there is no threat of serious injury to the petitioner companies.
- mm. Expansion in manufacturing capacities, per se, in China and Middle East countries cannot be termed as unforeseen development, since manufacturing capacities are not built up overnight.
- nn. Drop in growth rate of Chinese economy leading to increased imports of PUC from China cannot be treated as unforeseen development, since it is in line with economic trends across the globe. No data is provided in the Petition, regarding import of PUC from China.
- oo. Middle East countries have lower cost of energy production, due to oil and gas reserves and freight cost advantage, due to their proximity to India. Hence, surge in exports of PUC from Middle East countries is not due to any unforeseen development. The same view has been taken by the Director General Safeguards in his earlier investigation on the import of PUC.
- pp. Petitioners cannot present adjustment plans to overcome these inherent advantages of Middle East countries over the foreseeable future. Hence, this Petition is devoid of any adjustment plan.

- qq. When the petition was filed, rate of basic customs duty was 5%, which was increased to 7.5% in the union budget, 2016. Hence, levy of safeguard duty over and above the increased basic customs duty is not warranted.
- rr. Petitioners have filed this Petition with a mala fide intention to enhance their own domestic selling price after the introduction of safeguard duty and thereby profiteer at the cost of general public.
- ss. PUC, being a basic raw material, levy of safeguard duty thereon will have a cascading effect on the downstream industries in terms of increase in their raw material cost and set inflationary trend in the economy.
- tt. Safeguard duty on PUC will result into inverted duty structure, wherein the rate of import duty on raw material will far exceed the rate of duty on the finished products and will have adverse impact on the viability of the downstream industries.
- uu. Since the downstream industry is fragmented, it is not possible to levy safeguard duty on their products, which will result into their collapse adversely affecting their viability.
- vv. Downstream industries are more labour intensive than petitioner companies and it will lead to mass scale unemployment.
- ww. Domestic sales, export sales, production, inventory, capacity utilization, all have improved considerably and the economic viability and sustainability of the DI is not at stake. There are no unforeseen events, causing surge in imports. Thus, there is no increase in imports in such quantities, so as to cause significant overall impairment to the Petitioners.
- xx. When there is no significant overall impairment to the Petitioners, levy of safeguard duty on PUC is not in public interest.
- yy. If levy of safeguard duty is prejudicial to public interest at large, safeguard duty is not leviable, even if significant overall impairment has been caused to domestic industry.

#### **B. Indonesia**

In accordance with Article 9.1 Agreement on Safeguard, the authority shall exclude developing countries from safeguard measures as long as its share of import of the product concerned in the importing member does not exceed 3 % provided that developing members with less than 3 per cent import share collectively account for not more than 9 % of total imports. Indonesia's share of imports is negligible (less than 3% of India total imports) and the accumulation of other developing countries is less than 9%. DG Safeguards may maintain the conclusion in part X of the Preliminary Findings in its Final Findings.

#### **C. Taiwan**

- a. A break-up of imports country-wise during the period under consideration should be disclosed as has been done in the past investigations.
- b. The unforeseen developments cited in the preliminary findings do not meet the legal threshold of Article XIX: (1) (a) of GATT. Developments should be unforeseen by the country when it acceded to the WTO and not by a particular domestic industry.
- c. Taiwan is a developing country and it should be granted the benefit of exception in terms of Article 9.1 of the Agreement on Safeguards.
- d. The facts of case demonstrate that there is no serious injury to the domestic industry in terms of Article 2.1 and Article 4 of the Agreement on Safeguards. Several economic parameters of the domestic industry, namely, production, sales, inventory, productivity per employee, employment had improved in the most recent period. While imports of the subject goods increased by 26% in 2015-16 (Annualised) in comparison to 2014-15, sales of the domestic industry increased by 32% in the same period. In fact, sales of the domestic industry were highest in 2015-16 (Annualised) when imports were highest. This breaks the causal link.

- e. The adjustment plan of the domestic industry should be disclosed to interested parties in non-confidential format as the same has been claimed confidential in the petition.

**D. Russian Federation, Ministry of Economic Development**

The Russian Federation reiterated the post initiation comments made by it.

**E. M/s Noida Aluminium Company Pvt. Ltd.; Inland Importers & Consumers Association**

- a. The interest of downstream industry has to be watched primarily since it is spread across the length and breadth of the country because it provides employment to millions of people and investment multiple times higher than these major producers.
- b. The DI should limit the petition to aluminium not alloyed under HS code 7601.10 only.
- c. The DI should be asked to submit import data of 7601.10 only which is just negligible. The figures of imports represented by them are inclusive of alloy ingots which is not a raw material but a product made out of unwrought aluminium.
- d. The downstream industry engaged in manufacturing of aluminium under HS Code 7601.20 is badly hit by imports specially from ASEAN countries under FTA.
- e. The industry needs to have an unrestricted, free and level field to compete in the international markets.
- f. The imports have increased and DI's domestic sales have also increased.
- g. The exports of not alloyed ingots have increased from 234% in 2011-12 to 372% in 2015-16. The applicants want to have a free hand to export the PUC inflicting injury to secondary aluminium manufacturers in India.
- h. As compared to other parts of the world where the industry gets aluminium ingots at a price of LME+ Premium, the applicants have priced the material in such a way that it includes components of LME+Premium + Custom Duty+ Logistic Cost (as in case of import) X \$ X Rs. Price.
- i. DI's plea of low realization is misleading. In fact they want to take advantage of increase in custom duty.
- j. In last budget when the import duty was raised to 7.5% from 5%, they immediately increased the domestic price by Rs. 3500 per MT.
- k. DI's taking 2011-12 as base reference year is to divert the attention since at that time LME was at its peak. They are benefiting due to Rupee depreciation. They are enjoying the downward trend of fuel cost which accounts to 45% of the production cost.
- l. Hindalco as per their audited financial report year ending 2016 is showing a sale increase by Rs. 3000 crores against year ending 2015. The decline in net profit is on account of increase in capitalization during the year resulting in increased depreciation. Report mentions that they have managed higher sales due to better utilization of the installed capacity.
- m. Applicants are into a cartel due to which the downstream industry is into a dying position with lots of extrusion, alloy and other related manufacturers pulling down the shutters.
- n. Applicant's export price is lower than their domestic sales price which shows that they are taking full advantage of the custom duty levied on the imports. If the material is offered to

the domestic industry at the price being exported, the import of the material will drastically fall.

- o. DI's capacity utilisation has increased from 2012 to 2016 and they are going for massive expansions. Their capacity is well utilised since they are using the PUC for manufacture of other value added products.
- p. The MSME sector related to aluminium is in a very bad shape and needs to be supported.

#### **F. Malaysia**

- a. Serious injury to DI could have been contributed by factors other than imports.
- b. The DI's installed capacity has been constantly increasing throughout the POI which could have impacted their operational cost and financial performance.
- c. The market share of imports was consistently between 11 to 15 per cent while the market of domestic producers was between 85 to 90 per cent which shows that imports have not replaced the market share of the DI.
- d. Whether there is a real need to impose safeguards measure may be assessed objectively.
- e. The safeguards investigation may be conducted in a manner consistent with the WTO Agreement on Safeguards.

#### **G. European Commission**

- a. The product scope covers aluminium ingots, aluminium wire rods and aluminium billets. However, these products are not interchangeable, their production processes differ and therefore they cannot be considered as directly competitive.
- b. Even if these products can be investigated within the same proceeding, the imports and their impact on the situation of the domestic industry need to be analysed separately for the three different products.
- c. Though overall imports have increased between 2014/15 and 2015/16, the increase was not sudden and sharp but rather gradual all along since 2011/12.
- d. While the market share of imports increased by around 5 percentage points, the petitioner's market share also increased by around 3 percentage points. The market share of other producers decreased significantly, which shows that imports have not affected the petitioners negatively.
- e. The ratio between import volumes and total domestic production has remained stable over the period of analysis and even decreased in recent years. The increase in production volume of the petitioners was higher compared to increase in imports. Thus, it is difficult to justify that the increased imports are causing or threatening to cause serious injury.
- f. The serious injury in safeguard investigations is a higher injury standard than material injury in anti-dumping and anti-subsidy investigations. However, in the current investigation, the main injury indicators such as production volume, domestic sales and employment show an increasing trend. Despite an increase of capacity of 40%, the capacity utilisation rate also increased by 10 percentage points.
- g. The only indicator showing a downward trend is profits, which seem to turn into losses in 2015/16 after the last capacity increase. In the absence of consolidated absolute figures, they

are not in a position to comment on the level of the profit or loss. In view of the favourable development of all other injury indicators, the decreasing profits suggest that other factors than imports have had an impact on the situation of the domestic industry.

- h. Causality: Capacity and capacity utilization, Indian price & cost levels, wages, captive consumption and domestic competition may be analysed. Capacity has been increased by 40% which has affected the industry as there is increase in interest paid. Import prices merely followed the trend of the LME while domestic industry prices remained far above the LME. The increase of cost of sales by 30% against an overall decrease in raw material prices seems to point to potential inefficiencies of the domestic industry.
- i. There is 150% increase in wages, while the number of employees increased by only 5%.
- j. The captive consumption has decreased by over 70% over the period of analysis. The reasons for this decrease and its effect on the situation of the domestic industry need to be analysed.
- k. The effects of domestic competition on the situation of the petitioners may be analysed by the authority.
- l. The criteria for the imposition of safeguard measures are not met.

#### **H. M/s Metal Recycling Association of India (MRAI)**

- a. The levy of safeguard duty on unwrought aluminium would be a premium on purse of the secondary producers.
- b. The move of primary producers is to monopolize the market and get rid of the secondary producers.
- c. Previously, the applicant had demanded implementation of safeguards which was rejected. Analysis of the present demand would fetch the same conclusion.
- d. As per the Safeguard Agreement, safeguard is defined as emergency.
- e. The capacity utilization and production figures submitted by the primary producers state that there is an increase in production and capacity utilization as well.
- f. There is a steady increase in imports between 2011-12 and 2013-14. In 2015-16 there is a fall in imports.
- g. If export to production figures are taken into account, they too show that there is hardly any injury to the applicant. This has harmed the secondary producer & primary producers through this move created a cartel and thereby monopolistically determined domestic selling prices.
- h. Available export/import figures indicate the percentage of export/ import of not alloyed ingots have increased from 234% in 2011-12 to 403% in the first quarter of FY 2016-17. Thus the demand to impose safeguards on imports while allowing free exports is irrational.
- i. There was hardly any injury to the domestic industry.

#### **I. United Arab Emirates (Ministry of Economy)**

- a. An objective assessment of the trends evidences that there has been no sudden, sharp and significant increase in imports of unwrought aluminium into India. It is not enough for an investigation to show simply that imports of the product this year were more than last year - or five years ago...not just any increased quantities of imports will suffice. There must be such



- 'increased quantities' as to cause or threaten to cause serious injury to the domestic industry in order to fulfill this requirement for applying a safeguard measure.
- b. A close examination of the developments reported in the DG Safeguards preliminary findings demonstrates that they do not qualify as 'unforeseen developments' within the meaning of India's WTO obligations. DG Safeguards asserted that the very significant increase in production capacity of aluminium in the Middle East backed with by very low energy cost was unforeseen. They see no reasonable explanation why it would be unforeseen to the domestic industry that a place with 'very low energy cost' had new capacities of production. A finding that existence of unforeseen developments resulted in the increase in imports cannot be justified and therefore the first prerequisite for the imposition of a safeguard measure is not satisfied.
  - c. There is no positive evidence that the alleged increased imports are causing or threatening to cause serious injury to the applicants, in line with Article 4.1. (a) of the SG Agreement which establishes a very high standard to determine injury. The data concerning capacity of production, capacity utilization, production, domestic sales, exports, number of employees and wages significantly increased during the period of investigation. The market share of domestic industry increased. The domestic industry is not suffering from any serious injury.
  - d. DI's performance further improved since the previous safeguard complaint was filed in 2014, where the DG Safeguards properly concluded that the domestic industry did not suffer from a serious injury.
  - e. There is no causal link between the alleged injury and any increase in imports. Neither the application for the initiation of safeguard investigation nor the DG Safeguards preliminary findings provide compelling explanation or sufficient evidence about the existence of a causal link between increased imports and the alleged serious injury. When the level of imports increased in 2015-2016, the domestic sales, capacity of production, market share, production, installed capacity and productivity also increased.
  - f. The sudden decrease of the domestic industry profits is direct consequence of the LME pricing fluctuations.
  - g. The conditions for the continuation of the safeguard investigation are not met under the Rules.
  - h. The investigation should be terminated without the imposition of a remedy.

**J. M/s Hero Motors Corp. Ltd.**

- a. They are a user of unwrought aluminium in automobile sector. Unwrought aluminium is mainly consumed by auto mobile sector, consumable durables including utensils, automobile, housing and packaging sectors.
- b. Proceeding carried out by DG (Safeguards) is in violation of principle of Natural justice. DG (Safeguards) has not even waited for the mandatory period to lapse and issued its preliminary findings in haste. This deprived the interested parties of their right to participate at the critical stages of the investigation.
- c. Directorate General (Safeguards) did not have complete and comprehensive information when the Preliminary Findings was issued.
- d. Domestic Industry had sought undue and unwarranted protection in years 2009 & 2014 and the proceedings were terminated/ safeguard duty was not recommended. There is no change in the overall economic and financial condition of the Applicants.
- e. The Directorate General (Safeguards) could not have proceeded with the investigation and come out with Preliminary Finding as no adjustment plan was filed by DI.

- f. DG (Safeguards) must look at the performance of DI for the most recent period. Hindalco's financial results for first quarter of accounting year 2016-17 clearly establish that it has made bumper profit and there is no serious injury to the Domestic Industry.
- g. The Preliminary Finding is silent on the issue of public interest. Aluminium is one of the most important raw materials used by the core sectors of the economy i.e., automobile, power, consumable, utensils, packaging & housing sectors. Any action of the government to make aluminium expensive will adversely affect the downstream industries. Any move to destabilise automobile manufacturers will further aggravate the grim situation of employment.

**K. M/s Indian Electrical & Electronics Manufacturers' Association (IEEMA)**

- a. The primary producers of aluminium should agree and undertake to provide supplies to all IEEMA members, against fixed price contracts of cables, conductors, transformers and/or any other electrical products, for the entire project supply period, without taking the impact of any hypothetical imposition of any safeguards duty into consideration.
- b. It is always the basic principle to have a lower duty on raw materials than on finished goods. But in the previous budget, the rate of import duty on aluminium was increased from 5% to 7.5%, and hence the rate of import duty on raw materials and finished goods for cables, conductors etc. is same as that of finished goods.
- c. Before any safeguards duty is imposed on the primary aluminium, substantial duty protection should be given to finished goods such as cables, conductors, transformers or any other product group which uses aluminium as a component of raw material, to nullify the incidents of inverted duty structure, and protection should be greater than the quantum of safeguards duty, if imposed.
- d. The applicable duty under Project Imports is only 5% and already the import duty on most of the components of the electrical industry is up to 10%, thus resulting in a negative differential. Prior to any imposition of safeguards duty, a long term solution to the electrical equipment industry for addressing the inverted duty structure, prevalent under chapter 98, under Project Imports should be provided.
- e. The transformers, cables and conductors and any other products currently manufactured in India should not be allowed to be imported under Chapter 98.
- f. Imposition of safeguards duty on 5 micron aluminium foils, imported under HS code 7607 at 0% will create serious inverted duty structure since the finished goods i.e. capacitors, is also at 0% customs duty. Aluminium foil, under HS code 7607, should be kept out of the purview of safeguards duty.
- g. In order to reduce imports against exports, the local primary producers should be asked to supply duty free material on LME basis, without charging an undue premium.
- h. The implications on the local downstream industry may be evaluated and its protection should be ensured.

**L. M/s Aluminium Secondary Manufacturers Association**

- a. Production of domestic industry has not come down but on the contrary all the 3 applicants have increased their production. The applicants have made huge investments for increasing their production capacities and continue to increase further by making regular investments. When the applicants are able to increase their production and sell the entire production, they cannot claim that they have suffered any injury due to imports.

- b. DI's profitability has come down but none of the producers are suffering loss. The reasons for the reduced profitability are low international price of aluminium metal prevailing in the global economy and huge depreciation and interest cost incurred due to investment made by DI for increasing capacity. Hence, imports have not affected their profitability.
- c. The applicants are already enjoying at least 13% protection. There is already import duty of 7.5% ad valorem (effectively 8.25%) and they are adding another 5% towards clearing and forwarding charges on the imported metal. Hence, price of aluminium metal in India is at least 13% higher than the price of aluminium metal prevailing elsewhere in the world. There is absolutely no need to consider any further protection to the applicants.
- d. The petitioners' indexed data prove 5% increase in level of employment over 2011-12. The applicants have increased their capacity in last 5 years considerably and they are running to their full production capacity. As there is no reduction or retrenchment in the manpower by the applicants there cannot be any injury to them and levy of safeguard duty is not justified.
- e. The applicants have failed to prove any surge in import quantity of aluminium metal as 15% increase in imports by no means can be considered as surge in imports.
- f. Profitability of the applicants has come down due to reduction in international price of aluminium metal. They are seeking levy of safeguard duty to increase their price just to gain unjustified profits.
- g. Imports are taking place mostly under advance licence against export made by small secondary manufacturers.
- h. The submissions of applicants that there are cheap imports of aluminium metal from China and Middle East are absolutely false and misleading. Govt. of China levies 5% export duty on export of aluminium metal from their country due to which no import of primary aluminium metal is taking place from China to India. Price of imported aluminium metal is fixed based on the price prevailing in London Metal Exchange (LME) which is uniform world over. The formula for import is LME + MJP + Import duty (8.25%) + 5% clearing and forwarding charges. The applicants are also fixing their price in the same manner and based on the change in LME price.
- i. The applicants are exporting their metal to various parts of the world since production is more than the domestic demand. They are exporting metal at LME Price + Premium as prevailing at the time of export and making profits.
- j. LME price has gone up during 2016-17 compared to 2015-16. The applicants made reasonable profit during 2015-16, naturally they will be making much more profit during current financial year.
- k. On earlier two occasions DI's requests for safeguard duty were not found justified.
- l. Based on hot metal production, capacity utilisation of DI is almost 100%.
- m. Aluminium Association of India does not represent the entire aluminium industry.

**M. M/s Jindal Aluminium Ltd.; Century Extrusions Limited**

- a. Apart from items under Chapter 76.01, petitioners manufacture wire rods, slabs, sheets, circles, extrusions and foils also. Since all these products are made out of hot metal only, the installed capacity calculated with respect to hot metal only will give the real situation. The Petitioners' claim that their capacity utilization has come down to 48% is incorrect and all of them are running at 100 % of their capacity. When capacity utilization has improved there is no injury.

- b. The installed capacity of 32.58 lacs MT shown in the petition is over inflated and not fully in operation. Vedanta's 1.25 million tonne smelting plant in SEZ, Jharsugda is not fully on stream due to power and alumina issues The over inflated capacity is taken to intentionally show low capacity utilization.
- c. Imports have shown a marginal increase only in absolute terms from 2011- 12 to 2015-16 but as a percentage in terms of production, it has remained at almost at the same level and increased slightly. It was 13% of production in 2011-12 which increased to 15% in 2015- 16. Even otherwise, the increase of 78% in 4 years is not at all alarming but is quite normal and cannot be treated as 'spurt' calling for imposition of safeguard duty. The petitioners own production has also increased by 76% and their exports increased by 336%. Petitioners installed capacity and domestic sales also increased by 40%.
- d. As bulk of import is being done on duty free basis on advance license against exports it can't be stopped totally.
- e. Details of quantity imported against advance licence will reveal actual quantity of duty paid imports.
- f. Downstream industry is forced to import aluminium against their Advance License, since petitioners do not want to supply aluminium against these licenses at LME rates without payment of duty and taxes.
- g. Frequent attempts made by them in the past to source primary aluminium for exports against advance license from the local producers failed to yield any positive result.
- h. The applicants export aluminium on LME terms but it is denied to local downstream manufacturers at the same price. DI's exports realization is at least 13% less still they are earning profit whereas for domestic supplies their price is already higher.
- i. It is wrong to say that cost of imported aluminium is cheaper, since the prices of applicants are linked to import parity and is same that of cost of imported aluminium, prevailing time to time. If safeguard duty is imposed the applicants will increase their prices and imports will continue. They don't incur some of the costs like customs duty, clearing and forwarding charges etc. but still add these in their local prices and make additional gain of 13-14% compared to their counterparts abroad.
- j. Petitioners have been benefitted by depreciation of Indian Rupee against the US Dollar as Indian Rupee has depreciated nearly 39% between 2011 and 2015.
- k. There are no cheap imports of aluminium metal from China and Middle East as alleged. There is export duty of 5% on export of aluminium metal from China. The imports from Middle East are based on LME price, hence not cheaper.
- l. Claim of petitioners that increased imports have affected their financial situation and reason for their continuous losses, is baseless.
- m. Hindalco has been earning profits regularly and their profit for the first quarter ended April-June'16 jumped to Rs 294 Crores compared to Rs 61 Crores in the corresponding quarter of 2014-15.
- n. Nalco has also earned net profit in April –June 2016.
- o. The profitability of petitioners is slightly affected presently due to increased burden of depreciation, finance expenses on huge capital expenditure in creating additional capacities.
- p. As per statement issued by Hindalco while announcing their financial result for the FY 2015-16, their profit during FY 2015-16 is Rs. 607 crores; profit is less due to depreciation and high finance cost on increased capital expenditure on capacity expansion; they are working at full capacity since they have completed all their expansions; finance cost will be less henceforth and profit will increase; nowhere it is stated that their profit is less due to surge in imports.

- q. The DI has said that the falling premium is the reason of their reduced prices in the domestic prices. Premium has never been considered or meant to be a profit increasing factor and at even at low premium, the Petitioners are earning huge profits.
- r. Just like any other commodity, aluminium is also prone to fluctuations and is on downward trend. The petitioners can't make the prevailing low prices of aluminium as the basis of requesting for safeguard duty.
- s. These vital signs which prove injury to an industry are totally absent. Inventory has rather reduced in 2015-16 compared to 2011-12 even with appreciable increased production and sales between these periods. The manpower has also increased by 5%.
- t. The industry which doesn't show any signs of retrenched employees, no unutilized capacities, no abnormal decline in profits, can't be treated as under threat.
- u. The Middle East producers import alumina at very high cost whereas the primary producers in India have the natural advantage of local bauxite of one of the best quality and coal.
- v. The salary and wages cost of employees are minimum 40 to 45% higher for Middle East manufactures compared to India. The suppliers from Middle East are also fixing their selling price of aluminium metal at international price on the basis of LME as is done by Indian producers. Thus, there is no cheap import of aluminium from Middle East.
- w. Aluminium Association of India is basically governed by primary producers and is not the representative of secondary manufacturers as being claimed.
- x. Imposition of safeguard duty will hit the secondary manufacturers very hard when they are already reeling under stagnant demand, fall in exports and increasing losses. Many small and medium companies are on the verge of closure due to large scale import of aluminium secondary goods from China, subsidized by their Government due to 13% export subsidy. Imported secondary products from China will also become cheaper.

**N. M/s. Aluminium Bahrain B.S.C**

- a. Violation of Principles of Natural Justice: The Exporter submits that the investigation has been and continues to be conducted in violation of recognised and established principles of natural justice. It is a recognised principle that all the evidence which the authority wishes to use against a party should be placed before the party for his comment and rebuttal, otherwise it will be against the rule of fair hearing.
- b. Rule 6 of the Safeguard Rules lays out the principles which should govern any safeguard investigation by the DG Safeguards. In the investigation which is at a sufficiently advanced stage, the Exporter has no clarity as to which data pertaining to the domestic industry should be relied upon in order to make its submissions.
- c. No definitive information is on record: Since initiation of investigation five different documents with different information have been made available and there is no directive from the DG Safeguards as to which document should be relied upon by the interested parties to submit their views and comments. There is no consistency with respect to the period for which the data has been provided.
- d. In the petition, there is no clarity with respect to the exact months of the 2015-16 financial year that was taken into account. The import statement provided in the Petition considered data from April 2015 to January 2016. For volume data of the Petitioners, the period till March 2016 was considered. For price parameters e.g. profits no period has been identified at all. In fact they don't know which months of the FY 2015-16 were taken into account.

- e. Revised data in the letters dated May 23 and 24, 2016: The data which was provided by the Petitioner vide their letters was based on the period from April to December 2015 (Annualized). The Petition covers data upto March 2016 (at least with respect to volume parameters), the updated data filed on May 24, 2016 provides data for a reduced period and then annualizes it. The updation of data is not carried out for all the data which has been provided.
- f. First Verification Report contains data with respect to few parameters and it is completely silent with respect many other crucial parameters like profits/losses, return on capital employed, price undercutting and price underselling, wages, interest and so on.
- g. Second Verification Report provided data up to June, 2016. However, it is completely silent with respect many other crucial parameters like profits/losses, return on capital employed, price undercutting and price underselling, wages, interest and so on.
- h. The Petitioners, after the Public Hearing, have submitted another set of data. This data suddenly contains information with respect to SEZ units of the Petitioners about which there was no mention until the Public Hearing. They strongly object to furnishing of new data at this stage of the investigation and the same should not be taken on record. Even this updated data is fraught with inconsistencies.
- i. The revised data does not clarify which months of FY 2015-16 have been taken into account and whether the data has been annualized.
- j. The data is materially inconsistent with the second Verification Report.
- k. While the revised data provides information of all domestic industry, the data with respect to individual Petitioners have not been updated. The DI had submitted company-wise data through May 23, 2016 letter but the same has not been updated. The Revised data post public hearing has segregated the Injury Information of the DI on the basis of the unit falling under a Special Economic Zone ("SEZ"), but the months which have been taken into consideration have not been mentioned. The Petitioners have consistently been ambiguous and failed to provide clarity with respect to the data and the period for which the data is being provided and thus raising questions on the reliability of the data provided.
- l. The Exporter has in effect no access to information to which it may offer its views. This is not only in violation of Rule 6 of the Safeguard Rules, but also negates the Exporter's right to fair hearing.
- m. Inconsistencies in the data submitted by the Petitioners: The data in the five documents are materially inconsistent to each other. The injury data provided in the revised data post public hearing, the second Verification report, the first Verification Report, the updated data provided by the Petitioners vide their letter dated May 24, 2016, and the Petition are inconsistent not only for the data provided in the Period of Investigation but even for the preceding years.
- n. Once the second Verification Report was issued, the information on the parameters included in the verification report was frozen. However, the revised data submitted by the Petitioners post-public hearing contradicts the second Verification Report.
- o. The data for domestic sales, export sales, captive consumption, domestic sales value, export sales value, and stock differ between second Verification Report and the revised submissions made by the Petitioners post-public hearing
- p. Keeping the second Verification Report as base, a comparison of the data reported in five documents i.e. the Petition, letter dated 24 May, 2016, first Verification Report, second Verification Report and the revised data submitted post-public hearing shows variances.
- q. The data provided by the Petitioners post-public hearing differs significantly from the data recorded by the DG Safeguards in its verification report. The verification report issued by the DG Safeguards is conspicuously silent on several crucial economic parameters. Given the inconsistencies in the data provided by the Petitioners, the data cannot be relied upon.
- r. They request DG Safeguards to first notify the interested parties on data/information for all the relevant economic parameters of the domestic industry, as may have been verified by the DG

Safeguards. The DG Safeguards may then provide reasonable time to the interested parties to offer their comments and schedule another public hearing so that interested parties may have all relevant and verified information to comment upon. If investigation continues without giving access to verified data for a defined period of investigation, this would be in blatant violation of the principles of natural justice.

- s. The Petitioners have claimed excessive confidentiality with respect to the injury information submitted by them on 24th May 2016. The Petitioners have indexed all the information which was not indexed in the Petition in complete violation of the requirements of Trade Notice issued by DG Safeguards.
- t. No adjustment plan was provided by the Petitioners in the non-confidential version of the Petition which is an outright violation of Trade Notice. The interested parties cannot make any meaningful submissions on the adjustment plan without any information.
- u. The DG Safeguards, during the public hearing, directed that the non-confidential version of the adjustment plan would be made available in public file. The same was made available on October 6, 2016 i.e. just a day before these written submissions were due.
- v. The non- confidential version of the adjustment plan provided by the Petitioners at late stage of the investigation does not provide a meaningful summarisation, contains serious deficiencies and the Petitioners have claimed excessive confidentiality. This severely impaired the Exporter's right to make any meaningful submissions.
- w. The Petitioners have merely stated that they will reduce power consumption, various raw material consumption, administration and selling cost, and increase capacity utilisation without providing any explanation on the process that will be adopted. It is impossible to gauge whether the plan laid out by the Petitioner is feasible.
- x. DG Safeguards may make call for a revised non confidential version of the adjustment plan from the Petitioners which would include indexed figures for the data provided and a detailed explanation for the measures.
- y. The Petitioners have not filed updated information with respect to the import data even when the data for full FY 2015-16 (421,963.70 MT) is available on DGCI&S database. Annualization of data for a ten-month period (432,925 MT) offers skewed results favouring DI.
- z. The Petitioners in order to simulate an increase in imports have analysed data from 2007 to 2016 while the injury parameters have been analysed from the year 2011 to 2016.
- aa. The phrase "such increased quantities" imply that the increase in imports must be sharp enough, sudden enough, significant enough and recent enough.
- bb. The increased quantities of imports should have been "unforeseen" or "unexpected". Just any increased quantities of imports will not suffice. There must be "such increased quantities" as to cause or threaten to cause serious injury to the DI.
- cc. Given the requirement of recent enough increase, the Exporter submits that the DGSG must not consider import data from 2007 and rather it must focus on most recent data. The DGSG must call upon the Petitioners to submit most recent data.
- dd. The alleged increase in imports is not sudden or recent. The increase in the imports from 2007-08 to 2011-12 was 143% and from 2011-12 to Period of Investigation was 178% which proves that the increase in imports is not a recent or a sudden occurrence.
- ee. The establishment of "unforeseen developments" requires the demonstration of developments which were "unforeseen" or "unexpected"; such developments were of the effect of the obligations incurred by a Member under the GATT; these developments led to the increase in imports. The Petitioners have failed to elucidate in the Petition as to what developments were unforeseen and any linkages between such developments and increase in imports. The events laid by the DG Safeguards in preliminary findings cannot be considered to be unforeseen circumstances as the required three conditions have not been successfully substantiated and evidenced by the Petitioner or the DG Safeguards. The DG Safeguards has itself previously in the Final Finding of the

Safeguard investigation concerning imports of 'Not Alloyed Ingot of Unwrought Aluminium' into India Notification dated October 7, 2014 ruled that the events cannot be considered as 'unforeseen developments'.

- ff. If there is indeed a surplus of the PUC in China, there should have been significant imports from China. Whereas the data submitted by the Petitioners themselves show that imports from China are approximately 2.6% of total imports of the PUC in India.
- gg. In absence of any 'unforeseen developments', there is no merit in the present investigations and hence, it must be terminated forthwith.
- hh. The DI is not suffering from any injury, let alone serious injury. For purposes of submission, they have to the extent possible, considered revised data submitted by the Petitioners post-public hearing.
- ii. In the revised data submitted by the Petitioners post-public hearing, two versions of injury information have been provided: (i) excluding SEZ units; and (ii) including SEZ units. The exporter submits that a SEZ unit is primarily an export oriented unit. Almost all sales made by an SEZ unit are sold in export market and they do not enter the domestic merchant market. Therefore, the production and sales of a SEZ unit is not impacted by the conditions of competition in the domestic market and accordingly there is no reason for including SEZ unit into the 'domestic industry'. This principle has been adopted by the DG Safeguards in the past in the Final Finding of the Safeguard investigation concerning imports of electrical insulators into India from Peoples Republic of China dated September 27, 2012.
- jj. They have considered the injury data (excluding SEZ unit) for the purposes of the submissions.
- kk. As per Safeguard Agreement 'serious injury' is understood to mean a significant overall impairment in the position of a domestic industry which is very high & exacting standard of injury. The word 'serious' connotes a much higher standard of injury than the word 'material' envisaged under the Anti-Dumping Agreement. A safeguard action must be seen as extraordinary.
- ll. The data submitted by the Petitioners shows that there is no injury, let alone serious injury.
- mm. The production of the domestic industry has increased by 52% over the POI, domestic sales & domestic sales value have increased by 32% over the POI.
- nn. The company wise profitability information provided by the Petitioners evidences that the two of the Petitioners i.e., Vedanta and Balco are making huge profits and hence cannot be considered as injured. Since two of the Petitioners have clearly made profits during the Period of Investigation, any losses suffered by Hindalco cannot be attributed to imports. However, Hindalco vide their Annual Report 2015-16 have stated that they are experienced an upward trend in the profitability.
- oo. The revised data submitted by the Petitioners post-public hearing shows that the price undercutting is negative throughout the period of investigation. Thus there is no injury with respect to price parameters.
- pp. Safeguards Agreement requires that any injury alleged must be a consequence of the surge in imports. In the present case there is no causal link between alleged injury and increase in imports.
- qq. A causal link examination requires the examination whether an upward trend in imports coincides with downward trends in the injury factors, and if not, whether an adequate, reasoned and reasonable explanation is provided as to why nevertheless the data show causation; Whether the conditions of competition between the imported and domestic product as analysed demonstrate the existence of the causal link between the imports and any injury; and whether other relevant factors have been analysed and whether it is established that injury caused by factors other than imports has not been attributed to imports.
- rr. If the profitability of each of the Petitioners is analysed, no correlation can be drawn between the imports and the Petitioners' profitability. Increase in the import volume has not affected the profitability of the Petitioners. For example in 2014-15, the imports rose 42 index points from the base year and in the same time period, the Petitioners' profits increased by 54 index points from the base year. In 2014-15, the imports reduced by two index points and in the same period, the



- profits of Hindalco dropped to 14 index points. Vendata's profit in 2014-15 was indexed at -509 while during the same year Balco's profits rose to as high as 832 index points. Balco's profitability increased over the POI to 2487 index points with increasing imports. The imports into India have been consistently increasing while the profits of the Petitioners have been fluctuating due to reasons which cannot be attributed to the imports. Thus, the profitability of even one of the Petitioners cannot be correlated to the imports.
- ss. There is no correlation with the sales of the domestic industry and the imports. The imports and the sales volume have been consistently increasing over the POI. The import volume during the FY2015-16 has increased by 36 index points from the previous year while the sales volume of the domestic industry also increased by 38 index points during the same period.
  - tt. During the year 2013-14, the import prices increased by 5 index points and that was the same period when the Petitioners' profitability declined by 15 index points. Clearly, there is no causal link between subject import prices and the profitability of the Petitioners.
  - uu. In the present case, movement in the economic parameters do not bear any correlation with import volume which implies that either the data submitted by the Petitioners is erroneous or there are factors other than imports which have caused alleged injury, if any, to the Petitioners.
  - vv. It is clearly established that there is no causal link between the import volumes and economic performance of the Petitioners.
  - ww. The alleged injury suffered by the Petitioners has been caused due to various factors other than the alleged increased imports.
  - xx. The information with respect to the interest has been provided by the Petitioners vide their letter dated May 24, 2016 and the revised data provided post the public hearing is inconsistent and not even showing the same trend for the interest paid during the injury period.
  - yy. There is an increase in the interest by almost 500% during FY 2015-16 when compared to the base year. Therefore, the alleged injury to the Petitioners are more on account of the high interests cost and not due to alleged increase in imports.
  - zz. The largest cost in manufacturing aluminium apart from alumina is the cost of power. The Indian domestic industry has faced substantial obstacles with regard to power and energy costs. Hindalco's Annual Report 2015-16 states that 'The cost deflation, especially energy costs coupled with depreciation of several local currencies vis-a-vis USD resulted in a downward shift in the aluminium cost curve thus putting pressure on the LME prices. However, now the prices appear to have bottomed out.'
  - aaa. The global pricing of aluminium is largely influenced by the London Metal Exchange (LME). Due to severely fluctuating prices as per the LME, prices across the world have been affected adversely, including the domestic industry. Hindalco's Annual Report 2015-16 states that 'Average aluminium LME was 16% lower than the previous year while the premiums were sharply lower by 68% as compared with FY 15.'
  - bbb. From the substantial non-attributive factors highlighted by the domestic producers themselves, as well as the break in causal link indicated by the Petitioners' own figures, it is evident that there is no causal link in the present investigation correlating the surge in imports to the injury suffered by the domestic industry.
  - ccc. The Safeguard Agreement allows for interested parties to comment on whether or not the safeguard application is in public interest. A levy of the safeguard agreement would be contrary to the public interest as it would adversely affect the user industry and the same can be evidenced from the submissions made by the user industry.
  - ddd. For smaller conductor manufacturers, the conversion cost of wire rods from ingots is less than 5%. Therefore, imposition of safeguard duty above 5% would result in serious losses to all wire rod manufacturers.

- eee. In power cable business, power cables comprise of around 60% of aluminium which is covered under the product scope of the present investigation and it operates on wafer thin profitability due to which any increase in the cost of manufacture would adversely affect the mentioned sector.
- fff. Due to these reasons, the DG Safeguards may terminate the investigation as the imposition of the safeguard duty would not be in the public interest of the user industry and the consumers of the PUC.
- ggg. The basic customs duty on the product under consideration has increased from 5% to 7.5% on February 29, 2016. Therefore, the domestic industry has already received a benefit even when they have suffered no injury. The increase in basic customs duty must be taken into account.

**O. M/s Hydro Aluminium Asia Pte Ltd, Singapore; Rockman Industries Ltd.; Endurance Technologies Ltd.**

- a. M/s Vedanta's statement in press in October, 2016 shows that the aluminium sector is going upward and the company is very comfortable that the prices are moving at the right level. Therefore, there is no need for imposing safeguard duties and the case qualifies termination.
- b. Safeguard measures are extraordinary remedies to be taken only in emergency situations. Recourse to safeguard measure should be taken only when there is a very strong case on merit and there is no alternative other than imposition of duty to save a dying domestic industry.
- c. Present safeguard investigation was initiated and preliminary safeguard duties were recommend by not bearing in mind this fundamental principle set out by the WTO. This renders the investigation untenable as the petition no where proves any emergency situation concerning domestic industry of subject goods which warranted extra ordinary measures in the speed and manner in which the process of investigation and recommendation of Safeguard duties have been carried out.
- d. PUC selected is too wide and have been placed together heterogeneous products under one PUC. A definition "Unwrought Aluminium falling under customs heading 7601" is not only vague but it does not clearly identify the 'product' which is imported against which safeguard duty is sought by the applicants. There is lack of clarity and preciseness vis-a-vis the definition of PUC put forth by the domestic industry.
- e. Section 8B (1) of the Act read with Rule 4 enjoins a duty on DG Safeguards to specifically identify the article liable for Safeguard duty. From the scheme of the Act and the rules it is clear that PUC (imported article) needs to be identified in singularity. There may be plurality of articles which can be called like articles manufactured.
- f. The PUC in the present investigation in effect covers two broad categories, that is aluminium alloyed and not alloyed and various subcategories and types having significant differences in raw materials, basic physical properties and different end uses etc.
- g. The petitioners are producing only aluminium not alloyed category and they are not the manufacturers of goods falling under aluminium alloys. Aluminium alloys falling under subheading 760120 should not be included in the scope of PUC.
- h. As per Customs, aluminium alloys are subcategorized into primary alloys made from virgin metal & secondary alloys made from scrap or a mix of scrap and virgin metal. Consideration of PUC at 7601 level itself would lead to inclusion of a wide range of distinct product with its features, properties and end uses under one umbrella which is highly unfair and flawed.
- i. There is significant difference in the raw materials to produce aluminium not alloyed and aluminium alloys and in their end uses. Basic product properties are different.
- j. Petition admits significant price difference between alloy and non- alloy products and that significant volume of imports are of alloy grades and majority of sales of domestic industry is non- alloy grades.

- k. The non- alloyed products which are not supplied by the petitioners are apparently included in the PUC to inflate the import figures.
- l. Aluminium not alloyed and aluminium alloys are neither interchangeable nor substitutable inter se.
- m. The petitioners are not manufacturing aluminium alloys, leave aside the very specific products like A356 series within aluminium products. The petitioner cannot shoot over the shoulders of certain other producers of aluminium alloys in India by demanding duties on aluminium alloys.
- n. Aluminium not alloyed manufactured by the domestic industry is not like article to the aluminium alloys imported from various countries.
- o. Price of the product ranges from Rs.99 per Kg. to Rs 2447 per Kg. as per the import data given by applicants. Such distorted price is the result of a faulty PUC determination and erroneous product bucketing done by the petitioner.
- p. The application filed by the DI does not stipulate the types of goods produced by them across the subheadings. The DG may direct the DI to share with them the list of products claimed to be within the PUC category produced by them.
- q. They request exclusion of aluminium alloy ingots of A356 series which is not produced by DI from the scope of PUC to avoid unjust hardships to the automotive industry.
- r. The fundamental legal prerequisites of a safeguards case are not met in the present investigation.
- s. The information is not up to date actual information. The import for the period 2015-16 is provided based on annualised data with actual information up till January 2016. The petitioner should provide updated information for the most recent period and that also on quarter to quarter basis. DG Safeguards may provide transaction wise data of imports as per DGCI&S to see the factual position of imports. There are serious infirmities in the summary data being used by the applicants.
- t. There is no sudden and sharp increase in imports of PUC into India as alleged by the petitioners.
- u. The increase in import is a gradual and over the years growth and not a sudden and sharp increase. It is highly unfair to conduct an end to end analysis by taking only 2011-12 imports and 2015-16 imports into consideration. Actual imports during 2015-16 need to be seen on actual basis first with a quarterly breakup. Also more than 6 months have lapsed since March 2016. A quarterly examination of imports during FY2015-16 and till the last quarter i.e., July to Sep 16 is highly essential in the present case.
- v. The share of the imports in total demand remained at a meagre 15% during 2015-16 and 85% of the market share is very comfortably held by the domestic industry.
- w. The import data clearly shows that there is no sudden and sharp increase in imports in recent times.
- x. There are no unforeseen developments which may have triggered the alleged situation of injury. There must be a "logical connection" linking the "unforeseen developments" and an increase in imports of the product that is causing or threatening to cause serious injury. To support the claim of unforeseen developments the petitioner has relied upon certain feeble and unsubstantiated claims such as increasing capacity in Middle East countries; Chinese producers also started exporting; Cheap energy cost in middle eastern region; Decline in sea freight from Middle east; Export tax on primary aluminium and tax rebate on value added products from China PR and China building stocks.
- y. The petitioners have identified most of the factors as attributing to increased imports qua China but entire imports from China PR during the latest period was less than 3% of the total imports into India. The allegations about Middle East countries are more of possible subsidies given to them or the cheap cost in such countries etc. The data itself refutes the claim of the petitioners. The gap in consumption and production identified by the petitioner for Middle East in 2015 stood at same numbers during 2016 also. So there is no question of this factor triggering increase in imports during 2015-16.

- z. None of the factors identified by the petitioners can be considered to have contributed to a sudden and sharp increase in imports of PUC into India.
- aa. The PUC which is a commodity traded as per LME rates plus premium and exchange rate adjustments, have been facing LME price fluctuations and fluctuation in LME rates does not call for imposition of safeguard measures which has serious ramifications on the large number of users in India.
- bb. The attempt of the domestic industry is only to enhance their profit by getting safeguard duties imposed.
- cc. The alleged unforeseen developments, alleged increase in imports and alleged injury in the petition has no logical connection and investigation is liable to be terminated.
- dd. As per the Agreement on Safeguards "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry and "threat of serious injury" shall be understood to mean serious injury that is clearly imminent. Director General (S) is required to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of industry.
- ee. Their preliminary objection to the injury data in the PF and also in the petition is that the relied upon data is not the actual data for the recent period and the same suffers huge infirmities because of the wrong PUC determination. Correcting the import data after carrying out essential changes in the PUC would show no sharp increase in imports.
- ff. The key parameters such as capacity, production, sales and capacity utilization have tremendously increased over the years and through the recent period when the domestic industry is alleging serious injury. A robust volume situation is simply not possible if sudden and sharp increase in imports on account of unforeseen developments was adversely affecting the domestic industry.
- gg. It is not just capacity, production and sales have also increased, even capacity utilization has increased and was at the highest levels vis-a-vis previous years. There is no possibility that DI may have faced serious injury when the volume parameters showed such robust situation. Any claim of injury in such a situation is highly disputed and requires crucial examinations by the DG Safeguards.
- hh. Not only capacity utilization and production of the domestic industry increased over the years, the domestic industry has disproportionately high capacity qua the Indian demand. The domestic users cannot be asked to bear any brunt of such excess capacities set up targeting the export markets when it is an admitted fact that domestic industries have their plants on SEZ and EOU area which are set up targeting exports.
- ii. The burden of such excess capacities such as fixed cost burden, interest burden etc. must be investigated before reaching to any conclusion on injury to the DI. The cost of the DI and their fair price should be worked out considering normated capacity utilization at least at 80% and not otherwise.
- jj. Any pressure of such excess capacities on cost of production due to fixed costs like finance/interest, depreciation etc. could be the reason of any decline in profitability and such declines cannot be attributed to imports especially when the producers have SEZ/EOU units.
- kk. Inventory level improved which is a positive sign amidst claims of serious injury. The closing stocks with the DI declined significantly and remained at a negligible point. Thus, the entire claims of injury are false.
- ll. Situation of profitability cannot be attributed to imports and no serious injury is apparent. There has been a sharp increase in the interest cost of the DI and the same has increased from 100 points in the base year to 390 points in 2015-16. The price undercutting situation during 2015-16 cannot be seen in isolation. It is important to identify the causes which have been impacting the profitability of DI in the period 2011-12 to 2013-14 as can be seen from figures of PBT and what was the position of such other factors in the period 2015-16.

- mm. Thus, the losses in 2015-16 cannot be attributed to landed price since the PBT of the domestic industry was declining when the undercutting was negative in previous 3 years beginning 2011-12 which shows there are other significant reasons which have been impacting the performance of the DI.
- nn. Nothing on record shows such other factors were not prevalent during 2015-16. Thus, losses in 2015-16 cannot be attributed to positive price undercutting.
- oo. The PBT situation is showing a distorted picture because of the sharp increase in interest cost and not because of any other reasons. The decline in PBIT from 132 points in 2014-15 to 31 points in 2015-16 cannot be termed as a sharp fall considering the nature of the commodity and such fluctuations were apparent in the previous years also. For example, PBIT fell to 91 points in 2012-13 and then to 44 points in 2013-14 and the same increased to 132 points in 2014-15. So, what is there in 2015-16 is only a repetition of the fluctuation which is inherent to the commerce of this product which is primarily driven by LME prices.
- pp. The level of employment with the domestic industry has increased over the base year and there is significant increase in the wages as well. Thus, there is no negative impact on the employability or the ability to pay wages and this do not show any signs of serious injury.
- qq. The price of the product globally is determined based on LME plus MJP/Premium and also exchange rate impacts which is a transparent mechanism. Thus, any claim of low price import per se is unsubstantiated and deniable in this product.
- rr. The Indian producers are holding 85% of the domestic demand and import is barely 15% which is a share incapable of inflicting serious injury.
- ss. The alleged injury appears to be triggered by high interest cost etc. of the Indian producers and imports are not to be blamed for the same.
- tt. The issues of Vedanta lies in their bauxite and coal procurement as evident from their annual reports and any adverse effects on the same should not be attributed to imports.
- uu. Customers should not be made liable to pay for the inefficiency of Vedanta as the other producers are apparently operating in profit.
- vv. The users should not be put to bear the brunt of excess capacity set up by the DI.
- ww. Transfer cost of intermediary transfers of the DI should be subjected to strict scrutiny while determining their cost of production.
- xx. The domestic industry could not bring on record any strong case of serious injury on account of sudden and sharp increases in import into India.
- yy. Causal link between the increased imports and the injury to Domestic Industry must be established in order to impose the Safeguard duty. The DI has not given any material basis on which it can be demonstrated that the injury claimed by them is due to the alleged increased imports. The analysis of data given in petition shows that there is no linkage between imports and claimed injury. The cause of injury to the domestic industry is burden of interest cost and there is no influence of import prices. Profit was declining when the undercutting was negative in the initial three years which shows any decline in profit ought to have been due to some other reasons. Injury claimed is not connected to imports and reasons such as raw material procurement issues, high interest cost etc. are apparent. The reasons of any alleged injury is solely other reasons and are not driven by any sudden surge in imports as the DI could not show any such increase in imports. Vedanta has significant legal issue and litigations concerning environmental issues qua their mines and any impact of the same should not be attributed to imports.
- zz. The industry has been through a volatile period and the same is over and the industry is gaining benevolent prices. Volatility in the segment cannot be made a base to claim remedy under safeguard scheme.
- aaa. The import duty on PUC is already increased by 2.5% and is at 7.5% now as an additional protection and this fact should be taken into consideration by the DG. Any safeguard duty in such

circumstance would leave the end user in sheer vulnerabilities and would lead to inverted duty situation for the end users.

- bbb. The NCV version of the adjustment plan do not permit any meaningful comment/understanding at least in percentage terms as to what would be the effect of the plan proposed by the domestic industry. In the absence of any summary on quantification of the same, they are not in any position to comment meaningfully.
- ccc. The non confidential version falls short of the standard requirement of Article 3.2 of Agreement on Safeguards read with Rule 7 of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. The information submitted in application is vague and does not allow reasonable and meaningful understanding of the DI's case. Confidentiality has been claimed in respect of a number of data without assigning any reason. Therefore, the entire confidential information needs to be disregarded by DG Safeguards.
- ddd. While deciding the case of imposition of safeguard duty on any product, public interest analysis including the impact of safeguard duty on products down the line must be done. Imposing safeguard duty on subject goods is against public interest, especially looking at the PUC as defined.
- eee. Imposition of safeguard duty would have serious impacts on various user sectors. The attempts of the domestic industry are only to enhance their profits by way of safeguard duties. The PUC as defined includes a whole lot of variety of products which has nothing to do with the performance of the DI. It would be at larger public interest not to impose duty on the PUC. M/s Vedanta have admitted that the situation of aluminium have drastically improved after volatility during the last year. No safeguard duty should be imposed at this juncture.
- fff. In totality, it appears that in spite of being no case for imposition of safeguard duty a case has been initiated.
- ggg. In view of submissions made, they request that a recommendation be made for termination of the present investigation.
- hhh. Every increase in import or availability of material at lower prices outside India is not bad and should not be discouraged. The availability of goods outside India at prices lower than those which are indigenously produced would encourage competition amongst the Indian industry and would not per se result in eliminating the competitor.
- iii. The submission of DI that SEZ/EOU units have been treated as part of domestic industry in various anti-dumping and safeguard investigation in India is factually correct. In a recent anti-dumping initiation concerning "Non Woven Fabric" F.No.14/23/2015-DGAD, dated 15<sup>th</sup> June, 2016, the petitioner did not consider producer in the SEZ area for the determination of standing and the producer in SEZ was kept out for determination of total Indian production.
- jjj. The application for imposition of safeguard duty and the current proceedings started based on the same is not maintainable and be terminated.

**P. M/s Virgo Aluminium Ltd.**

- a. There is only 4.07% increase in import against the demand in domestic market in last five years.
- b. Total demand of unwrought aluminium in domestic market increased by 29% in last five years above the base demand of 2011-12 whereas the production capacity of primary product has increased by 40%.
- c. Sale of petitioner has increased by 40% in last five years.
- d. Sale of secondary producers has increased by 2.65% in last five years.
- e. The overall domestic industries are enjoying approx. 85% market share of the total demand.

- f. M/s National Aluminium Company Limited (NALCO), a Navratna PSU never recommended such petition.
- g. In the last budget when the custom duty was increased by 2.5% above the earlier 5% customs duty, all domestic primary producers increased the prices by Rs.3500/- per metric ton.
- h. Domestic primary producers want to earn more and more profit with the monopoly in the market.
- i. There is no injury for the Petitioners.

**Q. M/s EEPC India**

- a. They represent a large number of manufactures who are engaged in production of aluminium.
- b. Contention that import of PUC has significantly gone up from 2011-12 till 2015-16 and domestic industry is getting harmed by increasing export is misleading/ false. The import as percentage of total production has not gone up. It was 13% in 2011-12 which went up to 17 % in 2013-14 and again came down to 15% in 2015-16.
- c. The import made under export promotion "duty free" scheme has not been segregated. Very small and insignificant quantity is being imported under duty paid route. The exporters have to import their requirement on international competitive prices, as the domestic industry is unwilling to supply the PUC to the exporters at international price.
- d. PUC is not being imported on duty payment from China in significant quantity and it is not true that cheap Chinese imports are flooding the domestic market and harming the domestic industry.
- e. It is not true that DI is getting harmed as all domestic aluminium producing companies including NALCO are posting handsome profits. NALCO has not joined the demand for safeguard duty protection.
- f. The claim of private sector producers is motivated to make undue profits.
- g. The domestic industry has not lost any market share to imports.
- h. If DI extends the international price under duty free scheme, the exporters of finished products will be willing to procure the same from domestic suppliers.
- i. The DI is using the international price plus premium plus import duty multiplied by the USD to Rupee exchange rate as the basis of pricing their products. They are getting huge benefit on account of depreciating rupee which artificially increases their product pricing.
- j. The purpose of petition is to increase their product price since they will immediately jack up their price on the basis of higher landed cost of imported metal.
- k. Many small manufactures & exporters who are using the PUC in small quantities will be most severely hit since they do not have sufficient volume or financial ability to import the PUC under "duty free" scheme.
- l. Any increase in duty of PUC (raw-material) without commensurate increase in import duty of finished/semi finished goods will result in an inverted duty structure which will severely harm the large number of domestic aluminium consuming industries.
- m. There is no case to levy any safeguard on import of PUC in India.

**R. M/s Century Metal Recycling Pvt. Ltd; (CMR), CMR Nikkei India Private Limited (CMRN); CMR-Toyotsu Aluminium India Private Limited (CMRT).**

- a. CMR is involved in production and sales of unwrought aluminium - alloy and zinc alloy. CMRN & CMRT are involved in production of unwrought aluminium - alloy only.
- b. Aluminium alloy ingots are primarily used as raw material for aluminium die cast components and aluminium mouldings required in casting of auto parts and to a small extent in casting of white

goods and consumer durables. For production of unwrought aluminium, scrap is purchased and sorted as per requirements.

- c. Under FTA, there is no duty on imports of PUC from certain Asian countries like, Thailand, Malaysia, Vietnam, Japan etc.. The increase in imports from the FTA countries is because of FTA concessions and imports being made without adhering to the value addition conditions.
- d. Imports have increased significantly in such quantity and in such situation that the same have caused severe injury to the domestic industry.
- e. The increase in imports is significant in spite of the fact that they are offering un-remunerative prices at par or even at a price which does not allow recovery of even cost.
- f. Since China cannot export PUC directly to India as the same attracts customs duty @7.5%, therefore, entrepreneurs of China origin have set up plants in Malaysia and Vietnam for export of PUC as such imports are duty free in India. Import of PUC from Malaysia and Vietnam have increased substantially.
- g. They are also suffering injury as a result of increased imports.
- h. Though capacity, production, and sales increased, the capacity utilization declined. Looking at volume parameters in isolation would not give correct state of affairs of the performance of industry. Increase in its profits and market share did not happen and due to easy availability of the imported material in the Indian market, company was forced to maintain prices at the level of imported prices, which does not allow recovery of even full cost, leave aside margin over huge investment made.
- i. Their profitability is severely eroded. From a profit of 100 (indexed) per MT in base year, they have now made loss of 23 in the 2015-16 FY for domestic operations. Due to decline in profits, their cash flow and return on capital employed is also severely deteriorated.
- j. There is direct correlation in increase in imports and deterioration in profits.
- k. Employment shows similar trends as that of production (though the same declined in 2015-16 over preceding year). Wages per kg. declined in 2015-16 and despite the same, losses have increased. The wage per unit of production declined in line with the productivity achieved by the company.
- l. Productivity per day and also productivity per employee has shown increases, thus, any possible decline in productivity is not the cause of injury. Despite improvement in productivity, profitability has deteriorated.
- m. Import has severely impacted fundamental operating parameters such as profits which can be cured only through imposition of adequate safeguard duties on subject imports.
- n. Return on capital employed has got significantly impacted as a result of increased imports from subject countries.
- o. There is significant increase in inventories
- p. They have suffered serious injury from the increased imports of unwrought aluminium (7601) in India.
- q. Appropriate safeguard duty may be recommended and got imposed immediately.

**S. M/s Masters India Pvt. Ltd.**

- a. Productivity in the notice is measured in terms of production (MT) per employee. But labour does not constitute a major part of the cost structure. The standard measure internationally used is electricity consumed to produce a tonne of aluminium (MWH per tonne), primarily, because electricity accounts for about 40% the cost of production. The productivity should be reassessed. Consequently, a correlation between imports and losses to primary producers must be re-established.



- b. The use of economic parameters has not only been limited, but also their application has been made in isolation. It is unclear how a causal link was established between increased imports and losses. They request the DG, Safeguards to reevaluate the economic parameters used to establish the link between the imports and the losses to the applicants
- c. As per Hindalco statement, the EBIDTA attained has been the highest ever in 2015-16; profits were low because "the interest and depreciation charges rose significantly in line with the commissioning of new facilities".
- d. Reduced profitability in recent years has been due to increased uncalculated debt burden and operational inefficiencies.
- e. Since LME prices have now stabilized, there is increasingly healthier business position of the primary producers.
- f. M/s NALCO is also not one of the applicants.
- g. The safeguard duty will have grave effect on the downstream industry. As soon as the safeguard duty is levied, the percentage increase in the duty becomes reflective in the DI's prices.
- h. FTA countries, major exporters of PUC to India, would still be exempt from the duty.
- i. The duty will create a shortfall in supply in short-term.
- j. Increased duty will also deter export growth of the country, since, the prices of domestic producers will likely become uncompetitive in the international market due to increase in primary metal cost.
- k. The DI is not providing duty free material to exporters and they have to import material against advance licence.
- l. Applicants should affirm to maintain the prices in case the safeguard duty is imposed.

**T. M/s Vedanta Limited- Aluminium & Power; Bharat Aluminium Company Limited; Hindalco Industries Ltd. (Domestic Industry)**

- a. An issue has been raised concerning eligibility of petitioner as a domestic industry in view of the fact that the petitioner's plant is in SEZ. Definition of domestic industry under the law implies SEZ unit is a domestic industry. The term used in the safeguard law is "*producers -in India*". The SEZs Units established in SEZs are very much producers in India.
- b. The relevant criteria for standing and scope of domestic industry is production and not utilization of such production. In a situation where a DTA domestic producer exports 90% of its production, the Directorate will still consider entirety of its production for the purpose of standing.
- c. As per the definition of words import and export under the SEZ Act, import implies bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode and export implies taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode. Therefore, sale by an SEZ unit into DTA is not an export and is in fact a domestic sale
- d. In the books of accounts and for all the purposes such as revenue recognition, FOB value of exports etc., a sale made by a unit in SEZ is treated as domestic sale. The sale made by an SEZ unit to an Indian entity cannot be included for determining FOB value of exports (even if it is to an SEZ unit). Only physical exports can be considered as exports for the purpose. Sales to DTA, EOU, SEZ are treated as domestic sales and only physical exports are considered as exports sales in India for the purpose of reporting "FOB Value of exports" in the financial records of the company.
- e. A unit in SEZ is treated as an Indian manufacturer for various regulations in the country,

- barring with the sole exceptions of direct and indirect taxations. However, direct and indirect taxation laws are grossly irrelevant for the present purposes. It does not mean that production shall not be taken as domestic production merely because the Govt. has allowed import of inputs without payment of customs duty.
- f. Direct tax benefits given by Govt. of India are entirely irrelevant for the present purposes. The Designated Authority however has not denied the status of domestic industry to such a company only because of income tax exemption.
  - g. All civil, criminal or business laws do apply to a unit in SEZ.
  - h. Customs authorities treat sale made by an SEZ unit to Indian company as a domestic sale and the same is not recorded either as import or as export. Only physical exports made by SEZ unit are reported as exports. Imports made by an SEZ unit are reported as imports.
  - i. The Designated Authority, Anti Dumping in the past considered an EOU or a unit in SEZ as a domestic industry in the cases of polypropylene, solar cell, electric insulator, alloy wheels, DVD-R & DVD-RW, CDR and vitamin-A palmitate.
  - j. In DG Safeguards case of saturated fatty alcohols, the domestic industry is a 100% EOU.
  - k. A unit in SEZ has been held as domestic industry in the matter of solar cells case before the Designated Authority after lot of debate and discussions with regard to their eligibility.
  - l. The Designated Authority and Director General Safeguards have been determining standing of the domestic industry both after including captive consumption and excluding captive consumption in those situations where a domestic producer has captive consumption of the product in the downstream product.
  - m. Imports made under projects category under chapter 98 under Customs Tariff Act are normally at zero customs duty and invariably at concessional customs duty. However, merely because the imports have been allowed under Chapter 98 with no or concessional customs duty does not imply that the resultant production shall not constitute domestic production.
  - n. Treatment of a unit in Indian SEZ by other countries: Production and export from SEZ attracts trade defence measures. Subsidy duties have been imposed because of the benefits that have been given to such a unit. Thus, these exports have been treated as goods "originating in India".
  - o. The various benefits given to SEZ unit should not impact the treatment of such a unit as a domestic industry. In any case and in fact, the incidence of customs duty on the finished product may be marginally higher than the incidence of customs duty and other benefits received by SEZ unit on raw materials and inputs. Thus, it is not a case where SEZ unit is enjoying double benefits.
  - p. Petitions were earlier filed a number of times. The scope of product under consideration kept changing in these petitions. While the first petition was only on products falling under 7601 and 7602; the petitioners thereafter enlarged the scope to cover all the product falling under 7601 to 7608, excluding 7603. However, eventually, petitioners restricted the scope of product under consideration to only 7601, as DG considered it impermissible to file one application covering all the products from 7601-7608.
  - q. Neither the domestic laws on safeguard measures nor Agreement on Safeguard provide specific guidelines on the period of investigation. However the issue of period of investigation has been dealt in detail in Panel findings in US-Line Pipe Case against Korea wherein it was ruled that it is up to the discretion of the investigating authority of the importing Member to decide the "length of the period of investigation" and its "breakdown". The relevant

investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury and it should not only end in the very recent past but the investigation period should be the recent past. The present submissions are based on information for the period from 2011-12 onwards till 2015-16.

- r. The petition was based on the period Apr-Dec., '15. After filing initial petition, the DG Safeguards conducted a table verification of domestic industry information. Accordingly, some minor corrections were necessitated in the petition and the same were carried out. Thereafter, and post initiation, DG has conducted physical verification at the premises of all the companies and issued a verification report. Thus, now since DG Safeguards conducted physical verification and has issued a verification report, the petitioners have made present submissions based on this verified information by the DG Safeguards. Accordingly, there is a need for correction in the injury statement, so as to have present submissions consistent with the verification conducted by the Directorate.
- s. One of the major difference in the data/ information filed by the petitioners and verification report issued by the Directorate concerns capacity utilisation. The DG Safeguards have proceeded with the hot metal capacity with the petitioners. Further, since this hot metal capacity has been used by the petitioners for production of product under consideration and other products, the DG Safeguards has considered capacity utilisation by considering data/information of other products as well. In other words, instead of capacity utilisation in product under consideration, the DG has considered capacity utilised by the company for producing various products. Accordingly, petitioners have revised entire injury information.
- t. While directing the petitioners to file updated data for 2015-16, the DG has directed the petitioners to exclude data relating to SEZ plant. Since it was a direction, petitioners complied with the same, regardless of correctness or otherwise of the exclusion of SEZ plant data. However, petitioners provided information twice – once by excluding data of SEZ plant and once by including data of SEZ plant. Accordingly, petitioners are enclosing injury statements with these submissions both after including and excluding SEZ plant data. There is no legal basis for excluding SEZ plant data.
- u. Imports of the PUC are being reported under dedicated customs classifications for the PUC alone and the summary information published by the DGCI&S in determining volume of imports has been adopted. The data on various economic parameters is based on records maintained by the company. Data with regard to production, sales and inventories is based on excise records maintained by the company. Data with regard to selling price, cost of production and profit/loss is based on the financial records maintained by the company.
- v. Some information/ data has been provided on confidential basis and confidentiality has been sought thereon.
- w. The PUC for imposition of safeguard duty is "Unwrought Aluminium" which includes aluminium, not alloyed and aluminium alloys falling under custom heading 7601. The PUC includes aluminium ingots, aluminium wire rods and aluminium billets. Aluminium ingot is basic form of cast aluminium (unwrought) and it is made by the process of solidifying of liquid hot metal by pouring into a mould. Ingots are cast from molten aluminium metal with or without adding alloying elements. Aluminium wire rods are drawn from molten aluminium in a continuous casting and rolling mill with most common diameter of 9.5mm (other diameters are 7.6mm and 12.5mm). Aluminium billet is a length of metal that has a round or square cross-section, typically with a diameter range from 4" to 20". Billets are created directly via continuous casting. Billets are further processed for extrusion. Final products include profile, tubes and rods.
- x. Scope of the PUC in the present case includes all shapes, size, forms of unwrought aluminium. The present written submissions cover PUC of all dimensions, shapes, sizes, specifications, forms so long as these are classifiable under 7601 and even if these can also be classified in

a classification other than 7601.

- y. Non alloy ingots are used as base metal for any type of aluminium products like extrusions, cables, conductors, secondary wire rod, metal powder, chemicals, alloy ingots for automobile industries and miscellaneous castings, utensils, foundry, casting and other industrial & engineering equipments, steel de-oxidizing, building and construction and so on. Alloy ingots are used in aluminium die casting industries for autocomponents, miscellaneous castings. Non alloy wire rods are drawn to wire for manufacture of cables and non alloy conductors. Alloy wire rods are drawn to wire for manufacture of alloy conductors. Non alloy billets & alloy billets are used for extrusions. Non alloy wire bars & alloy wire bars are used for decoration, construction, rivets, etc.
- z. Aluminium is most commonly obtained from a mineral ore called bauxite. Alumina (aluminium hydrate) is separated from the ore by dissolving the crushed ore in caustic soda, and pumping the slurry into a setting tank. This is known as the Bayer process. Pure metal is then obtained by the process of electrolysis of alumina by passing huge electric current through a solution containing alumina. About one ton of primary aluminium needs just less than 6 tons of bauxite.
- aa. The customs classifications are indicative only, and the same are not binding on the scope of the present written statement and proposed measures and they request imposition of safeguard duty on the product description regardless of classification.
- bb. WTO decisions in the matters of (a) EC-Bed Linen and (b) Farmed Salmon from Norway make it evident that there is no restriction in the law with regard to definition of product under consideration. The investigating authority is free to define the product under consideration in a manner considered appropriate. The injury analysis is not required to be undertaken separately for each type of the product under consideration. On the contrary, separate injury analysis is illegal.
- cc. Ingots, billets, bars, wire, rods are merely different forms of the product. Similarly, the only difference between alloys and non-alloys is in the composition of aluminium, which is achieved during the product process. Most of the producers globally produce different forms of unwrought aluminium.
- dd. The PUC can be in a number of forms, which includes ingots, billets, wire bars, wire rods, etc.. Mere difference in shape, size, forms do not render different types as different products. The DG Safeguards has issued a number of findings, wherein different shapes, forms and types were treated as one article. In the investigations relating to acrylic fibre, tow, top, and staple were considered as one article; in aluminium FRP & foils case, different kinds of FRP or foils were taken as one article; in stainless steel case, different size, width, thickness for different applications were treated as one product; in electrical Insulators case, glass & porcelain insulators and insulators for different applications were treated as one product. Further, substation, transmission insulators, equipment insulators were treated as one article. Similarly, different size, shape, width of the product were considered as one article. In oxo alcohols NBA, IBA and EHA were treated as one product; In seamless pipes & tubes case, product included several types of the product produced through different processes and line, boiler, casing and tubing were treated as one product. Similarly, there are numerous examples in the safeguard investigations conducted by other authorities globally and Designated Authority on Anti Dumping.
- ee. The goods produced by Petitioners are like or directly competitive product. Both the products have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc. Comparison of essential product properties in respect of domestic product and imported product would

show that the goods produced by the domestic industry are comparable to the imported goods in terms of essential product properties. While the scope of product under consideration is only products falling under 7601, the like and directly competitive article is being produced in India using scrap (secondary producers) and alumina (primary producers).

- ff. The Petitioners M/s Vedanta Ltd, Balco Industries and Hindalco Ltd. have standing to file and maintain petition for the subject goods, as far as "a major share" requirement is concerned. The production of Petitioners constitutes more than 50% of Indian production.
- gg. The scrap generated in India or imported into India can also be used to produce product under consideration. The petitioners have assumed that all the import of 7602 is utilized in producing ingot, billets, bars etc., and determined standing on that basis as well. The production of the petitioner companies still constitutes a major share in the Indian production. In any case, gross consumption of various types of aluminium products in the country is 28 lacs MT, whereas the production of the Petitioner companies is more than 19 lacs MT. The production of the petitioners constitute a major share in the Indian production.
- hh. Imports of unwrought aluminium constitute "increased imports" within the meaning of the Rules. The conditions for imposition of safeguard duty are increased imports- in absolute terms, relative to domestic production & relative to domestic consumption and injury due to increased imports. The rules require an analysis of the rate and amount of the increase in imports, in absolute terms and in relation to domestic production and consumption. The imports of the product should be sudden, significant, most recent and sharp but it does not mean such increase necessarily be at the end of the period of investigation or at the time of determination. Both end to end comparison and intervening trends may be seen in order to determine increase in imports.
- ii. In the US- Line Pipe, the Authority has stated that 'temporary change in the behaviour of the imports may not be sufficient to reverse an overall trend indicating existence of increased imports'. In US- Line Pipe, the Panel found that the word "recent" implies a "retrospective analysis"; but it does not imply an analysis of the conditions immediately preceding the authority's decision nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation.
- jj. Petitioners have determined whether imports of PUC have increased in relation to production and consumption in India and compared imports of PUC with production and consumption in India. The imports of the product under consideration have shown a sudden, sharp and significant increase over the period. Further, imports have increased not only from end to end point, but also throughout the period. The imports have increased both in absolute terms as also in relation to production and consumption in India.
- kk. The market share of the domestic industry has declined in 2014-15 but increased marginally thereafter. However the domestic industry is unable to increase its market share since base year despite increase in demand. Market share of the imports have increased over the period. Market share of the Indian industry as a whole has declined.
- ll. The rules require increase in imports as a basic prerequisite for the application of a safeguard measure. Thus, to determine whether imports of the product under consideration have "increased in such quantities" for purposes of applying a safeguard measure, the rules require an analysis of the increase in imports, in absolute terms and as a percentage of domestic production. The increase in imports must have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. The word "recent" implies a "retrospective analysis", but it does not imply an analysis of the conditions immediately preceding the authority's decision nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation. The analysis of the increased imports of unwrought aluminium has been conducted in the light of these evaluations.
- mm. Reasons for the increase in imports are that the producers across the globe have capacities

more than their domestic demand which forces them to sell the products to other markets. Indian market is a sizeable market with a high growth potential and has been used to sell off cheaper goods. The majority of the metal being imported is of Middle Eastern origin.

- nn. The producers in Middle East expanded their capacities considering the global aluminium demand; this has led to excessive unutilized capacities with Middle East companies which are being utilized to export to Indian market.
- oo. Middle Eastern countries have increased their respective capacities for primary aluminium production considerably over the years. With no signs of decline in Chinese aluminium production, the increased capacities of the Middle Eastern producers are being utilized in India. There is a huge gap between the production and consumption of aluminium in these countries; thus, freight friendly markets such as India are a major market for the export of the goods.
- pp. With China expanding its own capacities it has also entered into the market as a strong player. This has led the Middle East countries to aggressively export to Indian market.
- qq. It has been contended by interested parties that imports of PUC from China are so insignificant in India that the same cannot be considered as unforeseen development. Petitioners submit that the requirement under the law is the factors/ reasons that have led to increase in imports. The requirement does not imply that the import per se must increase from the country concerned. If there are changes in market situation in China because of which imports have increased from third countries, such factors/ reasons prevalent in China are nevertheless relevant and important for deciding the reasons for increase in imports in the present case. In this context, market situation prevailing in China is one of the factors for the free fall of LME and resultant increase in imports.
- rr. Major cost in manufacturing aluminium is energy. Middle Eastern countries' electricity costs are significantly lower than other regions, therefore, the smelters in this region begin with a profitability advantage. Energy cost contributes to around 38% to Indian smelter, which is approximately \$700 per MT. The energy cost for UAE smelters stand around \$360 per MT. On the contrary, Indian smelters run on power generated by power plants that run on coal. The cost of running a coal power plant is costlier.
- ss. India is a freight friendly market for Middle East countries due to its geographical location and therefore it is convenient and economically more viable for them to export aluminium to India. Due to stagnant growth of product under consideration in Europe, India has become a target market for exporters/producers of Middle East which has led to increase in imports from these countries. Further the sea freight from Middle East to India has declined in the current period which has further led to increase in imports.
- tt. China imposes a 15% export duty on the export of primary aluminium. On the other hand, it offers a 13% tax rebate on export of value added aluminium products. This serves as an advantage to Chinese producers which have skewed global aluminium trade forcing shutdowns of various smelters across the world. This has also forced producers in other countries to export their products due to inflow of cheap Chinese semis.
- uu. Due to slow down in the Chinese economy, China is faced with excess capacities. Despite this, China's aluminium producers are not shutting down their smelters, because of support of local governments. Almost all aluminium producers in China are making financial losses at current aluminium prices. News reports state that China's aluminium production will rise by 11 per cent to over 30m tonnes in 2015 with a further 1.8m tonnes of capacity likely to come online next year. China continues to pump its surplus out to the rest of the world, depressing prices and pushing more smelters elsewhere to the brink of closure.
- vv. According to AZ China, the local government of Gansu province has lowered the cost of

power to the plant to the point that Liancheng can at least break even at current prices.

- ww. At the moment any supply-demand gap in the aluminium market outside of China is being filled by Chinese exports of semi-manufactured products allowing exporters to avoid the prohibitive 15 percent tax on exports of metal and instead earn tax rebates on their exports of value-added products.
- xx. For the purpose of determining the "serious injury" certain listed factors as well as other relevant factors must be evaluated. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". It is essential that the overall position of the domestic industry is evaluated in light of all the relevant factors having a bearing on the situation of that industry.
- yy. The DI has considered the period from 2011-12 to 2015-16 for increased imports and injury analysis. Due to such increase in imports, the domestic industry is suffering serious injury.
- zz. The petitioners have considered dedicated capacity for Vedanta and Balco. However, in case of Hindalco, since the capacity is not dedicated, the petitioners have considered working capacity (calculated by ratio proportion method applying on hot metal capacity and hot metal production).
- aaa. Production and domestic sales of the domestic industry increased over the period. The plants in this kind of products are required to run at high operating rates. Overheads/ fixed costs are not met, if these plants are run at lower utilization rates. With the increase in demand, the domestic industry increased its capacities. The summerised factual position is as under:

Particulars	Unit	2011-12	2012-13	2013-14	2014-15	2015-16
Capacity	MT	12,51,400	12,53,700	13,54,480	21,88,728	31,39,569
Production	MT	9,97,282	10,63,882	11,53,951	15,01,542	15,99,740
Imports	MT	2,42,533	3,08,279	3,48,886	3,43,428	4,21,964
Domestic sales	MT	5,18,295	5,91,784	5,04,675	5,01,513	7,00,486
Exports	MT	1,48,485	1,34,555	2,96,301	5,95,931	6,64,197
Demand	MT	20,36,574	22,34,732	21,46,481	23,63,727	24,39,251
Increase over base year						
Production	MT		66,600	1,56,669	5,04,260	6,02,458
Domestic sales	MT		73,489	-13,620	-16,782	1,82,192
Exports	MT		-13,930	1,47,816	4,47,445	5,15,712
Imports	MT		65,746	1,06,352	1,00,895	179,431
Demand	MT		1,98,157	1,09,907	3,27,153	4,02,676

- bbb. The increase in production is largely in line with the increase in demand. Thus, the DI could have easily sold its increased production in the domestic market. However, the DI has not been able to sell the increase in production in the domestic market and has been forced to export the PUC in view of surging imports to prevent piling of inventories.
- ccc. As the DI was suffering losses in exports in the current year (2015-16), the DI gradually reduced the gap between its prices and the imported product prices in the domestic market to increase its sales.
- ddd. The DI is forced to export the PUC due to increased imports into India. The exports and financial losses suffered in exports should also be considered as one of the parameters of injury to the DI.

eee. Whereas significant volume of imports are of alloy grades, significant portion of sale of DI is of non-alloy grades. Table shows that there is significant price difference between alloy and non-alloy product.

HS code	Volume	Share	Average price
760110	1,43,023	45.86	119.24
760120	1,68,820	54.14	132.91
Total	3,11,843	100	126.64

fff. The DI has determined month-wise landed price of imports, landed price of imports if imports were made at average prevailing LME price during the period and selling price of domestic industry.

ggg. From July, 2015, LME prices are significantly lower than the import prices because of the time lag. Imports and LME prices are significantly lower than the selling price of the DI. Thus, the landed price of imports is significantly below the selling price of the DI. The price undercutting is quite significant. The analysis is on the basis of selling price of the petitioner companies.

hhh. Whereas the import price declined steeply over the period during 2015-16, the volume of import increased significantly.

iii. Imports of the PUC are very adversely impacting the utilization of production capacities in the country which is quite low. Both alumina refining and aluminium smelting are continuous process operations and, therefore, need a steady supply of quality power. The producers have to ensure maximum possible production in order to reduce the utility costs. No producer can afford to hold inventories. At the same time, no producer can afford to regulate production or suspend production. Production process in the present product is totally different from an industry like electronics where switch off and switch on of production do not have any significant implications.

jjj. Faced with piling up of inventories, petitioners had earlier resorted to significant export of the product. Whenever petitioners are not able to sell the product in the domestic market, petitioners have taken orders from outside Indian markets and exported the product. The DI has resorted to exports despite higher losses. If DI increases the exports where it is suffering higher losses the only plausible clause for the same must be its inability to sell product in the domestic market.

kkk. The domestic industry is unable to dispose off its inventories due to increased imports. Petitioners are resorting to exports to dispose off its inventories.

lll. It has been contended by the interested party that the petitioner can very well supply the material in the domestic market at a price comparable to export price. The DI would have in fact suffered higher losses had it not exported the product and sold the same in domestic market.

mmm. DI added manpower with the enhancement of capacities. The DI was however now forced to retrench manpower. One of the Petitioner companies has retrenched persons and would be forced to reduce more employment, should the present situation continue. Wages paid to the domestic industry have increased with the increase in employment levels.

nnn. Profitability of the domestic industry has very severely deteriorated over the present period.

ooo. Cash profits of the domestic industry has declined significantly and the domestic industry is faced with cash losses during most recent period.



- ppp. The return on capital employed has remained low throughout the injury period and declined to lowest levels in the most recent data. The serious injury being suffered by domestic industry further gets established by the return on investment earned by domestic industry in the POI. Return on Investment earned by domestic industry is so low that the same is not permitting recovering of even interest costs, leave aside reasonable profits to the domestic industry. The continued increased imports would result in injury to the domestic industry in terms of profitability.
- qqq. There is no prescribed methodology with regard to assessment of threat of serious injury under Safeguard laws. In the absence of specific methodology under the Rules, the petitioner has referred to dumping law and WTO decisions to assess how threat of serious injury can be examined. In the particular circumstances of a case, a continuation of imports at an already recently increased level may suffice to cause such threat.
- rrr. In addition to the serious injury already inflicted on the domestic industry, increased imports of product under consideration are threatening serious injury to the domestic industry. The threat of serious injury is established by the following factors:
- i. The price difference between domestic and imported product is quite significant;
  - ii. LME is constantly falling; the mark up between the domestic producers prices and LME has steeply declined in view of surge in imports;
  - iii. The foreign producers are holding significant unutilized capacities. Resultantly, the foreign producers are looking for additional markets to the extent possible;
  - iv. The volume of imports has increased significantly in a relatively short period;
  - v. The domestic industry is faced with accumulated inventories;
  - vi. Not only that there is a decline in demand for the product under consideration globally; there is a likelihood of continued low demand. In fact, demand is constantly declining;
- sss. The global decline in demand has triggered steep decline in the product prices. Temporary increases in LME are of no relief to domestic industry. The injury information provided now is for the period upto March, 2016. The domestic industry suffered significant financial loss when the average LME was US\$ 1742 pmt. There is at the least further decline in LME. If the domestic industry suffered significant losses in 2015-16, it follows that the domestic industry is suffering financial losses even on the present LME.
- ttt. Due to slow down in the Chinese economy, China is faced with excess capacities. China continues to pump its surplus out to the rest of the world, depressing prices and pushing more smelters elsewhere to the brink of closure.
- uuu. It has been contended by interested parties that imports of PUC from China are so insignificant in India that the same cannot be considered as unforeseen development. The requirement under the law is the factors/ reasons that have led to increase in imports. The requirement does not imply that the import per se must increase from the country concerned. If there are changes in market situation in China because of which imports have increased from third countries, such factors/ reasons prevalent in China are relevant. Market situation prevailing in China is one of the factors for the free fall of LME and resultant increase in imports.
- vvv. The imports of the PUC are already causing serious injury, the same is likely to intensify in due course, should the safeguard duties not be imposed immediately.
- www. There are no other factors that may be attributing to the serious injury to the domestic industry other than the increased imports. There is no contraction in demand of PUC in India, thus, possible decline in the demand has not caused injury to the domestic industry. The pattern of consumption with regard to the PUC has not undergone any change. There is no trade

restrictive practice which could have contributed to the injury to the domestic industry. Technology for production of the product has not undergone any change. Though the Petitioner has exported the product under consideration, the claimed injury to the domestic industry is on account of domestic operations and cannot be attributed to exports.

- xxx. Claimed injury to the DI is on account of PUC. Petitioner has segregated financial information with regard to PUC and provided in the petition.
- yyy. The requirement is "a" causal link and not "the" causal link. There is a very significant difference between "a causal link" and "the causal link". While the later implies that the only cause of injury should be increased imports, the former implies that increased imports should be one of the causes of injury.
- zzz. The mere fact that there is some other cause of injury as well does not mean that increased imports of the product under consideration are not a cause of injury.
- aaaa. In the facts of the present case, the increase in exports and losses being suffered by the DI is one of the factors showing causal link. The domestic industry is forced to export only because of the imports in India. There is otherwise no reason why the domestic industry should export the product when there is a demand in India.
- bbbb. Further, following shows causal link between increase in imports and serious injury to the domestic industry
- i. The product is largely sold in comparison/competition with imports.
  - ii. The imports of the product under consideration have increased significantly during the most recent period.
  - iii. Increased imports are leading to significant accumulation of inventories.
  - iv. The domestic industry is constrained to resort to exports, wherein the domestic industry is suffering higher degree of injury due to low price of the product in the global markets.
  - v. The imports of the product declined in 2014-15. Consequently, profits of the domestic industry increased. However, in 2015-16, imports increased again, and the domestic industry suffered financial losses. This is due to the low prices imports entering the Indian market.
  - vi. Resultantly, the profitability of the domestic industry has declined significantly and was suffering losses.
- cccc. Petitioner requests imposition of safeguard duty for a period of two years.
- dddd. Public interest: Imposition of safeguard duty in the present case shall be in public interest, from the perspective of three different parties- the producer, the consumer and the general public as following:
- i. The measure would prevent further injury to the domestic industry from increased imports into India. Domestic industry is suffering significant injury and imposition of safeguard duty would prevent this injury to the domestic industry. It is vital to allow the petitioner to continuously produce the product for which imposition of safeguard duty is vital. Imposition of safeguard duty shall restore the injury suffered, arrest decline in the performance and will make the DI viable and competitive.
  - ii. It is in the consumer's interest to have a competitive Indian domestic industry capable of supplying the PUC to the consumers and compete with foreign producers. If the current situation is allowed to continue, the Indian domestic industry will face further injury and could eventually be wiped out giving foreign producers increased leverage.

- iii. There are very limited consumers who actually bear the cost increases and benefit from price declines as PUC prices increase or reduce. A number of players in the industry work on pass through basis i.e. they pass on increases and reductions in raw material costs. The eventual impact of 10% safeguard duty on the consumers shall be 0.053%. Thus, it is without any basis that the consumers shall suffer as a result of imposition of safeguard duty.
  - iv. It is in the interest of the public at large to have a strong, competitive Indian domestic industry. Due to widening trade deficit and dwindling forex reserves, it is important to rely more on the domestic production capacities. Further, usage of subject goods is must for industrial applications. Therefore it is extremely important from strategic point of view to reduce the import dependence.
  - v. If domestic industry is allowed to deteriorate to a condition in which it can no longer operate, Indian consumers will be almost completely dependent on foreign producers.
- eeee. Indian domestic producers have the capacity and capability required to meet the current and potential/future demand in the country.
- ffff. The eventual impact on the cost of the end products is insignificant.
- gggg. The Indian Producers have laid down a viable adjustment plan which focuses on cost reduction, further utilization of existing production capacity and capacity expansion to cater the growing demand.
- hhhh. The petitioner has set up another manufacturing facility to produce the PUC. The plant has commenced trial production but was unable to commence the commercial production owing to increased imports causing significant injury. The Plant will be fully operational at optimum capacity once the protection is granted under safeguard duty. The expanded capacity would be sufficient to take care of present and potential demand of unwrought aluminium in the country and to face fair competition from imports.
5. The brief summary of the rejoinders filed by the interested parties to the written submissions of other interested parties are as under:

**A. M/s Century Metal Recycling Private Limited**

- a. The factors such as concessions given under various Free Trade Agreements, decline in LME prices, setting up or enhancement of capacities in major exporting countries post FTA duty concessions reasonably constitute reasons for increase in imports and the same constitute unforeseen developments/circumstances.
- b. Imports of unwrought aluminium - both non-alloyed and alloyed have shown significant surge. The focus is on alloyed aluminium products where imports have increased as shown in the table below. This increase in imports is unprecedented, sudden, significant, sharp in recent period within the meaning of Safeguard Rules.

Details of Import of Aluminium Alloy Ingots (HS760120)

<b>Year</b>	<b>Malaysia</b>	<b>Vietnam</b>
<b>2013-14</b>	32329.35	51.00
<b>2014-15</b>	53821.71	1260.33
<b>2015-16</b>	53898.41	2401.92
<b>2016-17 (Annualized)</b>	83316.60	7561.42
<b>Increase in imports in 2016-17 over 2013-14</b>	162.5%	14723%

(Source :-Ministry of Commerce Website)

- c. Total domestic production of aluminium alloy ingots (HS760120) are to the tune of less than 500,000 MT whereas the imports of the said goods during 2015-16 was 224,570 MT constituting nearly 45% of the total domestic production.
- d. Such imports are increasing, therefore, the share of such imports cannot be considered insignificant, particularly in a situation where there is already significant surplus capacity in the country. Moreover, the low price at which imports are being made at present is causing severe injury to the Indian industry and the same is required to be checked by imposition of safeguard duty.
- e. It is not true that entirety of imports are under advance license. In any case, the mere fact that some of the imports are under advance license is entirely immaterial. DG considers all the imports, regardless of the nature of imports, for determining increased imports and the fact that these have been made without payment of customs duties has not been considered relevant in the past.
- f. Some parties have contended that the scope of the product under consideration is vague and wide. It is submitted that the different kinds of product under consideration differ only in terms of associated shape, size and composition. While primary producers' focus is production of non-alloyed form of product under consideration, primary focus of secondary producers is alloyed form of product under consideration. However, the only difference between the two is in the chemical composition. Otherwise, all types of product under consideration are comparable.
- g. It is a fact that the imports of the product under consideration are causing serious injury to the Indian industry. In fact, M/s Century Metal Recycling Pvt. Ltd. has also suffered significantly as a result of surge in imports of product under consideration.
- h. There is significant decline in the price of alloyed form of product under consideration.
- i. As regards submissions of opposing parties concerning public interest, it is submitted that public interest lies in protecting the domestic industry. The cheaper imports may benefit the end use consumers in the short run but the long term benefit for the domestic industry lies in the levy of safeguard duty. The parties opposing safeguard duty have failed to provide any verifiable information/documents to establish that imposition of safeguard duty would have any significant adverse impact on the end use consumers.
- j. Imposition of safeguard duty on unwrought aluminium (HS7601) comprising aluminium not alloyed (HS76011 0) and aluminium alloy (HS760120) shall have a significant positive impact on the domestic industry as it will check the sudden and significant surge in imports which is causing serious injury to the domestic industry.
- k. The proposed safeguard duty especially on imports from FTA countries shall not have any adverse impact on the end use consumers.
- l. The imposition of safeguard duty shall provide a level playing field to the domestic industry manufacturing unwrought aluminium, both aluminium not alloyed falling under 760110 and aluminium alloy falling under 760120. It will also serve the larger public interest of not only domestic industry but also the end use consumers.

**B. Department of Foreign Trade, Ministry of Commerce, Thailand.**

- a. In spite of the increase of import volume, which has been claimed causing serious injury to the domestic industry, the production volume and domestic sales of the domestic industry have been increasing as well as the domestic inventory has been decreasing in the positive manner.
- b. The PUC includes a range of products, which should not be affected by the safeguard measure.

- c. The basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof is dubious.
- d. While the domestic industry is confronting with domestic loss, it is still able to increase its capacity, employment level as well as increase tremendously its wages. It is arguable whether such loss of the domestic industry is caused by increase in import or it is attributable to inefficiencies of the domestic industry or other factors.

**C. M/s Jindal Aluminium Ltd.**

- a. Notwithstanding the explanation of the petitioners in justifying that a SEZ unit is a domestic industry, in reality SEZ is a unit situated in domestic area primarily for exports. Almost all the sales are for export market and the goods are not meant for domestic market. However, if goods are sold in domestic area the applicable taxes and duties need to be paid. This provision in policy is included to allow SEZ to sell some quantity in domestic area which can't be exported.
- b. Since the SEZs are not affected by the competition prevailing in domestic area, the installed capacity, production and sales of SEZ should not be considered for calculation of capacity utilization.
- c. The capacity of SEZ plant of Vedanta is not fully operational due to power and alumina issues. Taking the capacity of 1.25 million tonne of this plant in total installed capacity is with the malafide intention to lower capacity utilization.
- d. M/s Vedanta has established SEZ unit on the strength of benefits, exemptions and incentives granted to them for setting up the unit. If SEZ is to be treated as a domestic unit, the benefits granted should be surrendered by them.
- e. The definition of PUC is quite large and some of the products are not even imported in significant quantity. The definition of PUC covers both aluminium not alloyed and aluminium alloys in the form of ingots, billets, wire rods, wire bars etc. All these products are not interchangeable and are separate. Some of them, like wire rods are not even imported.
- f. The petitioners earlier submitted the application covering 'unwrought aluminium falling under Chapter 7601', but DG while notifying found it appropriate to add (aluminium non alloyed and aluminium alloyed) with this. It's not understood as to why the DG enlarged the scope of PUC on his own.
- g. Aluminium non alloyed and aluminium alloyed covers two different broad categories with different technical characteristics and cannot be treated as identical.
- h. There are only two items which are imported; unwrought aluminium (76011010) and billets (7601 2020). All other products under heading 7601 are either not imported or not manufactured by the petitioners.
- i. The alloyed ingots are not manufactured by the petitioners but by small secondary producers using scrap and imposing safeguard duty on this is not justified.
- j. Some quantity of alloy ingots is imported for some specific purposes due to quality and high domestic prices.
- k. Ever since the investigation has started, the data submitted by the petitioners have been changed 4-5 times to such an extent that the affected parties are confused and not in a position to understand as to which set of data is final for filing their response accordingly.

- l. The petitioners have submitted another set of data post public hearing which is even inconsistent with the data furnished by DG after on-site verification.
- m. Neither the petition, nor revised data and DG's preliminary investigation conclusively establish any link between rising imports and its direct impact on the profitability of the domestic industry.
- n. Imports have shown a marginal increase of 1,89,837 MT only in absolute terms in 4 years from 2011-12 to 2015-16 but as a percentage in terms of production, it has remained at almost at the same level and increased slightly.
- o. Import was 13% of production in 2011-12 and increased to 15% in 2015-16 as per Notice of Initiation of safeguard investigation dt 19.04.16. Even otherwise, the increase of 78% in 4 years is not at all alarming considering the overall growth in India. This increase which is quite normal cannot be treated as 'spurt' or 'sudden' calling for imposition of safeguard duty.
- p. The increase in imports has been gradual and consistent giving the applicant sufficient time to tweak their business plan, if required. In this period the petitioners' production increased by 76% and their exports increased by 336%. The petitioners installed capacity and domestic sales also increased by 40%.
- q. As per the data submitted by petitioners in their written submissions given on 7<sup>th</sup> October '16, there is absolutely no link or relation whatsoever between the profitability of applicants and quantity of imports. In 2013-14, their profits fell down whereas with almost the same quantity of imports in 2014-15, the profits increased to almost 12 times of 2011-12.
- r. It can be concluded that increase in import volumes have no affect on the profits of the applicants. Imports have been rising gradually with increase in economic development while the profits of the applicants have been fluctuating due to reasons which cannot be attributed to imports.
- s. In the year 2015-16, the import of primary metal i.e. ingot (not alloyed) was 1,97,394 MT only out of which most of the quantity was imported against advance license to the exporters, for their export entitlement. The same cannot be stopped as this is the special incentive being given to the exporters by the government of India.
- t. Besides this, there was an import of alloyed aluminium ingot in the country to the extent of 2,24,570 MT that was supplied from the FTA countries i.e. the countries having Free Trade Agreement with the government of India. Hence, there is negligible import in the country of unwrought aluminium ingot against OGL and there is no import of metal in the country to cause any competition to the domestic manufacturers.
- u. Claim of petitioners that increased imports have caused serious injury and have affected their financial situation and are the reason for their continuous losses, is baseless. The actual reason of their losses is increased interest and depreciation on the heavy capital expenditure by all the applicant companies; Hindalco, Vedanta and Balco.
- v. In their annual accounts for the year 2015-16, Hindalco has admitted that they have completed their expansion project and there will be no more capital expenditure during the current financial year. Hence, they will be earning more profits during the current year. Hence, there is no justification in considering their request for any safeguard duty.
- w. According to the statement made by Managing Director of Hindalco while announcing their financial result for the FY 2015-16,
  - i) Their profit during FY 2015-16 is Rs.607 Crores
  - ii) Their profit is less due to depreciation and high finance cost on increased capital expenditure on capacity expansion.

- iii) They are working at full capacity
  - iv) Since they have completed all their expansions, finance cost will be less henceforth and profit will increase.
- x. Hindalco's new Chief Executive in a detailed press interview has explained Hindalco's strategy to reduce the debt burden in order to improve the profits further.
- y. Hindalco has managed to show a stellar performance in 1<sup>st</sup> quarter ended April-June'16 by earning profits of Rs 294 Crores as compared to Rs 61 crores in the corresponding quarter of 2014-15 – a growth of 382%. This will improve further in coming quarter with reduction in debt, as planned.
- z. M/s Nalco (not a petitioner) has also earned a net profit of Rs 139.12 Crores in April-June"16.
- aa. The profitability of petitioners is slightly affected presently due to increased burden of depreciation, finance expenses on huge capital expenditure in creating additional capacities. Nowhere is it established by the petitioners that the industry is threatened due to rising imports.
- bb. The applicants' claim of lower capacity utilization of 48% is false as production of only unwrought aluminium has been taken.
- cc. The applicants have submitted the revised set of data showing 97% capacity utilization after onsite visit by Directorate of Safeguards. This raises serious doubt on the authenticity of data submitted earlier, based on which the investigation is initiated.
- dd. The MD of Hindalco while announcing their financial results for FY 2015-16 has confirmed that Hindalco is working at its full capacity.
- ee. Aluminium being a commodity, its prices are prone to fluctuations like any other metal. As the prices of the petitioners are linked with LME, their fortunes also keep on changing with these fluctuations. The petitioners file such applications whenever the LME prices are sluggish, making some flimsy ground like rising imports, dumping of material etc.
- ff. The aluminium prices have increased almost 12% in the current year since January and the profits of the petitioners have increased by Rs 14,500/- MT, though the imports have continued.
- gg. Since the LME prices have improved, the DGSG should wait for this downward trend be over.
- hh. The secondary manufactures are also equally affected by the downtrend and sluggish demand.
- ii. For levy of Safeguard duty on any product, the Applicants must prove the following:
  - i) Production of Domestic Industry has come down due to imports.
  - ii) Domestic industry is suffering loss due to cheap imports.
  - iii) Domestic industry is forced to reduce manpower.
  - iv) There is heavy surge in the import causing injury to the domestic industry.
  - v) Inventory has increased as the domestic industry is not able to sell.
- jj. None of these vital signs which prove injury to an industry are present in this case and
  - i) The domestic industry is operating at almost 100% of its capacity.
  - ii) The domestic industry is making profits but profits have come down. Their profits are lower due to incidence of higher interest and depreciation on their huge capital expenditure, not because of imports.
  - iii) The manpower of domestic industry has rather increased by 5% and wages has increased by 100% between 2011-12 and 2015-16.

- iv) There is no surge of imports. The imports have been fairly consistent and whatever marginal increase taken place during the period is normal and corresponding with the economic growth.
  - v) As per notice dated 19.04.14 of DGSG, inventory has rather reduced in 2015-16 compared to 2011-12 even with appreciable increased production and sales between these periods. This proves petitioners are able to sell the entire quantity and there is no injury.
- kk. The industry which doesn't show any signs of retrenched employees, no unutilized capacities, no abnormal decline in profits, can't be treated as under threat and be given extra protection of safeguard duty or any other duty just to amass extra profit at the cost of general public.
- ll. Most of the imports are against advance license for entitlement of exports. Apart from that some quantities are imported mostly from FTA countries. DGSG can verify the data and if felt necessary, the import from FTA countries be stopped.
- mm. If safeguard duty is imposed, it will cause serious injury to the entire secondary manufacturing industry engaged in downstream aluminium products and drive them to the closure.
- mn. All the secondary manufacturers of different aluminium products will be forced to buy their raw material from these primary producers on the higher prices. They will have to compete with primary producers for the downstream aluminium products as they are also engaged in the manufacture of the same on large scale.
- oo. Thus, it will be a two edged sword in the hands of the primary producers, on the one hand, to earn profit from sale of raw material and on the other to acquire monopoly on the downstream products by forcing the small and medium industries to close down their units.

#### **D. Aluminium Secondary Manufacturers Association**

- a. The petition submitted by the domestic industry is entirely baseless and far from the facts.
- b. As far as the injury is concerned, the same occurs in the following conditions:
  - i) If the industry is running in losses due to imports.
  - ii) If there is under-utilization of the installed capacity.
  - iii) If there is any retrenchment of the staff, employees and workers.
  - iv) If there are large scale imports.
- c. It has been proved beyond doubt that none of the above mentioned conditions are at all applicable to applicants as they are earning very reasonable profits. They are enclosing the copies of unaudited results of Hindalco for Q1 of 2016-17, audited results of Vedanta (including Balco) for 2015-16.
- d. Though their percentage of profit have slightly been affected for the year 2015-16 in comparison to previous years but that is entirely due to increase in interest and depreciation incurred on huge capital expenditure incurred for increasing their capacities; or /and adjustment of some exceptional expenses.
- e. The capacity utilization of 48% as claimed by the applicants is grossly incorrect since all the applicants are running their plant at full capacity.
- f. The applicants are engaged in many other products apart from those listed under chapter 7601, like extrusions, rolled products, foils etc. The installed capacity for this reason should be calculated with reference to the capacity of smelted hot aluminium which is converted in any products, decided by the petitioners.



- g. As verified by the Directorate General of Safeguard the installed capacity of hot metal combined of these companies is 20,39,569 MT per annum; whereas the production against the above installed capacity during the year 2015-16 was 19,84,765 MT i.e. more than 97% of the installed capacity.
- h. The manpower of the domestic industry has increased 5% between 2011-12 and 2015-16 and wages have increased by more than 100%.
- i. The domestic industry's man power cost has increased by 100%. This is an ample proof of a profitable industry operating at its peak.
- j. The inventory has also reduced in 2015-16 compared to 2011-12 even with significant increase in production and sales between these periods. This proves petitioners are able to sell the entire quantity and there is no injury.
- k. Hence, the industry which is making reasonable profits, running at 97% installed capacity, increases its manpower and reduces its inventory do not deserve any undue protection and their application for the safeguard duty is liable to be rejected.
- l. Applicants are already exporting about 8.2 lakh MT of primary aluminium on the international prices i.e. LME + premium; whereas on the entire supply in the domestic market to the extent of about 12 lakh MT, they are enjoying a premium of about 13% due 8.25% customs duty and clearing/ forwarding charges, applicable for imports.
- m. The landed cost of the metal in the country is based on the LME price + premium + customs duty + cess + clearing and forwarding charges, inland haulage charges etc. The domestic industry always keep their prices in the domestic market equivalent to that of the landed price of imported metal and earn extra 13% over and above the international prices.
- n. Protection to domestic industry is not required, since there is no surge in the import of primary metal in the country. During last six years the import of primary metal is ranging between 13 to 15% of the total production.
- o. The growth in imports was marginal and in line with overall economic development. Most of the imports which take place now are against Advance Authorisation Scheme as entitlement of exports which will continue and do not affect the domestic industry. Besides this, some quantity of alloy ingots is imported from nearby FTA countries.
- p. Import of alloy ingots also do not cause any injury to the domestic countries as the same is not manufactured by the domestic industry since raw material for the same is scrap. In both the above category of imports safeguard duty is not applicable and do not affect the domestic industry.
- q. The domestic industry could not establish a link between rising imports and their profits. The imports though increased slightly but are at the same percentage of production whereas the profits of the domestic industry have fluctuated between 2011-12 and 2015-16.
- r. The purpose of filing the application is just to increase the profits by raising the prices of the aluminium sold in the domestic market and earn more profits.
- s. Raising the domestic prices will not stop imports since domestic prices are linked to cost of imported aluminium. Safeguard duty will increase the cost of imported aluminium.
- t. They request not to impose any safeguard duty which will hit the secondary manufacturers very hard and cause inverted duty structure. Prices of raw material will increase due to safeguard duty and secondary products will become cheaper.

- u. All the secondary manufacturers of different aluminium products will be forced to buy their raw material from these primary producers on the higher prices and on the other hand, they will have to compete with them (primary producers) for the downstream aluminium products as they are also engaged in the manufacture of downstream products.
- v. This will happen at a time when the small downstream manufacturers are already reeling under stagnant demand, fall in exports and increasing losses.
- w. Many small and medium companies are on the verge of closure due to large scale import of aluminium secondary goods from China, subsidized by their Government due to 13% export subsidy and imposition of safeguard duty will worsen the situation further.

**E. M/s. Aluminium Bahrain B.S.C**

- a. In light of the decision of the CESTAT in the case of *Pig Iron Mfrs. Assn. V Designated Authority* 2000 (116) E.L.T. 67 (Tribunal), it is clear that captive producers of a product are not considered as domestic industry with respect to the said product as they do not sell such product in the domestic merchant market and thus are not in competition with imports of the said products. Similarly, an EOU or SEZ unit which primarily sells in the export market and does not compete in the DTA cannot be considered as the domestic industry.
- b. The Petitioners have attempted to justify the multiple changes that have been made to the data of the domestic industry. The Exporter had submitted detailed arguments on this issue vide its written submission dated October 7, 2016. The Exporter further submits that:
  - i. The change in the data provided by the Petitioners with respect to the certain parameters cannot be attributed to the change in capacity because the production, sales, profit/loss and stock figures could not have taken into consideration the products which are not a part of the product under consideration.
  - ii. The revised data submitted by the Petitioners post-public hearing contradicts the second Verification Report. The only data that is same in the second Verification Report and the revised data post Public Hearing is capacity utilisation which is the only parameter that was explained by the Petitioners. All the other parameters have been claimed to be minor changes.
- c. It is not clear when the DGSG has already conducted on-site verification and subsequently issued verification report, how the data for entire period of investigation has changed so substantially.
- d. The Exporter submits that there is no clarity as to which data pertaining to the domestic industry should be relied upon in order to make its submissions which is a blatant violation of recognised and established principles of natural justice.
- e. The principles of natural justice require that party who is proceeded against must be made available with all evidence against such party and must be given an opportunity to rebut such evidence. Due to the Petitioners inability to provide reliable data, the Exporter is deprived of its right to rebut evidence.
- f. The Petitioners have claimed excessive confidentiality on injury information and adjustment plan as submitted by the Exporter vide their written submission.
- g. An EOU or SEZ unit cannot be considered to be part of the domestic industry and accordingly data pertaining to the SEZ unit must be rejected by the DGSG.
- h. The Petitioners in order to prove that the increase in imports is sudden, significant, recent and sharp have conducted an end-to-end comparison of the data provided for imports into India by

comparing the imports in the base year i.e. 2011 – 12 to the imports in the Period of Investigation i.e. 2015 – 16.

- i. The end-to-end analysis that was conducted by the Petitioners is inconsistent with the WTO. The issue of end-to-end comparison was discussed by the WTO in the *Argentina - Safeguard Measures on the Import of Footwear (Argentina – Footwear)* and vide their Panel Report dated June 25, 1999 - WT/DS121/R as well as their Appellate Body Report dated December 14, 1999 - WT/DS121/AB/R held that the analysis with regard to the increase in imports must not be based on a comparison of the end points i.e. the Period of Investigation and the base year, but must also necessarily include the intervening periods.
- j. The Petitioners in order to substantiate their claim have incorrectly reported the increase over preceding year (MT) as the increase over base year (MT).
- k. The increase in the imports from 2011-12 to 2012-13 was 27.1% and the increase in imports from 2014-15 to the Period of Investigation was 25.8%, which proves that the increase in imports was not sudden or a recent occurrence. Thus, even if reliance is placed on the Petitioners' data, there is no evidence of the increase in imports being sudden or recent. Accordingly, the investigation should be terminated forthwith.
- l. While the Petitioners argue that the producers across the globe have excess capacities, the Petitioners do not provide any data or evidence to substantiate the same. Rather the Petitioners argue that there is excess capacity in China. With respect to the alleged excess capacity in China, the DGSG, in a previous safeguard investigation concerning imports of 'Not Alloyed Ingot of Unwrought Aluminium' into India Initiation Notification F. No. D-22011/17/2009 dated May 22, 2009 has held as follows:

*“82.3 Regarding increase in imports from China, the DI has not submitted any data and therefore, this contention is not acceptable.”*

It may be noted that the Petitioners had provided the very same arguments in the previous investigation with respect to China and yet the DGSG had held that no case on 'unforeseen developments' was met by the Petitioners.

- m. With respect to claims of unforeseen development regarding Middle East, the DGSG in the 2014 investigation held as follows:

*“82.1 The expansions in capacity in the Middle East per se cannot be considered as unforeseen since expansion in capacity is not an overnight process. It takes considerable time to expand capacities to such levels. Further such expansions are not as a consequence arising out of India's obligations under the GATT and therefore, expansions in capacity in the Middle East, cannot be taken as unforeseen development.*

*82.2 Regarding other claim of cheap energy cost and freight cost in export to India, there is nothing unforeseen about it. It is common knowledge that due to their oil/gas reserves, Middle East countries have cost advantage in production of energy and due to their proximity to India they have freight cost advantage.”*

- n. From the above, it is clear that mere expansion in capacity or cheap energy cannot be seen as unforeseen development within the meaning of Article XIX of GATT.
- o. To clarify, the Exporter does not argue that for an unforeseen development to occur, the imports from the country subject to alleged unforeseen development must increase. Rather, the Exporter submits assuming there is excess capacity of the PUC in China, there is no reason that imports from China would be below *de minimus*. The Petitioners have provided no explanation as to why the imports from China are below *de minimus* even when they claim that there is excess capacity in China. This further contradicts the Petitioners' claim with respect to the unforeseen development.

- p. The Exporter submits that the Petitioners have been attempting to make baseless averments with regard to the unforeseen developments without any legal basis.
- q. The Exporter submits that “serious injury” is a very high threshold that needs to be met and the same has been laid out by the WTO in their Appellate Body in US—Lamb which described “serious injury” as a “very high standard of injury”. Therefore, only showing dispositive figures cannot in anyway prove that the Petitioners have suffered “significant overall impairment”. Assuming that the revised data submitted by the Petitioners is correct, it would show that there is no injury, let alone serious injury.
- r. The table captures the data on production, domestic sales and domestic sales value. The production of the domestic industry has increased by 52% over the POI, domestic sales have increased by 32% and so has increased the domestic sales value over the Period of Investigation.

**Petitioners’ Injury parameters**

	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
<b>Production – Index</b>	100	107	116	150	158
<b>Domestic Sales (MT) – Index</b>	100	114	97	97	135
<b>Domestic Sales (Value) – Index</b>	100	118	102	115	132

*Source:* Revised data post Public Hearing (Without SEZ)

- s. The Exporter therefore submits that the Petitioners’ averments with respect to serious injury should be completely disregarded as they are false and cannot be substantiated by the data provided by them.
- t. The Petitioners have attributed their inability to utilize the increased capacity on the imports. The Petitioners have stated that due to the “increase in demand, the domestic industry has increased its capacity”. This statement is incorrect because increase in capacity is not proportionate to the increase in demand. The Petitioners had increased their capacity in 2013-14 by 1,00,780 MT while in the same year the demand reduced by 88,251 MT. Moreover, the Petitioners have during the Period of Investigation increased the capacity much more than the demand.
- u. The Petitioners have conveniently blamed the imports for bad business decisions made by them which have resulted in excess capacity.
- v. Further, the Petitioners argue that exports by the Petitioners and financial losses suffered in exports should also be considered as one of the parameters of injury to the domestic industry. This claim is not only unsupported by law but is devoid of any logic and is rather outlandish. The export performance of the Petitioners have no correlation whatsoever with the conditions of competition in India. The Exporter submits that alleged injury suffered in export sales cannot be considered while assessing injury.
- w. The steep increase in export sales over the period of investigation clearly shows that the Petitioners themselves are not supplying in the domestic market.
- x. The Petitioners have not provided any clarity with respect to the data on price undercutting. In any case, based on the data submitted by the Petitioners, it is clear that import prices are above LME prices all throughout. Further, it is not clear as to what figures have been considered by the Petitioners to arrive at price undercutting figures i.e. whether domestic selling prices have been compared with LME price or import prices.

- y. The Exporter submits that relying on the data of the Petitioners, there is no injury on account of capacity utilization which in fact increased by 2 indexed points when compared to base period. Further, the data with respect to SEZ cannot be taken into account for reasons as stated by them.
- z. The company-wise profitability information provided by the Petitioners vide letter dated May 23, 2016, evidences that the two of the Petitioners i.e. Vedanta and Balco are making huge profits and hence cannot be considered as injured.
- aa. Since two of the Petitioners have clearly made profits during the Period of Investigation, any losses suffered by Hindalco cannot be attributed to imports. Further, Hindalco vide their Annual Report 2015-16 have stated that they experienced an upward trend in the profitability.
- bb. The Petitioners claimed that there is also a threat of serious injury and have made baseless averments with respect to LME prices and stock which cannot be attributed to the increase in imports:
  - i) LME is constantly falling: LME price fluctuations are a global phenomenon and the alleged fall in LME prices cannot be attributed to the volume of imports which is a precondition for any safeguard measure. The global pricing of aluminium is largely influenced by the London Metal Exchange (LME). Due to severely fluctuating prices as per the LME, prices across the world have been affected adversely, including the domestic industry.
  - ii) Accumulated inventories: The Petitioners' submission with respect to accumulated inventory is completely inaccurate as the closing stock has reduced from 5,708 MT to 891 MT which proves that the Petitioners have successfully been able to make sales not only of the produced goods during the Period of Investigation but also the inventory stock during 2014-15.
- cc. The Exporter has provided various non-attributable factors which have caused an injury to the domestic industry vide their written submission dated September 7, 2016. Therefore, due to the existence of other non-attributable factors that have caused injury to the domestic industry, the requirement of increased imports being the sole reason for the injury suffered by the domestic industry cannot be met. The DGSG must terminate the investigation due to non-existence of "the causal link".
- dd. In FY 2014-15, the imports rose 42 index points from the base year and in the same time period, the Petitioners' profits increased by 54 index points from the base year. The imports into India have been consistently increasing while the profits of the Petitioners have been fluctuating due to reasons which cannot be attributed to the imports.
- ee. Additionally in 2015-16, the imports increased by 24 index points from the previous year while the Petitioners' profit decreased by 177 index points. Such a sharp decrease in the Petitioners' profits cannot be attributed to the slight increase in the imports.
- ff. The Petitioners have not provided any guidance as to how the cost reduction would be achieved. Further, mere expansion of capacity cannot remove inefficiencies of the domestic industry.
- gg. The Petitioners have failed to submit any viable adjustment plan other than some bald and ambitious statements.

**F. M/s Vedanta Limited- Aluminium & Power; Bharat Aluminium Company Limited; Hindalco Industries Ltd. (Domestic Industry)**

- a. The petitioners have identified following parameters as unforeseen developments and submit that these constitute unforeseen development within the meaning of Safeguard Agreement:
  - i. Increasing capacity with Middle Eastern countries

- ii. Chinese producers also started exporting
  - iii. Cheap Energy Cost
  - iv. Decline in sea freight from Middle East
  - v. Export tax on primary aluminium and tax rebate on value-added products from China
  - vi. China Building Stock
- b. Petitioners submit that FTA concessions constitute an unforeseen development, as it cannot be expected that as a result of FTA concessions, (a) new manufacturing facilities shall be set up, (b) the exporters will start selling at low price. FTA concessions have been given by Govt. to allow other member country to sell the product in India. However, it is expected that the same shall not be at low price.
  - c. While acceding to WTO, India did not foresee that it shall grant FTA concessions to the member countries and the same shall lead to the low price imports in India.
  - d. While acceding to WTO, India did not foresee that the LME will fall to the degree it has fallen.
  - e. The DG has fully complied with the investigation procedure.
  - f. The interested parties are in fact participating in the investigation and have defended their interests to the extent they wished. Not only the DG has allowed opportunity to interested parties to file relevant information, but also, DG has provided opportunity to interested parties to defend their interests orally.
  - g. The questionnaire is in respect of companies who are not part of the petition. Those companies who are part of the petition in any case have already provided all these information to the DG. This becomes evident from perusal of the application proforma and performa for domestic producers.
  - h. The Designated Authority has provided opportunity to all the interested parties and the investigation has been conducted in fair and impartial manner. There is no legal or factual basis for stating that the DG has been unfair or partial in any manner.
  - i. The DG has conducted spot verification and has thereafter issued verification report. This verification report supersedes the information filed by the petitioners. Further, petitioners have made elaborate written submissions, a copy of which has been made available to other interested parties.
  - j. Country-wise imports breakup has already been provided by the petitioners. Further, petitioners have adopted published DGCI&S data, which is available in public domain and all interested parties have access to the same.
  - k. The claimed injury to the domestic industry is not because of increase in capacities or increase in overhead costs due to possible increase in capacities.
  - l. The DG has very clearly written in the verification report that the data is upto 2015-16.
  - m. The fact that NALCO has not supported the petition is entirely immaterial when production of the petitioners constitute major share in Indian production.
  - n. Merely because different products included in the scope of PUC differs in term of shape, size or composition the same does not imply that the resultant products are different.
  - o. The mere fact that the product types involved are bearing different description under the Customs Tariff Act does not imply that the different types are different articles.

The contentions of the interted parties and responses of DI thereon are as under:

- p. Aluminium alloys falling under subheading 760120 should not be included in the scope of PUC and it should be restricted to sub-heading pertaining to aluminium not alloyed which is 760110: The petitioners strongly object. Firstly, petitioners produce the like or directly competitive article to the PUC. Elaborate information provided at the time of spot verification is referred to and relied upon. Further, the petition has been supported by those producers who are exclusively producing and selling products falling under subheading 760120.
- q. CTH 7601 itself includes wide range of products. The products have many different characteristics such as different raw material, basic product properties, end uses and price. The products are neither interchangeable nor substitutable: The petitioners strongly object. Products falling under 7601 essentially differ in terms of their shapes, size and composition. Different shapes of the product can be produced by rolling hot metal into the desired shape. Further, different chemical compositions can be achieved in the product by controlling the raw materials used in making the product. The mere fact that the resultant products have different specification, uses or prices is entirely immaterial. In fact, the price of all the products included under 7601 have moved in tandem/same direction. This further establishes that the difference in price is only because of difference in composition of product or shape or size. However, all product types constitute one product.
- r. It is also relevant to note that the inability of the consumers to use different product types interchangeably is never considered criteria for defining the scope of PUC.
- s. The DI does not produce Aluminium Alloys: The statement is factually incorrect. The verification documents clearly provide information on production and sale of alloyed aluminium products produced by the petitioners.
- t. Price of the product ranges from Rs 99 per KG to 2447 per kg. This distorted price range is result of faulty PUC determination: The petitioners submit that the two price ranges considered by the party are extreme. Even for one HS code, the price of the product varies very significantly. If the argument of interested parties were to be accepted, it shall imply even within the same 8 digit HS code, there are significantly different products. Evidently, that cannot be the case. Notwithstanding, petitioners submit that difference in prices can never be a criteria to determine the scope of PUC. The DG recommended safeguard duties on such products, wherein different product types carry significantly different prices. However, the DG considered them one product and Govt. has imposed safeguard duties on these products.
- u. List of PUC produced by the DI should be provided: The petitioners have provided elaborate information on product types produced and supplied by the domestic industry. In fact, the information has been provided on the basis of excise classifications. The DG therefore has all relevant information on record with regard to the production and sale of different product types falling under different classifications.
- v. Special products like aluminium ingots of A356 series should be excluded from the scope of PUC because the same is not produced and supplied by the DI: Petitioners strongly dispute. The product type is produced and supplied by the domestic industry.
- w. PUC includes aluminium ingots, wire and billets. Non interchangeable due to difference in the production process renders them out of direct competition with each other: The PUC need not include product types which must be interchangeable for the consumers. In fact, there have been large number of investigation conducted wherein product under consideration included such product types which were not interchangeably used by the consumers. In fact, in majority of the investigations, product under consideration is such which are not interchangeable from consumer's point of view.

- x. Impact of the imports needs to be analysed separately for the three different products: Petitioner dispute and submit that increased imports and serious injury to domestic industry is required to be determined for product under consideration as a whole and not separately for each product types.
- y. Petitioners claim cheaper import rates, such claim defeat the LME Pricing structure and successive cost additions: Submissions made before clearly demonstrate that the difference between PUC import price and LME is declining over the years. Thus, while PUC price is decided based on LME, the import price did not follow the same LME pricing structure as was followed in the base year of the POI. This further establishes that increase in import is due to significantly falling difference between LME and pricing structure being followed by the exporters.
- z. Applicants' selling price is in parity with imported goods, in spite of being immune to the various duties and charges: This clearly establishes that the selling price of the domestic industry follows the import price. It is for this reason that the imports have caused injury to the domestic industry. As regards various duty charges, petitioners submit that their prices reflect all applicable duties and charges.
- aa. Decreasing premium affecting DI's profit is baseless: The mark-up on LME has declined as shown in the table below. This decline is in addition to decline in LME price itself over the period.

Month	LME USD MT	Spot Premium
Apr-14	1810	367
May-14	1749	367
Jun-14	1834	367
Jul-14	1945	405
Aug-14	2030	404
Sep-14	1992	404
Oct-14	1938	410
Nov-14	2054	410
Dec-14	1913	400
Jan-15	1808	400
Feb-15	1821	395
Mar-15	1773	370
Apr-15	1817	270
May-15	1805	194
Jun-15	1683	99
Jul-15	1638	100
Aug-15	1540	95
Sep-15	1589	93
Oct-15	1524	88
Nov-15	1466	89
Dec-15	1494	96
Jan-16	1479	110
Feb-16	1536	107
Mar-16	1531	110
Apr-16	1564	111
May-16	1556	95
Jun-16	1592	85
Jul-16	1630	80
Aug-16	1642	75
Sept -16	1558	70



- bb. The safeguard duty will adversely impact the downstream (cables, conductors, transformers, any product group using aluminium as primary raw material) industry and ultimately the end consumer: The petitioners have already established that imposition of safeguard duty will not have adverse effects on the consumers, as these producers are in pass through industry. Since the producers are in pass through industry, they will pass on any cost increase or reduction to the consumers and therefore proposed safeguard duty shall not adversely impact them.
- cc. Increase export tax of aluminium and supply it duty free on LME rates, without premiums: Imposition of export tax on product under consideration will kill this industry. The domestic industry as such is not able to sell in the domestic market due to increased imports. Imposition of export tax shall imply that the domestic industry will not be able to sell the product either in the domestic market or in the export market. Under the circumstances, the domestic industry will have to shut down the production.
- dd. Aluminium industry to provide aluminium at fixed price in line with LME contract to protect the interest of downstream industries both for fixed price contracts for sale, and against fixed price bids not yet allotted: In any case, petitioners undertake not to charge any safeguard duty to all those consumers who have fixed price contracts with the consumers as of the date of recommendations of safeguard duties.
- ee. Safeguard duty should be passed for HS Code 7601.20, i.e. Aluminium alloy, as it would aid the downstream industry engaged in manufacturing from the import hit specially from ASEAN Countries under FTA: The proposed safeguard duty is on all products falling under 7601 and it is very clear from the written submissions filed by CMR that CMR also have suffered material injury from the increased imports.
- ff. Non interchangeable products under 7601 as billets and alloy have different processing and end use: Various products falling under 7601 are produced on the same manufacturing facilities and are interchangeably produced by the producers.
- gg. Petitioners have claimed excessive confidentiality with respect to Injury Information. : Petitioners have claimed only such information as confidential information, confidentiality of which is protected under the rules. No information has been claimed confidential by petitioners, which is in public domain. Information that is not in public domain cannot be disclosed.
- hh. There is no sudden and sharp increase of imports: The data clearly establishes increased imports. There is clear increase in imports in present case when compared with other cases where duties have been imposed by Govt.
- ii. 78% rise in imports over a period of 4 years is natural for a nation like India. DI is not affected negatively. A marginal increase of 15% in imports: The increase in import was 74% over the period. Further, whereas the demand grew by 20%, imports increased by 74%. Thus, increase in imports was far higher than increase in demand. It would be seen that the exports by domestic industry is higher than imports into India, which clearly establishes that the domestic industry could have easily met the demand of the product in the country and imports were not necessary to meet rising demand of the country.
- jj. There is no reason why domestic industry would prefer to export and incur higher losses rather than selling in the domestic market. The only plausible reason for these exports is inability of domestic industry to sell the product in the domestic market in view of increased imports of the product in the country.
- kk. Imports cannot be stopped in absolute terms because most of it is imported under advance licensing. Actual imports can be figured out once import against advance licence is excluded out of total import: The issue has already well decided by the Safeguard authority in the past cases. The authority has never segregated imports made under advance license. The rule also does not

specify that the authority shall determine increased imports after segregating and eliminating imports made under duty exemption schemes. Further, merely because imports under advance license shall not be subjected to proposed safeguard measures, the same does not imply that the same shall not be considered for determining increased imports.

- ll. False and misleading information furnished by the applicants regarding imports from China PR and Middle East. Details of the same are sought: Full details of imports of the product from various countries have been provided. Further, the petitioners' claim is based on published DGCI&S data and therefore there can be no question of false and misleading information having been provided by the domestic industry. Petitioners have never alleged that imports have surged from China. Petitioners have contended that in view of changing market situation in China, imports have increased in India. Whereas China was the major importer of PUC, China has become an exporter of the PUC resulting in significant surpluses with other producers globally. It is thus surplus in the global market which is forcing other countries' producers to divert the product in Indian market.
- mm. Downstream industry forced to import as the DI is reluctant to deliver goods against the Advance License: Import under advance license in any case will not be subject to safeguard duty and therefore the interested parties need not be concerned and should not oppose the proposed safeguard duty on this account. The consumer can continue to source their requirements through imports under advance license and without payment of safeguard duties.
- nn. Non-payment of duties and taxes over LME would aid reducing imports: While non-payment of duties and taxes to the LME price may help in reducing imports, this would lead to intensified injury to the domestic industry. The domestic industry has suffered a combined loss of Rs 170 crores during 2015-16. If the selling price is reduced by an amount of taxes and duties, the losses to the domestic industry shall increase to 432 crores.
- oo. Alleged import influx claims by petitioner are not supported by their ever increasing profits, and non-retrenchment of workforce : Profitability of the domestic industry declined steeply over the POI. Thus, the arguments of interested parties are not based on the facts. As regards retrenchment of workers, petitioners are producing to the extent they can and therefore there is no question of retrenching workers.
- pp. Non segregation of imports made under export promotion "duty free" scheme with "OGL" duty paid scheme, misleads the imports made under duty paid route : The DG had earlier conducted a number of investigations and has not segregated imports into duty free and duty paid. Therefore, question of doing the same in the present case also does not arise.
- qq. No market is lost due to imports. DI should extend their international price under duty free scheme to attract the finished products exporters :The table below shows the market share of domestic industry and imports. It is evident that domestic producers as a whole lost their market share and imports gained the same.

Particulars	UOM	2011-12	2012-13	2013-14	2014-15	2015-16
Market Share in Demand						
Imports	%	12	14	16	15	17
Domestic industry	%	42	42	40	37	39
Others (Nalco)	%	16	12	10	11	7
Secondary producers	%	31	33	34	37	36
Total Primary producers	%	57	53	50	49	46
Total of Indian producers	%	88	86	84	85	83

- rr. Import figures mislead, as the ones presented relates to total ch. 7601. Submission of import data of 7601.10 is required as the same would be negligible: The table below shows the imports segregated into 760110 and 760120. It would be seen that the imports are significant in both the classifications.

Particulars	UOM	2011-12	2012-13	2013-14	2014-15	2015-16
Imports in 760110	MT	97,596	1,60,496	1,94,104	1,56,326	1,97,394
Imports in 760120	MT	1,44,937	1,47,783	1,54,782	1,87,101	2,24,570
Total	MT	2,42,533	3,08,279	3,48,886	3,43,428	4,21,964

- ss. Increased exports in wake of increased imports in the present context shows that the applicants want to export PUC, creating scarcity in the Indian markets. Thereby injuring the secondary AI market: Submissions made before are reiterated. Increased exports by petitioners are because of increased imports by consumers. It is not a case of increased imports by consumers because of increased exports by petitioners. This gets clearly established by a comparison of profitability of domestic industry in the domestic and export market. Petitioners do not want to export the product. Petitioners are forced to export the product because of increasing imports of the product in the country.
- tt. The injury investigation period coincides with 2 FTAs namely, Malaysia –India FTA (Jul. 2011) and ASEAN-India FTA (Jan. 2010) : This is the precise argument of the petitioners. Surge in import is due to FTAs signed by India with some of the countries. These FTAs clearly constitute unforeseen developments, as it cannot be reasonably expected that the result of FTA shall be low priced imports. Further, as a result of these FTAs, new capacities have been set up in Middle East and China PR as per details given in the petition. Thus, while these FTAs have been signed, it was totally unforeseen that the same shall lead to setting up of fresh capacities in these countries.
- uu. There is no sudden and sharp increase Argentina- Footwear WTO Appellate Body Report (Footwear case), highlights the characteristics of sudden, sharp and significant imports.: There is clear sudden, sharp, significant increase in imports in recent period within the meaning of increased imports under the WTO Agreement and Indian rules.
- vv. Present petition is baseless as per AoS, GATT. Appellate Body report on US-Steel Safeguards and US-Definitive Measure- logical connection missing in the petition between the unforeseen development and increase in imports. : The requirement of AoS and GATT are fully met in the present case. In fact, interested parties themselves have contended that increased imports coincide with signing of FTAs. Thus, it is their own case that increased imports are coinciding with unforeseen development. In so far as the question of Agreement on Safeguard and the requirement of unforeseen developments stated therein are concerned, petitioners reproduce the relevant part of the Agreement. It would be seen that the Agreement provides that the increased import should be a result of tariff concessions and obligations incurred by India.

*Concessions and Other Obligations*

*In applying a safeguard measure, the Member must maintain a substantially equivalent level of concessions and other obligations with respect to affected exporting Members. To do so, any adequate means of trade compensation may be agreed with the affected Members. Absent such agreement, the affected exporting Members individually may suspend substantially equivalent concessions and other obligations. This latter right cannot be exercised during the first three years of application of a safeguard measure if the measure is taken based on an absolute increase in imports, and otherwise conforms to the provisions of the Agreement.*

India has in fact undertaken tariff concessions and the same has led to reduction of customs duty.

- ww. No loss of production to the DI on account of imports, moreover DI infused substantial funds to increase production and are able to sell the produce too. : The DI has clearly faced loss of production due to increased imports. If exports are excluded from production, it would be seen that there is an increase in production significantly lower than increase in demand.
- xx. No loss making recorded for the last 5 years by the petitioners. Only reduction in profitability, that too not because of imports but because of the depressed price of AI in international market. : Statement is factually incorrect. Table below shows profitability of the DI. It would be seen that the DI is suffering significant financial losses, cash losses and negative return on investment. This is because of price depression faced in the PUC.

Particulars	UOM	2011-12	2012-13	2013-14	2014-15	2015-16
Profit/(Loss) – Domestic	Rs.Lacs	100	13	-4	149	-50
Cash Profit	Rs.Lacs	100	23	10	152	-31
Return on Investment	%	100	60	20	100	0

- yy. DI injured on account of their own expansion plans, huge depreciation and interest costs being the driving reasons : Decline in profitability is not due to increase in depreciation or interest cost. Even if it is admitted that the decline in profits is due to depreciation and interest cost, it cannot be said that the DI is not entitled to protection under the rules. Under annexure –II, requirements of causal link cannot be read to imply that there is absence of causal link because of increase in depreciation and interest cost. The present petition is a petition for imposition of safeguard duty and not for anti-dumping duties.
- zz. United States — Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea, WT/DS202/AB/R, adopted 8 March 2002, DSR 2002:IV, 1403- safeguard measure is an extra ordinary remedy to be adopted in emergency situation :The facts of present case clearly establish an extraordinary situation in the present industry. The combined loss suffered by the industry in its domestic and export operations was in the region of Rs 463 crore. Further, profitability changed by Rs. over 500 crore over the present injury period. This by no stretch of imagination can be considered as an ordinary business situation.
- aaa. DI failed to produce any WTO provision to seek safeguard duty. : The present petition is under Indian rules and not under WTO Agreement. The petitioners have filed petition considering the trade notice and has provided all such information which the DG has prescribed. It is not an argument of any interested party that the WTO Agreement is different from Indian Rules. Thus, the present petition is fully consistent with the WTO Agreement of Safeguards.
- bbb. Retrenchment/ lay off, of workers not possible as per the facts provided by the DI. Employment doesn't show any sign of injury: It is not necessary that all injury parameters must show injury. In fact, the jurisprudence on the subject is absolutely clear – while there are large number of parameters prescribed under the law, it is not necessary that all these parameters show deterioration and establish injury on individual parameter basis. On the contrary, it is well understood that the injury analysis is required to be conducted after considering all parameters relating to industry. Further, in a situation where some injury parameters have shown improvement and some have shown deterioration, the DG must examine where deterioration in some of the parameters far outweighs improvement in some other injury parameters.
- ccc. The DI is making profits by exporting and does not sell the products to the domestic users : The petitioners have provided factual data. This clearly establishes that the petitioners have suffered significantly higher losses in exports as compared to domestic operations. Thus, exports made by the petitioners were a compulsion as a result of increased imports and was really not a choice of the petitioners.

- ddd. Economic parameters of the DI ranging from production to productivity per employee had improved : The written submission are referred to and relied upon, which clearly establishes that the DI has suffered serious injury as a result of increased imports. The claim of serious injury gets fully established by considering parameters such as significant decline in profits, ROI, market share, increase in losses in exports, increased exports due to increased imports. All these parameters collectively and cumulatively established that the DI has suffered serious injury.
- eee. Market behaviour with regard to aluminium was predictable because of falling Chinese consumption pattern in 2011, along with the forecasts of increasing production capacity of the Middle East : Falling Chinese consumption and increasing production capacity in Middle East both constitutes unforeseen developments.
- fff. Challenges inclusion of SEZ by petitioners as part of DI by citing Final Findings of Electrical Insulators from China PR. : Elaborate written submissions are referred to and relied upon. As far as decision of the authority in the matter of electrical insulators is concerned, petitioners have already made elaborate submissions how this decision cannot become a legally binding precedence in the present case.
- ggg. Appellate Body in US-Lamb defines serious injury and establishes different natures of serious and material injury: The decision of Appellate Body in US lamb case when applied to the present case clearly establishes that the DI has suffered serious injury.
- hhh. Shows increase in economic parameters for the DI, to nullify claims of injury : Increase in some economic parameters, when performance in some other parameters has severely deteriorated, does not imply no injury. In fact, improvement in these parameters is of no relevance/advantage to the domestic industry. Performance of the DI has so materially deteriorated in other parameters.
- iii. Data received post-public hearing shows negative price undercutting :The price undercutting is clearly positive in the present case. Since there is significant difference in alloy and non-alloy products, the DG may compare the two separately.
- jjj. DGSG has laid out events as “not-unforeseen” and futile due to Chinese exclusion from the investigation is challenged: Low volume of imports from China does not mean that economic situation in China cannot mean unforeseen developments.
- kkk. The final findings of DG Safeguards in the previous case in 2014 whereby the DI was adjudicated to be under no harm : Considering the facts of the previous case, facts of the present case establishes serious injury. In fact, petition clearly shows that performance of the domestic industry improved in 2014-15. The observation of the DG was based on performance in Q1 of 2014-15 and therefore the observations of the DGSG in the previous case final findings and claim of the petitioners in the present petition are fully consistent. However, after improvement in performance in 2014-15, there was a dramatic decline in the performance in 2015-16 due to decline in LME prices.
- III. No causal link. DI increased capacity without optimizing the existing capacity. Thus lead to increased interest payments: Submissions made are relied upon. The DG may consider profit before interest and depreciation which will show a significant deterioration in profitability of domestic industry. Thus, the argument is without any basis. Even in a situation where DI has been expanding its capacity which are not getting fully established, the DI is entitled for safeguard duty protection. The DI is clearly entitled to protection even if it is in stabilization stage for enhancement of capacities. The facts of the case do not show that the DI was increasing capacities without optimizing existing capacities. It would be seen that profit before interest declined significantly over the injury period. It is thus evident that the deterioration in profits of the DI was not due to increase in interest cost. The same was due to decline in selling price as a result of significant decline in LME price.

- mmm. Domestic users cannot bear the brunt for excess capacity with DI: In a situation of excess capacity with the domestic industry, there is no necessity of imports by the consumers. Further, if imports increase in a situation where industry is already suffering from excessive capacity, the situation is likely to lead to increase in cost of production of the domestic industry and resultantly higher prices to the consumers.
- nnn. Sharp increase in interest cost: The authority may consider profitability of domestic industry before and after interests expense. It would be seen that profit before interests declined severely. This further establishes that the decline in profitability of domestic industry was not due to increase in interests cost.
- ooo. The DI does not follow the LME price. In fact the price of DI is higher than LME: The fact is that the selling price of domestic industry declined steeply over the period. Resultantly, the profitability of domestic industry has declined significantly.
- ppp. DI failed to cut down its price despite decrease in raw material prices: The changes in selling prices and raw material costs are on record. It would be seen that the domestic industry has reduced prices significantly and even beyond the decline in raw material prices.
- qqq. Wages increased by 150%, whereas employment only increased 5%: The table below shows the incident of wage cost per kilo and profitability of domestic industry. It would be seen that the deterioration in profitability of domestic industry could not have been due to alleged increased in wage cost.

Particulars	UOM	2011-12	2012-13	2013-14	2014-15	2015-16
Wage cost per MT of production	Rs./MT	100	101	122	139	127
Profit/( Loss) - Domestic	Rs. MT	100	11	-4	154	-37
Changes year to year						
Wage cost per MT of production	Rs./MT	100	1,631	1,325	-944	100
Profit/( Loss) - Domestic	Rs./MT	100	17	-178	215	100

- rrr. Captive consumption figure which stood at 70% needs analysis: All factual information is on record. The domestic industry shall provide any further information as is considered relevant and appropriate by authority.
- sss. Only increase in the import duty of PUC without increase in the finished/semi-finished good will result in inverted structure: Written submissions are relied upon. As submitted before, the consumers are largely in pass-through industry and passes on increases in the input cost.
- ttt. Domestic competition- DI amount to be representing more than 50% of the total production thus need to analyze the effects of domestic competition on the petitioner : The claimed injury to the domestic industry is because of import competition and decline in import prices as a result of decline in LME prices. The claimed injury to the domestic industry is not on account of possible inter-se competition amongst the domestic producers. In fact, domestic producers were competing with each other throughout the relevant period. However, profitability of domestic industry has severely declined, despite similar inter-se competition amongst domestic producers.
- uuu. With an increase in imports by 26% in the year 2015-16, the production of the DI increased by 32% along with highest sales figure. Thus breaking the casual link : The table below shows imports of PUC, production, exports and sales of the domestic industry. It would be seen that the increase in sales in the domestic market is far lower than increase in production and demand of the product.

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Imports MT	2,42,533	3,08,279	3,48,886	3,43,428	4,21,964
Production – PUC MT	9,97,282	10,63,882	11,53,951	15,01,542	15,99,740
Sales Domestic MT	5,18,295	5,91,784	5,04,675	5,01,513	7,00,486
Exports MT	1,48,485	1,34,555	2,96,301	5,95,931	6,64,197

vvv. Footwear Case, along with Korea-Dairy, and US-Wheat Gluten- Causation standard: The stated cases do not vitiate the conclusions drawn in the present case. In the present case, it is increased imports that have caused injury to the domestic industry.

www. No coincidence of reduced profits due to increasing imports. No proof of fall in sales due to increasing imports: The table below shows the imports of PUC and profitability of domestic industry. It is evident that the profitability of domestic industry has declined steeply in the present period as imports have increased. Further, petitioners submit that (a) the volume of imports are required to be compared with volumes and market share of the domestic industry and (b) price of imports is required to be compared with profits of domestic industry. The table below shows the import price of PUC and profitability of the domestic industry. It would be seen that the profitability of domestic industry has moved in tandem with import price. Thus, deterioration in profitability of domestic industry is due to import price.

Particulars	UOM	2011-12	2012-13	2013-14	2014-15	2015-16
Imports Volume	MT	2,42,533	3,08,279	3,48,886	3,43,428	4,21,964
Profit/( Loss) - Domestic	Rs. MT	100	11	-4	154	-37
Import price CIF	Rs. MT	120490	123000	128420	138640	123930

xxx. Reduction in profits is not a sign of link, but was on account of LME Price Fluctuation: The fact that LME declined for the period also establishes causal link. If Indian importers had not been importing at prices linked to LME, the domestic industry would not have been forced to link its prices to LME. Thus, if import price has declined due to LME, the same nevertheless establishes causal link. The reason for decline in import price is not relevant for causal link. The reason for decline in import price is relevant for decision on unforeseen development. It is the decline in LME which is responsible for increased imports. Further, this decline in LME was completely unforeseen as far as domestic industry is concerned.

yyy. The contention of the petitioner regarding reduction in domestic producers' share of market can be explained through increase in production costs and cheap imports from China PR: The argument has no rationality. First of all, increase/decrease in production cost is not linked to market share. The market share of domestic producers does not change with change in production costs. Further, the present case is a safeguard case and therefore availability of cheap imports from China in itself is not relevant and sufficient parameter to break causal link. In fact, interested parties have contended that imports from China are negligible. At the same time, some parties have contended that the performance of domestic industry has deteriorated due to cheap imports. Evidently, the parties are contradicting each other.

zzz. Combined results from the aluminium market price crash and high energy costs in India are eating up the revenues: This clearly establishes the causal link. It is this price crash which is responsible for injury to domestic industry. The fact that the energy costs in India are high is entirely immaterial. With the similar high level of energy cost over the injury period, the domestic industry was earlier earning profits and is now suffering losses. Table below shows energy cost paid by the domestic industry and its profitability.

Particulars	UOM	2011-12	2012-13	2013-14	2014-15	2015-16
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Energy Cost	Rs./MT	100	123	131	169	143
Profit/(Loss) - Domestic	Rs. MT	100	11	-4	154	-37

- aaaa. Decrease in inventory pointing towards increasing domestic consumption. Inventory improved : As submitted before, given the high price of PUC and considering per day production by the petitioners, it is not possible for domestic industry to hold inventories. In fact, on several occasions, the domestic industry has been forced to undertake exports in order to liquidate the inventories.
- bbbb. The negative impact on the Indian producers due to aluminium world prices, increase in import stipulated by growth in AI consumption by downstream industry : This is the precise argument of the petitioners. Decline in aluminium prices globally has led to increase in imports in India. Consequently, the domestic industry had to undertake significant exports at much lower prices. The domestic industry was forced to export because of increasing imports in the country.
- cccc. DI holds 85% share of the domestic demand. Mere 15% cannot cause serious injury: 15% market share cannot be called insignificant in a situation where the domestic industry is admittedly holding excessive capacities.
- dddd. Issue with Vedanta is bauxite and coal procurement, as mentioned in their Annual Report: The alleged issues might have impacted production. Production by the petitioners admittedly increased, thus establishing that the alleged factors did not adversely impact the domestic industry. If petitioners were not able to sell remaining volumes in domestic market, it was only because of increased imports in the country.
- eeee. The DI was suffering injury when price undercutting was negative for the initial 3 years : Price undercutting was not negative. The authority is requested to consider and compare the imported product and domestic industry product prices on comparable basis.
- ffff. Injury is due to depreciation cost, high finance cost on increased capital expansion: It would be seen from the table below that all parameters show deterioration. Evidently, decline in profitability of domestic industry is not due to alleged increase in depreciation and interests cost. It is due to steep decline in the prices as a result of steep decline in LME and consequently import prices.

Particulars	UOM	2011-12	2012-13	2013-14	2014-15	2015-16
Profit/(Loss) Domestic	Rs.Lacs	100	13	-4	149	-50
Profit/ (Loss) – before interest	Rs.Lacs	100	73	35	162	23
Profit/ (Loss) – before interest and depreciation	Rs.Lacs	100	75	40	163	29

- gggg. PUC finds expansive and across-the-board application, thus levy of duty would adversely affect downstream industries: Petition and written submission are referred to and relied upon, which clearly establish that the weighted average impact of 10% of safeguard duties on the consumer shall be 0.053%, which is grossly insignificant. Further, public interest cannot be read merely as immediate consumers interest.
- hhhh. Imposition of safeguard duty would have serious impacts on various user sectors and huge profit for the DI. This is completely against the public interest. United *Phosphorous v. Director General (Safeguards), 2000 (118) E.L.T. 326 (Del.)*: There is no merit in the argument. As far as domestic industry is concerned, the domestic industry is suffering significant financial losses and the question of huge profits is simply ruled out. The DG had earlier recommended 10% safeguard duty. As far as the adverse impact of safeguard duty on the users is concerned, petitioners reiterate



- that the argument is without any basis. Impact of 10% safeguard duty on the consumers shall be only 0.053%. Detailed information filed before is referred to and relied upon.
- iiii. Duty would flood market with finished products, thus destroying downstream industries and render workers jobless: The argument is a mere conjecture. Despite increase in customs duty, there has not been significant increase in the finished downstream product. The interested parties have provided no evidence to establish their contention.
  - jjjj. Final Finding of Cold Rolled Flat Products of SS of 400 Series, to establish that interest of DI cannot be said to be public interest : The facts of that case are entirely different and therefore are not relevant to the present case.
  - kkkk. Levy of duty would go contrary to the public interest, and the smaller conductor manufacturer and power cable business would make losses: There is no merit in the argument. Conductor industry is clearly a pass-through industry. In case of power cable also, the consumers pass on the changes in aluminium cost of the downstream industry. Without prejudice, if import of the downstream products surges, that domestic industry can certainly file petition and seek redressal. Merely because downstream products imports may surge does not imply that the present domestic industry is made to suffer serious injury.
  - llll. “Haridas Export vs. All India Float Glass Manufacturer’s Association (2002 (145) ELT 241 (S.C.))” establishes that import of PUC at competitive price is not prejudicial to Public Interest. Even if prejudicial in nature duty cannot be levied despite of impairment caused to DI. 2000 (118) E.L.T. 310 (S.C.): The stated decision has been quoted totally out of context. In case it is established that the product under consideration is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, Govt. must impose safeguard duty on imports.
  - mmmm. Adjustment plan to be disclosed to the interested parties in NCV Format as claimed in the confidential version: The petitioners have provided revised NCV as per the directions of DGSG. Further, DGSG has circulated revised NCV to the interested parties.
  - nnnn. The NCV version of the adjustment plan does not make it clear what will be the effect of the plan proposed by the DI: The information provided to the DG clearly shows the effect of adjustment plan proposed by the domestic industry on reduction on cost of production.
  - oooo. Vedanta’s Chairman has made public statement in press that their prices are going in right direction and the worst is over. : LME has in fact declined further beyond the average of 2015-16. As regard Vedanta Chairman’s statement, petitioners submit that these are optimistic statements and in respect of potential market situations. The DG is however required to record findings based on actual information and not considering potential market situation. In any case, if the market situation changes dramatically in future, the DG has powers to undertake a review for withdrawal of safeguard duties.
  - pppp. The submission that SEZ should be treated as DI is a factually correct submission. But in a recent anti-dumping initiation concerning-Non Woven Fabric originating in or exported from Malaysia, Indonesia, Thailand, Saudi Arabia and China PR, F.No.14/23/2015-DGAD, dated 15th June, 2016, the petitioner did not consider SEZ as DI and DG should call for copy of the application filed by the DI specially the part II in that case. There should be consistency of approach: A copy of the petition can be provided, if so required by the DG. It would be seen that the DA has considered SEZ as a domestic industry to the extent of domestic sales.
  - qqqq. DI exports products on LME terms but the same is denied to the domestic users: The domestic industry sells the products both in domestic and export markets on prices linked to LME.

- rrrr. The imported aluminium is not cheap imports. Price of DI is in parity with the imported products : The arguments contradict argument of other parties. On one hand some parties have contended that domestic industry is not selling at LME and some parties have contended that the price of domestic industry is in parity with the imported product. The fact is that the prices of PUC declined severely; as a result of which, the price of imported product steeply declined.
- ssss. DI already enjoying sufficient protection (13%) owing to ad-valorem import duty in addition to the extra percentage points charged by them in the name of clearing and forwarding charges : The injury to the domestic industry claimed by the petitioners is after taking into account the existing duties.
- tttt. Misleading information provided to the government by the applicants, regarding capacity utilization. Reduced figure achieved by, selective product heads chosen to determine capacity and inflating installed capacity. : Petitioners have provided all relevant information as desired by the DG. There was no suppression of facts. The complete information is on record.
- uuuu. DI being benefitted by the depreciation of rupee: The claimed injury is on the basis of profit/loss which has taken care of depreciation of rupee.
- vvvv. Applicants have priced the Al Ingots in a way to include LME+Premium+Custom Duty+Logistic Cost (as in case of imports), as compared to the standard practice of LME+Premium.: No industry prices its product without having regard to prevailing customs duty and logistic cost. In fact, the consumer industry also prices its product having regard to customs duty and logistic cost.
- wwww. Increase in the domestic price by Rs.3500 per MT in the wake of budgetary changes in form of increase in import duty from 5% to 7.5%. : While customs duty was enhanced from 5% to 7.5%, the impact of the same was about rupee 000 per MT. However, at the same time, the Government enhanced cess on coal, impacting the cost of production of the industry. Thus, the domestic industry has received no material protection from enhancement of customs duty from 5% to 7.5%.
- xxxx. Usage of 2011-12 as the base reference year is a diversion, as during that time LME was at its peak: Even if some other period is considered as a base period, the same will still lead to the same conclusion.
- yyyy. Exploited the depreciation of INR wrt USD along with enjoying downwards tread of fuel cost accounting 45% of the production cost: The petitioners have reported their performance on the basis of records maintained by them.
- zzzz. Installed capacity argument of the DI holds no ground; not only did their production capacity grew by 10% b/w 2012-16 they are also going on for massive expansions: Production increased by 60%, sales increased only by 35% and exports increased by 345%. Petitioners were suffering far higher loss in exports as compared to domestic which establishes that petitioners are suffering injury due to increased imports.
- aaaaa. Export price is 6-9% lower than the price they are selling to the domestic industry. Thus taking advantage of the custom duty: The petitioners are legitimately entitled to take advantages of the customs duty. Even the consumers of the PUC are doing so. As regards export price of petitioners, the petitioners have been forced to export at a lower price because of imports into India.

**G. Hydro Aluminium Asia Pte Ltd; Singapore; Rockman Industries Ltd; Endurance Technologies Ltd**

- a. The contentions of the domestic producers in general stand denied.
- b. As the information has been changed severally, the injury data submitted by the applicants may be subjected to utmost scrutiny.

- c. The exclusion or inclusion of an SEZ unit from the ambit of domestic industry is an unsettled question of law. The DG, Safeguards may reach to a finding on the same as per the Safeguard rules. However, the burden of huge export capacities set up by targeting the export markets by the applicants should not lead to very high fair prices for the domestic industry and the Indian users should not be put to bear the brunt of such export capacities set up by them.
- d. An injury analysis by taking injury information for 2015-16 as a whole and not subjecting the same to quarterly analysis will be highly insufficient. The performance of the aluminium sector recovered significantly during the beginning of 2016 as admitted by the Chairman of M/s Vedanta itself. Thus, conducting a comparison of data with 2011-12 as the base year and 2015-16 as the most recent period would not show the correct and accurate picture of the domestic industry.
- e. Analyzing 2015-16 information further into quarters and considering information till the quarter ending 30<sup>th</sup> September, 2016 would show a totally different picture of benevolent position of the domestic industry.
- f. The summary data published by DGCI&S as proposed by the petitioners may not be relied upon. The transaction wise import data as per DGCI&S would show the real heterogeneous nature of multiple variety of products getting imported under these headings at significantly different prices.
- g. All such confidential information which has been filed with no appropriate non confidential version or proper justification for claiming confidentiality may be disregarded.
- h. The submission of the DI makes it very clear that PUC is a huge whole basket of heterogeneous products and a lot of exclusions are essential to bring the definition of PUC in sync with the reality and what is fair and just under the rule.
- i. Non alloys have different application and alloys have different application. Wire rods and ingots are not directly competitive items. It is absolutely unjustified that alloyed and non alloyed products are put in one basket whereas non alloy and alloy have further multiple inter se types in it which also vary in terms of technical properties and price. There is no justification for inclusion of those items which have never been manufactured by the DI.
- j. In the submissions filed by CMR Century Metal Recycling Pvt. Ltd (CMR), CMR Nikkei India Private Limited (CMRN) and CMR-Toyotsu Aluminium India Private Limited (CMRT) it is claimed that they have produced only alloy aluminium. This shows the products produced by the petitioners do not represent the 'like article' produced by the domestic industry and the petitioners did not bring on record the existence of different set of industries engaged in alloy aluminium production which is apparently a different category all together. Thus, what the petitioner has shared qua domestic industry and standing is not correct and the facts require much detailed investigation.
- k. The increase in imports along with the fact that even after such alleged increases, overall share of imports in demand has been less than 15% which shows 85% of the market share has been comfortably held by the domestic producers. Thus, the allegations of increase in imports are not real and are hoisted to gain undue protection under the safeguard scheme.
- l. There is no substance in these claims of the petitioners and they are self-contradictory. The petitioner has cited some probable causes of sudden spurt in imports but such causes prima facie show that they could not have caused any spurt in imports in a very short period of time. Some of the reasons cited are even alleged subsidy. Mere cyclical changes in the commodity market for a short period of time, especially when the prices are governed by LME should not be subjected to safeguard duties under the garb of spurt in volumes as the effect of the same on the user industry would be irreparable.
- m. The position of the petitioners has tremendously improved and they are realising fair prices for the subject goods as admitted by Chairman of one of the petitioners M/s Vedanta itself. Imposing Safeguard duty would only help the petitioners to resort to gaining unreasonable profits and the user industry which is already paying a higher price would be subjected to pay more as a result of any safeguard duties.
- n. The facts of the present case as established in their written submissions show that the petitioners failed to demonstrate a case of serious injury and the claims are mere. The allegations of injury

- require strict scrutiny since the producers have SEZ/EOU units and have huge excess capacities. The domestic industry is not represented accurately before the DG since there are new sets of producers claiming they are also manufacturers of subject goods like CMR.
- o. The position of imports and performance of domestic industry may be examined quarterly during 2015-16 and also up to quarter ending September, 2016 as comparison between 2011-12 and 2015-16 is inappropriate.
  - p. Blanket claims of injury are not tenable under the safeguard rules. Domestic industry has been holding a substantial position of around 85% of the Indian demand. Import at 15% has been put under one PUC basket with a whole bunch of products varying in terms of technical features and also price. Many of the items are not even produced by the domestic industry or are not like article to the goods produced by the domestic industry.
  - q. The petitioners have relied upon same parameters to allege spurt in volume, serious injury and threat of injury. This shows that the reasons pointed out by the petitioners are at the best inherent cyclical issues in the commodity market and are not any specific reason to have caused any sudden spike in import as alleged by the petitioner to have caused them any injury. Also, the petitioner while claiming threat of injury did not show how such factors are causing some threat to them as admittedly the situation of the domestic industry is already on a path of tremendous improvements. Thus, there is neither serious injury nor any threat of injury.
  - r. Global cyclical effects may have impacted the Indian industry also but the situation has changed now and there is no need for safeguard duties on the imports of PUC.
  - s. There is no causal relationship between imports and alleged injury as
    - i. Profit was declining when the undercutting was negative in the initial three years which shows any decline in profit ought to have been due to some other reasons.
    - ii. Injury claimed is not connected to imports and reasons such as raw material procurement issues, high interest cost etc are apparent.
    - iii. The reasons of any alleged injury is solely other reasons and are not driven by any sudden surge in imports as the OI could not show any such increase in imports.
    - iv. The DI is holding on to more than 85% of market share and no injury in terms of volume or price parameters is visible.
    - v. Thus, there is no causal link between alleged surge in imports and serious injury allegedly caused to the DI.
    - vi. Vedanta has significant legal issue and litigations concerning environmental issues qua their mines and any impact of the same should not be attributed to imports.
    - vii. It is an admitted fact as above that the industry has been through a volatile period and the same is over and the industry is gaining benevolent prices. Volatility in the segment cannot be made a base to claim remedy under safeguard scheme. Thus, the entire claim of injury on account of sudden and sharp increase in imports is unfounded.
  - t. The petitioner has not established any case for imposition of Safeguard duties hence the request for duties for 2 years also needs to be denied.
  - u. Imposition of Safeguard duties will have a huge impact on user industry that too when the prices of the subject goods have significantly gone up and BCD has been already increased by 2.5%. The claims of the petitioner are not based on facts.
  - v. The NCV version of the adjustment plan does not permit any meaningful reading of the plan and DI should provide meaningful information for providing comments.
  - w. The application is not maintainable and the current proceedings may be terminated.
  - x. The present investigation cannot be carried out with the present scope of PUC which includes wide range of products which cannot be put together in the scope of one investigation and such bucketing will render distorted results which would be against the legitimate interests of users in India.

#### **IV. EXAMINATION & FINDINGS OF DIRECTOR GENERAL (SAFEGUARDS)**

1. I have carefully gone through the case records, the replies filed by the domestic producers, users/importers, exporters and exporting nations. The written submissions and the rejoinder submissions made by them have also been considered appropriately. The submissions made by various parties and the issues arising therefrom are dealt with at appropriate places in the findings below:
2. Section 8B of the Customs Tariff Act, 1975 deals with imposition of safeguard duty on imports. Its sub-section (1) provides for imposition of safeguard duty by the Central Government on an article if the article is being imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the Domestic Industry.
3. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provide the manner and principles governing investigation.
4. The investigation has been conducted in accordance with the said rules and the final findings are recorded through this notification.

##### **A. Domestic Industry (DI):**

5. Section 8B(6)(b) of the Customs Tariff Act, 1975 defines Domestic Industry as follows:  
*“(b) ‘Domestic Industry’ mean the producers -  
(i) as a whole of the like article or a directly competitive article in India; or  
(ii) Whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;”*
6. Some of the interested parties have contended that the SEZ plant of M/s Vedanta is only for export and hence cannot be included in the domestic capacity. However, the DI holds that SEZ unit of M/s Vedanta should be treated as domestic industry for the reasons given below:
  - a. The term used in the safeguard law is *“producers -in India”* and the SEZ Units established in SEZs are very much producers in India.
  - b. The relevant criteria for standing and scope of ‘domestic industry’ are production and not utilization of such production.
  - c. Under the SEZ Act, import implies bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode and export implies taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode. Therefore, sale by an SEZ unit into DTA is not an export and is in fact a domestic sale.
  - d. The sale made by a unit in SEZ are treated as domestic sale in the books of accounts; customs authorities also treat the sales to Indian buyers by SEZ units as domestic sales; civil, criminal or business laws are applicable to SEZs; SEZ is treated as an Indian manufacturer for various regulations.
  - e. As per Anti Dumping authorities’ decisions, an EOU or a unit in SEZ is treated as a domestic industry.
  - f. In DG Safeguards case of saturated fatty alcohols, a 100% EOU is treated as domestic industry.
  - g. Exports by Indian SEZs are treated as goods ‘originating in India’ by other countries.
  - h. Various benefits given to SEZ unit should not impact the treatment of such unit as a domestic industry.
7. In this regard, I observe as under:
  - (i) The Special Economic Zones Act, 2005 (SEZ Act) enacted on 23rd June, 2005 states that it is :-

“An Act to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto.”

- (ii) Section 2 (i) of SEZ Act defines Domestic Tariff Area (DTA) as:-  
“Domestic Tariff Area” means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones;”
  - (iii) Section 2 (m) (ii) of SEZ Act, 2005 defines export to, inter alia, mean “supplying goods, or providing services, from Domestic Tariff Area to a Unit or Developer”.
  - (iv) Section 30 of the SEZ Act provides that:-  
“Subject to the conditions specified in the rules made by the Central Government in this behalf:-
    - (a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and
    - (b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.”
  - (v) Section 53 of the SEZ Act further provides that:-  
A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.  
(2) A Special Economic Zone shall, with effect from such date as Central Government may notify, be deemed to be a port, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962:  
Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones.
  - (vi) Rule 47 of the Special Economic Zones Rules, 2006 states as under:  
“Sales in Domestic Tariff Area — (1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:
    - (a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy”
8. From the aforementioned provisions of the SEZ Act & Rules made thereunder it is observed that:
- (i) The fundamental objective of establishing of SEZ units is promotion of exports.
  - (ii) The areas of the SEZs are excluded from the definition of Domestic Tariff Area (DTA) and removals therefrom are subject to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975.
  - (iii) Supply of goods from DTA to the SEZ constitutes export.
  - (iv) Under Section 53 of the SEZ Act, an SEZ is deemed to be a territory outside the customs territory of India and is also deemed to be a port, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962.
  - (v) Domestic Tariff Area 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.
9. As discussed below, the contentions of the DI for treating the SEZ unit as part of domestic industry are not acceptable.

- a. DI's contention that the term used in the safeguard law is "producers -in India" and the SEZs Units established in SEZs are very much producers in India is not acceptable as an SEZ unit is deemed to be a territory outside the customs territory of India as described under section 53 of SEZ Act, 2005 and all produce therein is treated as if produced outside the territory of India.
  - b. The DI has argued that relevant criteria for standing and scope of 'domestic industry' are production and not utilization of such production. In my view, as an SEZ is deemed to be a territory outside the customs territory of India, it cannot be treated as domestic producer or domestic industry. At first, eligibility of a unit as domestic producer/industry is to be established and then only its production can be taken into account for the purpose of establishing standing as domestic industry.
  - c. It has been contended that under the SEZ Act, import implies bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode and export implies taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode. Therefore, sale by an SEZ unit into DTA is not an export and is in fact a domestic sale. I observe that as per Section 2 (m) (ii) of the SEZ Act, supplying goods or providing services from the Domestic Tariff Area to a Unit or Developer also comes under the definition of export. Also, any goods removed from a Special Economic Zone to the Domestic Tariff Area are chargeable to duties of customs including safeguard duty.
  - d. The contention of DI pertaining to the treatment of sale made by a unit in SEZ as domestic sale in the books of accounts or by customs authorities; application of civil, criminal or business laws to SEZs or SEZ being treated as an Indian manufacturer for various regulations raised by the applicant are not relevant. The eligibility of a unit in SEZ as domestic industry has to be decided within the framework of existing legal provisions of Safeguard law read with SEZ Act and rules.
  - e. Anti Dumping authorities' decisions on treatment of an EOU or a unit in SEZ as a domestic industry are taken within the framework of anti-dumping laws and the same are not applicable to safeguard investigations.
  - f. The applicants have pointed out that in DG Safeguards case of saturated fatty alcohols, the domestic industry is a 100% EOU. Since SEZs and EOUs are governed by different legal provisions, the same is not applicable in the current investigations.
  - g. It has been contended that exports by Indian SEZs are treated as goods 'originating in India' by other countries. In my view, the treatment given to the exporters in SEZ by other countries as per their domestic laws is not relevant here.
  - h. The DI has argued that various benefits given to SEZ unit should not impact the treatment of such unit as a domestic industry. In this regard the eligibility of SEZ as domestic industry is being decided on the basis of various relevant provisions of safeguard rules and SEZ Act & rules made thereunder and not on the basis of any benefits given to them.
10. I also find that in one of the past safeguard findings issued vide F.N0.D-22011/14/2011 dated 27.09.2012 concerning imports of electrical insulators into India the issue as to whether an SEZ unit can be included in the scope of SEZ was decided by the Director General (Safeguards) as under:

“A unit operating in SEZ cannot claim market disruption due to imports. These SEZ units are deemed to be outside Indian Customs Territories and not competing with other domestic units. Accordingly, it is decided that the data in respect of the SEZ unit of WSI, situated in Vishakhapatnam, is not to be considered for the purposes of present investigation.”

11. In view of the foregoing discussions, I hold that the SEZ unit of M/s Vedanta is to be excluded from the scope of Domestic Industry. Accordingly installed capacity and other data in respect of SEZ unit of M/s Vedanta have not been considered for the purpose of present investigation.
12. The application is filed by (i) M/s. Vedanta Limited –Aluminium & Power, (ii) M/s Bharat Aluminium Company Ltd. and (iii) M/s Hindalco Industries Limited and together they account for more than 50% of the Indian production and hence are major producers. It is evident from the table given below:

Table-1

YEAR	Production of DI (MT)	All India Production (MT)	Share of DI (%)
2011-12	8,77,948	19,18,126	46
2012-13	9,31,324	20,72,915	45
2013-14	10,52,132	20,89,929	50
2014-15	13,61,447	25,57,548	53
2015-16	15,60,141	28,15,481	55

13. Accordingly, it is held that the applicant domestic producers constitute and represent the Domestic Industry (DI) (excluding the SEZ Unit of M/s Vedanta) within the definition of DI under Sec 8B(6)(b) of the Customs Tariff Act, 1975.

**B. The Product Under Consideration (PUC):**

14. Several interested parties have raised issues on the product under consideration. These issues are addressed below :-

- i. Some of the interested parties argued that the PUC is too wide and is bucketing of heterogeneous products under one PUC.: In this regard I am of the view that merely because different products included in the scope of PUC differ in terms of shape, size or composition, the same does not necessarily imply that the resultant products are substantially different so as to merit a separate treatment.
- ii. It has been contended by some of the interested parties that PUC as defined in the preliminary finding is not only vague but also does not define the product which is being imported and against which safeguard duty is to be imposed. : There is no basis of the argument. The scope of PUC in preliminary findings is very clear and is reproduced below.

“The product under consideration Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys) (hereinafter referred to as PUC) is classified under Customs Tariff Heading No.7601 of Chapter 76 of the Customs Tariff Act 1975”.

- iii. It has been argued that the tariff classification identifies Aluminium not Alloyed and Aluminium Alloys differently and for the present investigation it cannot be treated as one product.: This argument can not be held as correct. There are several precedents showing a number of products under different Customs classification being taken together as PUC.
- iv. Some of the interested parties argued that the domestic industry does not produce Aluminium Alloys and Aluminium alloys falling under sub-heading 760120 should not be included in the scope of PUC and it should be restricted to sub-heading pertaining to aluminium not alloyed which is 760110.: The applicants submitted that they produce the like or directly competitive article to the PUC. In this regard I have examined the information provided at the time of spot verification of the domestic data and find that the applicants are producing and selling products falling under sub-heading 760120 as well.



15. In view of above, the product under consideration (PUC) taken up for investigation is “Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)” (hereinafter referred to as PUC) classified under Customs Tariff Heading No.7601 of Chapter 76 of the Customs Tariff Act, 1975. It covers the entire product range under Customs Tariff Heading No.7601.
16. It is also held that domestically produced “PUC” falls under the ambit of like or directly competitive article in all respects to the imported product under investigation and that the domestically produced “PUC” is a like article to the imported “Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)” falling under Customs Tariff Heading No 7601, within the meaning of Rule 2(e) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

#### **C. Source of information:**

17. The product under investigation is imported into India under Custom Tariff Heading 7601 of Chapter 76 of First Schedule to the Customs Tariff Act, 1975. The Safeguard investigation was initiated on the basis of import data taken from Export Import data bank, Ministry of Commerce (<http://www.commerce.nic.in/eidb/icomq.asp>) from 2011-12 to 2015-16 (up to January, 2016) and the domestic data from 2011-12 to 2015-16 submitted by the DI in their application. The said domestic data was verified on the basis of Excise Returns and other documents provided by the DI in the office of D.G (Safeguard).
18. It was pointed out by some interested parties that there was a mismatch in the domestic data and that the installed capacity of SEZ unit of M/s Vedanta has been included by the DI in the total installed capacity shown in the application filed by the DI. I observe that the DI in their application had not mentioned that one of their units was an SEZ unit. Accordingly, an on-site verification at manufacturing units of DI was conducted by Directorate General of Safeguards.
19. On examination of the domestic data from 2011-12 to 2016-17 (till June, 2016), it was observed that in some of the manufacturing units, the entries of production and sales/captive consumption of hot metal is reflected in Excise Returns (ER-1) under CTH 7601 alongwith the entries of the products ingots, billets, wire rods etc.. However, these products i.e ingots, billets, wire rods etc. are being produced from the hot metal already entered in the Excise Return. As both hot metal and the PUC (produced from the hot metal) fall under same CTH 7601, there was overlapping in the earlier verified data pertaining to clearances/inventory resulting in some mismatch of the domestic data reflected in the 1st verification report.
20. The verified domestic data in the 2<sup>nd</sup> verification report does not contain the data of the SEZ unit of M/s Vedanta Ltd.. Also, the issue related to overlapped data mentined above has been resolved and these final findings are based on the 2<sup>nd</sup> verification report. The on site verification report (non confidential version) has also been placed in the public file.
21. Further the import data taken from Export Import data bank, Ministry of Commerce (<http://www.commerce.nic.in/eidb/icomq.asp>) from 2011-12 to 2015-16 is being used for POI analysis. The import data taken from the website of Ministry of Commerce and the verified domestic data for the period 2016-17 (April to June, 16) is being used for the post POI analysis. The cost data have been provided by the domestic industry duly certified by Cost Auditors of the companies and same has been examined by the Advisor (Cost) to DG (Safeguard).

#### **D. Period of Investigation (POI):**

22. It has been observed that neither the Customs Tariff Act, 1975, nor the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, specifically define ‘period of investigation’ or the minimum period to be considered for a Safeguard investigation. The WTO Agreement on Safeguards does not contain any general or specific provision or guidelines for choosing the investigation period. However the issue of period of investigation has been dealt in detail in Panel findings in US-Line Pipe Case against Korea (Para 7.196,7.199 and 7.201). The Panel in this case ruled that it is up to the discretion of

the investigating authority of the importing Country to decide the “length of the period of investigation” and its “breakdown”.

*“We note that the Agreement contains no requirements as to how long the period of investigation in a safeguards investigation should be, nor how the period should be broken down for purposes of analysis. Thus, the period of investigation and its breakdown is left to the discretion of the investigating authorities. In the case before us the period selected by the ITC was five years and six months, which is a period similar in length to the one used by the Argentine investigating authority in Argentina — Footwear Safeguard. However, we note that the Appellate Body, in the findings relied upon by Korea to argue the question of the length of the period of investigation, emphasized not the length of the period per se, but that there should be a focus on recent imports and not simply trends over the period examined. In the case of the line pipe investigation the ITC did not merely compare end points, or look at the overall trend over the period of investigation (as Argentina had done in the investigation at issue in Argentina — Footwear Safeguard). It analyzed the data regarding imports on a year-to-year basis for the 5 complete years, and also considered whether there was an increase in interim 1999 as compared with interim 1998. We are of the view that by choosing a period of investigation that extends over 5 years and six months, the ITC did not act inconsistently with Article 2.1 and Article XIX. This conclusion is based on the following considerations: first, the Agreement contains no specific rules as to the length of the period of investigation; second, the period selected by the ITC allows it to focus on the recent imports; and third, the period selected by the ITC is sufficiently long to allow conclusions to be drawn regarding the existence of increased imports.”(paras. 7.196, 7.199 and 7.201)*

23. In view of above, considering these facts, and source of information stated above, it is considered appropriate to adopt data for the period 2011-12 to 2015-16 for the purpose of the present investigations.

#### **E. Confidentiality of information submitted:**

24. Rule 7 of the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 and Article. 3.2 of WTO Agreement on Safeguards provides for confidentiality treatment to certain information. The rules provide that an Interested Party is not required to disclose such information on actual basis which is confidential information of the company and disclosure of which can cause serious prejudice to the business interests of such party, which is not in public domain and which the petitioner has not disclosed before public at large in the past.
25. I find that the Domestic Industry has provided some information on confidential basis and sought confidentiality on the information /data submitted. The Domestic Industry provided non- confidential version of the application for safeguard measure as per the provisions of Safeguard Rules 1997 read with Trade Notice No. SG/TN/1/97 dated 06.09.1997 and No.D22011/75/2009 dated 21.12.2009. Further, the Domestic Industry has submitted reasons for seeking confidentiality at the time of filing the application which appears to be reasonable and, therefore, has been accepted, whenever claimed.

#### **F. Increased Imports:**

26. Section 8B of Customs Tariff Act, 1975 deals with the power of the Central Government to impose safeguard duty and provides as follows:
- “(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to Domestic Industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article :”*
27. The safeguard rules mandate increase in imports as a basic prerequisite for the application of a safeguard measure. Thus, to determine whether imports of the product under consideration have “increased in such quantities” for purposes of applying a safeguard measure, the rules require an analysis of the increase in imports, in absolute terms or in relation to domestic production.
28. Rule 2 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 defines ‘increased quantity’ as follows:

“(c) “increased quantity” includes increase in imports whether in absolute terms or relative to domestic production.”

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

*“131. [T]he determination of whether the requirement of imports ‘in such increased quantities’ is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year — or five years ago. Again, and it bears repeating, not just any increased quantities of imports will suffice. There must be ‘such increased quantities’ as to cause or threaten to cause serious injury to the Domestic Industry in order to fulfill this requirement for applying a Safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause ‘serious injury’.”*

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

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

31. The analysis of the increased imports of the product under consideration has been conducted in the light of the above mentioned law and WTO jurisprudence.

**Increased Import in absolute terms:**

32. The analysis of the trend in imports of PUC in the light of the above mentioned provisions has been done. PUC is imported into India from a number of countries including UAE, Malaysia, Russia, South Africa, Oman, Qatar, Bahrain and Thailand. Some of the interested parties contented that there is no actual sudden and sharp increase in imports required by the WTO Agreement.

33. In this regard, the analysis of the import data for the Period of Investigation from 2011-12 to 2015-16 reveals as under:

Table-2

Financial Year	Total Import (MT)	Trend
2011-12	2,42,533	100
2012-13	3,08,279	127
2013-14	3,48,889	144
2014-15	3,43,428	142
2015-16	4,21,964	174

34. It is apparent from the data in the table above that there is a surge in import in absolute terms i.e. import increased from 2,42,533 MT during the period 2011-12 to 4,21,964 MT during 2015-16. Further, I observe that during the most recent period of 2014-15 to 2015-16, there is a sudden increase of 23% in imports which is significant enough, sharp enough and recent enough.

**Import in relation to Production:**

35. The imports of the product under consideration in India over the years are as follows:

Table-3

Financial Year	Total Imports (MT)	All India Production (MT)	Import with respect to total production (%)
2011-12	2,42,533	19,18,126	13
2012-13	3,08,279	20,72,915	15
2013-14	3,48,889	20,89,929	17
2014-15	3,43,428	25,57,548	13
2015-16	4,21,964	28,15,481	15

36. It is seen that the imports of PUC during the period of investigation have increased in relation to all Indian production. The import with respect to total production increased from 13% in 2011-12 to 15% in 2015-16.

**G. Determination of Serious Injury and Threat of Serious Injury:**

37. Sub-section 6(c) of Section 8B of Customs Tariff Act, 1975 provides as follows:

“Serious injury” means an injury causing significant overall impairment in the position of a domestic industry;

38. Sub-section 6(d) of Section 8B of Customs Tariff Act, 1975 provides as follows:

“*threat of serious injury*” means a clear and imminent danger of serious injury.

39. The Paragraph 1 of Annex to Rule 8 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provides as follows:

“*In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the article 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 utilization, profits and losses, and employment.*”

40. With regard to the overall impairment in the position of the industry, the Appellate Body in Argentina—Footwear (EC), in contrast to the Panel, held that an evaluation of each listed factor will not necessarily have to show that each such factor is "declining" to justify a finding of serious injury. Relevant extract is as follows:

“139. *In our view, it is only when the overall position of the domestic industry is evaluated, in light of all the relevant factors having a bearing on a situation of that industry, that it can be determined whether there is "a significant overall impairment" in the position of that industry. Although Article 4.2(a) technically requires that certain listed factors must be evaluated, and that all other relevant factors must be evaluated, that provision does not specify what such an evaluation must demonstrate. Obviously, any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant declines in sales, employment and productivity that will show "significant overall impairment" in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of whether the competent authorities in a particular case have evaluated all the listed factors and any other relevant factors, we believe that it is essential for a panel to take the definition of "serious injury" in Article 4.1(a) of the Agreement on Safeguards into account in its review of any determination of "serious injury".*

41. Accordingly, in analysing serious injury or threat of serious injury, all factors which are mentioned in the rules as well as other factors which are relevant for determination of serious injury or threat of serious injury, have been considered. The determination of serious injury or threat of serious injury is based on evaluation of the overall position of the Domestic Industry, in the light of all the relevant factors having a bearing on the situation of that industry which are as under:

a. **Production:** The production of the DI over the years is as follows:

Table-4

Financial Year	Production of DI (MT)	Trend
2011-12	8,77,948	100
2012-13	9,31,324	106
2013-14	10,52,132	120
2014-15	13,61,447	155
2015-16	15,60,141	178

It is seen that the production of domestic industry increased from 8,77,948 MT in 2011-12 to 15,60,141 MT in 2015-16.

b. **Changes in the level of Sales:** Table below shows the changes in the level of sales over the period of investigation.

Table-5

Financial Year	Import (MT)	Sales of DI (MT)	Captive consumption (DI) (MT)	Sales of other Indian Producers (MT)	Total Demand (MT)	Market Share (%)			
						Import	DI (excluding captive consumption)	DI (including captive consumption)	Others
2011-12	2,42,533	6,27,554	1,02,981	9,45,192	19,18,260	13	33	38	49
2012-13	3,08,279	7,10,800	88,898	9,97,410	21,05,387	15	34	38	47
2013-14	3,48,889	6,71,101	76,202	9,40,006	20,36,198	17	33	37	46
2014-15	3,43,428	6,75,798	69,964	11,34,836	22,24,026	15	30	34	51
2015-16	4,21,964	8,90,587	30,472	10,63,907	24,06,930	18	37	38	44

It is seen that the sales of the Domestic Industry increased from 6,27,554 MT in 2011-12 to 8,90,587 MT in 2015-16.

c. **Market Share:** It is also seen from the table above that the imports had a market share of 15% in 2014-15 which increased to 18% during 2015-16 and the market share of Domestic industry also increased from 30% to 37% (excluding captive consumption) and from 34% to 38% (including captive consumption) during the same period. However during the same period market share of other producers decreased from 51% to 44%.

d. **Capacity Utilisation:** The DI is manufacturing different aluminium products in addition to the PUC. The common input for all aluminium products manufactured by the DI is aluminium hot metal. The aluminium hot metal can be used for manufacturing of an aluminium product whether PUC or non-PUC as decided by the DI. In other words, there is no dedicated hot metal capacity for producing the PUC. In case, if the entire hot metal production is used for the manufacture of non-PUC items, the DI is left with no quantity of hot metal for the

manufacture of PUC. In these circumstances, the dedicated capacities (if any) of the PUC will be irrelevant. Therefore, only the capacity of hot metal production is relevant and the same is taken for the purpose of calculating capacity utilization. Table below shows the capacity utilization of the installed capacity by DI.

Table-6

Financial Year	Installed Capacity of Hot Metal (MT)	Production of Hot Metal (MT)	Capacity Utilisation (%)
2011-12	12,51,400	12,55,713	100
2012-13	12,53,700	13,17,023	105
2013-14	13,54,480	14,10,367	104
2014-15	16,38,728	16,86,726	103
2015-16	20,39,569	19,84,765	97

It is observed that the capacity utilization of the Domestic Industry has remained around 100% throughout the entire POI.

- e. **Employment & Productivity:** The table below shows employment & productivity over the years.

Table-7

Financial Year	Production (MT)	Employment (Nos) (Indexed)	Productivity per employee (MT) (Indexed)
2011-12	8,77,948	100	100
2012-13	9,31,325	95	112
2013-14	10,52,132	112	107
2014-15	13,61,447	112	139
2015-16	15,60,141	106	168

The employment as well as productivity per employee is higher in 2015-16 as compared to the base year 2011-12. There is slight decrease of 5% in employment in the year 2015-16 as compared with 2014-15. However, the productivity has increased by 21% during the same period.

- f. **Profit & Loss (Indexed):** The profitability of the Domestic Industry has declined during 2015-16 and domestic industry recorded losses. This is observed from the table below:-

Table-8

Financial Year	Domestic profit/loss (Rs/Kg) (Indexed)
2011-12	100
2012-13	11
2013-14	-4
2014-15	154
2015-16	-23

- g. **Other Important Factors:-**

- (i) **Inventories:** Position of inventories is as follows:

Table-9

Financial Year	Inventory (MT) Indexed
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2011-12	100
2012-13	91
2013-14	149
2014-15	635
2015-16	197

Inventories have increased from 100 points in base year 2011-12 to 197 during the year 2015-16. During the recent period, the inventories have decreased from 635 points in 2014-15 to 197 points during the year 2015-16. I also observe from the actual data that the inventories as a percentage of total annual production are very insignificant. Hence, changes in the levels of inventories are not relevant for the purpose of determination of injury in the present case.

**(ii) Price undercutting, suppression/depression:**

- a. The price undercutting has been calculated by taking into consideration the average landed value of import from the period 2011-12 to 2015-16. The applicable customs duty under Customs Tariff Act, 1975 based upon various Trade Agreements between India and other countries has also been considered while calculating the average landed value of imports. The variation (indexed) of landed prices of imports, sales realization, profit/loss and price undercutting with respect to cost of sales of 2011-12 are as under:-

Table-10

(Indexed with respect to cost of sales of 2011-12)

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Cost of sales (Indexed)	100.0	108.8	110.4	116.8	104.5
Net sales realisation(Indexed)	105.6	109.4	110.2	125.5	103.2
Landed value (indexed)	109.2	111.9	116.3	125.4	112.4
Profit/(loss) (Indexed)	5.6	0.6	-0.2	8.6	-1.3
Price Under cutting (Indexed)	-3.6	-2.5	-6.2	0.1	-9.2

- b. It is observed that the landed value of the imports of PUC is higher than the sales realization and cost of sales of the Domestic Industry during POI. The imports were thus not seen to be suppressing the Domestic Industry prices in the market and price undercutting is negative.
- c. DI in their rejoinder submission argued that the price undercutting is clearly positive in the present case and since there is significant difference in alloy and non-alloy products, the DG may compare the two separately. However, I find that contrary to this, DI has contended in their earlier submissions that the injury analysis is not required to be undertaken separately for each type of the product under consideration and that on the contrary, separate injury analyses is illegal and have even quoted case law in support of their contention. I have examined their contentions and hold that once a single PUC has been defined covering both alloys and non-alloys, there is no scope for making any separate injury analysis.

42. Although there is a surge in import in absolute terms as well as in relation to total domestic production, the factors like production, domestic sales, productivity of DI have improved and capacity utilization has remained around 100% throughout the entire POI. Further, it is observed that the landed price of imports is higher than the selling prices of the domestic industry during POI. Therefore, a conclusion can not be drawn that the imports were suppressing the Domestic Industry prices in the market. As can be seen, the price undercutting is negative. Therefore, it can not be established that the Domestic Industry is suffering on account of import prices. The market share of import increased from 15% in 2014-15 to 18% during 2015-16 whereas the market share of Domestic industry increased from 30% to 37% (excluding captive

consumption) and from 34% to 38% (including captive consumption) during the same period. Further, I observe that the rate of increase of market share of imports is less than the rate of increase in market share of domestic industry. On the other hand, the industry profitability has turned negative during the most recent period, leading to injury of the DI.

43. Thus, an evaluation of the overall position of the Domestic Industry, in the light of all the above factors, shows improvement in the position of DI in certain areas despite loss of profitability. It is thus concluded that, there exists an injury to the DI but it can not be stated to be a serious injury or a threat of serious injury to the domestic industry in the period of investigation. In view of the above facts, there appears no need for evaluation of other parameters like causal link, unforeseen circumstances, adjustment plan and public interest.
44. An attempt was also made to analyse the trend in the period after the POI i.e. upto 1st quarter of 2016-17. The import data taken from the website of Ministry of Commerce and the verified domestic data for the period 2016-17 (April to June, 16) has been considered for post POI analysis. The data analysis is as under:

Table-11

	2015-16	2016-17 ( upto June,16)	2016-17 (Annualised)	Increase/decrease (%) in 2016-17 as compared to 2015-16
Total Imports(MT)	4,21,964	98,209	3,92,836	-6.9
Production (MT)	15,60,141	4,04,910	16,19,640	3.8
Domestic Sales(MT)	8,90,587	2,39,624	9,58,496	7.6

45. On scrutiny of the above data, it is observed that during the post POI i.e 2016-17 (up to June,16) (Annualised), there is a decrease in the imports by about 6.9% between the period 2015-16 and period up to June, 16 (Annualised). Further during the same period there is an increase of about 3.8% in production and increase of about 7.6% in domestic sales of DI. This shows that the position of DI has improved during post POI period.
46. Further, average monthly LME prices of aluminium have been examined for the post POI period from the website <http://www.lme.com/metals/non-ferrous/aluminium/> and it is observed that the LME prices are on increasing trend since January,2016 as shown in the table below:

Table-12

MONTH	USD/Ton	Trend
Jan-16	1479.09	100
Feb-16	1535.23	104
Mar-16	1530.22	103
Apr-16	1563.96	106
May-16	1,555.96	105
Jun-16	1591.83	108
Jul-16	1629.47	110
Aug-16	1,641.13	111
Sep-16	1589.68	107
Oct-16	1663.57	112
Nov-16	1735	117

47. From the above I find that the average monthly LME price of aluminium has moved upwards from USD 1564 level during April, 2016 to USD 1735 in Nov, 2016, giving scope of better realizations to the



domestic producers. Further, depreciation of Rupee during the most recent period has enhanced the competitiveness of the DI.

#### **H. Conclusion:**

48. The imports of the product under consideration have increased in absolute terms as well as in relation to production during the Period of Investigation.
49. Market share, production, domestic sales and productivity of DI have improved and capacity utilization is almost at 100% during the period of investigation.
50. The landed price of imports is higher than the selling prices and cost of sales of the domestic industry during POI and price undercutting is negative. Production, domestic sales, capacity utilization, productivity have improved during the period of investigation. Hence, based on the above data, it can not be concluded that the imports are responsible for decline in profitability of domestic industry
51. Analysis of post POI data shows that import is decreasing whereas production and sales of DI has increased. As LME prices have moved upwards from USD 1563 during April, 2016 to USD 1735 in Nov, 2016, domestic producers will get higher realizations. The depreciation of Rupee is also working in their favour.
52. There exists an injury to the DI but there exists no serious injury or threat of serious injury to the domestic industry in the POI and hence no protection under the safeguard law is required. Moreover, the Govt. of India has already provided relief to the DI, by increasing Custom duty on PUC from 5% to 7.5% with effect from 1st March, 2016 vide Finance Bill 2016, which will further improve their position.

#### **I. Recommendations:**

53. In view of the discussions detailed above and the conclusions reached, safeguard duty on the PUC is not recommended.

Sd/-

**(Vinay Chhabra)**  
**Director General**