

**MINISTRY OF FINANCE**

**(Department of Revenue)**

(OFFICE OF THE DIRECTOR GENERAL OF SAFEGUARDS CUSTOMS AND CENTRAL EXCISE)

NOTIFICATION

New Delhi, the 29<sup>th</sup> May, 2009

**Subject:-Safeguard Duty investigation against imports of Aluminum Flat Rolled Products and Aluminum Foil in to India from People's Republic of China -Final Findings**

G S R Having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 thereof;

**A. PROCEDURE**

1. An application was filed before me Under Rules 5 of the Custom Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 by M/s. Aluminium Association of India , 118, 1<sup>st</sup> Floor, Ramanashree Arcade, 18, M.G. Road, Bangalore-560 001 and M/s Hindalco Industries Limited, "Century Bhavan", 3<sup>rd</sup> Floor, Dr. Annie Besant Road, Worli Mumbai for imposition of Safeguard duty on imports of Aluminium Flat Rolled Products and Aluminium Foil into India from People's Republic of China to protect the domestic producers of Aluminium Flat Rolled Products and Aluminium Foil against market disruption caused or threatening to be caused by the increased imports from People's Republic of China Having satisfied that the requirements of Rule 5 were met, the Notice of Initiation of Safeguard investigation concerning imports of Aluminum Flat Rolled Products and Aluminum Foil into India from People's Republic of China was issued under Rule 6 of Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 on 27<sup>th</sup> January, 2009 and was published in the Gazette of India Extraordinary on the same day.
2. A copy of the notice was sent to the government of People's Republic of China through their embassies in New Delhi. A copy of initiation notice was also sent to all known interested parties listed below:

**Domestic Producers (Aluminum FRP & Foils)**

- i. M/s Hindalco Industries Limited, "Century Bhavan", 3<sup>rd</sup> Floor, Dr. Annie Besant Road, Worli , Mumbai
- ii. M/s Nalco India Limited, NALCO Bhavan, P/1, Nayapalli, Bhubaneswar-751 013.
- iii. M/s Bharat Aluminium Company Limited, Business Square, "C" Wing, 2<sup>nd</sup> Floor, Andheri Kurla Road, Chakala, Andheri (E), Mumbai.
- iv. M/s Ess Dee Aluminium, Ess Dee House, Akurli Road, Kandivali (East), Mumbai-400 101.
- v. M/s. P G Foils, Pipalia Kalan, Rajasthan
- vi. M/s. Raviraj Foils, 702, Safron, 7<sup>th</sup> Floor, Pacchwati, Ahmedabad, Gujarat-380 006.

- vii. India Foils, 1, Sagore Dutta Ghat Road, Kamarhati, Kolkata, West Bengal-700 058,
- viii. M/s. AMCO India Ltd., C-53-54 Sector-57 , Phase III, Noida, Uttar Pradesh-201301.
- ix. M/s Manaksia Ltd., 8/1, Lalbazar Street, Kolkata - 700 001
- x. M/s. Paragon Industries Ltd., Khasra No :168-171, Raipur Bhagwanpur, Roorkee-247667, Uttrakhand
- xi. M/s Marudhar Industries, 611 GIDC Phase-IV, Ahmedabad- 382445
- xii. Jindal Aluminium Foils, Plot No 443 / 442, GIDC Waghodia, Dist. Vadodara – 391760, Gujarat

### **Importers**

#### **(a) Aluminum Foil**

- i. Ess Dee Aluminium Ltd. , Plot No. 124-133, Panchal Udyog Naga Bhimpore, Daman
- ii. Jil Pack 8 Purnima , 2nd Flr.,Mahatma Gandhi Rd., Mulund (West), Mumbai, M.S.
- iii. Positive Packaging Industries Limited Divn., Positive Packaging Dta, Vill. Ransai, Survey No.51&53
- iv. R.S.Foils Pvt Ltd., Shed No. 3 & 4, 181/A, Ranoli -Ipcl Road, Near Cargo Motors, Village – Vadoda
- v. Umiya Flexifoam Pvt. Ltd., 40/A, Panchratna Inds. Estate, At Changodar, Tal. Sanand, Dist. Ahmedabad
- vi. Nipra Industries Pvt. Ltd., 34 & 44/126, Amlli Village, Opp. 66 Kva Station, Silvassa, Dadra & N
- vii. Ansa Printpack Pvt. Ltd., 30, Keshavrao Khadye Marg, Byculla West, Mumbai, Maharashtra 400011
- viii. Bhavani Seals Pvt. Ltd., R-308, Ttc, Midc Area, Rabale, Navi Mumbai, Maharashtra
- ix. Tetra Pak India Pvt Limited , Village Takave Budruk, Tal: Maval, Dist Pune 412106
- x. Oriental Containers Limited, Plot No. A1, Midc, Murbad, Dist. Thane.
- xi. Parekh Aluminex Ltd., 601auto Commerce House, Kennedy Bridge, Nana Chowk, Mumbai, Maharashtra
- xii. Nagreeka Foils Ltd., 258/3,Near Telephone Exchange, Union Territory Of Dadra & Nagar Haveli
- xiii. Amco India Ltd , C-53-54, Sector 57, Phase Iii , Noida 201 301
- xiv. Eurobond Industries Pvt. Ltd., Epip Kartholi Bari Brahmana, Jammu

#### **(b) Aluminium Flat Rolled Products**

- i. Manaksia Ltd.( Formerly Hindustan Seals Ltd.), Bikaner Building, 8/1, Lalbazar Street, 3rd Floor, Kolkata 700 001.

- ii. Tata Toyo Radiator Ltd., Survey No. 235/245, Village Hinjewadi, Tal. Mulshi Dist., Pune ,Maharashtr.
- iii. Alcan Composites India Pvt. Ltd., Unit 321, Building 3, 2nd Floor,Solitaire Corporate Park, Mumbai 400 093.
- iv. Alstrong Enterprises, 95, Khirki Village, Malviya Nagar, New Delhi-110017.
- v. V.L. Estates Pvt.Ltd., 204, Neelgiri Appartments, Barakambha Road, New Delhi - 110 001, (India).
- vi. Bhaiya Fibres Ltd., Aludecor Lamination (P) Ltd., 209, Kapadia Chambers, 599, Jss Road, Marine Lines (E),
- vii. Mumbai –400002.
- viii. Lallubhai Amichand Limited, 48/50, Kansara Chawl, Kalbadevi Road, Bombay 400 002, Maharashtra, India.
- ix. Sterlite Technologies Ltd., Survey No.209, Phase 2, Piparia Industrial Estate, Silvassa - 394240, Haveli, India.
- x. Durabuild Technologies Pvt. Ltd., 76/79, Makwana Lane,Takpada, Marol, Off Andheri Kurla Road, AndheriEast, Mumbai 400 059.
- xi. Alupan Composite Panels Pvt. Ltd., Flat No. 7-D, 7th Flr., Hansalaya Bldg.,15, Barakhamba Rd.,Connaught Place,
- xii. New Delhi, 110001.
- xiii. GEI Industrial Systems Ltd., 26/A, Industrial Area, Govindpura, Bhopal, M.P.
- xiv. Banco Products (India) Limited, Bil, Near Bhaili Railway Station, Padra Road, District Baroda - 391 410, Gujarat.
- xv. Glazetech Alupanel Pvt. Ltd., 103, Riddhi Siddhi Complex, Ahinsa Circle, C-Scheme., Jaipur

## **Exporters**

### **(a) Aluminium Foil**

- i. Dingsheng Aluminium Industrial Co., Ltd.Jingkou science&tech industrial area, Jingkou Zone, Zhenjiang, Jiangsu, China PR
- ii. Xiashun Aluminium Foil Co., Ltd., No. 388, Qingyang Yangguan Road, Haicang, Xiamen, Fujian, China PR.
- iii. Jiangsu alcha aluminium co., ltd., West Baimao of Guli country, Changshu city, Jiangsu province, China PR
- iv. Hebei North China Aluminium Co. Ltd., City ZhuoZhou, Hebei, China PR . Post Code: 072750

### **(b) Aluminium Flat Rolled Products**

- i. Alcan Composites Ltd. , Shanghai 298 East Kangqiao Road , 201319 Pudon G Shanghai, China.
- ii. Sapa Heat Transfer (Shanghai) Ltd, No.1111, Jiatang Road, Shangha I, China PR.

- iii. Shanghai Wangxun New Material Co., Ltd., No.1299, Ping An Rd, (So Uth Of Yuanjiang Industrial Zone, 2 China PR.
- iv. Hangzhou Huangshun Industrial Corp. 9/F, Qiushi Building, 6 Jiaogong Road, Hangzhou China.
- v. Wuxi Quantong Cable Material Co.Ltd, Nanhu Zhonglu Binhu Town, Binhu District , Wuxi Jiangsu China.
- vi. Zhenjiang Dingsheng Aluminium Industries Corpn., Jingkou Science And Tech.Industrl. Area, Zhenziang C China.
- vii. Xiamen C And D Inc, 17th Floor Seaside Bldg Xiamen , China.
- viii. Shanghai Grace Trading Co.Ltd., No.148, Hangtou Road, Hangtou Town, Nanhui District, Shanghai, China.
- ix. Donge Blue Sky And Seven Color, daqiao tawn,donge country, liaocheng ,Shandong, China,252218
- x. Changzhou Lidao Metallic Material, South New Jichang Road, Xinzha Town, Zhonglou, Changzhou, Jiangsu, China 213000
- xi. Wuxi Yingbang Nternational Trading Co.,Ltd, No.100 Erquan East Road, Ding Ting, China.
- xii. Shandong Fuhai Industrial Co., Ltd., No.18 Renhe Street, Yantai, P.R.Of China.
- xiii. Hefei Foreign Investment And Trade Service Co Ltd , 9f Hefei Building No.83 , Huayuan , China.
- xiv. Foshan Yinglu Trading Co.,Ltd., Lanshi Guangdong, China 528000
- xv. North China Aluminium Co Ltd, Zhuozhou , Hebei , China.
- xvi. M/S.Dodo Aluminium (Suzhou) Co., Lt D., Dayi Industrial Zone, Chang Shu City, Iangsu Province, 215557, China.
- xvii. CNBM International Corporation., 5/F Longbo Building, 3 South Lishi, Beijing, China (mainland) 100037

3. Questionnaires were also sent, on the same day, to all known domestic producers and importers and exporters and they were asked to submit their response within 30 days.
4. Request to consider them as interested parties were received from the following parties and all the requests were accepted. Further, requests for an extension of time to submit their replies were made by a number of interested parties, and after taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time were allowed in all cases and the parties concerned were accordingly informed.
5. After expeditious conduct of investigation preliminary findings were issued on 2<sup>nd</sup> February 2009. The provisional duties were levied on 23-03-2009 vide notification no.26/2009 - Customs, dated, 23-03-2009 at the rate of 21 per cent. *ad valorem* on all goods falling under heading 7606 (Aluminium Flat Rolled Products) of the First Schedule to the said Act, when imported into India from People's Republic of China; and at the rate of 35 per cent. *ad valorem* on all goods falling under heading 7607 (Aluminium Foil) of the First Schedule to the said Act, when imported into India from People's Republic of China.

6. A public hearing was held on 30<sup>th</sup> March 2009, notice for which was sent on 26<sup>th</sup> February, 2009. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997. Copy of written submission filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinder, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.
7. The information presented by domestic producers with regard to their production, sales, costs and prices, profits, and other injury parameters were verified by on-site visits to the plants of the domestic producers to the extent considered necessary. Further, the cost data has been also verified and certified by independent cost accountant. The non confidential version of verification report is kept in the public file.

**B. Views of domestic producers in India**

8. The domestic producers have stated as follows:
  - i. Imports of the products under consideration have increased from People's Republic of China over the years;
  - ii. Imports from People's Republic of China have increased in relation to Indian production in absolute terms as well as in relative terms;
  - iii. Imports from People's Republic of China have increased in relation to consumption in India;
  - iv. While market share of China has increased, that of the domestic industry has declined;
  - v. Whereas the market share of the Indian Producers as a whole has declined, that of imports from China has increased.
  - vi. Given significant price difference between the imports and the domestic products, there is strong likelihood of further importation;
  - vii. Sales of the domestic industry have declined in absolute terms;
  - viii. Growth in domestic demand is being captured by Chinese imports.
  - ix. Domestic Industry is facing significant idling of production capacities in both the products under consideration as a result of increased imports. There is decline in production and consequently decline in capacity utilization in current year due to significant increase in the import from China in both the products. Further, whereas the market share of China increased, that of domestic industry declined in a situation where the domestic industry was having unutilized capacities. The domestic industry is now resorting to production cuts and the increased imports are leading to market disruption in both the products under consideration.
  - x. Increased imports are leading to under utilization of the installed capacity resulting into loss of employment.
  - xi. There is significant rise in inventory.

- xii. They have submitted import data, data relating to economic parameters, cost data duly certified by cost accountant to justify their claims.

**C. VIEWS OF THE GOVERNMENT OF CHINA AND EXPORTERS**

**C.1. Views of the Government of China**

9. The Government of China through his consultant has contended that before proceeding to initiate an investigation, consultations should have been held in terms of Article 16.1 of CAP. The arguments given is reproduced below;

“This is an investigation for imposing Transitional Product-Specific Safeguard Measures (TPSSM) as contemplated under Article 16 of China’s Accession Protocol to WTO (CAP). Article 16.1 of CAP states as follows:

***16. Transitional Product-Specific Safeguard Mechanism***

*1. In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to **seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards.** Any such request shall be notified immediately to the Committee on Safeguards.”*

10. However, GOC regrets to note that the Investigating Authority failed to provide such consultation opportunity before the initiation of the investigation. From the time prior to the initiation of investigation till date (even after the approval of preliminary findings), no communication has been received by GOC through proper channels. In the opinion of GOC, this runs not only against the basic principles of WTO but also runs counter to the obligations to be assumed by the Investigating Authority. Consequently, because this has seriously deprived the rights of GOC, GOC cannot accept how the Investigating Authority is acting.

11. The words ‘*seeking mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards*’ appearing in Article 16.1 of CAP clearly imply the following:

- i. In the circumstances specified in the first leg of the first sentence of Article 16.1, WTO member so affected shall seek consultations with China. The objective of such consultations is to seek a mutually satisfactory solution.
- ii. It may be possible to pursue several options while seeking a mutually satisfactory solution in the facts and circumstances of a particular case. One of such pursuits is the application of a measure under the Agreement on Safeguards (hereinafter “Agreement on Safeguards”). The phrase ‘pursue application of a measure under the Agreement on Safeguards’

means that as a part of the consultations, one may look at the application of safeguard measures under the Agreement on Safeguards. If in the course of the consultation process one decides to pursue the application of a safeguard measure under Agreement on Safeguards, then, the question of applying TPSSM does not arise. Therefore, before deciding what option one should pursue, i.e., TPSSM or Safeguard Measure under Agreement on Safeguards, consultations with China are required to be held.

iii. If one decides to ‘pursue’ application of a measure under Agreement on Safeguards, they would follow the procedures laid down in Agreement on Safeguards. If one decides to follow TPSSM route, then the provisions of Article 16 of CAP shall be followed.

iv. With regard to provisional measures, the affected WTO Member shall make a preliminary determination in terms of Article 16.7 (first sentence) and the notification of the provisional measures and consultations on the provisional measures shall be effected immediately thereafter (Article 16.7 second sentence). While Article 12.4 of Agreement on Safeguards provides for notification before taking a provisional measure and consultation to follow after imposition of provisional measures, Article 16.7 of CAP provides that both notification and consultation shall follow the imposition of provisional measures.

v. First, consultations as required under Article 16.1 shall be held. Pursuant to such consultations or in spite of such consultations, if a WTO Member decides to pursue TPSSM, then, he will initiate the investigation for applying a TPSSM. Thereafter, if critical circumstances are present, provisional measures can be imposed without any notification under Article 16.7. A subsequent consultation may be held under Article 16.7.

vi. It is not appropriate to first impose provisional measures referred to in Article 16.7 and then hold a consultation (under Article 16.1) to choose between ‘TPSSM’ and a ‘Measure under Agreement on Safeguards’. If provisional measures have already been imposed and in the consultations under Article 16.1, the Investigating Authority finds that a ‘measure under Agreement on Safeguards’ is more appropriate, then, the imposition of provisional measures under TPSSM is not warranted at all. Thus, the consultations under Article 16.1 have to be held first and consultations if any as may be required under Article 16.7 shall follow at the appropriate time during the course of the investigation for a TPSSM. Under no circumstances can consultations under Article 16.7 precede the consultations under Article 16.1.

vii. This is the only feasible interpretation of Article 16.1 of CAP. Otherwise, the phrase, “including whether the affected WTO Member should pursue application of a measure under the Agreement on

Safeguards” appearing in Article 16.1 of CAP would be rendered redundant.

viii. In this particular case, India did not seek consultations with China under Article 16.1 of CAP. As a WTO Member, the basic WTO principles to be adhered to and the obligations to be assumed shall not be ignored or reduced by any means when conducting an investigation. Since no opportunity of consultation under Article 16.1 of CAP has been provided to GOC, the TPSSM investigation shall be terminated immediately.”

12. Petition is ill conceived as it targets too broad a scope of the product and does not provide reliable import statistics in support of increased imports.
13. The petition did not show any rapid increase in imports. It did not also show any evidence of market disruption – serious injury or threat of serious injury. When both these elements are missing, obviously, causal link becomes irrelevant.
14. The demand has been going down. In the light of declining domestic demand, it is not shown as to how the marginal increases in the imports from China PR caused injury to the domestic industry.
15. Indian domestic industry does not produce foils suitable for flexible packaging uses. The users need foils with the following two characteristics:
  - i. Foils having a thickness less than 7 microns;
  - ii. Foils having a width exceeding 975 mm irrespective of thickness;
16. Preliminary findings state that in arriving at the duty rate, ‘average cost of production of AL product + a reasonable return on capital employed’ was compared with the ‘average import price + import duties’. In light of this statement, it is of crucial importance to know how the cost of production for the domestic industry was arrived at. The petition is silent about the cost of production. Regarding costing information, no non-confidential version of the same has been made available to us.
17. It is well known that globally, AL industry fixes the prices based on the following formula: “LME prices of RM + conversion/fabrication cost”. It is also well known that conversion/fabrication cost is almost uniform around the globe. Hindalco is an integrated producer. His cost should be lower than others. It is not known how they presented a significantly higher cost during October/December 2008. Perhaps, they made some accounting gimmicks. It is apprehended that the following might have taken place:
  - a) Firstly, they might have replaced the actual cost of AL ingots with the domestic selling prices of AL ingots or market value or realisable value of AL ingots. If they had not used their costs, costing information shall be revised downwards.
  - b) Secondly, they might have replaced the actual cost of making AL FRPs with that of selling prices of FRPs or market value or realisable value of FRPs.

- c) Thirdly, since their losses are during October/December 2008, it may be because of stock writing off.

**C.2. Views of SAPA Heat Transfer (Shanghai) Limited**

18. SAPA Heat Transfer (Shanghai) Limited has developed, using the special R & D facility at Sweden as well as in China, aluminium alloy flat rolled products which are claded on both sides with certain alloys.
19. This cladded aluminum alloy flat-rolled products have special characteristics in terms of yield strength, ultimate strength (Npa) Elongation etc.
20. The list of SAPA Heat Transfer (Shanghai) Limited products having the above characteristic is also provided.
21. These products are not ordinary aluminum flat rolled but these are meant for specialized application in the manufacture of heat exchangers which are used in Automobiles and in Heat ventilation and Air-conditioning systems where efficient, environment friendly and prolonged heat transfer is a pre-requisite. These products are used by some of the leading Indian importers who are not at all able to access “like articles” or the products of identical specification from the domestic industry. Incidentally some of these products exported by SAPA Heat Transfer (Shanghai) Limited are patented. The use of these imported claded aluminium alloy flat rolled products by these Indian importers has manifested in the production and supply of high quality products with impeccable efficiency locally by the Indian Automobile and HVAC sectors and thus the level of consumer satisfaction index is very high consistent with international standards.
22. The products which are manufactured and exported by SAPA Heat Transfer (Shanghai) Limited to India offer the following characteristics.

High conductivity = efficient heat transfer

Low weight = contributes to energy saving

Easy to form and weld or braze = efficient manufacturing

Easy to recycle = environmental friendly.

23. Further, specialized aluminium alloy strips are manufactured by SHTS for meeting the exact requirements of particular clients. Some instances of such specific products being made available to Indian customers are as under

Alloy Grade	Temper	Yield strength before brazing	Ultimate strength before brazing	Elongation%	Yield strength after brazing	Ultimate strength after brazing
<b>FA82A4</b> (Indian Product)	H14	Min 125Mpa	145-185Mpa	Min1	40Mpa	110Mpa

<b>FA8EA4</b>	H14	Min125Mpa	145~185Mpa	Min1	45Mpa	140Mpa
(SHTS Product supplied to Tata Toyo Radiators Limited)						
<b>FA8HA4</b>	H24	Min150Mpa	185~235Mpa	Min8	55Mpa	145Mpa
(Supplied to Banco Products (India) Limited)						
<b>FA8U**</b>	H24	Min 140	150-205Mpa	Min8	50Mpa	140Mpa
(supplied to Behr India Limited)						
<b>FA81J4</b>	H24	Min150Mpa	180~210Mpa	Min8	60Mpa	160Mpa
(supplied to Banco Products (India) Limited)						

24. The Indian importers have also confirmed to us that they are not able to procure or to access the products that have been supplied by SAPA Heat Transfer (Shanghai) Limited from any of the domestic manufacturers and in this sense these products exported by SAPA Heat Transfer (Shanghai) Limited are unique and do not cause any “market disruption” or threat of market disruption which is contemplated by the Customs Tariff (Transitional Product Specific Safeguard duty) Rules 2002 read with section 8 C of Customs Tariff Act, 1975. The same has also been their stated position as detailed in their written submissions filed with you.
25. In view of the above, it is requested that your office may be kind enough to issue an appropriate Notification by which an exemption/exclusion is given to the products (supplied by SAPA Heat Transfer (Shanghai) Limited, China). At the risk of repetition, we state that in these products supplied by SAPA Heat Transfer (Shanghai) Limited for which there is no domestic manufacturer to the best of our information, and thus there is no “threat of market disruption” so as to justify the imposition of transitional products specific safeguard duty.
26. For the purpose of granting the exemption from investigation/imposition of the safeguard duty, we suggest that the following description may appropriately epitomise the products described

**“Aluminium-Manganese-Silicon based and/or Aluminium-Magnesium-Silicon based alloys, whether clad or unclad; with thickness between 0.05 mm to 3.00 mm; with post brazing yield strength greater than 45 MPA, falling under**

**tariff heading 7606 or 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof"**

**D. VIEWS OF IMPORTERS/USERS INDUSTRIES**

27. As there are more than hundred interested parties and seventy six persons have attended the public hearing, their submissions in summary form are as follows;

- i. The Directorate General of Safeguards had provided time till 27<sup>th</sup> Feb.2009 to the interested parties to make their views known. However, without waiting for the last date preliminary findings were issued on 2<sup>nd</sup> Feb. 2009 recommending strict duty to the detrimental of the entire user industry.
- ii. Grave and irreparable injury and loss would be caused to the entire user industry by not providing opportunity of hearing and considering their views.
- iii. There are too many products that are sought to be investigated in one investigation and hence bad in law. Section 8(c) of the Customs Tariff Act only envisages investigation in respect of "any article" and "not article" therefore common conclusion for such different articles are incorrect.
- iv. Constantia H&N Sjou has informed that they are providing Aluminium bottleneck foil bear levels. The Aluminium foils on which printing is done are produced in China. The thickness of these foils is 10.5 micron which is not produced by either Hindalco or Vedanta.
- v. M/s R.M.Packaging Pvt. Ltd. and other packaging units have contended that they convert bear foil to value added products and sell to mainly Pharmaceutical Industries. From 2005 onwards they have been facing volatile market and large foil manufacturers are making huge profits whenever there is an increase in LME prices. From Jan.2008 till July 2008 the price of foils were increased by about 45 per Kg. in about 6 or 7 installment without any prior notice. This was done due to high LME ruling prices even though Hindalco or Balco do not import metal and their cost of metal remains the same. The increase in prices were to the tune of 28%. The LME prices of Aluminium went up from USD 2400 in Jan.08 to about USD 3200 in July 08 which fell down to USD 1320 in Nov.08. The present foil manufacturers are working in cartel form and not reducing the prices even after reduction in LME prices.
- vi. The LME is ruling at USD 1350 average and the average price of Chinese medium gauge foil of good quality is USD 2550/-. This means that the conversion cost is about Rs.60000/- per ton or Rs 60 per kg which is quite high and hence there is no question of their dumping material on India in the case of foils. USD 1350 means about Rs 66 per kg and the average price of foil being charged by the foil manufacturers is more than Rs 170 for bare foil and Rs 240 for some converted foils. Thus a margin of Rs 120/- per kg is there from ingot to foil and about Rs 175 per kg on converted foils. This is very high margin for foil as per world standards.

Sl. No.	LME Price/Kg in USD	LME in Rupee @ Rs49/USD	Average price of Indonesian suppliers		Avg. Chinese price of foil in USD		Average bare medium gauge foil price of Indian manufacturers
			In INR	In USD	IN INR	IN USD	
1	1.35	66.15	130	2.65	125	2.55	170

Average margin for Indian Manufacturers over LME price	Normal margin required for Foil from Ingot in rupees	Average margin taken by Chinese manufacturers over LME price in INR (Rs)	Average margin of Indonesian suppliers over LME	Extra profit per Kg of Indian Manufacturers at present prices	Expected price of medium gauge foil increase in 35% duty imposed as was prevailing in July 2008	Margin over LME price after safeguard duty
105	55	58.8	63.6	55	200-215	Rs.135-150

vii. The Converting industry employs much more people than the foil producing companies. The average employment per company of the large manufacturers is about 150 per factory and there are total of only five large companies and hence the total employment is only about 600-750 persons. Whereas the employment in the foil converting industry is not less than 15000-20000 as there are not less than 1000 converting units in India and on an average about 15-20 people are employed in small companies and about 100-200 in large companies like Paper products, Essel packaging etc. Moreover the pharmaceutical industry employs huge no of persons and trying to save a small industry like foils in India will cripple large industries in many areas and ring the death knell for all SSI's in converting sector.

viii. Most of the converting industries have put up modern printing and lamination facilities and thus good quality converted foils is available at

affordable prices in India and none of the foil producing companies have invested in new machinery in the last ten years. A company like Hindalco imported cheap obsolete foil rolling mills for their Silvassa plant and is unable to give good quality foil at present and hence those factories with modern machines which require good quality foils have to import the same. None of the foil companies have invested in modern rolling mills giving good quality foils have to import the same. None of the foil companies have invested in modern rolling mills giving good quality and high recovery of foil. The manufacturers like India Foils [formerly of Balco under Vedanta group] Hindalco and Ess Dee, Amco, P.G.Foils Ltd have all been running secondhand mills where the recovery percentage is low. Thus their costs are high. They have also enjoyed monopoly status for long like India Foils used to supply Polyal tape to companies like Hindustan Cables Ltd in the 1980's at Rs.130 per kg when the foilstock price was Rs 30/- per kg and they supplies the same polyal tape to Hindustan Cables in 2001-2003 at Rs.125/- per kg when the foils stock price was Rs 100 per kg. The present move of the foil industry which employs only a few hundred people is to move to the days of those monopolistic prices and this will affect the common man and a large converting industry which not only employs a large work force of over 15 to 25 thousand but also provides huge revenue to the Central Government.

- ix. M/s Hindalco has posted outstanding Q3 FY 2008-2009 results and posted PBIT at Rs.768.6 crore. The net profit has been Rs.544.8 crore which is marginally higher. The net sales and operating revenues of Hindalco has been Rs.5683.2 crore against Rs.4966.9 crore during the quarter ending 30<sup>th</sup> Sep.2007.
- x. The Indian Tea Association has contended that the Indian Tea Industry widely uses multwall paper sacks for bulk packaging of Tea for export as well as for domestic market. This paper sacks are manufactured in India. These manufacturers use 7 micron thick Aluminium foil having width of 1245 mm and 1445 mm. M/s Hindalco and others do not manufacture such 7 micron foil of 1245 mm and 1445 mm. Indian manufacturers manufacture the product of width less than 1000 mm. The quality of Indian foil is inferior.
- xi. Various Associations of Refrigeration and Aircondition manufacturers Association have contended that heat exchangers are one of the critical such assembly of aircondition and quality of Aluminium is critical for performance of Airconditioners. The CIA prices of such foils has been consistently dependent on Aluminium price at LME. Any hike in Import duty will cause inverted duty structure.
- xii. In the annual report for 2007-08 there is foot note to schedule 20 wherein installed capacity of Silvassa foil plant have been re-assessed at 30,000 ton per annum by Deptt. Of Indian Policy and promotion. Taking the re-assessed capacity, the capacity utilization has been more than 100% during April-Dec.08. Apart from Hindalco there is no other Indian company making any

grades of Aluminium foil suitable for AC and R Industry and Hindalco is not able to meet the pick demand.

- xiii.* Organisation of Plastics Processors of India has contended that Indian foil converting Industry operates with obsolete machines and technology and the product is of poor quality. The flexible packing manufacture industry has been consistently increasing their facilities with state of Art equipments and machinery which operates high speed lines and produces high quality technologically superior products that caters to domestic as well as export market. The commonly used foil gages are 6.0, 6.35 and 7 micron thickness. The foil below 7 micron is not manufactured by Hindalco and other Industries. The 7 micron foil manufactured by Hindalco is different in terms of quality than the one imported. The pin hole counts for a 7micron foil in respect of imported one is only 50 per square meter as against 600 per square meter for domestic supplier. These 7 micron and less than 7 micron foils are used by food and Pharmaceutical products industry which is highly quality sensitive segment. The domestic capability to produce their cage foil is limited to about 500 TPA which is considerably lower than the demand.
- xiv.* The safeguard duty on basic raw material will add to the cost and may lead to import of final product. The import price of 7 micron Aluminium foils is Rs.185/- and that of M/s Hindalco Industries Ltd. is Rs.221.6 per Kg.
- xv.* M/s Nagrika foils Ltd. has contended that they are engaged in Heat press lamination of Aluminium and Chrome Coated Steel Foils with co-polymers. The end product is used by cable manufacturers. Imposition of Safeguard duty will make them less competitiveness as input prices will go up.
- xvi.* M/s B&A multiwall packaging Ltd. has contended that they manufacture multilevel paper bags to preserve quality and freshness of tea particularly for export. The inner barrier of the multiwall paper bags are made out of 6.35 to 7 micron thick Aluminium Foil as a substrate. Internationally accepted standard size of bags for tea packaging call for 1245mm and 1445mm width of Aluminium foil. Such product are not manufactured by Hindalco and others in India. The Indian manufacturers capacity is limited to production of upto 7 micron thick foil of less than 1000 mm width. Therefore, they have no other opinion but to import and thus foil of thickness 7 micron and less than 7 micron should be excluded from the purview.
- xvii.* Various packaging units including M/s Green Pack Pvt. Ltd. , M/s Paras Pack and M/s Uma Converter Pvt. Ltd. have contended that the quality of India foil is not good and safeguard duty would adversely affect their business.
- xviii.* Petition is ill conceived as it targets too broad a scope of the product and does not provide reliable import statistics in support of increased imports.

- xix.* The petition did not show any rapid increase in imports. It did not also show any evidence of market disruption – serious injury or threat of serious injury. When both these elements are missing, obviously, causal link becomes irrelevant.
- xx.* The demand has been going down. In the light of declining domestic demand, it is not shown as to how the marginal increases in the imports from China PR caused injury to the domestic industry.
- xxi.* Indian domestic industry does not produce foils suitable for flexible packaging uses. The users need foils with the two characteristics viz. Foils having a thickness less than 7 microns; and Foils having a width exceeding 975 mm irrespective of thickness;
- xxii.* Preliminary findings state that in arriving at the duty rate, ‘average cost of production of AL product + a reasonable return on capital employed’ was compared with the ‘average import price + import duties’. In light of this statement, it is of crucial importance to know how the cost of production for the domestic industry was arrived at. The petition is silent about the cost of production. Regarding costing information, no non-confidential version of the same has been made available to us.
- xxiii.* It is well known that globally, AL industry fixes the prices based on the following formula: “LME prices of RM + conversion/fabrication cost”. It is also well known that conversion/fabrication cost is almost uniform around the globe. Hindalco is an integrated producer. His cost should be lower than others. It is not known how they presented a significantly higher cost during October/December 2008. Perhaps, they made some accounting gimmicks. It is apprehended that the following might have taken place: Firstly, they might have replaced the actual cost of AL ingots with the domestic selling prices of AL ingots or market value or realizable value of AL ingots. If they had not used their costs, costing information shall be revised downwards. Secondly, they might have replaced the actual cost of making AL FRPs with that of selling prices of FRPs or market value or realizable value of FRPs. Thirdly, since their losses are during October/December 2008, it may be because of stock writing off.
- xxiv.* The weighted average prices would vary from country to country depending upon the product mix. Kind attention is invited to paragraph 1(B) of Section 5 on page 13 of the application where the Domestic Industry itself admits that that the category of Aluminium Products cannot be considered as a homogenous product. If that is the case, it is far from clear as to how an application with such admitted position can be the basis of an investigation.
- xxv.* Different sources of import data have been used to build up the case for increased imports. No method of statistical analysis would permit such analysis and comparisons to reach any meaningful conclusions.
- xxvi.* No effort has been made to ascertain that the broad description of the product under consideration has resulted into a situation where several products not even

manufactured by the complainant Domestic Industry have been included in the purview of investigations.

- xxvii. Initiation has been done despite the fact that the application itself mentions that imports from China have increased “gradually” whereas the precondition of Section 8C is that the imports should have increased “rapidly”.
- xxviii. No reason is available in the public file as to why the Chinese raw data has to be kept confidential.
- xxix. Since the data for other countries has been procured from sources other than the China Customs then the same sources could have been relied upon in case of exports coming into India. Unfortunately, the domestic producers have concealed such pertinent facts in their application and the DG (Safeguards) has also not carried out the tests of adequacy and accuracy as envisaged under Rule 5 making the entire investigation *ab initio* void. We are of the considered view that if all the relevant facts had been taken into consideration, it would not have resulted in the initiation of the investigations or the impugned preliminary findings.
- xxx. The producers of Aluminium Composite Panels (ACP) use colour coated coils of two types. These are referred to as (a) Aluminium Coil (Top) and (b) Aluminium Coil (Bottom). The technical specifications of such coils are attached as Annex 3. The Top Coil is coated with PVDF while the Bottom Coil is coated with polyester. To the best of our information, both the coils are not manufactured by the complaining Domestic Industry at whose behest the entire investigation has been initiated. It is also submitted that at no stage of the hearing, the Domestic Industry contested the above facts that they are not producing or supplying the said coils. The reference to the WTO Panel decisions and the EC decision, as stated earlier, is totally misplaced as the issue here is not about how wide or narrow the “product under consideration” can be. The quintessential issue is whether the Applicant is the Domestic Industry for the products not manufactured by them. It may be appreciated that no effect of increased imports can ever be felt on the Domestic Industry for products not even manufactured by them. Therefore, it is the consistent practice of the Designated Authority for Anti-dumping as well as the other authorities in the world for anti-dumping as well as safeguard to specifically exclude products not manufactured or offered by the Domestic Industry.

**E. EXAMINATION AND FINDINGS**

28. I have carefully gone through the case records and the replies filed by the domestic producers, users/importers, exporters and exporting government. Submissions made by the various parties and the issues arising there-from are dealt with at appropriate places in the findings below.

**F. Domestic Industry, Product Under Investigation and like or directly competitive article:**

29. The sub-section 1 of section 8C which reads as follows:

***“Notwithstanding anything contained in Section 8B, if the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India, from the People’s Republic of China, is such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article.***

***Provided that the Central Government may, by notification in the official gazette, exempt such quantity of any articles as it may specify in the notification, when imported from People’s Republic of China into India, from payment of the whole or part of the Safeguard duty leviable thereon.”***

30. The said sub section empowers the Central Government to impose Transitional Product Specific Safeguard Duty on import from People’s Republic of China. The section provides for imposition of Safeguard duty on any article which is imported into India from People’s Republic of China in such increased quantity and under such condition so as to cause or threatening to cause market disruption to domestic industries.

31. The “domestic industry” has been defined in sub-section 7 of section 8C of Customs Tariff Act, 1975 as;

**a) “domestic industry” means the producers-**

***i. as a whole of a like article or a directly competitive article; or***

***ii. whose collective output of a like article or a directly competitive article to India constitutes a major share of the total produced of the total production of the said article in India.***

32. Some of the interested parties have contended that the use of the word “any article” in the statute implies that each and every article has to be investigated separately. In this respect a case of provisional safeguard measure against import of certain steel product by European Union through commission regulation (EC) no.560/2002 of 27/3/02 is referred. In this case European Union had made 21 product groups of various steel products of wide range.

33. Each product group consisted of many tariff sub-headings. Further, each tariff sub-heading may contain a number of articles with different physical or chemical characters. Similar, methodology of investigation has been adopted by China as seen from the initiation of investigation dated 20/05/2002 whereby a group of articles have been investigated together.

34. It may not be out of context to refer section 13 of the General Clauses Act, 1897, reproduced below;

**S.13 Gender and number- In all Central Acts and Regulations, unless there is any thing repugnant in the subject or context –**

**(1) words importing the masculine gender shall be taken to include females; and**

**(2) words in the singular shall include the plural, and vice versa.**

35. From the General Clauses Act, 1897 it is evident that the use of singular word 'article' in the Customs Tariff Act 1975 does not preclude 'articles'.

36. The Hon'ble Supreme court in the matter of Collector of Customs vs M/s United Electrical Industries Ltd [AIR 1999 SC 3796]{Civil Appeal No. 10195 of 1983} has taken similar view. The relevant part is reproduced below;

**"We find the Tribunal gave good reasons for rejecting the interpretation given by the department. Having considered the submissions for the parties we find in case interpretation given by the department is to be accepted, no assessee could get exemption unless all the machines are imported as one composite machine reference of each separate machines with (') would have no meaning. This will make this notification unworkable, hence Tribunal rightly rejected Revenue interpretation. The notification has to be interpreted to give true import and meaning, not to make it purposeless and nugatory. It is well settled which is also provided in S. 13 of the General Clauses Act, 1897 of Central Acts that unless there is anything repugnant to the subject or context the word singular shall include plural and vice versa. The Tribunal interpreted the word 'machine' to be 'machines' and, in our opinion, rightly so. It seems by the restrictive interpretation the very purpose of this notification since completely diluted which led into clarification/ modification by the Government through the aforesaid letter."**

37. Therefore, the contention of the interested parties that each and every article should be investigated separately is not tenable on the ground that the same is not a practical proposition and it is well accepted methodology to consider a group of products together as a product basket for the purpose of analysis of various economic parameters.

38. Some of the interested parties have contended that grave errors have been caused by the use of word 'market disruption and threat of market disruption' when the law requires 'market disruption or threat of market disruption'. The argument taken by the interested parties have been that 'market disruption' and 'threat of market disruption' is mutually exclusive event. The contention of the interested party is not tenable as once 'market disruption' has taken place, does not mean no further 'market disruption' can take place. It is also possible that 'market disruption' takes place and also there is 'threat of market disruption' in immediate future. The 'market disruption' can be of varying degrees and thus in the instant case 'market disruption' has taken place and the evidences show existence of 'threat of market disruption' too. As far as semantics of the word 'or' and interpretation of statute is concerned, the order of Hon'ble Supreme Court in the matter of J. Jayalalitha Vs. Union of India and other is being referred, which clearly rules that the word "or", which is a conjunction, is normally used for the purpose of joining alternatives and also to join rephrasing of the same thing but at times to means "and" also.. The relevant part of the order is reproduced below;

**'The dictionary meaning of the word "or" is "a particle used to connect words, phrases, or classes representing alternatives". The word "or", which is a conjunction, is normally used for the purpose of joining**

alternatives and also to join rephrasing of the same thing but at times to means “and” also. Alternatives need not always be mutually exclusive. Moreover, the work “or” does not stand in isolation and, therefore, it will not be proper to ascribe to it the meaning which is not consistent with the context of Section 3. It is a matter of common knowledge that the word “or” is at times used to join terms when either one or the other or both are indicated. Section 3 is an empowering section and depending upon the necessity the Government has to appoint Special Judges for an area or areas or case or group of cases. Even in the same area where a Special Judge has already been appointed, a necessity may arise for appointing one more Special Judge for dealing with a particular case or group of cases because of some special features of that case or cases or for some other special reasons. There is no good reason to restrict the power of the government in this behalf by giving a restricted meaning to the word “or”. The word “or” as used in section 3 would mean that the Government has the power to do either or both the things. (Para 9)’

39. Various interested parties have also contended that certain articles, even though fall in the tariff sub-heading where safeguard duty has already been imposed, are not manufactured in India or certain products even if manufactured in India are not manufactured by Hindalco which has been termed as “domestic industry” in the notice of initiation and preliminary findings. It has also been contended that such articles are neither like nor directly competitive.

40. The applicants through their consultant opposed the contention of the interested parties on the ground that the competitive relationship extends as well to potential competition and further process per se does not come in the way of treating an article “like or directly competitive”. They also referred Report of the Appellate Body in the case of United States- Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan [WT/DS192/AB/R] , Korea- Taxes on Alcoholic Beverages [WT/DS75/AB/R, WT/DS84/AB/R 18 Jan 1999] and Definitive Anti-dumping duty by European Union on imports of Polyethylene Terephthalate Film [Council Regulation (EC) No. 1676/2001]

41. In order to analyse the relevance of the referred reports and findings, the relevant parts are reproduced below

**United States- Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan [WT/DS192/AB/R]**

*84. The United States appeals this finding of the Panel. The United States submits that Article 6.2 permits a definition of the domestic industry on the basis of products that are not only like but also directly competitive with the imported product. According to the United States, yarn sold on the merchant market and yarn produced by vertically integrated fabric producers for their own internal consumption are like, but they are not*

*directly competitive with each other. The United States argues that, by rejecting its definition of the domestic industry, the Panel failed to give full meaning and effect to the term "and/or" in Article 6.2 and reduced the word "and" to inutility. The United States also argues that the Panel should have interpreted the definition of the domestic industry within the four corners of the ATC without having recourse to the wider context of other agreements of the WTO containing a definition of the domestic industry.*

85. *We begin our analysis of this issue with the definition of the domestic industry as stated in the relevant part of Article 6.2 of the ATC, which provides:*

*Safeguard action may be taken under this Article when, on the basis of a determination by a Member, it is demonstrated that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. (footnote omitted, emphasis added)*

86. *A plain reading of the phrase "domestic industry producing like and/or directly competitive products" shows clearly that the terms "like" and "directly competitive" are characteristics attached to the domestic products that are to be compared with the imported product. We are, therefore, of the view that the definition of the domestic industry must be product-oriented and not producer-oriented, and that the definition must be based on the products<sup>[1]</sup> produced by the domestic industry which are to be compared with the imported product in terms of their being like or directly competitive.<sup>[2]</sup>*

87. *We also consider that the term "producing" in Article 6.2 means producing for commercial purposes and that it cannot be interpreted, in itself, to be limited to or qualified as producing for sale on the merchant or any other segment of the market. The definition of the domestic industry, in terms of Article 6.2, is determined by what the industry produces, that is, like and/or directly competitive products. In our view, the term "producing", in itself, cannot be given a different or a qualified meaning on the basis of what a domestic producer chooses to do with its product.*

88. *We now turn to the next two components of the definition of the domestic industry under Article 6.2 of the ATC, namely, like products and directly competitive products.*

89. *We note that there is no disagreement between the participants<sup>[3]</sup> that yarn imported from Pakistan and yarn produced by the producers of the United States, regardless of whether they are vertically integrated fabric producers or independent yarn producers, are like products. The United States has made it clear in its arguments<sup>[4]</sup> that its exclusion of yarn produced by vertically integrated fabric producers from the definition of the domestic*

*industry was not because they are not producing a like product, but because they are not producing a directly competitive product. It is, therefore, not necessary for us to address the meaning of the term "like products" for the purposes of this appeal.*

90. *Before we examine the term "directly competitive" in the specific context of Article 6.2 and the facts of this particular case, we consider it useful to recall our interpretation of this term on previous occasions.*
91. *We have interpreted the term "directly competitive " in Korea – Alcoholic Beverages<sup>[5]</sup> and Japan – Taxes on Alcoholic Beverages.<sup>[6]</sup> We are cognizant of the fact that these two reports interpreted this term in the context of the Interpretative Note Ad Article III:2 of the GATT 1994. We will refer to this aspect later. The key elements of the interpretation of the term "directly competitive" in our Report in Korea – Alcoholic Beverages are:*
- (a) *The word "competitive" means "characterised by competition". The context of the competitive relationship is necessarily the marketplace, since that is the forum where consumers choose different products that offer alternative ways of satisfying a particular need or taste. As competition in the marketplace is a dynamic and evolving process, the competitive relationship between products is not to be analyzed exclusively by current consumer preferences<sup>[7]</sup>; the competitive relationship extends as well to potential competition.<sup>[8]</sup>*
  - (b) *According to the ordinary meaning of the term "directly competitive", products are competitive or substitutable when they are interchangeable or if they offer alternative ways of satisfying a particular need or taste.<sup>[9]</sup>*
  - (c) *In the context of Article III:2, second sentence, the qualifying word "directly" in the Ad Article suggests a degree of proximity in the competitive relationship between the domestic and imported products. The word "directly" does not, however, prevent a consideration of both latent and extant demand.<sup>[10]</sup>*
  - (d) *"Like" products are a subset of directly competitive or substitutable products: all like products are, by definition, directly competitive or substitutable products, whereas not all "directly competitive or substitutable" products are "like".<sup>[11]</sup>*
92. *The United States argues that the Panel's over-reliance on our Report in Korea – Alcoholic Beverages is mistaken for two reasons. First, that dispute involved interpretation of a different phrase ("directly competitive or substitutable"), of a different provision and agreement (Article III:2 of the GATT 1994), and in a different factual setting. In particular, the word "substitutable" is not used in juxtaposition with "directly*

*competitive" in Article 6.2 of the ATC. Second, the Appellate Body emphasized, in that case, the importance of the marketplace in judging the competitive relationship between products because that is the forum where consumers choose between different products. According to the United States, a proper reading of the Appellate Body's reasoning reveals that if a domestic product does not enter the marketplace at all, it cannot be regarded as being "directly competitive" with the imported product, even though the two products may admittedly be "like products".*

93. *We are not persuaded by these arguments of the United States with respect to the relevance and interpretation of our Report in Korea – Alcoholic Beverages.*

94. *With respect to the first argument of the United States, a careful reading of our Report in that case would show that we used the terms "directly competitive" and "directly substitutable" without implying any distinction between them in assessing the competitive relationship between products. <sup>[12]</sup> We do not consider that the mere absence of the word "substitutable" in Article 6.2 of the ATC renders our interpretation of the term "directly competitive" under Article III:2 of the GATT 1994 irrelevant in terms of its contextual significance for the interpretation of that term under Article 6.2 of the ATC.*

95. *We now turn to an examination of the term "directly competitive" in the specific context of Article 6.2 of the ATC and the dispute before us. We must bear in mind that Article 6.2 permits a safeguard action to be taken in order to protect a domestic industry from serious damage (or actual threat thereof) caused by a surge in imports, provided the domestic industry is identified as the industry producing "like and/or directly competitive products" in comparison with the imported product. The criteria of "like" and "directly competitive" are characteristics attached to the domestic product in order to ensure that the domestic industry is the appropriate industry in relation to the imported product. The degree of proximity between the imported and domestic products in their competitive relationship is thus critical to underpin the reasonableness of a safeguard action against an imported product.*

96. *According to the ordinary meaning of the term "competitive", two products are in a competitive relationship if they are commercially interchangeable, or if they offer alternative ways of satisfying the same consumer demand in the marketplace. "Competitive" is a characteristic attached to a product and denotes the capacity of a product to compete both in a current or a future situation. The word "competitive" must be distinguished from the words "competing" or "being in actual competition". It has a wider connotation than "actually competing" and includes also the notion of a potential to compete. It is not necessary that two products be competing, or that they be in actual competition with each other, in the marketplace at a given moment in order for those*

*products to be regarded as competitive. Indeed, products which are competitive may not be actually competing with each other in the marketplace at a given moment for a variety of reasons, such as regulatory restrictions or producers' decisions. Thus, a static view is incorrect, for it leads to the same products being regarded as competitive at one moment in time, and not so the next, depending upon whether or not they are in the marketplace.*

97. *It is significant that the word "competitive" is qualified by the word "directly", which emphasizes the degree of proximity that must obtain in the competitive relationship between the products under comparison. As noted earlier, a safeguard action under the ATC is permitted in order to protect the domestic industry against competition from an imported product. To ensure that such protection is reasonable, it is expressly provided that the domestic industry must be producing "like" and/or "directly competitive products". Like products are, necessarily, in the highest degree of competitive relationship in the marketplace. <sup>[13]</sup> In permitting a safeguard action, the first consideration is, therefore, whether the domestic industry is producing a like product as compared with the imported product in question. If this is so, there can be no doubt as to the reasonableness of the safeguard action against the imported product.*

98. *When, however, the product produced by the domestic industry is not a "like product" as compared with the imported product, the question arises how close should be the competitive relationship between the imported product and the "unlike" domestic product. It is common knowledge that unlike or dissimilar products compete or can compete in the marketplace to varying degrees, ranging from direct or close competition to remote or indirect competition. The more unlike or dissimilar two products are, the more remote or indirect their competitive relationship will be in the marketplace. The term "competitive" has, therefore, purposely been qualified and limited by the word "directly" to signify the degree of proximity that must obtain in the competitive relationship when the products in question are unlike. Under this definition of "directly", a safeguard action will not extend to protecting a domestic industry that produces unlike products which have only a remote or tenuous competitive relationship with the imported product.*

**42. Korea- Taxes on Alcoholic Beverages [WT/DS75/AB/R, WT/DS84/AB/R 18 Jan 1999]**

114. *The term "directly competitive or substitutable" describes a particular type of relationship between two products, one imported and the other domestic. It is evident from the wording of the term that the essence of that relationship is that the products are in competition. This much is clear both from the word "competitive" which means "characterized by competition", and from the word "substitutable" which means "able to be substituted". The context of the competitive relationship is necessarily the marketplace since this is the forum where consumers choose between different products. Competition in the market place is a dynamic, evolving process. Accordingly, the wording of the term "directly competitive or substitutable" implies that the competitive relationship between products is not to be analyzed exclusively by reference to current consumer preferences. In*

our view, the word “substitutable” indicates that the requisite relationship may exist between products that are not, at a given moment, considered by consumers to be substitutes but which are, nonetheless, capable of being substituted for one another.

115. Thus, according to the ordinary meaning of the term, products are competitive or substitutable when they are interchangeable or if they offer, as the panel noted, “alternative ways of satisfying a particular need or taste.” Particularly in a market where there are regulatory barriers to trade or to competition, there may well be latent demand.
116. The words “competitive or substitutable” are qualified in the Ad Article by the term “directly”. In the context of Article III:2, second sentence, the word “directly” suggests a degree of proximity in the competitive relationship between domestic and the imported products. The word “directly” does not, however, prevent a panel from considering both latent and extant demand.
117. Our reading of the ordinary meaning of the term “directly competitive or substitutable” is supported by its context as well as its object and purpose. As part of the context, we note that the Ad Article provides that the second sentence of Article III:2 is applicable “only in cases where competition was involved” (emphasis added) According to Korea, the use of the past indicative “was” prevents a panel taking account of “potential” competition. However, in our view, the use of the word “was” does not have any necessary significance in defining the temporal scope of the analysis to be carried out. The Ad Article describes the circumstances in which a hypothetical tax “would be considered to be inconsistent with the provisions of the second sentence”. (Emphasis added) The first part of the clause is cast in the conditional mood (“would”) and the use of the past indicative simply follows from the use of the word “would”. It does not place any limitations on the temporal dimension of the word “competition”.
118. The first sentence of Article III:2 also forms part of the context of the term. “Like” products are a subset of directly competitive or substitutable products: all like products are, by definition, directly competitive or substitutable products, whereas not all “directly competitive or substitutable” products are “like”. The notion of like products must be construed narrowly but the category of directly competitive or substitutable products is broader. While perfectly substitutable products fall within Article III:2, first sentence, imperfectly substitutable products can be assessed under Article III:2, second sentence.
119. The context of Article III:2, second sentence, also includes Article III:1 of the GATT 1994. As we stated in our Report in Japan – Alcoholic Beverages, Article III:1 informs Article III:1 sets forth the principle “that internal taxes... should not be applied to imported or domestic products so as to afford protection to domestic production.” It is in the light of this principle, which embodies the object and purpose of the whole of Article III, that the term “directly competitive and substitutable” must be read. As we said in Japan – Alcoholic Beverages:

*The broad and fundamental purpose of Article III is to avoid protectionism in the application of internal tax and regulatory measures. ... Towards this end, Article III obliges Members of the WTO to provide equality of competitive conditions for imported products in relation to domestic products. .... Moreover, it is irrelevant that the “trade effects” of the tax differential between imported and domestic products, as reflected in the volumes of imports, are*

*insignificant or even non-existent; Article III protects expectations not of any particular trade volume but rather of the equal competitive relationship between imported and domestic products.*

120. *In view of the objectives of avoiding protectionism, requiring equality of competitive conditions and protecting expectations of equal competitive relationships, we decline to take a static view of the term “directly competitive or substitutable”. The object and purpose of Article III confirms that the scope of the term “directly competitive or substitutable” cannot be limited to situations where consumers already regard products as alternatives. If reliance could be placed only on current instances of substitution, the object and purpose of Article III:2 could be defeated by the protective taxation that the provision aims to prohibit. Past panels have, in fact, acknowledged that consumer behaviour might be influenced, in particular, by protectionist internal taxation. Citing the panel in Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages (“1987 Japan – Alcohol), the panel in Japan – Alcoholic Beverages observed that “a tax system that discriminates against imports has the consequence of creating and even freezing preferences for domestic goods”. The panel in Japan – Alcoholic Beverages also stated that “consumer surveys in a country with .. a [protective] tax system would likely understate the degree of potential competitiveness between substitutable products”. (emphasis added) Accordingly, in some cases, it may be highly relevant to examine latent demand.*

**43. Definitive Anti-dumping duty by European Union on imports of Polyethylene Terephthalate Film [Council Regulation (EC) No. 1676/2001]**

- (19) *With regard to metallised film, it was found that the addition of one or two layers of metal, such as aluminium, to the base PET film does not markedly alter the basic physical, technical and chemical characteristics of the product. Indeed, the actual composition of metallised film shows little variation from that of base film given that the quantity of metal actually applied to the base PET film is minuscule (typically of the order of 20 grams of aluminium per tonne of film). **Moreover, base and metallised PET film are in many applications interchangeable and therefore have the same or a similar use. While it is true that metallised PET film may be intended for particular applications, the fact remains that other standard types of PET film could also be used in a number of those particular applications, for instance in food packaging applications, showing the existence of a certain degree of competition and interchangeability between the product types.** For all of the above reasons metallised film is considered to fall under the definition of the product concerned. It was also found that metallised film based on polyethylene terephthalate is classified under CN code 3920 62 19 and 3920 62 90.*

**2. Like Product**

(23) *PET film produced and sold on the domestic market in India and Korea and PET film exported to the community from India and Korea as well as PET film produced and sold by the Community industry on the Community market were found to have the same physical and technical characteristics and uses. It was therefore concluded that they are a like product within the meaning of the basic Regulation.*

44. From the above referred reports, it is apparent that the definition of the *domestic industry* must be product-oriented and not producer-oriented, and that the definition must be based on the products produced by the *domestic industry* which are to be compared with the imported product in terms of their being like or directly competitive. Further, the ‘like products’ are sub set of ‘directly competitive products’. The word ‘competitive’ broadly means substitutable and it also includes the product which has potential to compete and not only the product which is competing at present. The word ‘directly’ indicates the degree of proximity that must obtain in the competitive relationship when the products in question are unlike. Under this definition of "directly", a safeguard action will not extend to protecting a domestic industry that produces unlike products.
45. In the case of ‘Pet Resin’ referred by the domestic industry the authorities have come to conclusion that the two products, which are not ‘like’ but have the common uses and thus these meet the criterion of substitutable. Further, physical and chemical characteristics are also found to be similar.
46. Based on the above principle all cases, where exclusion has been requested on the ground of not being ‘like or directly competitive’ has been examined.
47. For the purpose of safeguard investigation M/s Hindalco Industries Ltd. had been considered as “domestic industry” on the ground that Hindalco manufactures group of articles which are being imported. This fact has been brought out in the notice of initiation as well as in the preliminary findings. Further, the economic parameters of only Hindalco has been considered on the same ground. If there is any article imported which is neither like nor directly competitive to the article manufactured by Hindalco ‘Hindalco ‘does not constitute “domestic industry” as per sub-section 7 of section 8C of Customs Tariff Act,1975 and the article which is not manufactured by Hindalco remains excluded from the analysis of the economic parameter as economic parameters of only Hindalco has been considered in the notice of initiation as well as preliminary findings. Accordingly, the product under investigation are the products falling under sub heading as mentioned below and the product is like or directly competitive to what is manufactured by Hindalco.

Name of the Products	Customs Tariff Heading
Aluminium Flat Rolled Products and Aluminium	76061110, 76061190, 76061200, 76069110,

Foil	76069120, 76069190, 76069210, 76069290
Aluminium foil	<u>76071110,</u> <u>76071190,</u> <u>76071910,</u> <u>76071991,</u> <u>76071992,</u> <u>76071993,</u> <u>76071994,</u> <u>76071995,</u> <u>76071999,</u> <u>76072010,</u> <u>76072090</u>

48. In light of the reports mentioned above and the dictionary meaning of competitive and substitutable, following parameters have been considered to arrive at the conclusion whether an article is 'like or directly competitive' or not.
- In case of 'like' article, whether the two articles under comparison are identical or alike in all respects.
  - Technical Characteristics
  - Interchangeability and uses
  - Potential uses
  - Marketing Channel
  - Price etc.

In order to clarify, it is noted that the conclusion is not that in order to become 'directly competitive' the two products under comparison must be positive in all above mentioned parameters or if there is any one parameter giving positive result the products would become 'directly competitive'. These above parameters, which may not be exhaustive, have been the guiding principle for arriving at the decision on 'directly competitive' products.

**Aluminium Foils falling under 7607 and of thickness less than 7 micron:**

49. Various interested parties have contended that Aluminium Foils of thickness below 7 micron are not manufactured by Hindalco and any other company in India. M/s India Foil Limited, through his letter dated March 31, 2009 has informed that their Achenbach mill at Kamarhati is capable of producing world class quality of ultra light gauge aluminium foil up to thickness of 6 micron and maximum width of 1480 mm. M/s Hindalco has informed that they do not manufacture aluminium foils of thickness less than 7 micron.
50. As discussed above, in the instant case the 'domestic industry' is Hindalco and economic parameters of only 'Hindalco' has been considered in the investigation, it is immaterial whether India Foil manufactures the product or not.

51. Regarding the question whether the aluminium foil of thickness less than 7 micron is “like or directly competitive” to aluminium foil of thickness more than or equal to 7 micron or not, it is undisputed fact that the two are not identical or alike in all respect and thus not ‘like’ articles. Further, both the articles use Aluminium as their main input. From the fact that India Foil can manufacture foil only up to 6 micron and Hindalco cannot produce foil below 7 micron with current facility, it can be inferred that the manufacturing process are not identical and the same machine cannot be used to manufacture both the products. Both these products are primarily used in packaging industry, but have different uses and used in manufacture of different kind of packages with different uses. Accordingly, I am of the view that the two are neither competing at present nor the two have potential to compete with each other.

**Aluminium Foils falling under 7607 and of thickness of 7 micron:**

52. Regarding the question whether the imported aluminium foil of thickness of 7 micron is “like or directly competitive” to aluminium foil of thickness equal to 7 micron produced by Hindalco or not. It has been contended that the imported foils have different width and of different quality as far as number of holes/Sq meter is concerned. It has also been contended that the uses of domestic foil causes more wastage and thus lesser efficiency. In this respect it may be noted that both the articles use Aluminium as their main input. The 7 micron aluminium foil can be used at the place of imported 7 micron. Both these products are primarily used in packaging industry and in trade both these products are known as same name and traded through similar trade channel. These products compete with each other and have potential to compete with each other. On verification it was found that the number of pin holes is 150-250 per Sq meter against claimed quality of 60 pin holes per Sq meter. Accordingly, the two are directly competitive products in spite of possible differences in quality parameter, as the differences in quality parameter are not to the extent that it is not possible for one to substitute the other.

**Aluminium Foils falling under 7607 and of thickness above 7 micron:**

53. M/s Hindalco has informed that they are manufacturing aluminium foils above 7 micron. Some of the interested parties have requested for exclusion of aluminium foil of 10.5 micron on the ground that such product is not manufactured in India. These foils are specialty foil with grooves and minute holes at regular interval. The manufacturing process of such foil is different as the normal foil has to undergo different process. The ordinary 10.5 micron foil cannot be used at the place of the special foil as the ordinary foil will not stick to bottles. The samples of Hindalco and samples from Interested parties were got collected. On face of it, the two foils are different with different technical characteristics.
54. There is no representation with evidence except the above mentioned in the category of more than 7 micron foil. Accordingly, aluminium foils of thickness above 7 micron except “aluminium foil of 10.5 micron with rough surface and holes at regular intervals to be used by beer bottling unit” is considered as product under investigation.

### **Aluminium Flat Rolled Products and Foils used in the manufacture of Heat Exchangers:**

55. M/s Alkraft Thermotechnologies Pvt. Limited, Tata Toyo and others have contended that they are in the manufacture of heat exchangers and other cooling systems. These heat exchangers and cooling systems have uses primarily in radiator in vehicles and engines. In order to manufacture such critical components, they import clad and unclad Aluminium alloys in Flat Rolled and Foil form, which are specially designed material with distinct physical characteristics suitable for its specific use. These alloys are not manufactured by anyone except Hindalco and even Hindalco does not manufacture all specification. The specifications manufactured by Hindalco are different and cannot be used at the place of imported specialty alloy. M/s SAPA Heat transfer (Shanghai) Limited, who manufactures such alloys joined investigation as interested party and contended that these products are the result of long research and many of the products are patented. These products are specialized products with unique features and characteristics. They also gave comparison of various characteristics to distinguish between the products manufactured in India and those manufactured by them. The prices of such imported articles are not lower than Indian manufactured items. M/s Alkraft Thermotechnologies were also heard on 25<sup>th</sup> May, 2009. The technical characteristics, uses, manufacturing process etc was examined in detail.
56. The domestic industry has not provided any proof that the products manufactured by them are like or directly competitive to the imported articles.
57. In light of the above, it is concluded that the product under this category is highly specialized products with pre defined and designed physical and chemical characteristics and hence closer comparison is required. As Hindalco has not named any such product with whom comparison can be made, and thus these articles are not like or directly competitive. In order to define the products for exclusion following name with end use is concerned.
- “Aluminium-Manganese-Silicon based and/or Aluminium-Magnesium-Silicon based alloys, whether clad or unclad; with thickness between 0.05 mm to 3.00 mm; with post brazing yield strength greater than 45 MPA, falling under tariff heading 7606 or 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof”**

### **Poly Aluminium Foil Coated with Co-polymer:**

58. M/s Wuxi Quantong Cable Material Co Ltd through Kable Solutions and others have contended that the product is made of Aluminium Foil not exceeding thickness of 0.2 mm and Copolymer Plastic Films. These are zero duty items as per IT agreement. The price of local producers is only Rs. 134 per Kg against Rs. 140 per Kg in China. The import caters only 11% of demand of India. On query from M/s Hindalco , they informed that they do not manufacture such products.

### **Color Coated Coil:**

59. The interested parties have contended that Aluminium Color Coated Coils are not manufactured by “Domestic Industry” and thus cannot be covered within the ambit of the product under consideration. These products are different and cannot be considered “directly competitive”. They have also contended that the manufacturing process, manufacturer plant and uses of colour coated Aluminium coil are different from the uncoated Aluminium coil. The coating is a specialty coating. These coating are of two types i.e. PVDF and PE coating coil. The brochure of SEVEN “who deals with colour coated coil” reads the description of PVDF coil and PE coating coil as follows;

*“PVDF (fluorine-carbon) Coating : made of fluorine carbon resin, pigment, ester solvent, after high temperature roasting and baking, the paint is solidified to dry film with super weather resistance. PVDF Coating, with KYNAR500 PVDF, two or three times for coating and baking, has good properties of anti-acid, anti-alkali and is durable in atrocious weather and environment, keeping 15 hours no unwonted fading. In view of these facts, we recommend this panel applied for external wall cladding.*

*PE (Polyester) Coating : high molecular polymer as monomer and addition of alkyd, is an UV- resistant coating. It can be classified matt and glossy according to coating gloss. The compact molecule structure, makes paint surface luster and smooth, which assure good printing on the panel surface. With an warranty of 8-10 years for weather resistance, it is specially applied for internal decoration and sign board.”*

60. M/s Hindalco Industries Ltd. have opposed the contention of the interested parties and made the following submission;

*“ Aluminium coated coils are being produced and supplied in India. The Indian aluminium FRP industry supplies bare ACP stock material to the consuming industry. Some of the buyers have captive coating lines and other buyers buy coated ACP materials from the independent coating lines in India. The color coating capacity in India is sub optimally utilized and there is no reason for any buyer in India to import these materials. Infact the Indian industry (including independent coating lines) have enough capacity to supply both bare and coated ACP stock materials. Some companies that have coating lines are*

*M/s Aludecor Lamination Private Limited  
M/s Durabuild Technologies Private Limited  
M/s Glazetech Alupanel Private Limited  
M/s Vishnu International*

*During the Public hearing in March 09, Aludecor (an ACP manufacturer with coating facility) had supported the safeguard duty on Coated ACP coil. Aludecor is one of the leading players in the ACP industry and like other coating companies in India has significant idle capacity of its coating lines. An important*

point to mention here is that Aludecor is registered as a manufacturer of color coated aluminium coils.

*Presence of independent coating facilities (with significant unutilized capacity) in India supports the Indian aluminium industry that manufacture bare ACP stock. All types of coating requirements can be met by these independent coating lines, i.e. – PVDF, Polyester and others.*

*The aluminium FRP industry would be adversely impacted if Coated ACP coils are excluded from the final safeguard duty because it will allow the buyers to directly import cheap coated ACP coils from China. This will have a direct adverse impact on the sales of the bare ACP coils sold by the Aluminium FRP industry. In other words, if the coated coils are imported from China it would directly replace the domestic sales of bare ACP coils by the India FRP industry. Therefore, coated and bare ACP coils are directly competitive products and coated ACP coils should not be excluded from the final safeguard duty. Another important point to note is that aluminium constitutes more than 98% weight of the coated ACP coils, clearly indicating that coated ACP coil is nothing but an aluminium product.”*

61. The fact that M/s Hindalco does not manufacture colour coated coil as referred by the interested parties is not in dispute as M/s Hindalco has never argued that they manufacture such coils. Further, the fact that some of the units in India are manufacturing such coils has also not been disputed by the interested parties as discussed in the above para. Regarding the definition of “domestic industry” it is Hindalco who has been treated as “domestic industry” and the products manufactured by Hindalco only has been subjected to safeguard investigation by analyzing the economic parameters of the Hindalco. The economic parameters of *M/s Aludecor Lamination Private Limited, M/s Durabuild Technologies Private Limited, M/s Glazetech Alupanel Private Limited , M/s Vishnu International* or any other manufacturer of such coated coil has not been subjected to safeguard investigation as no investigation in respect of the product manufactured by M/s Aludecor Lamination Private Limited and others but not manufactured by Hindalco has been initiated. Therefore, the comparison of articles imported with the articles manufactured by Aludecors and others but not by Hindalco contradicts the principles of investigation.
62. M/s Hindalco has contended that imported colour coated coil has direct adverse impact on the sales of the bare ACP coils sold by the Aluminium FRP industry. In other words, if the coated coils are imported from China it would directly replace the domestic sales of bare ACP coils by the India FRP industry. In order to analyze the contention of domestic industry and interested parties a comparison have been made between imported colour coated coils and bare Aluminium coils of similar thickness which is manufactured by Hindalco.
63. As admitted by the “domestic industry” the aluminium coils manufactured by Hindalco are used as input in the manufacture of colour coated coil. The process of manufacturing

of colour coated coil is quite elaborate and requires separate plant of high investment. The manufacturing process is not a minor process which does not change the physical or chemical characteristics. The coating is done by fluorine carbon (PVDF) or polyester (PE). In case of PVDF coating the aluminium coil is subjected to fluorine carbon resin, pigment, ester solvent, and after high temperature roasting and baking the paint is solidified with dry films with super weather resistance. The process is repeated 2-3 times for coating and baking. The colour coated coil so manufactured has anti-acid and anti-alkali properties. In contrast to that Aluminium coils are active to acid as well to alkali and by virtue of chemical properties of aluminium it reacts with weather conditions. The colour coated coil made of PVDF coating are weather resistance and used for external wall cladding. The PVDF coating coil is used in making aluminium composite panels where one of the layers is the layer of PVDF colour coated coil. The uses of PVDF coated colour coils is different from that of bare coil and bare coil cannot be used on external wall on account of its sensitivity to weather condition. Further, price structure of such coated coils is different and is normally higher on account of extra cost to be incurred in manufacturing.

64. The PE coating colour coil uses high molecular polymer as monomer with addition of alkyd to make UV resistant coating. The compact molecular structure makes paint surface luster and smooth. The PE coating coil has weather resistant properties for 8-10 years. It is specially applied for internal decoration and sign board. In contrast to this aluminium coils are not weather resistant on account of aluminium being chemically active. The physical properties of bare aluminium are different than that of PE coating coils. The chemical properties of PE coated coil is different than that of bare aluminium coil as certain chemical properties of the aluminium coil are suppressed by PE coatings to make it weather proof. The bare coil cannot substitute the use of PE coils on account of specialty treatment of bare aluminium coil through elaborate process accomplished by a separate high investment plant. Besides this the price structure of such coated coils are different and ordinarily higher on account of extra manufacturing cost incurred in manufacturing such coils.
65. Therefore, the imported PVDF coating coil and PE coating coil of various thickness are not “like or directly competitive” article to the bare aluminium coils manufactured by Hindalco.
66. It has been contended by some of the interested parties that at some places “Aluminium Composite Panels” are being classified under 7606 and thus the same also be excluded. On verification it was found that “Aluminium Composite Panels” are not manufactured by Hindalco. Thus without going into the issue of classification of the same product, the product has not been part of safeguard investigation.
67. Further, letters to all interested parties were sent to inform the technical specification along with samples to take decision on exclusion of products. All replies received have been considered.

68. Taking the principles of severability into account, the articles which are not found to be 'like or directly competitive' article to what is manufactured by Hindalco, has been removed from the scope of products under consideration. These products, which have been excluded from the product scope are;
- a. Aluminium Foil of thickness less than 7 micron falling under CTH 7607
  - b. "Aluminium foil of 10.5 micron with rough surface and holes at regular intervals to be used by beer bottling unit"
  - c. Colour Coated Aluminium Coil with either PE (Polyester) Coating or PVDF (fluorine-carbon) Coating falling under CTH 7606 or 7607.
  - d. Aluminium Composite panels.
  - e. Etched or formed Aluminium Foils falling under CTH 7607 meant to be used in the manufacture of Electrolytic capacitors.
  - f. Poly Aluminium Foil Coated with Copolymer falling under CTH 7607 to be used in the manufacture of PIJF Telecom Copper Cables or Optical Fiber Cables.
  - g. Aluminium-Manganese-Silicon based and/or Aluminium-Magnesium-Silicon based alloys, whether clad or unclad; with thickness between 0.05 mm to 3.00 mm; with post brazing yield strength greater than 45 MPA, falling under tariff heading 7606 or 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.

#### **Domestic Industry:**

69. The application was filed by M/s. Aluminium Association of India. M/s Hindalco Industries Limited, M/s Nalco India Ltd, and Bharat Aluminium Company. Ltd. are inter-alia the members of the association . The members of association account for production of 97% of Aluminium Flat Rolled Products (FRP) and 98% of Aluminium Foil production. The association is representative of a major proportion of total Community production of the like and/or directly competing products. One of its member companies M/s. Hindalco Industries Limited has provided relevant financial information to file this application. M/s. Hindalco Industries Limited account for production of 71% of Aluminium Flat Rolled Products (FRP) and 56% of total domestic production of Aluminium Foil. Further, no claim has been made by the interested parties against the applicants being the domestic industry. Therefore, it is held that M/s Hindalco constitutes and represent the domestic industry.

#### **G. Increased imports:**

70. In the notice of initiation, reliance was placed on imports data as per DGCIS , IBIS. And China Customs data. Some of the interested parties have raised question on use of the data. Accordingly, besides the sources referred, the data as per DGCIS has been used to compare the trend arising out of the use of sources referred in the initiation and preliminary findings. The period has been limited to the last quarter of 2008-09, as the

provisional safeguard duty came during the last quarter the period of investigation has been limited to the quarter ending December, 2008. The imports by the product group excluded has also been excluded from the import figures, even though some of the interested parties have informed that there is no increase in the products requested for exclusion. Further, a reasonably long period has been considered to even out the effect of temporary fluctuation and seasonal effects, if any.

**Absolute increase in imports:**

71. In view of the arguments of the interested parties, the imports of the product were examined. Information available from sources as mentioned in the initiation as well as DGCI&S for complete period was considered. These information are as follows:

**FRP**

Imports(MT)	2005-06	2006-07	2007-08	April-08 to Dec-08
China	9,853	16,155	26,617	22,287
Other Countries	16,193	20,814	21,657	11,639
Total Imports	26,046	36,968	48,274	33,925

Source:- China imports as per China customs. Other countries imports up to march-08 is as per DGCI&S and thereafter as per IBIS.

**FOIL**

Imports(MT)	2005-06	2006-07	2007-08	April-08 to Dec-08
China	5,437	10,777	23,925	27,534
Other Countries	14,826	13,304	15,465	6,889
Total Imports	20,263	24,082	39,390	34,422

Source:- China imports as per China customs. Other countries imports up to march-08 is as per DGCI&S and thereafter as per IBIS.

**FRP**

Imports(MT)	2005-06	2006-07	2007-08	April-08 to Dec-08
China	4,596	8,906	17,065	15,196
Other Countries	16,193	20,814	21,657	14,760

Total Imports	20,789	29,720	38,721	29,956
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Source: - As per DGCI&S and for the excluded products IBIS to get line wise entry.

**FOIL**

Imports(MT)	2005-06	2006-07	2007-08	April-08 to Dec-08
China	4,642	8,897	19,064	22,775
Other Countries	14,826	13,304	15,465	9,876
<b>Total Imports</b>	<b>19,468</b>	<b>22,201</b>	<b>34,529</b>	<b>32,651</b>

Source:- As per DGCI&S and for the excluded products IBIS to get line wise entry.

There is some difference in the two sources, which may be on account of statistical error. The analysis of the DGCIS data shows that there is an increase in import by 19% in case of FRP and 59% in case of Foils. The trend of increasing import has also been since 2006-07. In quantitative terms the increase in imports is 266MT per month in case of FRP and 941 MT per month in case of Foil, which is rapid, sharp, sudden and significant.

**72. Increase in imports from China Vis-à-vis Other countries.**

The contribution of imports from China has been compared with that from other countries. It has been noticed that the share of imports from China has gone up while share of other countries declined up to 2007-08. The average monthly imports of FRP from China increased at much faster rate than imports from countries other than China. The different trends in imports from china compared to the imports from other countries justify adoption of Transitional Product Specific Safeguard Measure.

**Increase in share of Imports- FRP**

Imports(MT)	2005-06	2006-07	2007-08	April-08 to Dec-08
China	22.11	29.97	44.07	50.73
Other Countries	77.89	70.03	55.93	49.27

Source:-DGCI&S

**Increase in share of Imports- FOIL**

Imports(MT)	2005-06	2006-07	2007-08	April-08 to Dec-08
China	23.84	40.07	55.21	69.75
Other Countries	76.16	59.93	44.79	30.25

Source:-DGCI&S

**73. Increase in share of Imports in Domestic Market  
FRP**

Imports(MT)	2005-06	2006-07	2007-08	April-08 to Dec-08
Sales of Domestic industry	50.85	51.10	46.17	42.29
Sales of Other Indian Industries	36.80	32.78	35.68	36.98
Total of Indian Industry	87.65	83.88	81.84	79.27
Imports from China	2.73	4.83	8.00	10.52
Other Countries-Imports	9.62	11.29	10.15	10.21

Source:-DGCI&S and verification report of site visit

**FOIL**

Imports(MT)	2005-06	2006-07	2007-08	April-08 to Dec-08
Sales of Domestic industry	42.21	39.21	31.12	26.37
Sales of Other Indian Industries	25.93	26.64	24.94	21.81

Total of Indian Industry	68.14	65.85	56.06	48.18
Imports from China	7.60	13.69	24.26	36.15
Other Countries-Imports	24.27	20.47	19.68	15.68

Source:-DGCI&S and verification report of site visit

### Market Disruption or Threat of Market Disruption:

#### 74. Production:

The Production trend of the domestic industry over the period is as follows:

#### Aluminium Flat Rolled Products

Production	Unit	2005-06	2006-07	2007-08	April-08 to Dec-08
Hindalco	MT	187,678	207,908	214,584	134,709
Average Monthly Production	MT	15,640	17,326	17,882	14,968
Indexed Average Monthly Production	Trend	100	111	114	96

#### Aluminium Foil

Production	Unit	2005-06	2006-07	2007-08	April-08 to Dec-08
Hindalco	MT	28,567	28,360	27,735	18,911
Average Monthly Production	MT	2381	2363	2311	2101
Indexed Average Monthly	Trend	100	99	97	88

Production					
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Given the growth of the product in the Country, domestic industry argued that Indian producers have been able to increase production of Aluminum Rolled Products, until recently when production has started suffering as a result of increase in Chinese imports. Some of the interested parties argued that fall in production is not significant. From the production figures it is evident that fall in production is 16% in case of FRP and 9% in case of Foil, which is significant considering the volume of production and large market. It is also observed that production has started suffering with the increased imports of Aluminum Rolled Products and Foils into India. In case of Foil, the production has consistently declined, but the decline during 2008-09 has been sharper compared to past period.

75. **Capacity Utilization:**

**(a) Aluminium Flat Rolled Products**

	Unit	2005-06	2006-07	2007-08	April- Dec-08
<b>Capacity</b>	<b>MT</b>	175,000	205,000	205,000	153,750
<b>Production</b>	<b>MT</b>	187,678	207,908	214,584	134,709
<b>Capacity Utilization</b>	<b>%</b>	107.24	101.42	104.68	87.62

**(b) Aluminium Foil**

	Unit	2005-06	2006-07	2007-08	April- Dec-08
<b>Capacity</b>	<b>MT</b>	40,000	40,000	40,000	30,000
<b>Production</b>	<b>MT</b>	28,567	28,360	27,735	18,911
<b>Capacity Utilization</b>	<b>%</b>	71.42	70.90	69.34	63.04

Some of the interested parties have contended that the capacity utilization in case of one unit has been downgraded to 30000 in 2007-08. On scrutiny of balance sheet it is found that there has not been any down gradation of capacity. The capacity taken here is the

total capacity of the three plants. The copy of balance sheet along with clarification by the domestic industry has been kept in Public file.

Further, the capacity utilization during 2008-09 clearly shows steep fall. The capacity utilization fell by 17.06% in 2008-09 (upto Dec) compared to rise of 3.26% in 2007-08 compared to previous years. In case of foil, the capacity utilization fell by 6.3% in 2008-09 (upto Dec) compared to rise of 1.56% in 2007-08 compared to previous years. These fall in capacity utilization is significant to cause material injury to the domestic industry.

76. **Domestic Sales:**

**Aluminium Flat Rolled Products**

	Unit	2005-06	2006-07	2007-08	April- Dec-08
Sales	MT	85,588	94,235	98,460	61,111
Average Monthly Sales	MT	7132	7853	8205	6790
Indexed Average Monthly Sales		100	110	115	95

**Aluminium Foil**

	Unit	2005-06	2006-07	2007-08	April- Dec-08
Sales	MT	25,790	25,489	24,457	16,615
Average Monthly Sales	MT	2149	2124	2038	1846
Indexed Average Monthly Sales	MT	100	99	95	86

The preliminary determination has been that the monthly sales volume by the domestic producer has declined significantly April-December 2008 compared to 2007-08 against the rising trend during the period from 2005-06 to 2007-08. The fall in sales has been more profound during October-December. The verified data as mentioned above shows same trend. The sales of both the products have been significantly lower than the

immediately preceding year and the least in past three years. It is also observed that the sales of the domestic industry suffered over the period as a result of increased imports.

77. **Demand and Market share analysis:**

FRP

<b>Demand</b>					
Sales of Domestic industry	MT	85,588	94,235	98,460	61,111
Sales of Other Indian Industries	MT	61,928	60,443	76,083	53,435
Imports from China	MT	4,596	8,906	17065	15,196
Other Countries-Imports	MT	16,193	20,814	21,657	14,760
<b>Total demand/consumption</b>	<b>MT</b>	<b>168,305</b>	<b>184,398</b>	<b>213,264</b>	<b>144,502</b>
<b>Market Share in Demand</b>					
Sales of Domestic industry	%	50.85	51.10	46.17	42.29
Sales of Other Indian Industries	%	36.80	32.78	35.68	36.98
Total of Indian Industry	%	87.65	83.88	81.84	79.27
Imports from China	%	2.73	4.83	8.00	10.52
Other Countries-Imports	%	9.62	11.29	10.15	10.21

**Source- Import figures DGCI&S**

The market size of Aluminium FRP is down by 1% against 17% loss of sales. This loss of sales except a minor loss on account of reduction of market size by 1% is on account of imports from China, which has risen by 19% against the back drop of falling imports from other countries.

**FOIL**

<b>Demand</b>				2007-08	2008-09 (Up to Dec.)
Sales of Domestic industry	MT		25,489	24,457	

		25,790			16,615
Sales of Other Indian Industries	MT	15,840	17,320	19,600	13,740
Imports from China	MT	4,642	8,897	19,064	22,775
Other Countries-Imports	MT	14,826	13,304	15,465	9,876
<b>Total demand/consumption</b>	<b>MT</b>	<b>61,098</b>	<b>65,010</b>	<b>78,586</b>	<b>63,006</b>
<b>Market Share in Demand</b>					
Sales of Domestic industry	%	42.21	39.21	31.12	26.37
Sales of Other Indian Industries	%	25.93	26.64	24.94	21.81
Total of Indian Industry	%	68.14	65.85	56.06	48.18
Imports from China	%	7.60	13.69	24.26	36.15
Other Countries-Imports	%	24.27	20.47	19.68	15.68

**Source- DGCI&S**

The market size of Aluminium Foil increased by 7% while domestic industries suffered loss of 9% in sales. This loss of sales is on account of imports from China, which has risen by 59% against the back drop of falling imports from other countries.

From the above, it is apparent that the imports from China have not only taken share of domestic producers but also the share of other countries. This change in market dynamics has serious implication as the parameters influencing competition in the domestic market has gone substantial change, which is not desirable in long term.

**78. Employment:**

Employment levels with the domestic producers have declined. This reduction in employment is due to curtailment of production by the domestic industry.

**Statement showing manpower deployment**

Year/ Month	FRP	FOIL
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	Permanent	Temporary	Total	Permanent	Temporary	Total
2005-06	2,131	945	3,076	1,094	471	1,565
2006-07	2,139	1,006	3,145	1,076	489	1,565
Apr'07	2,317	1,087	3,404	1,079	496	1,575
May'07	2,311	1,116	3,427	1,065	492	1,557
Jun'07	2,317	995	3,312	1,057	515	1,572
Jul'07	2,305	957	3,262	1,052	520	1,572
Aug'07	2,308	891	3,199	1,046	466	1,512
Sep'07	2,307	875	3,182	1,044	467	1,511
Oct'07	2,316	896	3,212	1,038	461	1,499
Nov'07	2,309	753	3,062	1,037	456	1,493
Dec'07	2,306	784	3,090	1,033	501	1,534
Jan'08	2,297	777	3,074	1,031	487	1,518
Feb'08	2,294	791	3,085	1,027	494	1,521
Mar'08	2,279	780	3,059	1,027	448	1,475
Apr'08	2,285	791	3,076	1,019	448	1,467
May'08	2,277	839	3,116	1,051	428	1,479
Jun'08	2,268	853	3,121	1,032	481	1,513
Jul'08	2,269	853	3,122	1,024	435	1,459
Aug'08	2,256	815	3,071	1,025	430	1,455
Sep'08	2,246	783	3,029	1,029	430	1,459
Oct'08	2,230	746	2,976	1,032	419	1,451
Nov'08	2,223	712	2,935	1,029	437	1,466
Dec'08	2,226	685	2,911	1,028	421	1,449

79. **Domestic selling Prices:**

The domestic prices are under pressure on account of increased imports at lower prices. The average prices in December 08 have gone down below 2007-08 and 2006-07 level. The prices till September 2008 have been on rise, but the prices fell sharply after September 2008, when recession affected developed countries. One of the reasons of fall has been fall in LME prices. The energy cost and other costs did not fall in India as the fall of Metal prices and thus the price of final product cannot be directly proportional to the LME prices.

	Unit	2005-06	2006-07	2007-08	April-Sept-08	Oct-08	Nov-08	Dec-08
<b>FRP</b>	<b>Rs./KG</b>	129.40	156.87	146.39	164.32	147.73	139.79	122.95
<b>FOIL</b>	<b>Rs./KG</b>	188.76	210.52	205.63	226.76	224.76	206.86	202.82

It is seen that selling prices started declining very significantly from Oct., 2008. The domestic industry argued that the landed price of imports are significantly below the selling price of the domestic industry and as a result of significant price difference between the imported product price and domestic industry price, the consumers have increasingly switching over to imports. The arguments have merit as evident from increased imports.

80. **Profitability:**

**FRP**

	Unit	2005-06	2006-07	2007-08	April-Sept-08	Oct-08	Nov-08	Dec-08
<b>Cost of sales</b>	<b>Rs./KG</b>	120.14	146.99	141.97	155.11	153.60	139.31	127.70
<b>Selling Price</b>	<b>Rs./KG</b>	129.4	156.9	146.4	164.3	147.7	139.8	123.0
<b>Profit/Loss</b>	<b>Rs./KG</b>	9.26	9.88	4.42	9.21	(5.87)	0.49	(4.75)
<b>Total Profit/Loss</b>	<b>Rs.Lacs</b>	7,929.48	9,307.20	4,353.41	3,944.09	(323.13)	34.40	(332.73)

**FOIL**

	Unit	2005-06	2006-07	2007-08	April- Sept- 08	Oct-08	Nov- 08	Dec-08
Cost of sales	Rs./Kg	209.98	236.89	233.67	248.65	257.09	242.65	233.96
Selling Price	Rs./Kg	188.76	210.52	205.63	226.76	224.76	206.86	202.82
Profit/Loss	Rs./Kg	(21.22)	(26.38)	(28.03)	(21.89)	(32.33)	(35.80)	(31.15)
Total Profit/Loss	Rs.Lacs	(5,473.78)	(6,722.67)	(6,835.10)	(2,565.39)	(531.17)	(648.33)	(490.60)

The profitability of the domestic industry has significantly gone down. The domestic industry has made a profit of Rs 9.21/Kg during 2007-08, but the profit declined during the month of Oct-Dec 2008 in the case of FRP. During the month of October and December the profitability has turned negative and the domestic industry had to make loss of Rs. 5.87/kg and Rs. 4.75/Kg.

In the case of Aluminium foils, the domestic industry has been incurring losses, but the losses increased by more than 40% compared to 2007-08 during October-December 2008-09.

#### 81. Cash profit:

The profit made by the domestic industries have seen significant decline especially in the case of FRP, where the cash profit turned negative. In case of Foil, the losses increased in October-December 2008 compared to 2007-08.

	Unit	2005-06	2006-07	2007-08	April- Sept-08	Oct-08	Nov-08	Dec-08
FRP	Rs.Lacs	10,659.71	12,061.05	6,805.15	5,009.86	(190.33)	205.18	(163.81)
FOIL	Rs.Lacs	(3,539.72)	(5,168.68)	(5,585.53)	(2,103.16)	(443.24)	(561.28)	(399.29)

#### 82. Return on capital employed:

The return on investment is following the same trend as that of profitability.

	Unit	2005-06	2006-07	2007-08	April-Sepot-08	Oct-08	Nov-08	Dec-08
<b>FRP</b>	%	29.10	24.69	21.24	30.99	(2.54)	9.67	(1.20)
<b>FOIL</b>	%	(18.06)	(23.77)	(27.60)	(16.85)	(24.28)	(31.68)	(26.78)

83. **Other factors:** Factors other than increase in imports that might be operating at the same time and causing injury to the domestic industry were examined. In this regard, particularly the following factors were examined:

- i.* Dumping or subsidization –There is no allegation of dumping or subsidization of goods with evidence in the present case.
- ii.* Imports from third countries – The imports from third countries are not at significant rise and the import is at prices higher than Chinese prices. Thus, third countries imports are not the cause for the injury to the domestic industry.
- iii.* Changes in the patterns of consumption: - Domestic industry claimed that the pattern of consumption with regard to the product under consideration has not undergone any change. None of the responding parties have argued that changes in the pattern of consumption could have contributed to the injury to the domestic industry.
- iv.* Trade restrictive practices of and competition between the foreign and domestic producers: - Domestic industry argued that there is no trade restrictive practice, which could have contributed to the injury to the domestic industry. None of the responding parties have argued that trade restrictive practices could have contributed to the injury to the domestic industry.
- v.* Productivity – Domestic industry argued that changes in productivity levels are only due to increased imports and resultant reduction in production and even if productivity is kept at the same level, the data would show that the domestic industry has suffered injury. The investigation has not shown any evidence that the industry has suffered injury due to decline in productivity of machinery.
- vi.* Developments in technology: - Domestic industry argued that technology for production of the product has not undergone any change. Further, the interested parties have also not adduced any evidence which can show any change in technology causing injury to domestic industry
- vii.* Export performance: Information relating to only domestic performance has been considered. Therefore, possible injury caused due to export performance deterioration has been segregated while assessing price effect.

#### **Causal Link between Increased Imports and Threat of Serious Injury:**

84. A comprehensive evaluation of parameters as above for the period from 2005-06 up to December 2008 demonstrates that market disruption and imminent threat of market

disruption is being caused by increased imports. The causal link is established by the following.

- (a) The imports of the said products have increased significantly. During the period when imports increased, the economic parameters indicating injury viz. sales, production, capacity utilization, pressure on prices, market share have shown decline.
- (b) In this respect, the findings of Appellate Body in the Argentina foot ware case is referred of WTO

*"We note that Article 4.2(a) requires the competent authorities to evaluate "the rate and amount of the increase in imports", "the share of the domestic market taken by increased imports", as well as the "changes" in the level of factors such as sales, production, productivity, capacity utilization, and others. We see no reason to disagree with the Panel's interpretation that the words "rate and amount" and "changes" in Article 4.2(a) mean that "the trends -- in both the injury factors and the imports -- matter as much as their absolute levels." We also agree with the Panel that, in an analysis of causation, "it is the relationship between the movements in imports (volume and market share) and the movements in injury factors that must be central to a causation analysis and determination." (emphasis added) Furthermore, with respect to a "coincidence" between an increase in imports and a decline in the relevant injury factors, we note that the Panel simply said that this should "normally" occur if causation is present. ] The Panel qualified this statement, however, in the following sentence:*

*While such a coincidence by itself cannot prove causation (because, inter alia, Article 3 requires an explanation – i.e., "findings and reasoned conclusions"), its absence would create serious doubts as to the existence of a causal link, and would require a very compelling analysis of why causation still is present. Consequently, whereas the market share of the imports has increased, that of domestic industry has declined. Decline in the market share of the domestic industry is because of increased imports. While the decline in the market share upto Sept., 2008 is because of demand in the Country being much higher than domestic supplies; the decline in the market share in subsequent period is clearly because of surge in low priced imports at a time when the domestic industry was faced with unutilized capacities"*

- (c) **Demand in Indian Market:** The demand analysis above shows that the injury is significantly on account of increased imports at low prices.
- (d) **Increased imports vis-à-vis loss:** The increased imports at low prices caused pressure on domestic prices, as evident from falling prices. The falling prices caused strain on profitability to the extent that the profitability per Kg turned negative during Oct-Dec 2008.

85. From the above it is apparent that the market disruption is attributed substantially and significantly to increased imports from China.

**Public Interest:**

86. Various interested parties have contended that their economic interest would be affected on account of safeguard duty, but no evidence on the impact of safeguard duty on their profitability and viability has been given. The observance during operation of provisional duty has not indicated any substantial impact on the parties, who opposed imposition of duty.
87. As far as those, whose products are not manufactured by Hindalco, the same has been excluded.
88. Further, on examination of the competing interests of different economic operators and public at large has been carried out. In this respect, it is important to keep the prime objective of safeguard laws in mind which is to provide sufficient time to the domestic industry to make positive adjustments to meet the situation of increased imports. The strategic and national importance of Aluminium industries has long been recognized. It is in the interest of all to keep a healthy and competitive Aluminium Industry. It is apparent that if the provisional safeguard measures are not taken, both the prices and market share of domestic industries will further reduce resulting in financial loss of domestic Industries to the extent of getting the domestic industry unviable and consequent loss of employment as well as loss of strategic and economic interest to keep the domestic market competitive. The imposition of safeguard duty would allow the domestic industry to remain competitive and, at the same time, users/buyers will have a wider choice to source their material requirements, that too at competitive prices.

#### **Provisional measures**

89. In the preliminary findings, it was held that increased imports of Aluminium FRP and Foil have caused and threatened to cause further market disruption. It was also observed that critical circumstances existed, where any delay in application for safeguard measures would cause irreparable damage to the industry. Considering the market disruption in the domestic industry during the first nine months of 2008-09 in a number of critical injury parameters as explained in the paragraphs above, it is held that in the absence of provisional measures, injury would have caused irreparable damage.
90. Considering the average cost of production of FRP and FOIL separately by the domestic producers (Confidential), a reasonable return on capital employed, the level of competition required in the domestic market, the level of import duties and the average import prices of the same products safeguard duty at the rate of 21% (Twenty One Percent) ad valorem on all goods falling under Chapter heading 7606 (Aluminium Flat Rolled Products) and at the rate of 35% (Thirty Five Percent) ad valorem on all goods falling under Chapter heading 7607 (Aluminium Foil) was recommended. Pursuant to the preliminary findings, Ministry of Finance, Government of India imposed the Safeguard duty at the rate of 21% (Twenty One Percent) ad valorem on all goods falling under Chapter heading 7606 (Aluminium Flat Rolled Products) and at the rate of 35% (Thirty Five Percent) ad valorem on all goods falling under Chapter heading 7607 (Aluminium Foil) vide notification number 26/2009-Cus dated 23.3.2009.

#### **Miscellaneous:**

91. A writ petition was filed by M/s Thermotechnologies Pvt. Ltd before the High Court of Judicature at Madras, challenging the notification no. 26/2009-Cus dated 23.3.2009, whereby the preliminary findings of DG was also challenged as the notification is only sequel to the preliminary finding dated 2.2.2009. The Hon'ble Court ruled that the

‘challenge to the notification appears to be premature’. However, a direction to take the submission of M/s Thermotechnologies Pvt. Ltd in to account and make a final determination within three weeks of receipt of the copy of order and issue a notification within three weeks by the Union of India was issued vide order dated 18.4.2009, which was received on 18.5.2009 in the office of DG safeguards.

92. M/s Thermotechnologies Pvt Ltd was heard in person on 25.5.2009 and their submissions were taken into account.
93. A writ petition was filed by M/s MEC International Pvt. Ltd before the High Court of Judicature at Madras to stay the operation of the notification number 26/2009-Cus dated 23.3.2009. The Hon’ble Court passed an interim order permitting to clear goods in respect of B/L 0279539804 on furnishing a bank guarantee to the extent of duty imposed.
94. Writ petitions were also filed before the High Court of Judicature at Bombay by P.G. Foils Ltd challenging the notification no. 26/2009-Cus dated 23.3.2009 with ad interim relief. The pleadings has not yet completed and the court found *‘In so far as interim reliefs is concerned, there are really no substantial pleadings in support of the plea for interim relief in so far as balance of convenience and irreparable hardship.’*

#### **CONCLUSION AND RECOMMENDATION**

95. On the basis of the above preliminary findings it is seen that increased imports of Aluminium Flat Rolled Products and Aluminium Foils {Aluminum Products (FRP & Foils)} from People’s Republic of China have caused and threatened to cause market disruption to the domestic industry/ producers of Aluminum Products (FRP & Foils). There exist critical circumstances, where any delay in application for Specific Safeguard measures would cause damage which it would be difficult to repair, necessitating immediate application of provisional Specific Safeguard duty for period of 200 days, pending final determination of market disruption and threat of market disruption. Considering the average cost of production of Aluminum Products by the domestic producers (confidential), a reasonable return on capital employed, the present level of import duties and average import prices of Aluminum Product Specific Safeguard Duty at the rate of 21% (Twenty One Percent) ad valorem on all goods falling under Chapter heading 7606 (Aluminium Flat Rolled Products) and at the rate of 35% (Thirty Five Percent) ad valorem on all goods falling under Chapter heading 7607 (Aluminium Foil) which is considered to be the minimum required to protect the interest of domestic industry is recommended to be imposed on imports of such goods from Peoples Republic of China.

In view of the findings above, it is concluded that increased imports of product under consideration into India have caused and threatened to cause serious injury to the domestic industry and it will be in the public interest to impose safeguard duty for a period of four years on imports of the products under consideration into India. In arriving at the amount of safeguard duty that would be adequate to prevent market disruption weighted average cost of production has been taken into account . The present level of duties, import prices as well as the appropriate level of competition required in the

domestic market has also been considered at arriving at the Safeguard duty and gradual liberalization of the duty.

96. Based on the above, it is recommended that safeguard duty be imposed on imports of Aluminium FRP and Aluminium Foil into India for a period of four years at the rates specified below as under being the minimum necessary for the protection of the domestic industry from the market disruption caused and threatened to be caused by the increased imports of the products under consideration.

97. The list of products and recommended safeguard duty are as follows;

<p>All products falling under Chapter heading 7606 (Aluminium Flat Rolled Products) excluding</p> <ol style="list-style-type: none"> <li>a. Colour Coated Aluminium Coil with either PE (Polyester) Coating or PVDF (fluorine-carbon) Coating falling under CTH 7606.</li> <li>b. Aluminium Composite panels.</li> <li>c. Aluminium-Manganese-Silicon based and/or Aluminium-Magnesium-Silicon based alloys, whether clad or unclad; with thickness between 0.05 mm to 3.00 mm; with post brazing yield strength greater than 45 MPA, falling under tariff heading 7606 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.</li> </ol>	
<b>FRP</b>	
Year	Rate of duty
1 <sup>st</sup> Year	14% ad-valorem
2 <sup>nd</sup> Year	12% ad-valorem
3 <sup>rd</sup> Year	10% ad-valorem
4 <sup>th</sup> Year	8% ad-valorem

<p>All products falling under Chapter heading 7607 (Aluminium Foils) excluding”</p> <ol style="list-style-type: none"> <li>i. Aluminium Foil of thickness less than 7 micron falling under CTH 7607</li> <li>ii. “Aluminium foil of 10.5 micron with rough surface and perforated whether printed or not; to be used by beer bottling unit”</li> <li>iii. Colour Coated Aluminium Coil with either PE (Polyester) Coating or PVDF (fluorine-carbon) Coating falling under CTH 7607.</li> <li>iv. Etched or formed Aluminium Foils falling under CTH 7607 meant to be used in the manufacture of Electrolytic capacitors.</li> <li>v. Poly Aluminium Foil Coated with Copolymer falling under CTH 7607 to be used in the manufacture of PIJF Telecom Copper Cables or Optical Fiber Cables.</li> </ol>	
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**vi.** Aluminium-Manganese-Silicon based and/or Aluminium-Magnesium-Silicon based alloys, whether clad or unclad; with thickness between 0.05 mm to 3.00 mm; with post brazing yield strength greater than 45 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.

**FOILS**

Year	Rate of duty
1 <sup>st</sup> Year	30% ad-valorem
2 <sup>nd</sup> Year	25% ad-valorem
3 <sup>rd</sup> Year	20% ad-valorem
4 <sup>th</sup> Year	15% ad-valorem

**(S. S. RANA)**  
**Director General (Safeguards)**

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