

**DIRECTORATE GENERAL (SAFEGUARDS)**  
**Customs & Central Excise**  
**Department of Revenue, Ministry of Finance**  
**BVS Sadan, Bhai Vir Singh Marg,**  
**Gole Market, New Delhi-110001**

**NOTIFICATION**

**Subject :- Safeguard investigation concerning imports of 'Not Alloyed Ingots of Unwrought Aluminium' into India-Final Findings.**

G S R D- 22011/1/2014 dated 7.10.2014 having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 thereof;

**I. Procedure**

1. An application has been filed before me under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 by M/s. Hindalco Industries Ltd, M/s Sesa Sterlite Ltd. and M/s Bharat Aluminium Company Ltd. through their consultant M/S TPM Consultants for imposition of Safeguard Duty on imports of "Not Alloyed Ingots of Unwrought Aluminium" (hereinafter referred to as PUC) into India to protect the domestic producers of PUC against serious injury/threat of serious injury caused by the increased imports of PUC into India.

2. In order to satisfy the requirements under Rule 5 of the said Safeguard Rules, the information presented by the applicant was got verified by on-site visit to the plants of the domestic producers to the extent considered necessary. The non-confidential version of verification report is kept in the public file. On being satisfied that the requirements of Rule 5 were met, the Notice of Initiation of Safeguard investigation concerning imports of Not Alloyed Ingots of Unwrought Aluminium into India was issued under Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 7<sup>th</sup> April, 2014 and was published in the Gazette of India Extraordinary on the same day.

3. A copy of the Notice of Initiation dated 7<sup>th</sup> April, 2014 along with copy of non-confidential version of the application filed by the Domestic Industry were forwarded to the Central Government, in the Ministry of Commerce and other Ministries concerned, Governments of major exporting countries through their embassies in India, and the Interested Parties listed below, in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997:

**A. Domestic Producers**

M/s. Hindalco Industries Ltd, M/s Sesa Sterlite Ltd. and M/s Bharat Aluminium Company Ltd.

**B. Importers/Users:-**

1. AERO CANS INDIA PVT LTD, OFFICE NO 104, CITY CENTRE, SYNAGOGUE, STREET, PUNE CANTONMENT, MAHARASHTRA
2. ALLOY TECH, PLOT NO. 22E, III MAIN, V CROSS AT TIBELE INDL. AREA, ANEKAL TALUK, BANGALORE, KARNATAKA
3. ALM METALS & ALLOYS LTD, SURVEY NO. 56, N.H. 8A VAGHASIYA, WANKANER, DISTRICT - RAJKOT, GUJARAT 363621
4. ANAND ENTERPRISES, SURVEY NO. 237/ 238, PLOT NO. 3, 4 & 7B, NH- 8B AT VILLAGE VERAVAL (SHAPAR), DISTRICT - RAJKOT, GUJARAT 363624
5. ANVIL CABLES PVT. LTD., KRISHNA 1ST FLOOR, ROOM NO. 102, 224, A.J.C. BOSE ROAD, KOLKATA
6. APAR INDUSTRIES LIMITED, APAR HOUSE, CORPORATE PARK, BUILDG NO. 5, SION TROMBAY ROAD, CHEMBUR, MUMBAI - 400071
7. ARCIL CATALYST PRIVATE LIMITED, ON COASTAL HIGHWAY, P.O. MUJIPUR, TALUKA PADRA, VADODARA
8. ARKEMA CATALYST INDIA PVT. LIMITED, 6B, RUBY HOUSE, 2ND FLOOR, J.K. SAWANT MARG, DADAR [WEST]
9. BASE METAL CHEMICALS, 101, SYNERGY HOUSE II GORWA SUBHANPURA, VADODARA 390 023, GUJARAT.
10. BOTHRA METALS & ALLOYS LTD., BOTHRA HOUSE, ROOM NO. 15, 3RD FLOOR, 5 ASSEMBLY LANE, DADY SETHAGYARI LANE, KABADEVJI, MUMBAI 400002, MAHARASHTRA
11. CLASSIC METAL CORPORATION, WING-402/403, RAMJI HOUSE, 4TH FLOOR, 30, JAMBULWADI, KALBADEVJI ROAD, MUMBAI 400002
12. DELTRONIX INDIA LTD., E-3, SECTOR 59, NOIDA 201301
13. DYNAMIC CABLES PVT. LTD., F-260, ROAD NO. 13, VKI AREA, JAIPUR

14. ELECTROLEAD PUNE PVT LTD,GAT NO. 146, VILLAGE MAHALUNGE, CHAKAN INDUSTRIAL AREA TALKHED,DIST. PUNE 410501
15. LAKSHMI IMPEX,NO.1126, IST FLOOR, T.N.H.B.COLONY, VILLAPURAM NR PRESTIGE BUILDING,AVANIAPURAM,MADURAI, TAMILNADU
16. LAP- ROSS ENGINEERING LTD,PULIVALAYAM VILLAGE, BANAVARAM POST, SHOLINGHUR, VELLORE DISTRICT,RANIPET 632505, TAMIL NADU
17. MAITRI IMPEX,OFFICE NO 905, SHREE GURUKRUPA TOWER, SUBHASH ROAD, MOTI TANKI CHOCK,RAJKOT 360001
18. MANAKSIA LTD.( FORMERLY HINDUSTHAN SEALS LTD.),BIKANER BUILDING 8/1, LAL BAZAR STREET.,3RD FLOOR,KOLKATA 700001
19. MET TRADE (INDIA) LTD.138-139, MAIN ROAD GAZIPUR ,DELHI 110096
20. IMAC ALLOY CASTING,NO. 4-6, MADHAVARAM HIGH ROAD,SEMBIUM, CHENNAI 600011, TAMIL NADU
21. ISMT LIMITED, LUNKAD TOWERS,VIMAN NAGAR,PUNE 14
22. JSK INDUSTRIES PVT. LTD.,9, A.K.NAIK MARG, CST (VT).,MUMBAI
23. KATARIA INDUSTRIES PVT. LTD.,34-44 INDUSTRIAL ESTATE.,RATLAM, MADHYA PRADESH
24. KEVIN IMPEX,9, 86 - MAPLA WADI, BEHIND ROSHAN BAKERY, LOVE LANE, MAZGAON, MUMBAI 400010, MAHARASHTRA
25. OMALCO EXTRUSION PVT. LTD.,B/4 PUSHPA COMPLEX,D.B. GUPTA ROAD, PAHAR GANJ, DELHI
26. PARAGON INDUSTRIES LTD.ZAKIR COLONY HAPUR ROAD, OPP. L BLOCK, MEERUT 250004, UTTAR PRADESH
27. POLYCAB WIRES PVT.LTD., 1ST FLOOR,HICO HOUSE 771,PANDIT SATAWALEKAR MARG, MAHIM(W)
28. RANI METALS, PLOT NO.67, JEEVAN NAGAR,PART-II, BALLABHGARH ,FARIDABAD
29. SAGE METALS LTD.,346 FUNCTIONAL INDL. ESTATE,PATPAR GANJ, DELHI 110092
30. SHIBU ALUMINIUM INDUSTRIES,RAKSHAK VIHAR POST, AMBALA ROAD ,JAGADHRI, HARYANA 135003
31. SMITA CONDUCTORS LTD.,1402/3 RAHEJA CENTRE, NARIMAN POINT, FREE PRESS JOURNAL ROAD, MUMBAI, MAHARASHTRA 400021
32. STANDARD CONDUITS PVT. LTD.,2/3,ASHOK CHAMBERS,DEVJI RATANSY MARGMASJID (EAST), MUMBAI 400009
33. STAR EXPORTS, NO.3, NAVAL HOSPITAL ROAD,PERIAMET, CHENNAI 600003
34. STERLITE TECHNOLOGIES LTD.,E-1,E-2, E3, MIDC, WALUJ AURANGABAD 431136, MAHARASHTRA
35. SUNALCO ALLOYS PVT. LTD.,R.NO.26,2ND FLR.,RUNGTA BHAVAN,94/100,FANASWADI,, MUMBAI, MAHARASHTRA 400002
36. SWASTIK METAL ROLLING MILLS,36 37, HADAPSAR INDUSTRIAL ESTATE, NEAR PRAVIN MASALE COMPANY,HADAPSAR, PUNE 411013
37. TITRA TRADING PVT.LTD.,SURVEY NO.236/1 & 237, WAREHOUSE NO.K 05 & K 06(B), VILL. MITHI ROHA,GANDHIDHAM (KUTCH), PIN 370201
38. GALAXY ALLUMINIUM LLP,487/1, NR. KUPWAD MIDC PLOT NO N-3, KUPWAD, TAL-MIRAJ, SANGLI /MAHRASHTRA
39. GULBRANDSEN TECHNOLOGIES ( INDIA ) P LTD,405, SYNERGY SQUARE, KRISHNA INDUSTRIAL ESTATE, GORWa, VADODARA, GUJARAT 390016, BIDC, GORWA ESTATE, GORWA, VADODARA, GUJARAT 390003
40. HEENA METAL PVT LTD,NO. 117,KIKA STREET,GULALWADI,MUMBAI 400004, MAHARASHTRA
41. HINDALCO INDUSTRIES LIMITED,CENTURY BHAVAN, 3RD FLOOR, DR. ANNIEBESANT ROAD, WORLI,MUMBAI 400030
42. HINDUSTAN AERONAUTICS LTD,NO.15/1, CUBBON ROAD,BANGALORE KARNATAKA
43. HINDUSTHAN VIDYUT PRODUCTS LTD.,KANCHENJUNGA, 7TH FLOOR,18 BARAKHAMBIA ROAD, NEW DELHI
44. JSW STEEL LIMITED.,JSW- DOLVI WORKS, THE ENCLAVE, 5TH FLOOR, BEHIND MARATHE UDYOG BHAVAN, NEW PRABHADEVI ROAD,PRABHADEVI, MUMBAI 400025
45. JSW STEEL LTD., BANDRAKURLA COMPLEX,MUMBAI 400051
46. M/s JINDAL ALUMINIUM LTD. , BANGALORE

#### C. EXPORTERS

1. UNITED CO. OF RUSAL,13/1, NIKOLOYAMSKAYA STR., MOSCOW, 109240, RUSSIA
2. ALUMINUM BAHRAIN,PO BOX: 570, KINGDOM OF BAHRAIN
3. DUBAI ALUMINIUM CO.,PO BOX 3627,DUBAI, UNITED ARAB EMIRATES
4. RIO TINTO HEAD OFFICE120 COLLINS STREET ,MELBOURNE, AUSTRALIA 3000
5. SOHAR ALUMINUM ,SOHAR INDUSTRIAL ESTATE, SOHAR SULTANATE OF OMAN

6. EMAL, EMIRATES ALUMINUM ,PO BOX 111023, ABU DHABI, UNITED ARAB EMIRATES
7. ALCOA ALCOA GLOBAL CENTER,390 PARK AVENUE, NEW YORK, NY 10022, UNITED STATES
8. ALUMINUM CORPORATION OF CHINA,NO.62 XIZHIMEN NORTH AVENUE HAIDIAN DISTRICT,BEIJING, BEJ 100082,CHINA
9. NORSK HYDRO, DRAMMENSVEIEN 260,NO-0283 OSLO,NORWAY
10. BHP BILLITON LTD.,THIRD FLOOR, 6 HOLLARD STREET ,JOHANNESBURG,GAUTENG SOUTH AFRICA
11. QATAR ALUMINUM LIMITED ,(Q.S.C) ,P.O. BOX 23086,MESAIEED INDUSTRIAL CITY,QATAR

**D. EXPORTING NATIONS**

1. EMBASSY OF SULTANATE OF OMAN, NEW DELHI
  2. EMBASSY OF UNITED ARAB EMIRATES, MINISTRY OF ECONOMY, NEW DELHI
  3. THE HIGH COMMISSION OF SOUTH AFRICA, NEW DELHI
  4. MINISTRY OF INDUSTRY AND TRADE OF RUSSIAN FEDERATION, NEW DELHI
  5. EUROPEAN UNION, DELEGATION TO INDIA, NEW DELHI
4. Questionnaires were sent to the known exporters, known importers/users in India and other Interested Parties as per the information available with request to make their views known in writing within 30 days of the Notice of Initiation. Responses were received from the following parties:-

- a) Ministry of Economy
- b) M/s APAR Industries Ltd.
- c) Ministry of Industry and Trade of the Russian Federation
- d) M/s Century Metal Recycling Pvt. Ltd.
- e) M/s SUNALCO Alloys Pvt. Ltd
- f) Suri and Suri Law office representing Alcoa Inc
- g) M/s ELP representing M/s Aluminium Bahrain, BSC
- h) Embassy of UAE
- i) M/s JSK Industries Pvt. Ltd
- j) M/s Smita Conductors Ltd.
- k) Sultanate of Oman, Ministry of Commerce and Industry
- l) M/s Polycab Wires

5. (A) Requests to consider them as Interested Parties were received from the following parties:-

- a) European Union, Delegation to India
- b) Ministry of Industry and Trade of the Russian Federation
- c) M/s Jindal Aluminium Ltd.
- d) M/s Aluminium Extruders Association of Andhra Pradesh
- e) M/s Bhoruka Extrusion Pvt. Ltd.
- f) Athena laws Associates representing CACMAI
- g) M/s KEI Industries
- h) Australian High Commission
- i) M/s Ravin Cables Ltd.
- j) M/s Finolex Cables Ltd
- k) Aluminium Extruders Council (ALEX)
- l) Indian Electrical & Electronics Manufacturers' Association (IEEMA)

All the requests were accepted.

- (B) The under mentioned parties sought extension of time for submission of a detailed reply in terms of Rule 6(4) of Safeguard Duty Rules, 1997:-

- a. M/s Aluminium Bahrain
- b. Ministry of Economy UAE
- c. Ministry of Commerce and Industry, Sultanate of Oman
- d. M/s KEI Inds. Ltd.
- e Australian High Commission
- f M/s. Ravin Cables Ltd
- g. M/s Finolex Cables Ltd.

Extension of time upto **30.06.2014** was allowed in each case.

## II. Views of the Interested Parties (Post-Initiation) :

6. Responses to the Notice of Initiation were received from importers/exporters/exporting nations, as given below:

- 1) M/s Aluminium Extruders Association of Andhra Pradesh
- 2) M/s Bhoruka Extrusion Pvt. Ltd.
- 3) Athena laws Associates representing CACMAI
- 4) M/s KEI Industries
- 5) M/s Ravin Cables Ltd.
- 6) M/s Finolex Cables Ltd
- 7) Aluminium Extruders Council (ALEX)
- 8) Indian Electrical & Electronics Manufacturers' Association (IEEMA)
- 9) M/s APAR Industries Ltd.
- 10) Ministry of Industry and Trade of the Russian Federation
- 11) M/s Century Metal Recycling Pvt. Ltd.
- 12) M/s SUNALCO Alloys Pvt. Ltd
- 13) Suri and Suri Law office representing Alcoa Inc
- 14) M/s ELP representing M/s Aluminium Bahrain, BSC
- 15) M/s JSK Industries Pvt. Ltd
- 16) M/s Smita Conductors Ltd.
- 17) M/s Polycab Wires
- 18) M/s Jindal Aluminium Ltd
- 19) Sultanate of Oman, Ministry of Commerce and Industry
- 20) European Union, Delegation to India
- 21) Embassy of UAE
- 22) Australian High Commission

The views expressed by the Interested Parties have been taken into account in making appropriate determination. The non-confidential information received or acquired has been kept in the public file.

### 7. Views expressed by Domestic Industry

- i. Imports of PUC have shown a sudden, sharp and significant increase over the period with a significant increase during most recent period.
- ii. Imports in relation to production and consumption have also increased over the injury period.
- iii. The market share of the DI has declined significantly over the injury period and market share of imports has increased.
- iv. The main reason for the increase in imports are-
  - The producers across the globe have capacities more than their domestic demand
  - Indian market is a sizable market with high growth potential
  - Surplus capacities with Middle Eastern countries
  - Advantages with foreign producers
    - a. Cheap Energy Cost
    - b. India is a freight friendly market
- v. Production of DI declined and then increased. But, despite increase in demand, Production in current year was still lower than production in 2010-11.
- vi. Sales have declined significantly in the recent period with the increase in imports in this period.
- vii. The level of employment has marginally declined. Productivity of the DI has declined.
- viii. Profitability profit before tax and return on investment of the DI has steeply declined over the period.
- ix. The price difference between domestic and imported product is quite significant.
- x. The foreign producers are holding significant unutilized capacities. Resultantly , the foreign producers are looking for additional markets to the extent possible:
- xi. The volume of imports has increased significantly in a relatively short period.
- xii. Significant share in the domestic market is already held by the imports and such shares are increasing.
- xiii. In view of steep deterioration in performance of the DI as a result of increased imports of the PUC, imposition of 10% safeguard duty for four years is requested.

### 8. Views expressed by Aluminium Extruders Association of Andhra Pradesh (ALEXTA)

- i. Primary producers are pricing aluminium metal taking into account the LME (London Metal Exchange ) Price, international premiums, ex- change rate and import duties. Indian producers are

charging high premium and incur no cost in shipping material to domestic consumers. They already have the protection of prevailing 5% custom duty.

- ii. Primary producers are exporting large quantity products, almost 30-40% of their capacities and are creating artificial shortage within the country.
- iii. If safeguard duty is imposed this will be considered by the primary aluminium producers while pricing their products for domestic market. Imports will still continue because the domestic price will be at par with imports. This will only add additional profit to the primary aluminium producers and will cause additional burden to downstream industry and consumers in India.
- iv. The price of finished aluminium products in domestic market will be higher than the international market price. This will increase import of finished products making downstream industry unviable and eventually close down effecting the employment and revenue generation of the country.
- v. Safeguard duty will increase the dependency of manufacturers of downstream products and jeopardize the larger interest of the trade and economy. It will adversely affect thousands of downstream industries.

#### 9. Views expressed by Sunalco Alloys Pvt. Ltd.

- i. The reduction in production of DI is not due to imports and the losses are not due to high increase in production cost but due to reduction of LME prices in international market.
- ii. Any imposition of duty will negatively affect the small and medium scale industries and employment as well
- iii. Reduction in profitability and loss is due to expansion, over expansion and internal restructuring by the said companies
- iv. No injury to DI
- v. If safeguard duty is imposed, cost of production for local importer would increase, making it difficult to compete to international sellers.
- vi. Safeguard duty is not in the consuming industry's and public interest
- vii. In case SG duty is imposed then the same may be implemented
  - on secondary Aluminium Alloys and Re-melted Aluminium ingots imports as well.
  - In FTA, as well, impose safeguard duty equivalent to raw material of Aluminium Scrap duty % at present i.e. 2.5%.

#### 10. Views expressed by Jindal Aluminium Ltd.

- i. Data relating to production is false
- ii. Claim that the applicants are operating with significant unutilized capacities is not correct
- iii. There is no ground for serious injury for an industry which is operating more than its installed capacity. Only Hindalco, a major producer is affected due to high interest cost, shortage of coal and CBI enquiry on its allocation of coal mine.
- iv. Nalco one of the leading producer has not joined the DI in the petition
- v. The domestic prices of aluminium are unreasonably high and more than International prices.
- vi. DI is expanding at a rapid pace and has undertaken further expansions to ramp up its aluminium capacity
- vii. The company can compete with any aluminium company in the world and just wants to amass unreasonable profits at the cost of its consumer industry. However the losses claimed by the DI are mainly because of not getting bauxite mines from the Government and heavy interest burden on their unplanned and huge capital expenditures. The company is not incurring any losses due to imports of ingots in the country.
- viii. Imports from Middle East are not cheaper as claimed by the petitioners.
- ix. Most of the import of aluminum by the secondary aluminium manufacturer and processors is mainly against their export entitlements.
- x. If the correct production figures are considered and compared with the import data, imports constitute only 14.02 % of the Indian production. The increase in imports is due to unfavorable pricing policy for the domestic customers which force the Indian customer to pay higher prices than prevailing in LME.
- xi. The industry shows no signs of retrench employees, no unutilized capacities, no abnormal decline in profits cannot be treated as under threat and be given extra protection of SG duty to amass extra profit as the cost of public.
- xii. Safeguard duty will be counter productive of revival of the economy as it will increase costs of all aluminium products and affect the demand across all sectors of the economy including infrastructure, automobiles etc.
- xiii. No injury, misleading data, production gone up, profit levels are same, may be little less and no job loss.

#### **11. Views expressed by Bhoruka Extrusion Pvt. Limited**

- i. Petitioner are using bulk of their smelting capacity for value added products to earn higher profits. They give preference to maximize production of their downstream products such as wire rods, rolled products, foils, alloy ingots extrusions etc. The production of ingots will naturally show a declining trend, despite increase in production. The Indian consumers are compelled to import as very less quantity of ingots is made available to them by the applicants.
- ii. Production data is wrongly furnished
- iii. The producers are exploiting the situation by starving the local industry.
- iv. Hindalco is affected due to high interest cost, shortage of coal and CBI enquiry on its allocation of coal mine.
- v. Nalco one of the leading producer is not threatened by increase in imports and has not joined the petitioner companies.
- vi. The pricing system of the petitioner is designed to squeeze every penny out of the downstream aluminium industry. The domestic aluminium prices are based on prevailing (LME prices+Main Japanese Port Premium+5% Custom Duty)\*highest exchange rate prevailing in the country + freight+ other charges. Whenever there is a change in these factors, the domestic prices are also changed, though the cost of production remains the same.
- vii. Primary producers are manufacturing metal at a cost which is lowest in the world and selling the same at rates which are highest in the world.
- viii. Aluminium prices are depressed globally but despite that the applicants are making good profits and increasing their capacities regularly. Their profitability has decreased slightly due to depressed global economy, high interest burden

#### **12. Views expressed by Cable and Conductor Manufacturers' Association of India (CACMAI)**

- i. Safeguard measures are extraordinary remedies to be taken only in emergency situation. They are remedies that are imposed in the form of import restrictions in the absence of any allegation of an unfair trade practice.
- ii. Import of material at prices lower than prevailing in India cannot per se be regarded as being prejudicial to the public interest.
- iii. The petition does not fit into the objective of Safeguard duty under the law.
- iv. Non joining of NALCO as a Domestic Industry
- v. Wrong comparison of production figures
- vi. As per their own admission the production figures of last three years suggest that domestic industry does not require any protection
- vii. No injury in capacity utilization
- viii. No unforeseen developments
- ix. The closing inventory of domestic industry is very low. The figures shown are absurd.
- x. Captive consumption of ingot, export of ingots and LME effect not examined
- xi. Imports have neither caused serious injury nor they are threatening to cause serious injury.
- xii. Absence of causal link between increased import and injury.
- xiii. Petition has been initiated without examining the accuracy and adequacy of data
- xiv. No case of ex parte Provisional Safeguard duty in the absence of critical circumstances
- xv. Safeguard duty on Aluminium ingots is against public interest. Even if the injury is proved, the safeguard duty may not be imposed following the precedence of case of phosphorous in 1999. In the case Director General refused to recommend imposition of Safeguard duty on the ground of public interest in spite of finding of serious injury.

#### **13. Views expressed by M/s RAVIN Cables Ltd.**

- i. No separate data for imports under advance licence and duty paid imports has been provided. Import data seems to include all the products covered under Ch 76. Indexed data is provided instead of absolute data so as to make comparison impossible.
- ii. The so called surge in aluminium imports is mainly attributable to the deeds and misdeeds of domestic aluminium producers and is not all of sudden and not due to any unforeseen developments.
- iii. The capacity utilization in terms of % is lower not due to imports but due to number of factors like operational set backs, natural calamities, power and coal shortages, recession in both global and Indian economies etc.
- iv. Export of PUC is much more than the import of PUC.

- v. In some cases, absolute figures have been given, whereas, in many other cases, indexed figures are given as per the convenience of the petitioners
- vi. The petition is not complete in itself, the opposing industry has not been able to give comprehensive reply.
- vii. Any step to impose safeguard duty will adversely impact the viability of downstream industries which adversely will impact the viability of Aluminium Industry itself and may result into loss of employment as well as severely reduce Indian Exports resulting into loss of Foreign Exchange earnings for the country.
- viii. NALCO is excluded. Hence, the petition doesn't represent the entire DI.
- ix. Export data has not been provided.
- x. Though the LME prices are falling, prices charged by DI are on the rise every year forcing downstream industry to import PUC.
- xi. There is uncertainty in the supplies from DI due to operational setbacks.
- xii. The quality of the PUC of DI is poor and competitive commercial terms are not provided.
- xiii. Fall in any of the economic indicators of DI are not significant and exceptional enough to justify imposition of the safeguard duty.

#### **14. Views expressed by ALCOA INCs through Suri & Suri Law Offices**

- i. There is no indication that increased import volumes are causing any injury. They are a natural consequence of the domestic industry's choice to allocate production capacity to higher margin value added products.
- ii. Director General may conduct its injury analysis including NALCO.
- iii. Imports and domestic production have both increased in response to increase in domestic demand.
- iv. The applicants planned capacity increase demonstrates the growth and viability of the domestic market.
- v. The applicant's performance data are not impacted by increased import volumes'
- vi. The Domestic Producers already enjoy significant market insulation
- vii. There is no evidence that serious injury is imminent, nor that any such threatened injury is linked to increased import volumes.
- viii. The applicants claim on injury is based largely on adverse economic conditions. The profitability of the DI deteriorated in 2012-13, but it recovered significantly in 2013-14.
- ix. There is no indication that deteriorating profit was a result of import surges rather than global demand conditions.

#### **15. Views expressed by JSK Industries Pvt. Ltd.**

- i. Petitioners prefer to make more of other products having higher value addition curtailing ingot production
- ii. POI 2011-12 to 2013-14 covers the recovery period from global recession during which demand has been low and every industry was struggling.
- iii. Misleading data
- iv. The import data of ingots submitted by the petitioner companies is for total imports. Major part of import is against export incentives.
- v. Other critical factors like non availability of raw material have affected the profitability.

#### **16. Views expressed by All Indian Aluminium Extruders Council ( Alex )**

- i. Petitioner are using bulk of their smelting capacity for value added products to earn higher profits. They give preference to maximize production of their downstream products. The production of ingots will naturally show a declining trend , despite increase in production. The Indian consumers are compelled to import as very less quantity of ingots is made available to them by the applicants.
- ii. The producers are exploiting the situation by starving the local industry.
- iii. Hindalco is affected due to high interest cost, shortage of coal and CBI enquiry on its allocation of coal mine.
- iv. Nalco one of the leading producer is not threatened by increase in imports and has not joined the petitioner companies.
- v. The domestic aluminium prices are based on prevailing (LME prices+Main Japanese Port Premium+5% Custom Duty)\*highest exchange rate prevailing in the country + freight+ other charges. Whenever there is a change in these factors, the domestic prices are also changed, though the cost of production remains the same.

- vi. Primary producers claim to be manufacturing metal at a cost which is lowest in the world and selling the same at rates which are highest in the world . They are able to sell at prices higher than international rates.
- vii. Aluminium prices are depressed globally but despite that the applicants are making good profits and increasing their capacities regularly. Their profitability has decreased slightly due to depressed global economy and high interest burden.
- viii. Financial results of NALCO show that despite alleged surge in imports, NALCO's profit in the current year will be better even in this depressed global economic situation and lower metal prices. Fall in LME prices has been compensated by depreciation of Rupee by more than 20% in last two years.
- ix. The cost of production in Middle East is not low as claimed
- x. Most of the imports are against export entitlements
- xi. Production data is wrongly furnished
- xii. It has been alleged that the applicants are forced to exports to liquidate their inventories. The fact is all the applicants are exporting under a preplanned long term strategy for various reasons: to full fill exports obligation, to feed their associate companies abroad, to meet their currency exposure. In exports they have better realization
- xiii. Taking a total smelting capacity and showing production only of some product is gross misrepresentation of the facts.
- xiv. Figures have been concealed, twisted and misrepresented by showing indexed numbers at many places
- xv. There has been no job loss in the plants of the applicant
- xvi. Profitability of the domestic industry has slightly been affected with relation to 2010-11 because of global recession and not because of surge in imports.
- xvii. Safeguard duty will increase the costs of all aluminium products and affect the demand across all sectors of the economy including infrastructure, automobile etc.

**17. Views expressed by Century Extrusions Limited (The submissions are similar as reflected above by ALEX)**

**18. Views expressed by IEEMA (The submissions are similar as reflected above by ALEX)**

**19. Views expressed by Smita Conductors Ltd. (The submissions are similar as reflected above by ALEX)**

**20. Views expressed by KEI Industries Ltd. (The submissions are similar as reflected above by ALEX)**

**21. Views expressed by Finolex Cables Limited (The submissions are similar as reflected above by ALEX)**

**22. Views expressed by UAE, Ministry of Economy**

- i. Import data of the PUC from UAE during the period of investigation is erroneous and inflated probably due to misclassification of aluminium items being exported from UAE to India and especially by including aluminium items of billet and foundry under the same tariff classification (76011010). Wrong initiation.
- ii. No unforeseen development
- iii. No positive evidence that the alleged increased imports of the PUC caused a serious injury and threatened to cause a serious injury to the applicants.
- iv. No causal link between increased imports and the alleged serious injury. The applicants' alleged injury is due to global trends and drop in LME price during the period of investigation`

**23. Views expressed by APAR Industries**

- i. Non joining of Nalco. The petition filed is not really representative of entire domestic industry
- ii. Surge in imports has been more than compensated by growth of exports
- iii. Other factors like global trends, LME prices, Energy cost are responsible for the applicants' economic performance.
- iv. There is no serious injury
- v. Alleged economic performance is falsely drawn on weak data, if the perfect data or recent data is undertaken for investigation then there is no scope for imposition of safeguard measures.

**24. Views expressed by Australian High Commission**

- i. Product coverage needs further investigation and clarification

- ii. The second largest domestic producer in India, Nalco is not supportive of this petition. Nalco must be included in the examination. Nalco is not included, whether the remaining producers can fulfil the requirements of DI.
- iii. Intervening trends of imports must be fully taken into consideration in assessing whether an increase in imports satisfies the increased imports requirement of Article 2.1 of the WTO Safeguards Agreement.
- iv. Data provided in the petition is not sufficient.
- v. In the petition, the use of 'domestic industry' and domestic production' is not consistently referring to the petitioners only which creates confusion.
- vi. Imports have increased but market share of DI increased proportionately with increased imports.
- vii. The combined market share of the petitioners is actually increasing compared with Nalco's market share. The % of market share of imports appears to be trending in line with the increase of market share of the petitioners.
- viii. No unforeseen circumstances
- ix. 'Other factors' that may have caused the injury may be examined.
- x. No serious injury or threat of serious injury as there has been a sustained increase in installed capacity over the past years.

### **III Public Hearing:-**

25. A public hearing was held on 3<sup>rd</sup> July, 2014, notice for which was sent on 17<sup>th</sup> June, 2014 to the Interested Parties. In the said Public Hearing, Domestic Industry, M/s. Hindalco Industries Ltd, M/s Sesa Sterlite Ltd and M/s Bharat Aluminium Company Ltd as well as the following parties attended:-

#### **Exporting Nations**

1. Australian High Commission
2. Trade and Economic Section, Delegation of the European Union to India
3. Embassy of Sultanate of Oman
4. Russian Federation
5. Embassy of UAE
6. Kingdom of Bahrain
7. Malaysian High Commission

#### **Exporters**

1. M/s Aluminium Bahrain
2. M/s Rio Tinto, Australia

#### **Importers/ Importers Associations**

1. M/s APAR Inds. Ltd.
2. M/s Bhoruka Extrusions Pvt. Ltd.
3. Cable and Conductor Manufacturers' Association of India (CACMAI) represented by Athena Law Associates
4. Hindustan Vidyut Products Ltd
5. IEEMA
6. M/s Jindal Aluminium Ltd.
7. M/s JSK Industries Pvt. Ltd.
8. M/s Ravin Cables Ltd
9. M/s Smita Conductors Ltd.
10. M/s Sterlite Technologies Ltd.
11. Polycab wires (P) Ltd
12. Century Extrusions
13. Aluminium Extruders council
14. M/s Indo AlusysInds. Ltd.
15. Sudal Industries Ltd.
16. Alom Extrusions Ltd.

26. All Interested Parties who participate in the public hearing are required to file a written submission of the views presented orally in terms of Sub Rule (6) of Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Thereafter, copy of written submissions filed by an Interested Party is made available to all other Interested Parties, including the Domestic Industry. Interested Parties and Domestic Industry are also given an opportunity to file rejoinders, if any, to the written submissions of other Interested Parties. In the course of the Public Hearing in this matter on 3<sup>rd</sup> July 2014, the Domestic Industry made oral submissions followed by a written submission. 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 Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Copies of written submissions filed by the

Interested Parties were made available to all other Interested Parties. Interested Parties were also given an opportunity to file rejoinders, if any, to the written submissions of other Interested Parties.

27. Accordingly, all views expressed by the Interested Parties in the written submissions post-initiation as well as post-hearing were examined and have been taken into account in making appropriate determination.

#### **IV. VIEWS OF INTERESTED PARTIES (Post-Hearing)**

##### **28. Views of Domestic industry through M/s TPM Consultant**

The Domestic Industry submitted as follow:-

###### **(a) Increased imports of subject goods into India:**

- (i) Imports of the PUC have increased throughout the injury period, temporary change in the behavior of the imports may not be sufficient to reverse an overall trend indicating existence of increased imports. The imports of the PUC have shown sharp increase in absolute terms as well as in relative terms. The increase in imports is sudden and significant, causing serious injury to the domestic industry.

###### **(b) Unforeseen Circumstances:**

The DI has submitted the following reasons, which as per their understanding constitute the unforeseen circumstances in the present case:-

- 1) Imports of product under consideration have increased significantly over the period. It is submitted by the DI that the majority of the metal being imported is of Middle Eastern origin. The increase in imports is due to following reasons –
  - ii. Middle East became a net exporter from being a net importer
  - iii. Significant demand supply gap in middle eastern countries as China's dependence on imports have declined (which was a target market for Middle eastern countries)
  - iv. Indian market is a sizeable market with a high growth potential has been used to sell off their goods.
  - v. Advantages with foreign producers
    - a. Cheap Energy Cost
    - b. India is a freight friendly market

###### **(c) Injury to the domestic industry:**

- i. The imports of the PUC have increased significantly in absolute terms and in relation to production and consumption in India.
- ii. The overall demand for the PUC over the injury period has declined in the most recent period and increased imports aggravated the injury to the domestic industry.
- iii. Production of domestic industry has not declined, as the DI followed a policy of maximizing the production.
- iv. The capacity utilization of the DI has not declined
- v. Domestic sales have declined significantly in the current year with the increase in imports in this period.
- vi. The decline in domestic sales is much more than the decline in demand.
- vii. Exports have increased due to compulsion for the DI to liquidate production.
- viii. Landed price of imports is lower than
  - a. selling price of the domestic industry.
  - b. cost of production of the domestic industry
- ix. The profitability has steeply declined
- x. Return on investment has declined significantly
- xi. No significant change in the level of employment
- xii. The decline in market share, sales volumes far outweigh the increase in production.

###### **(d) Threat of Serious Injury:**

- i. The price difference between domestic and imported product is quite significant
- ii. The foreign producers are holding significant unutilized capacities. Resultantly, the foreign producers are looking for additional markets to the extent possible:

- iii. The major Chinese market for Aluminium ingots has clogged for the export oriented producers of Middle East countries, whereas the Indian market is quite strong.

Demand of the product: While the demand in the most recent period declined to some extent, the overall demand over the injury period is positive. Further, in the most recent period, whereas the demand declined, imports surged. Thus, the injury to the domestic industry is due to increased imports.

Export performance: Petitioners have exported the product under consideration. As submitted earlier, the domestic industry cannot hold inventories and are therefore forced to export the goods. Exports by the domestic industry are a result of increased imports of the product in India.

**(e) Causal Link:**

- i. The product is largely sold in comparison/competition with imports. The landed price of imports is significantly lower than the selling prices of the domestic industry.
- ii. The domestic industry is losing sales opportunities. Consequently, sales volumes, market share, profits, return on investment of the domestic industry declined due to presence of low priced increased imports.
- iii. Increased imports have led to increase in market share of imports. Consequently, market share of the domestic industry declined.

**(f) Adjustment Plan:**

Domestic Industry has submitted an adjustment plan detailing the efforts planned to be taken to make a positive adjustment to import competition, The plans focus on cost reduction, optimum utilization of the existing and future production capacity.

**(g) Public Interest:**

- a. Imposition of safeguard duty shall arrest decline in the performance of the domestic industry and to restore the injury suffered by the domestic industry. The safeguard duty would enable domestic producers to be viable and competitive
- b. It is in the consumers interest to have a competitive Indian domestic industry capable of supplying the product under consideration to the consumers and compete with foreign producers. Usage of subject goods is must for industrial applications. Therefore it is extremely important from strategic point of view to reduce the import dependence.
- c. DI is capable to meet the current and potential/future demand in the country.
- d. The impact of the proposed safeguard duty on each of the consumer industry shall be negligible. Petitioner submits that the term public interest has to be considered as the interests of domestic producers, domestic consumers and public at large. In this regard, considering almost negligible impact on the eventual end product and considering that survival of the domestic industry is must, it must be concluded that the imposition of safeguard duty shall be in public interest.

**Views of Exporting Nations:**

**29. United Arab Emirates (UAE)**

- i) **Inaccurate and invalid import data of the product under consideration from UAE.**
  - UAE exports of aluminum to India are mainly made of billets and foundry Aluminum products that are out of the scope of this investigation and there are only marginal quantities of NOT Alloyed Ingots of Unwrought Aluminum that were effectively exported from UAE to India during the period of Investigation.
  - Bills of lading clearly show an obvious discrepancy between the description of the product being effectively exported from UAE to India which is "primary aluminum foundry alloyed ingots" which is out of the scope of this investigation.
  - imports are really increasing in this investigation.
- ii) **No unforeseen increase of imports that might cause or threaten to cause serious injury.**
  - Meeting the conditions pertaining to increased imports, serious injury and causality does not suffice for safeguards to be lawfully imposed, but it must further be demonstrated that imports increased as a result of unforeseen developments.
- iii) **No serious injury or threat of serious injury to the domestic industry.**
  - there is no such overall impairment in the position of the applicants as clearly noticeable by an amelioration of the capacity of production, a better capacity utilization, and a progress of profitability

- the real reason for the fall of the capacity utilization as it is unrelated to imports but "to delays in getting the mining license".
  - the improvement of various economic and financial indicators during the last year of the period of investigation undermines any claim of threat of serious injury.
- iv) **No causal link between increased imports and the alleged serious injury.**
- a. **No temporal correlation between increased imports and the alleged serious injury:**
- In parallel, at the time the volume of imports of the product under consideration increased in 2012-2013, the situation of the applicants was ameliorating as reflected by an apparent increase of almost all the economic indicators, especially, the market share (60%), production (538.657 MT), capacity of production (1.269.900MT), capacity utilization (42%) and domestic sales (461.509 MT).
- b. **Factors other than increased imports are the cause of any alleged injury to the applicants:**
- Falling of the LME price during a particular time frame will consequently induce a fall of the selling price of the producers of the product under consideration.
  - Alleged serious injury or threat thereof is not linked to imports trends but rather to unrelated factors including global trends generally and the drop in LME price in particular during the period of investigation.
- v) **No Public interest to impose safeguards measures.**
- The imposition of a safeguard measure would merely inflate aluminum prices in the Indian market which would have negative impact on key end users of this product in the Indian market.
  - The domestic industry is already protected through the imposition of 5% customs duty on imports and thereby the imposition of any additional customs duty in the form of a safeguard measure would definitely prejudice the legitimate commercial interests of other enterprises in India and it is seen as contrary to the public interest.
- vi) Investigation should be terminated without further proceedings. Should the DG Safeguards continue its investigation, there should be no imposition of provisional measures.

### 30. **Australian High Commission**

- i. Product coverage needs further investigation and clarification.
- ii. The second largest domestic producer in India, Nalco is not supportive of this petition. Nalco must be included in the examination of whether the DI has suffered serious injury and whether a safeguard measure is justified on this basis. If Nalco is not included, whether the remaining producers can fulfil the requirements of DI.
- iii. Intervening trends of imports must be fully taken into consideration in assessing whether an increase in imports satisfies the increased imports requirement of Article 2.1 of the WTO Safeguards Agreement.
- iv. Data provided in the petition is not sufficient.
- v. In the petition, the use of 'domestic industry' and domestic production' is not consistently referring to the petitioners only which creates confusion.
- vi. Imports have increased but market share of DI increased proportionately with increased imports.
- vii. The combined market share of the petitioners is actually increasing compared with Nalco's market share. The % of market share of imports appears to be trending in line with the increase of market share of the petitioners.
- viii. No unforeseen circumstances
- ix. 'Other factors' that may have caused the injury may be examined.
- x. No serious injury or threat of serious injury as there has been a sustained increase in installed capacity over the past years.

### 31. **Russian Federation**

Exclusion of Russian Federation from the application of any safeguard measure on imports of not alloyed ingots of unwrought aluminium from Russian Federation as per the provisions of Article 9.1 of the Agreement on Safeguards of the WTO.

### 32. **Ministry of Economy of Mexico**

Exclusion of Mexico from the application of any safeguard measure on imports of not alloyed ingots of unwrought aluminium from **Mexico** as per the provisions of Article 9.1 of the Agreement on Safeguards of the WTO.

### 33. **High Commission of Malaysia**

Exclusion of Malaysia from the application of any safeguard measure on imports of not alloyed ingots of unwrought aluminium from Malaysia as per the provisions of Article 9.1 of the Agreement on Safeguards of the WTO.

**34. Kingdom of Bahrain**

Exclusion of Kingdom of Bahrain from the application of any safeguard measure on imports of not alloyed ingots of unwrought aluminium from Bahrain as per the provisions of Article 9.1 of the Agreement on Safeguards of the WTO.

**35. Sultanate of Oman**

The submissions were received at a very late stage on 2<sup>nd</sup> September 2014 and therefore were not available for viewing by other interested parties. However, the issues raised have been considered at appropriate places, as below:

- i. DG should strike a balance between the protection of confidential information and the right of interested parties to defend their interest
- ii. Discrepancy in figures provided in petition and NOI
- iii. Proper analysis of return on investment and price undercutting should be carried out
- iv. Clarification on methodology of annualized figures needs to be clarified.
- v. Waited average price of Oman imports into India, and weighted average price of Bahrain imports into India have an increasing trend over the last four years.
- vi. The volume of import alone is not a relevant factor. It must be combined with a significant, sharp, recent increase in imports to qualify as a determined factor in finding serious injury.
- vii. Oman exports have a large and almost stable share of imports into India due to its high quality and sound commercial practice
- viii. Loss of domestic industry's profit is not due to change in imports.
- ix. There is no relationship between change in imports and change in the number of employees.
- x. No causal link between imports and alleged injury to the petitioners.
- xi. No Public interest
- xii. NOI needs more clarification
- xiii. Negative changes in the performance of DI are due to other causes of injury but not imports of PUC.

**Views of Exporters:**

**36. M/s Aluminium Bahrain through ELP Advocates and Solicitors**

- i. With regard to injury information, no data has been updated by the Petitioners. The presentation made by the Petitioners at the public hearing relied upon information that was updated for the last quarter of 2013-14 i.e. January 2014 to March 2014.
- ii. No ground for issuance of a provisional finding since the data for the latest period is neither filed nor analysed by the Director General (Safeguards).
- iii. The representation of injury data is grossly erroneous, misrepresentative and fundamentally violates the requirement for accuracy and adequacy of the information per unit figures are fluctuating in Annualisation while value figures have remained constant in Annualisation, both of which are mathematically impossible.
- iv. A large amount of information and data has been claimed to be confidential in the petition and not disclosed even in summarised form- no reason provided as to why this information has been claimed to be confidential.
- v. Petitioners have failed to demonstrate any unforeseen developments having led to the increase in imports.
- vi. Surplus Capacity in the Middle Eastern Countries: Demand supply gap in "Middle East", from the year 2012 – 2018, does not cover the entire period of investigation.
- vii. The data provides a speculative forecast and does not demonstrate that the increase in imports into India is attributable to the alleged surplus capacity in the Middle East. .
- viii. Events occurring after the surge in imports cannot be said to have led to the imports in the first place. The analysis needs to be presented for the period of investigation and its preceding period in order to examine whether or not it has had any impact on unforeseeable developments at all.
- ix. No evidence to substantiate that the alleged excess capacity was diverted to India instead of China or other markets.
- x. The energy costs of foreign producers have always been substantially lower due to the generous natural gas deposits in the middle-east, which is a widely known fact. Therefore, by no means can this development be considered "unforeseen" or "unexpected".
- xi. The focus is on the values added products since they yield higher returns. The leftover material and capacity is then utilised for the product under consideration.

- xii. The actual capacity utilisation of the petitioners is completely different from the capacity utilisation presented in the petition and initiation notification. Petitioners have been utilising above 90% of their capacity throughout the injury period.
- xiii. Lower production of the product under consideration and greater increase on exports has led to a lower sales volume for the domestic industry. The lower sales volume has in turn led to a deficit of demand in the domestic market, leading to an inevitable increase in imports. Therefore, any volume injury suffered by the domestic industry is entirely self inflicted and cannot reasonably be attributed to imports.
- xiv. Profitability is improving for the domestic industry, it is clear that the domestic industry is already selling at a price where it may not be injured by any imports.
- xv. Due to varied sales realisations (and profitability for various products manufactured at the same plants, the cost should be judiciously allocated to ensure no additional costs are being loaded on to the product under consideration such as High Interest rates of Hindalco for Novelis Debt, Cost of Export Sales, Cost of other products and Captive Consumption of Ingots.
- xvi. Profitability of all products should be considered while calculating the NIP i.e. cost and ROCE may be allocated on turnover since the Applicants are deliberately leveraging their capacities in favour of value added downstream products
- xvii. The global slowdown in aluminium consumption did lead to substantial surplus capacities worldwide. However, there is now an increase in worldwide consumption and there are no longer any unutilized capacities anywhere.
- xviii. If there is a deficit in supply as forecasted by the Petitioners (Hinalco Presentation) themselves, there is bound to be an increase in prices since demand-supply forces would render it a seller's market if supply is in shortage.
- xix. There is no causal link between the volume of imports and the profitability of the domestic industry. The largest fall in profits in the entire injury period is in a year where there is no increase in imports at all. There is an increase in profitability from 2012-13 to 2013-14.
- xx. There is no relationship- between domestic sales quantity and imports
- xxi. Shift in focus and priority markets of the domestic industry has led to smaller volumes being sold domestically, whereby it is not the imports that are to be blamed rather the domestic industry's own priorities in terms of markets.
- xxii. Supply constraints of Alumina and shortage of coal have caused the Petitioners substantial cost impediments in their production as is evidenced by the Annual reports.
- xxiii. Largest cost in manufacturing aluminium apart from alumina is the cost of power and the Indian domestic industry has faced substantial obstacles with regard to power and energy costs as is seen from the Annual Reports.
- xxiv. The global pricing of Aluminium is largely influenced by the LME. Due to severely fluctuating prices as per the LME, prices across the world have been affected adversely, including the domestic industry as can be seen from the Annual reports.
- xxv. Imports from Bahrain in the latest period i.e. April 2013 to Dec 2013 are less than the prescribed threshold. Further, if all developing countries are considered (excluding Oman, South Africa and UAE which are above de minimis), the combined share in imports amounts to only 1.8% of the total

#### **Views of Importers/ User Industries/Associations**

##### **37. Bhoruka Extrusions Private Limited**

- i. The data is entirely false and given with a malafide intention to mislead.
- ii. Bulk of smelting capacity is used for these value-added products to earn higher profits.
- iii. Indian consumers are compelled to import more, as very less quantity of ingots is made available to them by the applicants.
- iv. "Unutilized capacities" and based on wrong figures given by them.
- v. The production of Nalco has slightly decreased from April'14 due to shortage of coal and is not affected by increase in imports.
- vi. Hindalco is affected due to high interest cost, shortage of coal and CBI enquiry on its allocation of coal mine.
- vii. The domestic aluminium prices are based on prevailing (LME prices + Main Japanese Port premium + 5% Customs Duty) X highest exchange rate prevailing in the country + Freight + other charges. Besides, freight from their plant to the factory of user is collected separately even though it is not collected from Japanese users.
- viii. The premium is basically the charge which is incurred to deliver aluminium from LME warehouse to consignee's port. In addition to MJP, the levy of customs duty is also added on domestic sale prices due to almost monopolistic situation prevailing in Indian Primary aluminium industry.

- ix. Since the LME prices are depressed, the companies' world over are faced with lower profitability and are taking steps to face the challenges.
- x. Due to 5% import duty and increase in Main Japanese Port Premium (MJP), they are able to sell at prices higher than international rates.
- xi. It is a known fact that the metal prices including aluminium are depressed globally but despite that the applicants are making good profits and are increasing their capacities regularly.
- xii. Hindalco has following expansion plans at different stages besides their existing capacity of 5,06,000 MT.
- xiii. Their profitability in 2013-14 is slightly reduced due to depressed global economy and high interest burden and due to their acquisition of Novelis, Europe where the company is incurring huge losses.
- xiv. Vedanta, like Hindalco is expanding at a rapid pace and has undertaken the following expansions to ramp up its aluminium capacity:
- xv. Nalco's financial results show that its profit in the current year will be better even in this depressed global economic situation and lower metal prices. Fall in LME prices has been suitably compensated by depreciation of Rupee by more than 20% in last 2 years.
- xvi. The imports have not affected Nalco at all as claimed in the petition. It also proves that it's possible to run a company profitably with strict financial discipline and efficient operations.
- xvii. Bauxite and coal which the Middle East manufactures has no natural source at their disposal and they import at very high cost whereas the primary producers in India have the natural advantage of local bauxite of one of the best quality and coal, the mining rights of which have been given to them by the Government at throw away prices, long back.
- xviii. The salary and wages cost of employees are minimum 40 to 45% higher for Middle East manufactures compared to India.
- xix. Suppliers from Middle East are fixing their selling price of aluminium metal at international price on the basis of LME as is done by Indian producers. Their prices are not lower as alleged by the applicants.
- xx. The importer in India, apart from this, pays customs duty, clearing charges and also bears transportation charges from the port till their factory.
- xxi. Selling price of both is same. There is no disparity or difference. The only difference is that in case of import, customs duty goes to Government Treasury but in case of domestic sale, the extent of customs duty of 5.6% goes to the pocket of these producers though it is the legitimate share of Government Exchequer.
- xxii. The imports into the country have to be analyzed, on the basis of data, to find as to how much imports are for home consumption and how much are for use as "inputs" for manufacture of products for export.
- xxiii. The import of aluminium is mainly against their export entitlements.
- xxiv. The correct production figures and compare the same with Import data give a totally different picture.
- xxv. The applicants are forced to exports to liquidate their inventory which is baseless and incorrect. All the applicants are exporting under a pre-planned long term strategy for various reasons; to fulfill exports obligation, to feed their associate companies abroad or for natural hedging to meet their currency exposures, taking advantage of depreciation in rupee, exports benefits etc. due to which the exports by them of aluminium ingots is also showing sudden surge in 2013-14
- xxvi. Exports they have better realization since they are getting export benefits as well as EPCG benefits.
- xxvii. Hindalco transfers a major portion to its associate company Novelis, Europe starving the Indian consumers.
- xxviii. Taking a total smelting capacity and showing production of only of some products is gross misrepresentation of the facts and is entitled for appropriate treatment.
- xxix. The export figure has conveniently been indexed to 2010-11. Annexure 7 attached with the petition the figures have been concealed, twisted and misrepresented by showing Indexed numbers at many places.
- xxx. Not given any comparable figures, rather using a vague statement that "the level of employment has marginally declined" which cannot be accepted at its face value. Companies in their published statement of accounts have shown increasing expenditure for their employees'.
- xxxi. "The productivity has declined in view of decline in production" is not possible when almost all the applicants have increased productions
- xxxii. The downstream industry is passing through one of the worst phase due low demand, rising interest cost, depreciation of rupee and global recession.
- xxxiii. Government at the Centre is presently trying hard to revive the economy and is announcing stimulus package involving fiscal and non-fiscal benefits of Crores of rupees. At the same time imposing safeguard duty on primary aluminium will be a step in the wrong direction since it will increase costs of all aluminium products and affect the demand across all sectors of the economy including infrastructure, automobiles etc. which are showing negative growths for the last few quarters.

### 38. Cable and Conductor Manufacturers' Association (CACMAI)

- i. Evidence of excess capacity has been claimed as confidential in Annexure 8 of the petition without assigning any reasoning
- ii. Domestic sale is given in absolute term but export sale is given in indexed form.
- iii. Closing stock of 2012-13 is 27(indexed) and opening stock of 2013-14 is 1(indexed) as per Ann 7 of petition, which cannot be.
- iv. The present petition does not demonstrate the extraordinary or emergency situation which warrants for imposition of Safeguard duty.
- v. A duty free import against advance license for manufacture of goods meant for export which has to be kept outside as these imports do not affect domestic market of India. Once we exclude the imports made against advance license there is no surge in imports.
- vi. A lot of imports has taken place under ICB at zero duty for notified power projects and these are also at par with consumption of goods outside India and should not be taken into account for the purposes of safeguards investigation.
- vii. There is no mention of any unforeseen developments.
- viii. Mere increase in imports cannot be a reason to impose safeguard duty. Every increase in import or availability of material at lower prices outside India is not bad and should not be discouraged.
- ix. No linkage between imports and claimed injury.
- x. It can be demonstrated that the (1) decline in domestic sales is attributable to export sales and lesser domestic demand in India and not to the imports of PUC and (2) decline in profit is attributable to higher interest burden and not due to the imports of PUC, based on figures, given in Annexure 7 of petition as below.
- xi. Export sales as well as total sales are going up.
- xii. The period during which profitability of Domestic Industry was declining, during the same period interest burden of Domestic Industry was going up and when interest burden of Domestic Industry started declining their profitability improved.
- xiii. Hindalco decline in profit is primarily due to lower aluminium LME realizations, weakening in demand and certain one offs. The cost pressure is on account of elevated crude prices.
- xiv. Annexure 7 of its petition has shown that the demand of the PUC during the period of investigation is reducing.
- xv. The major consumers of the PUC are power distribution industries, automobile industry and construction industry; going through a very bad phase and performing very poorly. The reduction in domestic sale of PUC by the domestic industry is attributable to reduced demand of the finished products which are using the PUC as raw material.
- xvi. Reason given for increased import is cheap electricity available to the exporter and the fact that India is a freight friendly market. These are external factors beyond the control of Domestic Industry and it would not be possible for Domestic Industry to make adjustment plan in respect of such factors.
- xvii. Aluminium ingot is a basic raw material which is used down the line by a number of industries which are small and medium scale industries giving employment to a large number of people. These industries also compete with imported products in the liberalised open economy.
- xviii. Any imposition of safeguard duty will lead to inevitable closure of many of the user industries leading to loss of employment and economic activity in the country and import of value added products like cable.
- xix. Further with import of value added cables even the ingot manufacturers will lose the domestic market.

### 39. All Indian Aluminium Extruders Council(Alex)

- i. Drop in the total production in 2013-14 is mainly on account of **Nalco** which cut production due to coal supply issues for its power plant.
- ii. .Contrary to the claim made by Hindalco & Vedanta their production of metal has increased during the period under investigation.
- iii. Manufacturers in order to add value will give the highest priority to production of Value Added Products (Billets, Wire Rods, Slabs) instead of Ingots, for the simple reason that their realisation from value added products are much higher compared to Ingots. The Value Added Products were prioritized over Ingots production
- iv. The Imports are more expensive than the domestic prices.
- v. It is important to check how much of the imports that the petitioner is showing in their petition are against duty free licences
- vi. The domestic producers are currently using the 5% import duty in their pricing for sales in the domestic market; effectively the 5% barrier (custom duty) is a straight profit to the Petitioners.
- vii. Any further increase in duty by Safeguard or any other mechanism will only add to the profits of the Domestic Aluminium producers.

- viii. The pricing formula of the Petitioner is based on the landed cost of imports (inclusive of all duties).
- ix. The Extrusion Industry is currently competing with Extrusion Imports from China. An increase in Raw Material cost due to the domestic producers mechanism of pricing on landed cost ( LME + International Premiums + Custom Duty + Safeguard Duty + Clearing charges) effectively will make extrusions produced in India expensive by 10% due to safeguard as against this Extrusions which can be imported at 5% Import Duty.
- x. This has lead to closing of a number of downstream product units and no fresh investments are being made in these sectors.
- xi. This has lead to loss of employment.

**40. Indian Electrical and Electronics Manufacturers' Association ( IEEMA)**

- i. Reduction of sales by the domestic Aluminum Producers-
- ii. The Domestic Downstream manufacturers use aluminium as raw material and not only do exports but also make Deemed Exports Supplies under International Competitive bidding (ICB) and supply to SEZ undertakings.
- iii. Low demand of conductors had resulted in the low demand of Aluminum.
- iv. Domestic manufacturers buy their raw materials including Aluminum under Duty Exemption Entitlement Certificate (DEEC) Scheme of foreign Trade policy by obtaining Advance Authorization against Project Authority Certificate issued to the project, on duty free basis.
- v. The Indian producers, preferred not to supply PUC on the matching cost of landed duty free imports due to the incidence of the Central Sales Tax (CST), due to which domestic manufacturers were forced to import.
- vi. Since the Aluminium producers had chosen not to participate in Deemed Export Segment, it is not fair for them to allege for surge in imports.

**Likely repercussion of SGD on PUC-**

- vii. The basic custom duty on finished goods is from 0% to 7.5% whereas Aluminum also attracts Basic Customs Duty of 5%.
- viii. Profit margin of conductor, cable and capacitor manufacturer are extremely slim
- ix. The imports of conductor, cable and capacitor, particularly from China would not have increase in cost and would swamp the Indian market, having adverse effect on the downstream manufacturers, creating huge unemployment and social unrest, resulting in sick industries.
- x. SGD will prove counterproductive for the Indian aluminium producers due to closure of user industries.

**41. JSK Industries Pvt. Limited-**

- i. Petitioners prefer to make more of other products having higher value addition curtailing ingot production.
- ii. During the POI, petitioner companies had resorted to production cuts due to non availability of raw material bauxite & coal. Also there were natural calamities like floods resulting in power outage which in turn led to closure of pots in the production line and resultant shortfall in metal output.
- iii. Petitioner companies had also consciously decided to cut production due to low prices prevailed in LME.
- iv. Problems faced by petitioner companies were not creation of aluminium user industries. By not properly disclosing these factors to DG (Safeguards), petitioner companies are misleading the authorities.
- v. During the POI petitioner companies have substantially added capacity and increased their sale of wire rods and other products substituting the ingot sale.
- vi. Shadow pricing : Globally aluminium ingot, like other base metals, is sold on the basis of market price quoted in (LME and not sold on cost plus pricing). Petitioner companies price the metal at LME plus applicable Premium converted into Indian Rupees and applicable customs duty and all statutory levies and surcharges. Thus, they are currently enjoying a "Safeguard" of 5%customs duty and surcharges because they do not actually pay any customs duty on domestically manufactured metal products.
- vii. Since LME price keeps fluctuating, it is necessary to keep adjusting the shadow price in tandem with LME price movements. While petitioner companies are very prompt in ' increasing their price for any upward movement in LME, they do not promptly reduce the shadow price when LME price show downward trend.
- viii. Petitioner companies should keep their prices marginally lower not only to prevent import but also as incentive to compensate for longer credit period at lower interest rate one can get from imported sources.
- ix. The import data of ingots submitted by the petitioner companies is for total imports. More than 50 % of import is against export incentives which cannot be stopped to "Safeguard" the petitioner companies.
- x. Compared to the overall demand, import is very negligible to cause any injury to metal giants like the petitioner companies who are global players.
- xi. Export of ingot from India is about three lac tons annually and growing
- xii. How can the import be prevented by safeguard when export of same product is freely permitted.
- xiii. Petitioner companies have been continuously adding capacity eyeing global market. They have the advantage of low cost producer because our country is rich in natural resources bauxite & coal required to

produce aluminium. The very fact that they are on continuous expansion is the proof that they are making huge profit.

#### 42. **Jindal Aluminium Pvt. Ltd.**

- i. Artificial segregation of aluminium Ingots and aluminium in billets, conductors, rolled products/extruded products etc. produced as per the choice of the Domestic Industry is not justified as they are like or competitive articles.
- ii. Actual export sales data has not been furnished by them.
- iii. Every month for first 15 days they export their entire production and do not supply metal to domestic needs creating artificial shortage.
- iv. Selling price of the Domestic Industry is identical with the price at which the foreign exporters sell it to the Indian users since both of them use the same LME price based pricing formula. Hence, the argument of lower price offered by the foreign exporters in view of their low energy cost etc. is not tenable.
- v. Whenever LME goes up, Primary Producers increase the price promptly but when LME prices come down, they do not show such promptness giving room for imports.
- vi. Import price is lower to the extent of customs duty relief in case of imports made for exports. This benefit should not be attempted to be taken away by the Domestic Industry by requesting the imposition of Safeguard Duty. Benefits of imports under FTA with other countries cannot be taken away by imposing safeguard duty.
- vii. Massive expansion of their production capacity particularly for other competitive products along with the lower LME prices is the main reasons for their reduced net profits
- viii. Since NALCO enjoys significant market share in Aluminium Industry in India, their absence from this application itself indicates that there is no need to levy Safeguard duty.
- ix. There is no significant price difference between the imported and domestic product
- x. There is no large scale increase in the imports of the product in a relatively short period. Imports of the product which went up by 67% during 2012-13 have actually come down to about 25% during 2013-14.
- xi. There is consistent profit as per the Balance Sheet -the reduction in Net profit of Hindalco is due to enhanced finance costs, depreciation etc and is self inflicted minor injury which cannot be linked to increased imports.
- xii. The production of ingot has not increased significantly only because the applicants do not want to increase and they have increased production of other products to increase their profitability.
- xiii. The capacity utilization in their application is 42% to 44% which shows that there is no decrease in their capacity utilization.
- xiv. Imported price and the domestic price are based on the same LME price based formula there is practically no difference in these prices.
- xv. Though the net profits of Hindalco have been falling, they are still making reasonably high profits. The reduction in net profits is mainly due to reduction in LME prices leading to reduced selling prices, high finance costs and depreciations due to massive expansion projects etc. not due to increased import of Ingots.
- xvi. The marginal reduction in employee's strength is due to attrition and automation in their plants which is deliberate to enhance their profits and cannot be linked to the increased Import of Ingots.
- xvii. DI has not been able to establish any injury either to production, sales, productivity, capacity utilization or employment. Indexed values of profits in various years are grossly misleading since it shows reduced profits as losses.
- xviii. Increase in wire rod & billet sales which gives higher margin has lead to reduction in Ingot sales.
- xix. No neighboring country is levying any customs duty on imported Ingots which is 5% in India. There is a strong case for withdrawal of this customs duty in India.

#### 43. **APAR Industries Ltd. (Conductor Industry)**

- i. It is not factually correct that the imports have increased at the expense of the local Aluminium producers' sales
- ii. Imposition of Safeguard duty would result in a proportional increase in the cost to the Conductor Manufacturers and the imported conductors from China would swamp the Indian Conductor market . Being a fragmented industry, there is no possibility of seeking a safeguard protection for the conductor industry.
- iii. Indian manufacturers will be out priced by the Chinese conductor manufacturer and conductor industry would collapse.
- iv. If the conductor manufacturers in India are closed down, then the Aluminium producers in India will not have any business from India and safeguard duty would prove counterproductive to the PUC (Aluminium) producers as well.

44. Further, besides above submissions, representations from the following parties, not registered as Interested Party in the case, have been received protesting imposition of safeguard duty on 'Aluminium Ingots'.

1. M/s MAAN Aluminium Ltd.
2. Boregaon Industries Association
3. Maharashtra Conductor Association
4. Shiva Chetana Electricals, Karnataka
5. VR Patil Vividh Vidyut Nirman Pvt. Ltd. Karnataka
6. Sterling & Wilson Limited, Mumbai
7. EMC Ltd. (JV) Shrinivas Electricals, Nasik
8. Vidarbha Electrical Contractors Association, Nagpur
9. Vidarbha Industries Association, Nagpur
10. Binayak Aluminium Private Limited
11. Orissa Aluminium Utensils Manufacturers' Association
12. Federation of All India Utensils Manufacturers
13. M/s Everest Aluminium Pvt. Ltd.
14. Kingdom of Bahrain
15. High Commission of Malaysia
16. Alom Extrusions Ltd., Kolkata
17. Sudal Industries Ltd.
18. Rakhi Agencies Ltd.
19. Indo Alusys Inds Ltd.

**V. Rejoinder submissions by other Interested Parties.**

**45. Cable and Conductor Manufacturers' Association of India (CACMAI)**

- i. Domestic Industry in its written submission has actually accepted that there is no injury as in totality the number of parameters have shown improvement in the most recent period. There is no mention of any unforeseen developments and no creditable and viable adjustment plan has been given.
- ii. The capacity utilization of Domestic Industry suggest that imports were inevitable and they are caused by Domestic Industry inability to produce more for domestic market as no extra capacity was left unused.
- iii. Domestic Industry is claiming increase in imports and reduction in market share during the period when their production, capacity utilization, export sales and most importantly the profitability and return on investment (ROI) has shown significant improvement. Therefore there is no injury which can be attributive to increase in imports.
- iv. The decline in domestic sales is on account of Domestic Industry prioritizing export markets. Had they been forced to export by dumping the products at throw away prices in export market their profitability would have been gone down.
- v. Domestic Industry before authority are claiming injury attributable to imports whereas the NALCO has not joined the investigation and has not claimed any injury on account of increase in imports.
- vi. It is evident that a large quantity of PUC has been imported for the purposes of re-export. There is no surge in imports for consumption in domestic market at all as alleged by Domestic Industry. The imports meant for domestic market did not increase at all.
- vii. None of the reasons for increased imports given by Domestic Industry are real reasons for import. In any case there not unforeseen at all..
- viii. Overall examination of parameters of Domestic Industry does not suggest any kind of injury to them..
- ix. Domestic Industry claims that there are no factors other than increased imports, which are causing injury and in the same para it accepts that demand of PUC in India has declined and the export of PUC has gone up.
- x. Since there is no injury to Domestic Industry there is no need to go for causal link analysis. Further the less than expected growth of Domestic Industry is attributable to factors other than increased imports.
- xi. The members of CACMAI and every other industry is competing with imported products and they will not be able to pass on any increase in cost on account of safeguard duties down the line. The user industries down the line are also producing the goods in India and giving employment to much more people compared to Domestic Industry. If user industries are closed that will be definitely against public interest and also against the interest of Domestic Industry because in that case to whom they are going to sell the products.
- xii. Domestic Industry does not have any idle capacity to cater any extra demand and the imports have taken place because of their inability to cater the domestic demand.

- xiii. Without imposition of duty all the parameters of Domestic Industry in the recent past has shown significant improvements.

**46. APAR Industries Ltd.**

- i. The conductor segment is practically half the volume of the Aluminium market and have to compete with foreign companies, particularly those from china. Safeguard duty if imposed, would make the Indian Conductor Industry non competitive leading to massive deluge of imported (Chinese) conductors.
- ii. It is neither in the interest of the Indian Conductor Industry nor the Indian Aluminium Industry to lose the Indian market for conductors since it would mean wiping out 100% of the Indian Conductor Industry and 50% of the Aluminium consumption which goes in the Indian Conductor Industry. It has been already seen that in the case of Insulator Industry, Powergrid and other users had switched over to Chinese insulators when they were cheaper to Indian Insulators.
- iii. The proposed safeguard duty is not in the general Public- at- large Interest as it will ultimately raise the cost of electricity and many other consumer products.

**47. Indian Electrical and Electronics Manufacturers Association (IEEMA)**

- i. Strong objection on the views of the domestic industry's submissions pertaining to Public Interest.
- ii. Other submissions are similar point-wise as reflected above by APAR Industries Ltd.

**48. M/s Aluminium Bahrain BSC through M/s ELP Advocates and Solicitors**

- i. The petition has not been fully examined.
- ii. There is an absolute increase in imports but mere increase in imports is not sufficient for the levy of safeguard duty.
- iii. Bahrain being a developing country with a de minimus share in imports ought to be excluded from the purview of the present investigation.
- iv. Injury figures and public domain reports indicate that any injury caused to the domestic industry is self inflicted.
- v. There is no threat of the injury to the domestic industry as per its own estimates in the public domain.
- vi. There is a severe breach in causal link as there is no correlation between rise in imports and injury parameters
- vii. Other factors are responsible for injury.

**49. UAE, Ministry of Economy**

- i. None of the listed factors constitute 'unforeseen developments' and demonstrate that the increase of imports of the PUC to India is linked to the surplus capacity in the Middle East.
- ii. Petition shows that Indian demand for the PUC decreased in the most recent period of investigation. Petitioner provided known data about the Middle East enhancement of capacities of production but failed to demonstrate that the increase of imports of the PUC to India is linked to the surplus capacity in the Middle East.
- iii. The petitioner's claims that there exists significant demand supply gap in UAE which has led the Middle East countries to aggressively target the Indian market is without basis as is evident by the import data of the PUC from UAE or other Middle East countries over the last decade.
- iv. Safeguard investigation does not target unfair imports but fair imports without any allegation of an unfair trade practice, which ultimately overturns the petitioner's allegations of being aggressively targeted by Middle East Countries.
- v. Detailed import data of the PUC from UAE transaction wise should be provided.
- vi. The financial documents of the domestic industry clearly establish that there is no injury or threat of serious injury. Rather these documents demonstrate that the petitioners are ameliorating their financial situation for the financial year 2013-14.
- vii. The trends in imports of the product under consideration seem to have no impact on the movements of the relevant injury indicators of the applicants
- viii. Other factors had a major impact on the performance of the petitioners breaking any link between increased imports and the alleged injury
- ix. There is a significant decrease in the demand of the product in the most recent POI of 2013-14 which caused the lost of sales and market share of the DI. There is correlation between the trends in demand and the domestic industry performance, especially the domestic sales.
- x. The data pertaining to the period 2012-13 shows clearly that imports have no direct impact on the petitioners export performance, as the increase of imports during this period have had no impact on the petitioners exports which declined to its lowest level over the period of investigation. Exports

- performance is driven by the petitioners business opportunities in export markets at the expense of domestic market.
- xi. The petitioner did not make any comment pertaining to LME depressed prices and its impact on the petitioner as it merely demonstrate that the alleged injury to the DI is not attributed to imports but to the lower LME trends in prices.
  - xii. Despite the significant fall in LME prices of aluminium over the POI by around 25% to 30%, there is no corresponding decrease in the selling price
  - xiii. The petitioners claims pertaining to price injury are not justified because the petitioners were always increasing their selling price over the period of investigation on one hand , and on the other hand, imports might be below the petitioners selling price because merely the petitioners did not reduce their prices in consideration of LME falling prices over the same period, instead the petitioners keep increasing their selling prices and not passing the drop of LME prices to consumers and users in order to maintain their profits as established in the annual reports and financial documents of the petitioners.
  - xiv. There is no case of cheap imports from UAE or Middle East countries as they are entirely in line with the worldwide pricing mechanism of primary aluminium based on LME prices + premium and petitioners did not even challenge this fact.
  - xv. Imposing safeguard duty will only lead to the increase in petitioner's profits at the cost of increase of the price of raw material for extrusion industry and the cost of the finished goods i.e. extrusions will go higher
  - xvi. The imposition of a safeguard measure would not be in the public interest because it will merely inflate aluminum prices in the Indian market which would have negative impact on key end users of this product in the Indian market.

## **VI Rejoinder to Post PH Submissions by Domestic Industry**

- i. The PUC is different from aluminium billets, conductors, rolled products/extruded products etc products as ingots are continuous cast items whereas others like bar, rod, plate, sheet, wire are drawn items, hot rolled or cold rolled. They are also different stage products in the manufacturing process and as per Customs Tariff Act 1975, Aluminium Ingots, billets, conductors are classified separately as different products.
- ii. The only reason why consumers have imported the product is because of lower price at which imported product was available. The foreign producers are giving long term credit and at much lower interest rate which has motivated the consumers to import the product.
- iii. On one hand, the parties have contended that the foreign producers and domestic producers are pricing their product on the basis of LME and on the other hand, they have contended that the domestic industry does not reduce its prices when LME comes down. If domestic industry's price is based on LME price, it follows that it moves along with LME.
- iv. The objective of FTA was not that it would result in trade distortion and would lead to surge in import; nor the objective of the FTA was that reduction of customs duty in FTA should lead to serious injury to the domestic industry. The submission made makes it evident that the consumers found imported product cheaper as a result of FTA.
- v. The surge in imports has led to decline in sales volumes and market share of the domestic industry.
- vi. NALCO is a public sector company. It is for the NALCO to consider their performance and seek redressal about the same. The facts on record clearly establish that the domestic industry has lost significant sales volumes and market share. Similarly, NALCO has lost significant sales volume and market share. It is possibly because of PSU status of the company and the constraints with a PSU company in approaching government for redressal of injury being caused due to increased imports that the NALCO possibly has not participated in the investigations so far.
- vii. The petitioners have not claimed injury on the basis of decline in production and capacity utilization.
- viii. It is not necessary that all parameters must show deterioration. The WTO Panel in the matter of United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities, upheld by the AB Report has held that performance of the domestic industry may be established in one or more parameters.
- ix. The argument of increase in wire rod & billet sales which gives higher margin has led to reduction in Ingot sales, is without basis. Increase in Wire Rods and Billets should have led to decline in production of

the product under consideration. The decline in production could have led to decline in sales. However, in the instant case, production marginally increased whereas domestic sales significantly declined.

- x. The neighboring countries are not producing aluminium ingots. Furthermore various impose custom duty on ingots, such as Europe, USA, Russia, Brazil, developed countries Industry to given inputs.
- xi. Interested Parties have no factual basis to contend that the data given in the notice of initiation is incorrect.allthe relevant information has been provided to the Director General (Safeguards).
- xii. There is no merit in the argument that DI export their entire production and do not supply metal to domestic needs creating artificial shortage. The domestic industry has been constrained to export only because they have not been able to sell in the domestic market.
- xiii. The petitioners have used data for 2013-14 at the time of Public Hearing. Further, written submissions filed by the petitioners are based on data for the period upto March 2014. Thus, the Interested Parties have got sufficient opportunity to comment on the data adopted by the petitioners.
- xiv. Petitioners have claimed only such information as confidential, confidentiality of which is protected under the law. There is no specific instance pointed out by the Interested Parties which shows that the information was publicly available and the petitioners have suppressed the information.
- xv. The information for 2012-13 clearly covers the period of investigation. There is no requirement under the law that the information should cover entirety of the period of investigation. Further, petitioners have shown increasing imports from Middle East in Indian market. Petitioners have also shown declining imports into Middle East over the injury period.
- xvi. The interested parties have submitted that it has not been demonstrated that the increase in imports into India is attributable to the alleged surplus capacity in the Middle East.The petitioners have provided information based on published source. The exporter has not demonstrated that the actual facts are contrary to the facts reported by the petitioners. In fact, the exporter has not even demonstrated based on its own data that there is no surplus capacity with the exporter and the exporter is selling entire volumes in the domestic market; nor has the exporter demonstrated that its production and sale constitute a significant proportion of production and sale in Middle East.
- xvii. The petitioners have referred to the events happening in 2012 and 2013. Increase in imports in the recent period is required to be considered in the light of events occurring in the recent period. It cannot be a situation that increase in import is determined considering 2013-14 data and the unforeseen events should be seen in 2010-11.
- xviii. The pattern of import into India clearly demonstrates that the excess capacity has been diverted to India. Imports into China have significantly declined and foreign producers are facing decline in their sales in other markets.
- xix. Low energy cost in the Middle East is a widely known fact, however, emergence of significant capacities in these regions far disproportionate to domestic demand is clearly an unforeseen development. These capacity additions have been made in order to sell the product outside domestic market, such as India.
- xx. The argument of Interested Parties that the focus is on the value added products since they yield higher returns and the leftover material and capacity is then utilised for the product under considerationcould have been relevant only if production of the petitioners for the product under consideration would have shown a decline and only if the petitioners had claimed injury to the domestic industry on the basis of decline in production.
- xxi. Capacity utilization of the company is irrelevantthat they have not claimed decline in production or capacity utilization as the factor establishing injury from increased imports,.
- xxii. There is no basis for the argument that sales volumes declined due to greater increase in exports. The fact is that faced with decline in domestic sales, the domestic industry was constrained to export the product.
- xxiii. It is the increase in imports which has led to decline in sales volumes of the domestic industry. The significant price undercutting between imports and domestic price clearly shows that the consumer preferred imported material because of the fact that price of imported product was lower than the price of the domestic product.

- xxiv. The DI had reported profitability by following a methodology which has been consistently applied over the injury period. Further, petitioners have got their cost of production and profit statement certified from a practicing Cost Accountant. The cost accountant has done detailed scrutiny of the cost of production and profit statement and has determined cost of production and profit based on their accepted norms. The profit in the product under consideration has therefore been determined at different level by the cost accountant. Therefore, the domestic industry has revised the calculations of profits. At the same time, it was noticed while consolidating the data that there were consolidation errors in the profits claimed earlier. Further, increase in profitability in 2013-14 is not on account of improvements in operational profitability of the product. The increase in profits in 2013-14 is on account of (a) significant reduction in interest costs in 2013-14, (b) increase in realization due to improvement in exchange rate.
- xxv. Since safeguard investigations are product specific, the cost of production, non injurious price, selling price and profitability needs to be determined only by considering product under consideration. These parameters in respect of products not included in the present petition are entirely irrelevant.
- xxvi. The data presented in the petition clearly shows not only existence of surplus capacities, but also rising capacities for the product.
- xxvii. The domestic industry benchmarks its prices to LME prices and therefore there is no reason why the prices should change disproportionate to the changes in LME.
- xxviii. It has been argued that there is no relationship- between domestic sales quantity and import. It is submitted by the DI that the argument is not correct, despite increase in production, sales of the domestic industry have declined significantly in current year with the increase in imports in this period. Further, the market share of the domestic industry declined sharply, whereas the market share of imports increased. It would also be seen that the demand for the product declined in the most recent period and the imports surged. Thus, the surge in imports is despite decline in demand for the product in the Country. As a result of decline in demand, the volume of imports should have also proportionately declined. However, the volume of imports surged. Further, even in 2012-13, the increase in imports (68%) was far higher than the increase in sales of the domestic industry (13%).
- xxix. The profits have declined due to increased imports but the domestic industry earned profits due to “other factors”. Under the Rules, the Director General (Safeguards) is required to segregate other factors. Therefore, profits of the domestic industry due to other factors are required to be segregated. Once this is done, profits of the domestic industry shows decline,
- xxx. Fluctuation in LME price is nothing unusual. However, the fluctuations in LME prices do not adversely impact the producers and the consumers of the product under consideration. The producers tend to insulate their performance from possible adverse affects of fluctuations in LME prices by obtaining orders and immediately booking raw materials.
- xxxi. Imports from Bahrain are at present below the limits prescribed of developing countries. On this account, the Bahrain producer should not be even considered as an affected party.
- xxxii. Middle East is exporting large volumes and producers in Middle East are exporting at prices significantly lower than rest of the world. This has resulted in increase in imports from Middle East even when imports from other countries declined.
- xxxiii. The total Indian production referred by the Interested Party from Minerals and Metals Review Magazine is based on total Indian Production is of Hot metal and not the product under consideration.
- xxxiv. Novelis is not incurring losses. Further, the information provided by the domestic industry is in respect of (a) Indian entities, (b) for product under consideration and (c) domestic operations of the product under consideration. Performance of other units outside India is therefore not even included in the data provided by the domestic industry.
- xxxv. Merely because imports of Aluminium Ingots have surged, does not mean that the domestic industry should close operations or terminate expansion plans. Expansion plans are long drawn exercise. The domestic industry has invested Rs. 27,000 crores in expansion and these started in the year 2009-10. The market was not suffering from surge in imports when the industry planned these expansions
- xxxvi. The studies done by CRU and Wood Mckenzie show that that the cost for middle eastern countries is significantly less as compared to India. This is mainly because of the low rates of energy cost which forms a major part of the cost of the product.

- xxxvii. Increased imports are required to be considered by considering imports into India. Segregation of duty free and duty paid imports cannot be made for the purpose. No duty is payable on imports for exports. Hence, imposition of safeguard duty in any case would not impact the consumers.
- xxxviii. Price of the domestic industry is based on LME, as has also been accepted by other Interested Parties. Therefore, if domestic industry's price is based on LME price, it follows that it moves along with LME.
- xxxix. No Exports have been made to Novelis Europe.
- xl. The domestic industry has not claimed excessive confidentiality. The information on export sales of the domestic industry is not publically available information. Furthermore, export sales are not a criteria to determine existence or non existence of injury in the domestic market. Moreover, the fact whether exports have increased or decline can be very well ascertained from the indexed figures.
- xli. Claimed injury is not on account of production. However, it is a matter of fact that decline in productivity is on account of decline in production.
- xlii. Evidence and data used for substantiating the grounds of unforeseen development has been given. It is the relevant extract of the reports that have been claimed confidential as they have been obtained with confidentiality clause.
- xliii. Emergence of China, from a stage of being a net importer of product, to a stage of self sufficiency and even becoming an emerging player in the global market was unforeseen. Therefore, excess capacity built up by Middle Eastern countries focusing China had to be diverted to India.
- xliv. Despite decline in demand, imports have surged causing injury to the domestic industry which is already battling low demand issue in the country.
- xlv. Considering almost negligible impact on the eventual end product and considering that survival of the domestic industry is must, it must be concluded that the imposition of safeguard duty shall be in public interest.
- xlvi. The domestic industry has given a detailed adjustment plan focusing on reduction in energy consumption, raw material cost reduction, reduction in manpower cost and melts loss. All this has been quantified and have been submitted to the Director General.
- xlvii. The product has a dedicated custom classification code. Imports coming under this code have only been treated as subject imports. None of the exporter from UAE has cooperated and provided relevant information.
- xlviii. In 2011-12, imports declined and domestic industry's sales declined. Therefore, the domestic industry had no complaints. In 2013-14, domestic industry sales declined and imports surged and therefore, the domestic industry is suffering injury because of increased imports.
- xlix. It is mere presumption that the prices would increase by the quantum of safeguard duty. The domestic industry intends to continue with its pricing policy as was being followed by the domestic industry in the past.
- l. Imports of the product under consideration have increased in absolute terms, in relation to production, sales of the domestic industry and consumption in India. As a result, the market share of the domestic industry has declined. Imports are undercutting the prices of the domestic industry which has resulted in decline in profitability and ROI.
- li. Domestic industry has followed the same pricing policy as was being followed by the domestic industry earlier. In fact, the domestic industry has been forced to compromise on the pricing methodology that was being followed by the domestic industry because of lower prices being offered by the foreign suppliers. Since foreign suppliers gave discounted prices, the domestic industry was not able to even maintain its earlier pricing policy.
- lii. The consumers have actually preferred imports because they found imports more lucrative than the domestic prices. Longer credit period at lower interest rate is one of the reasons for increased imports.
- liii. Petitioners have not sought safeguard duty on imports for exports. Further, safeguard duty in any case does not apply on imports for exports.

liv. Share of imports in demand/consumption of the product in the country is 29% which cannot be considered as negligible.

lv. Exports of ingots from India is given below:

	Unit	2010-11	2011-12	2012-13	2013-14
Exports (MT)	MT	133,658	118,354	74,606	221,018
Domestic sales (MT)	MT	416,993	408,225	461,509	342,800
Demand (MT)	MT	740,674	703,937	765,688	657,698
Trend					
Exports (MT)	Index	100	89	56	165
Domestic sales (MT)	Index	100	98	111	82
Demand (MT)	Index	100	95	103	89

It would be seen that the domestic industry is faced with decline in domestic sales which has forced the domestic industry to increase exports. The domestic industry would not gain anything by seeking imposition of safeguard duty, if the focus of the domestic industry is on exports.

lvi. Exports from India are a result of imports into India. If imports of the product decline, exports of the product would automatically decline. The domestic industry does not gain anything by seeking of safeguard duty if the domestic industry is not willing to sell in the domestic market.

lvii. Claimed injury to the domestic industry is despite the present competitive situation of the domestic industry. While JSK has contended that the domestic industry is competitive, other Interested Parties have contended that costs in Middle East are significantly lower (i.e., domestic industry is uncompetitive). Notwithstanding their contrary positions, the petitioners have given the factual information which shows that the domestic industry has suffered injury as a result of increased imports.

## VII. Examination & Findings:

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

### (A) The product under investigation:

50. The product under consideration (PUC) in the present case is "Not Alloyed Ingots of Unwrought Aluminium". The product scope specifically excludes Alloyed Ingots and all products of aluminium not in ingot form, such as billets, bars, rods etc. PUC is a basic form of cast aluminium (unwrought). It is made by the process of solidifying the liquid hot metal by pouring into a mould. The aim is to make the metal easy for handling and transportation. Aluminium Ingots are available in various shapes and sizes (std – 20 to 24 kg to sow ingots – 450 to 700 kg). Liquid aluminium is produced by the electrolytic reduction of alumina ( $Al_2O_3$ ) dissolved in an electrolyte (bath) mainly containing Cryolite ( $Na_3AlF_6$ ). The overall chemical reaction can be written as:  
 $2 Al_2O_3$  (dissolved) +  $3C(s) = 4 Al(l) + 3CO_2(g)$  (1)

50.1 Prebaked technology is used in manufacturing PUC. In prebaked technology the anodes used are termed as prebaked anodes which are made from a mixture of petroleum coke, aggregate and coal tar pitch binder moulded into blocks and baked in separate anode baking furnace at about 1120 degree centigrade. An aluminium rod with iron studs is then cast or rammed into grooves in the top of the anode block in order to support the anode and conduct the electric current to the anode when it has been positioned in the cell. On production of liquid hot metal it is then transferred to the Casting stations.

50.2 PUC is classified under Customs sub-heading nos. 76011010 of Chapter 76 of the Customs Tariff Act, 1975. It is used in electrical industry, utensils & other customer durables, transportation, packaging, building and construction, steel de-oxidizing, pyrotechnics biz., foundry, casting and other industrial & engineering equipments. Accordingly, it is also held that domestically produced Not Alloyed Ingots of Unwrought Aluminium falls under the ambit of like or directly competitive article in all respects to the imported product under investigation and that the domestically produced Not Alloyed Ingots of Unwrought Aluminium is a like article to the imported Not Alloyed Ingots of Unwrought Aluminium within the meaning of Rule 2(e) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

**(B) Domestic Industry:**

51. Section 8B(6)(b) of the Customs Tariff Act 1975 defines Domestic Industry as follows:

- (b) *“Domestic Industry” means the producers –*  
(i) *as a whole of the like article or a directly competitive article in India; or*  
(ii) *whose collective output of the like article or a directly competitive article in India constitutes a major share of the +total production of the said article in India;”*

51.1 M/s Hindalco Industries Ltd (manufacturing plants at Renukoot and Hirakud) M/s Sesa Sterlite Ltd (manufacturing plant at Jharsuguda) and M/s Bharat Aluminium Company Ltd (manufacturing plant at Korba) are the three applicants constituting domestic industry in this case. The domestic industry has claimed that their production of PUC accounts for 71% of the total production of PUC in India and thus they have the standing to file the present petition. Accordingly, it is held that the applicant domestic producers constitutes and represents the Domestic Industry (DI) within the meaning required and defined under Sec 8B(6)(b) of the Customs Tariff Act, 1975.

**(C) Source of information:**

52. The import data for the product under consideration has been taken from DGCI&S as provided by the applicants and verified from the monthly CDs of DGCI&S received in the Directorate. Further, the domestic data pertaining to economic parameters for the period from 2010-11 to 2013-14 (upto Dec 13), has been verified on the basis of central excise records of the domestic industry to the extent possible, through on-site verification of the manufacturing units of the applicants and such verified data for the POI has been taken into consideration for injury analysis. During the course of the present investigation, data for additional period, i.e., till Mar’2014 in respect of various economic parameters have been considered as per central excise records as furnished by the applicant, duly certified, in order to arrive at yearly consolidated data for the year 2013-14 for injury analysis. The additional information was made available to interested parties through Public File as required under Rule 6(7) of Safeguard Rules 1997. The data for three years or longer has been provided by the Domestic Industry in the form and manner decided by DG (Safeguard) under Rule 5(2) of Safeguard Duty Rules 1997 r/w the Trade Notice No-SG/TN/1/97 dated 06/09/1997. The non-confidential version of the verification report has been placed in the public file for comments by all concerned. The cost data and calculations of injury margin have been provided by the petitioner duly certified by an independent Cost Accountant.

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

53. Neither the Customs Tariff Act, 1975, nor the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, specifically define ‘period of investigation’ or the minimum period to be considered for a Safeguard investigation. The WTO Agreement on Safeguards does not contain any general or specific provision or guidelines for choosing the investigation period. However the issue of period of investigation has been dealt in detail in Panel findings in US-Line Pipe Case against Korea. The Panel in this case ruled that it is up to the discretion of the investigating authority of the importing Member to decide the “length of the period of investigation” and its “breakdown”:

*“We note that the Agreement contains no requirements as to how long the period of investigation in a safeguards investigation should be, nor how the period should be broken down for purposes of analysis. Thus, the period of investigation and its breakdown is left to the discretion of the investigating authorities. In the case before us the period selected by the ITC was five years and six months, which is a period similar in length to the one used by the Argentine investigating authority in Argentina-Footwear Safeguard. However, we note that the Appellate Body, in the findings relied upon by Korea to argue the question of the length of the period of investigation, emphasized not the length of the period per se, but that there should be a focus on recent imports and not simply trends over the period examined. In the case of the line pipe investigation the ITC did not merely compare end points, or look at the overall trend over the period of investigation (as Argentina had done in the investigation at issue in Argentina-Footwear Safeguard). It analyzed the data regarding imports on a year-to-year basis for the 5 complete years, and*

also considered whether there was an increase in interim 1999 as compared with interim 1998. We are of the view that by choosing a period of investigation that extends over 5 years and six months, the ITC did not act inconsistently with Article 2.1 and Article XIX. This conclusion is based on the following considerations: first, the Agreement contains no specific rules as to the length of the period of investigation; second, the period selected by the ITC allows it to focus on the recent imports; and third, the period selected by the ITC is sufficiently long to allow conclusions to be drawn regarding the existence of increased imports.”(paras. 7.196, 7.199 and 7.201)

53.1 The Panel in the same US-Line pipe case ruled that:

*“In a safeguard investigation, the period of investigation for examination of the increased imports tends to be the same as that for the examination of the serious injury to the Domestic Industry. This contrasts with the situation in an anti-dumping or countervailing duty investigation where the period for evaluating the existence of dumping or subsidization is usually shorter than the period of investigation for a finding of material injury. We are of the view that one of the reasons behind this difference is that, as found by the Appellate Body in Argentina – Footwear Safeguard, “the determination of whether the requirement of imports “in such increased quantities” is met is not a merely mathematical or technical determination.” The Appellate Body noted that when it comes to a determination of increased imports “the competent authorities are required to consider the trends in imports over the period of investigation”. The evaluation of trends in imports, as with the evaluation of trends in the factors relevant for determination of serious injury to the Domestic Industry, can only be carried out over a period of time. Therefore, we conclude that the considerations that the Appellate Body has expressed with respect to the period relevant to an injury determination also apply to an increased imports determination.” (Para 7.209)*

53.2 From the above it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguard and Article XIX of GATT provide specific guidelines on the period of investigation. However, in the spirit of the references cited above, it appears that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury and it should not only end in the very recent past, but the investigation period should be the recent past.

53.3 Considering that the period selected should be sufficiently long to allow conclusions to be drawn regarding existence of increased imports and to neutralize the effect of seasonal variation, data has been considered on year to year basis, from financial year 2010-11 to 2013-14. In the Notice of Initiation, import data up to December, 2013 had been considered on annualized basis. The import data has since been updated till March, 2014. The domestic data has been taken as per verified central excise records and data submitted by the DI, duly certified till 2013-14. Therefore, considering these facts, and source of information stated above, it is considered appropriate to adopt data for the period 2010-11 to 2013-14 for the purpose of the present investigations which is considered as the Period of Investigation (hereinafter referred to as POI) in this case.

**(E) Confidentiality of information submitted:**

54. Rule 7 of the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 and Article. 3.2 of WTO Agreement on Safeguards provides for confidentiality treatment to certain information. The rules provide that an Interested Party is not required to disclose such information on actual basis which is confidential information of the company and disclosure of which can cause serious prejudice to the business interests of such party, which is not in public domain and which the petitioner has not disclosed before public at large in the past.

54.1 The Domestic Industry has provided some information on confidential basis and sought confidentiality on the information /data submitted. The Domestic Industry provided non- confidential version of the application for safeguard measure as per the provisions of Safeguard Rules 1997 and Trade Notice No. SG/TN/1/97 dated 06.09.1997.

54.2 Further, the Domestic Industry has submitted reasons for seeking confidentiality at the time of filing the application, which appears to be reasonable and, therefore, has been accepted, whenever claimed.

**(F) Increased Imports:**

55. Section 8B of Customs Tariff Act, 1975 deals with the power of the Central Government to impose Safeguard Duty and provides as follows:

*“If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article.”*

55.1 The Rules mandate increase in imports as a basic prerequisite for the application of a safeguard measure. Thus, to determine whether imports of the product under consideration have “increased in such quantities” for purposes of applying a safeguard measure, the rules require an analysis of the increase in imports, in absolute terms or in relation to domestic production.

55.2 Rule 2(c) of Customs Tariff ((Identification and Assessment of Safeguard Duty) Rules, 1997 provides as follows

*“(c) ‘Increased quantity’ includes increase in imports whether in absolute terms or relative to domestic production*

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

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

55.4 The Panel on US — Wheat Gluten<sup>4</sup>, interpreted the phrase “in such increased quantities” as follows:

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

55.5 The analysis of the increased imports of the product under consideration has been conducted in the light of the above mentioned domestic law and evaluations of international law made by WTO fora. Imports of product under consideration into India have shown sharp increase in absolute terms as well as in relative terms.

**a) Increased Import in absolute terms:**

56. The imports of Not Alloyed Ingots of unwrought Aluminium during financial year 2010-11 to 2013-14 were as under:

Financial Year	Total Imports (MT)
2010-11	100312
2011-12	92184
2012-13	154449
2013-14	192766

From the table above, there appears to be an increase in imports in 2013-14 in absolute terms both from the base year and penultimate year. The imports have increased sharply from 100312 MT in 2010-11 to 192766 MT in 2013-14, which shows an increase of 92%. There was a dip in 2011-12, but the rise in 2013-14 from 2011-12 is very significant. However, even if it cannot be concluded that there is a continuous surge in imports over the entire POI, this increase is also very sharp and significant and therefore, it is held that imports of ‘ Not Alloyed Ingots of Unwrought Aluminium’ have surged over the POI in absolute terms.

**b) Increased imports (in relation to production):**

57. The imports of product under consideration in India during the POI have also increased in relation to production of the Domestic Industry when compared with the base year as well as preceding year. From the table below, it is seen that the import with respect to total production has increased from 12% in 2010-11 to 25 % in 2013-14, which is a significant increase. There was a dip in 2011-12, but the rise in 2013-14 from 2010-11 is still very significant. However, even if it cannot be concluded that there is a continuous surge in imports over the entire POI, it is noted that there has been significant increase in imports during POI.

<b>Financial Year</b>	<b>Total Imports (MT)</b>	<b>All India Production (MT)</b>	<b>% of Import with respect to production</b>
2010-11	100312	871492	12
2011-12	92184	826000	11
2012-13	154449	831405	19
2013-14	192766	785317	25

57.1. From both the tables above, it is evident that there is a surge in imports during the Period of Investigation, both in absolute terms as well as in relation to domestic production. The increase in imports during 2013-14 when compared with imports in 2012-13 is sudden, sharp, recent and significant enough to constitute “increased imports” within the meaning of Section 8B of the Customs Tariff Act’ 1975.

**(G) Serious Injury and Threat of Serious Injury:**

58. Section 8B subsection 6(c) of Customs Tariff Act provides as follows:

*“Serious injury” means an injury causing overall impairment in the position of a Domestic Industry;*

59. Section 8B sub section 6(d) of Customs Tariff Act provides as follows:

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

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

*“In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the article concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.”*

61. Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Customs Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is “declining”.

62. In one case, for example, there may be significant decline in sales, employment and productivity which may show "serious injury" to the Domestic Industry. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate " serious injury" to the Domestic Industry.

63. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall position of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.

64. In Argentina — Footwear (EC), the Appellate Body discussed the relationship between the definition of “serious injury” in Article 4.1(a) and the requirement of an evaluation of “all relevant factors” in Article 4.2(a):

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

65. The Panel on US — Wheat Gluten, in a finding upheld by the Appellate Body, elaborated on the meaning of the term “serious injury”:

*“[A] determination as to the existence of such ‘significant overall impairment’ can be made only on the basis of an evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.*

*[W]e do not consider that a negative trend in every single factor examined is necessary in order for an industry to be in a position of significant overall impairment. Rather, it is the totality of the trends, and their interaction, which must be taken into account in a serious injury determination. Thus, such upturns in a number of factors would not necessarily preclude a determination of serious injury. It is for the investigating authorities to assess and weigh the evidence before them, and to give an adequate, reasoned and reasonable explanation of how the facts support the determination made.”*

66. Accordingly, in analyzing serious injury or threat of serious injury all factors, which are mentioned in the rules as well as other factors which are relevant for determination of serious injury or threat of serious injury, have been considered. No single factor has been considered as dispositive. All relevant factors within the context of the relevant business cycle and conditions which are relevant to the affected industry have been considered. All submissions made by the interested parties, domestic industry, supporting domestic producers and opposing interested parties, have been considered. The determination of serious injury or threat of serious injury is based on evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.

67. Now whether the increased imports of Not Alloyed Ingots of Unwrought Aluminium’ have caused or are threatening to cause serious injury to the domestic producer of Not Alloyed Ingots of Unwrought Aluminium’, is analysed below, on the basis of various listed as well as other relevant factors which are objective and quantifiable:

i) **Market Share in domestic demand:** From the table below, it is seen that during the POI, market share of domestic industry has decreased in 2013-14, after rising continuously from 2010-11 to 2012-13. The DI had a market share of 56% in 2010-11 which was on a rise and had risen to 60% during 2012-13, but has declined to 52% in 2013-14, even less than the base year. Whereas the market share of imports has risen from 14% in 2010-11 to 29% in 2013-14, after slight dip in 2011-12.

Financial Year	Total Import (MT)	Sales of DI (MT)	Total Demand (MT)	Market Share (%)	
				DI	Import
2010-11	100312	416993	740674	56	14
2011-12	92184	408225	703937	58	13
2012-13	154449	461509	765688	60	20
2013-14	192766	342800	657698	52	29

Some of the interested parties have argued that the DI has preferred to export the PUC in large quantities in 2013-14 and therefore, their share in the local market has come down. The DI in this regard has stated that they have not preferred to export the PUC but out of compulsion they have exported, since they were not able to sell the PUC in the domestic market due to influx of cheaper imports. Irrespective of the submissions made above, the fact remains that the share of the DI in the domestic market has come down.

ii) **Production:** From the table below it is seen that the production of the domestic industry has increased very marginally by 2% from 552864 MT in 2010-11 to 565272 MT in 2013-14. After marginally declining in 2011-12 as compared to 2010-11, production of DI has increased till 2013-14, but not significantly.

Year	Production of 'Not Alloyed Ingots of Unwrought Aluminium'(MT)
2010-11	552864
2011-12	527571
2012-13	538657
2013-14	565272

It has been stated by some of the interested parties that the DI has over the years given preference to maximize production of their downstream goods such as wire rods, rolled products, foils, alloy ingots etc. and the left over alumina is used to manufacture PUC. It has been further stated that it is not the increased imports which is responsible for injury but DI's own choice to reduce the manufacture of PUC. However, no cogent material has been placed on record to substantiate this argument. It may be understood that the DI has capacity to manufacture ingots and other downstream products like wire rods, foils, etc. The DI does not have dedicated capacity to manufacture ingots. In any case, there appears no need to verify facts in this regard. It is seen that the production of the PUC is on the increase in the hands of the DI.

iii) **Capacity Utilisation:** From the table below, it appears that though very marginal increase in Installed capacity has been noticed throughout the POI, i.e., from 1263500MT in 2010-11 to 1280263 MT in 2013-14 by about 1%, capacity utilization has remained at the same level, i.e. 44% in 2013-14 as compared to base year 2010-11 but has increased by 2% when compared to the previous year i.e. 2012-13.

Year	Installed Capacity (MT)	Capacity utilized (%) (Ingots only)
2010-11	1263500	44
2011-12	1269500	42
2012-13	1269900	42
2013-14	1280263	44

Further, even the plant utilization has shown persistent increase during the period of investigation. During 2013-14, the plant utilization has been 109%.

iv) **Changes in the level of Sales :-** As seen in the table below, the sales of the domestic industry increased from 416993 MT in 2010-11 to 461509 MT in 2012-13, but declined significantly thereafter by about 26% to 342800 MT in 2013-14, which is even below the base year level.

Financial Year	Sales of DI (MT)
2010-11	416993
2011-12	408225
2012-13	461509
2013-14	342800

It has been submitted by some of the interested parties that sale volumes of the PUC in the domestic market have come down since the DI has exported huge quantities of the PUC. The submission is factually correct, since it seen that the DI has exported three times in 2013-14 in comparison to the quantity they exported in 2012-13.

v) **Employment:** There is a declining trend in employment throughout the POI whereby the employee's strength has reduced from 17109 in 2010-11 to 15944 in 2013-14.

Financial Year	Employment at the end of the year (Nos)
2010-11	17109
2011-12	16854
2012-13	16053
2013-14	15944

vi) **Productivity:** As seen from the table below the productivity per day of the DI has increased in 2013-14 to 102 indexed point as compared to 100 in the base year 2010-11, which is marginal as compared to the base year, but shows a rising trend from 2011-12 till 2013-14.

Year	Productivity per day (Production /350) MT per day (indexed)
2010-11	100
2011-12	95
2012-13	97
2013-14	102

vii) **Profit & Loss:** As seen from the table below the profitability of the domestic industry during the POI, has been as under:

Financial Year	Profitability (Rs. /Lacs) (Indexed)
2010-11	100
2011-12	38
2012-13	(30)
2013-14	37

Regarding profits/loss, I find that at the time of issuance of the Notice of Initiation, the data was taken till Dec'13, where the DI was in losses. However, when the data was updated during Post-hearing analysis, the profitability of the DI perceptively improved and it showed a remarkable recovery by leaping back into profits in 2013-14 after being in loss in 2012-13 and even till Q 3 of 2013-14. Though the profitability is far below the base year of 2010-11, but appears to show improved condition of the DI in this factor in the most recent period. The DI has later, vide their letter dated 24-09-2014 (containing confidential data) attempted to clarify that huge chunk of profits have accrued due to readjustment of the cost of interest of one of the constituents of the DI and not due to trading activity. This may be correct but I find that despite adjustment of cost of interest, the DI is running into significant profits as seen from the table below, though the profits have come down in comparison to the base year but these have increased when compared with the preceding year.

<b>Domestic Industry</b>	<b>Unit</b>	<b>2010-11 (Indexed)</b>	<b>2011-12 (Indexed)</b>	<b>2012-13 (Indexed)</b>	<b>2013-14 (Indexed)</b>
Profits, if interest not charged in both years (2012-13 & 2013-14)	<b>(Rs./Lacs)</b>	100	54	28	41
Profits, if interest is charged in both years (2012-13 & 2013-14)	<b>(Rs./Lacs)</b>	100	54	-25	13

**Other important factors:**

68. **Exports:** As seen from the table below, the exports of the DI have risen very significantly in 2013-14 from the preceding year and the base year, i.e. 2010-11, after showing a declining trend till 2012-13 from the base year, i.e. 2010-11.

<b>Financial Year</b>	<b>Exports of DI ( MT)</b>
<b>2010-11</b>	133658
<b>2011-12</b>	118354
<b>2012- 13</b>	74606
<b>2013-14</b>	221018

69. **Inventory:** As seen from the table below, the inventory has decreased from 149 MT in 2010-11 to 65 MT in 2013-14, which is in fact a very insignificant quantity when compared to the sale and production figures of the DI.

<b>Financial Year</b>	<b>Inventory DI (MT)</b>
<b>2010-11</b>	149
<b>2011-12</b>	37
<b>2012- 13</b>	41
<b>2013-14</b>	65

70. **Price Undercutting and Price suppression/ depression:**

The DI has submitted the cost data duly certified by the independent cost accountant. It is seen that the selling price of DI is more than the landed value of the imported product in 2013-14. The DI in its submission has asserted that landed value of imports is lower than the cost of sales of the domestic industry but the information provided by them does not support their claim as the cost of sales is less than the landed value and selling price of the DI. It is noticed that the price undercutting between the selling price of the DI and the landed value of the imported product is quite insignificant and negligible, as evident from the table below, and there does not seem to be any threat of serious injury to the DI on this count.

<b>Particulars</b> (Indexed with respect to cost of sales of DI)	<b>2010-11 (Indexed)</b>	<b>2011-12 (Indexed)</b>	<b>2012-13 (Indexed)</b>	<b>2013-14 (Indexed)</b>
Cost of Sales(Rs./MT)	100	117	124	125
Landed Value (Rs./MT)	110	120	125	127
Selling price (Rs./MT)	110	119	125	129
<b>Price Undercutting (RS./MT)</b>	<b>0</b>	<b>-1</b>	<b>0</b>	<b>2</b>

**Other changes causing serious injury or threat thereof:**

71. **Changes in the patterns of consumption:** It is claimed by the Domestic Industry that there is no change in the pattern of consumption with regard to the product under consideration. None of the interested parties have contended change in the patterns of consumption and therefore the record does not show that patterns of consumption has undergone any material change as far as the Indian market is concerned. Since none of the Interested Parties has brought out any evidence to dispute this claim of the Domestic Industry, and is, as such, accepted.

72. **Trade restrictive practices of and competition between the foreign and domestic producers:** There is no evidence on record that trade restrictive practices or competition between the foreign and domestic producers could have contributed to the injury to the Domestic Industry.

73. **Developments in technology:** The applicant has claimed that the technology for production of the product has not undergone any change. This has not been refuted by any Interested Party. Developments in technology are therefore, not a factor of injury, in this case.

74. It is thus noted that possible other factors have not caused injury to the Domestic Industry. There are no other factors that may be attributing to the serious injury to the Domestic Industry other than surge in the low priced imports.

#### **Conclusion Regarding Serious Injury or threat thereto:**

75. As mentioned above, 'serious injury' as well as 'threat to serious injury' are defined expressions in the domestic law. Serious injury as defined in law means significant overall impairment in the position of the industry caused by increased imports. What is 'significant overall impairment' has not been defined in law. The expression 'overall impairment' is further qualified by the word 'significant' which points out toward a certain level of gravity of impairment. It is left to the judicious discretion of the DG to make the evaluation of overall position of the domestic industry and come to the conclusion in this regard.

75.1 In my view, there is no straight formula which can lead to rationale conclusion as to what is 'significant overall impairment'. Every case has to be analysed on the basis of various listed as well as other relevant factors. The overall position of the DI is reflected in the analysis of listed as well as other important relevant factors as discussed above.

75.2 From the analysis above, I find that the production of the PUC, capacity utilization, productivity, profits and exports have increased during the POI. Even the sales (taken together in the domestic market as well as by way of export) have increased in 2013-14 when compared with 2012-13. These factors are not supporting the case of the DI. However, factors like decrease in their share in the domestic market, domestic sale, reduction in employment support their case. I also find that their share in the domestic market has come down due to substantial increase in exports though it is contended by the DI that the exports have increased since the domestic customers did not buy their PUC due cheaper import of PUC. Further, the quantum of inventory of 65 MTs is totally insignificant when compared to total production and total sale of the PUC even though there is marginal increase.

75.3 However, I find that it is not the case that the DI was not able to sell the PUC in the domestic market in profits. The landed price of the PUC has been lower than the selling price of the PUC in the domestic market suggesting that there is no price under-cutting/suppression. The profitability of the Domestic Industry has shown an extraordinary healthy trend in 2013-14 vis a vis the base year. This improvement is all the more significant as it has improved to the level of 2011-12 from a state of loss for a major part of the year 2013-14, i.e. till Q3, which has been achieved in a very small period of 3 months, i.e., Q 4 of 2013-14 only. This is besides increased imports and decline in domestic sales.

75.4 There is reduction in employee's strength during the period of investigation but the reduction is not significant. However, productivity has improved, mainly due to rise in production.

76. Various economic parameters of DI during 2013-14, the last year of period of investigation, have shown marked improvement as compared to the immediately preceding year i.e. 2012-13. Moreover in parameters like production, after a dip in 2011-12, there is a continuous increase, which is also co-terminus to the rise in imports. Even though domestic sales have declined in the most recent period of 2013-14, imports have risen and the DI has recovered remarkably in the profits. This is even more important because this performance has been shown by the DI in the event of rising imports. Even though the DI seems to have suffered injury till 2012-13 due to surge in imports, the same cannot be said to be true for 2013-14 in this case. This leads to the conclusion that there appears to be no threat of any serious injury to the DI due to surge in imports in 2013-14, since the DI has made good profits in 2013-14 and the same trend is likely to be continue in the post-POI also.

77. Thus, in my view, the analysis does not suggest significant overall impairment and therefore, the DI has not suffered serious injury or threat thereto. The analysis also does not suggest any threat of such injury.

**(H) Unforeseen developments:**

78. It is noted that there is no express obligation/requirement on the Director General (Safeguards) to analyse unforeseen circumstances as there is no specific requirement either in Indian Rules, on the methodology that should be followed for analyzing unforeseen developments, or the WTO Agreement on Safeguards, which also does not make any prescription with regard to the methodology that should be followed or the parameters that must be met in deciding unforeseen developments. The Agreement on Safeguards read with Article XIX of GATT, however, obligates the national authorities to examine the “unforeseen developments” which led to the serious injury to the Domestic Industry. This Directorate has consistently been examining the issue of “unforeseen developments” in its investigations. It is, therefore, considered important to examine the unforeseen developments or circumstances which have led to increased imports. In this regard, I find that Article XIX of GATT, 94 provides that serious injury has to be as a result of unforeseen developments.

Article XIX of GATT 1994 states as follows:

*1.(a)If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.*

79. The Appellate Body in Argentina — Footwear (EC) case held that the phrase “Unforeseen Developments” means the developments which were unexpected. ‘Unforeseen developments’ requires that the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been ‘unexpected’. The Appellate Body in Korea-Dairy case held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.

80. The applicant has given a number of reasons for surge in imports, which in their understanding constitute the unforeseen circumstances in this case, which are summarized below:

80.1 Middle East region was initially net importing area for Aluminium where as it is now a net exporting area as can be seen from the table below:

<b>Countries</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Middle East Imports	1,43,022	1,81,701	15,731	3,898

80.2 Significant demand supply gap (as demonstrated in the table below) in Middle Eastern Countries as China’s dependence on imports have declined (which was a target market for Middle Eastern countries. The foreign producers in the Middle East are holding significant unutilized capacities. Resultantly, they are looking for additional markets to the extent possible.

<b>(Demand Supply gap in Middle East) in '000 MT</b>							
<b>Year</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Apparent Consumption</b>	2021	2137	2256	2429	2606	2814	2963
<b>Production</b>	4031	4375	5119	5518	5695	6035	6346
<b>GAP</b>	2010	2238	2863	3089	3089	3221	3383

*Source: Data by CRU*

80.3 Excess capacity established by the Chinese and Middle Eastern producers has led to a situation of global demand supply gap;

80.4 Foreign producers have the advantage of cheap energy cost is one of the major reasons for the surplus production of product under consideration in Middle Eastern Countries. Further, India is a freight friendly market for Middle East countries and therefore it is convenient and economically more viable for them to export aluminium to India.

81. It has been contended by the opposing Interested Parties that :

- i. Surplus Capacity in the Middle Eastern Countries: Demand supply gap in “Middle East”, from the year 2012 – 2018, does not cover the entire period of investigation
- ii. The data provides a speculative forecast and does not demonstrate that the increase in imports into India is attributable to the alleged surplus capacity in the Middle East.
- iii. Events occurring after the surge in imports cannot be said to have led to the imports in the first place. The analysis needs to be presented for the period of investigation and its preceding period in order to examine whether or not it has had any impact on unforeseeable developments at all.
- iv. The energy costs of foreign producers have always been substantially lower due to the generous natural gas deposits in the middle-east, which is a widely known fact. Therefore, by no means can this development be considered “unforeseen” or “unexpected
- v. The geographical location of India has remained constant and there is no unforeseen development in this behalf which has suddenly led to a surge in imports
- vi. Whenever LME goes up, Primary Producers increase the price promptly but when LME prices come down, they do not show such promptness giving room for imports.

82. On examination of the factors cited by the DI as unforeseen circumstances, I find that the data provided by the DI with respect to the factors like rising export from Middle East and demand-supply gap appears to prove that Middle East countries have excess capacity for the PUC. It is also seen from the trend in imports coming from the Middle East countries like Oman, UAE etc. that their share has risen tremendously in 2013-14 than the base year. Therefore, this reason cited by the DI appears to substantiate their claim of shift of imports from Middle East to India as the unforeseen reason for increased imports during the POI.

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

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

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

**(I) Public Interest:**

83. The domestic law does not contain any specific provision with regard to levy of safeguard duty. However, Article 3 of the Agreement on Safeguards states as follows:

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

84. In their written submissions regarding the question of public interest, the domestic industry have stated that the impact of the proposed safeguard duty on each of the consumer industry shall be negligible as shown in the table below:

Impact Analysis								
				Impact		Price	Impact %	
	Factor	Price	Cost	10% Duty	20% Duty		10% Duty	20% Duty
Conductor*	14.60	135	1971	197	394	315176	0.06%	0.13%
Cable**	0.19	135	26	3	5	250	1.03%	2.05%
Autobobile	18	135	2430	243	486	25000	0.97%	1.94%
Construction				90	180	10000000	0.001%	0.002%
Foil	0.66	135	89	9	18	653	1.36%	2.73%
* Conductor is consumed for Grid in which this account for 20% cost. Further, even this 20% is also capitalized and depreciated over a period of 20 years with other assets, hence impact is determined accordingly								
** Cable is produced from wire rod. Wire rod accounts for 30% of cable cost, hence impact is determined accordingly								

85. The DI has submitted that considering almost negligible impact on the eventual end product and considering that survival of the domestic industry is must, the imposition of safeguard duty shall be in public interest.

86. On the other hand, it has been contended by other Interested Parties that the major consumers of the PUC are power distribution industries, automobile industry, extrusion industry and construction industry; going through a very bad phase and performing very poorly. Aluminium ingot is a basic raw material which is used down the line by a number of industries which are small and medium scale industries giving employment to a large number of people. These industries also compete with imported products in the liberalized open economy. Any imposition of safeguard duty on PUC will increase its cost, forcing the downstream industries to close down. These factors shall not be in the consumer/public interest.

87. It is also noticed that an evaluation of all the listed parameters shows that even though there has been an increase in imports, it has coincided with rise in production, same level of capacity utilization, almost nil inventory, rising exports and vastly improved profitability (in 2013-14 from Q1-Q3 to Q4). Though the demand has declined and so has domestic sales, the DI has managed to show significant improvement in exports. This also gets supported by the fact that the DI has gained on account of sale as per LME in international markets. Moreover, the sharp and significant improvement in the profitability shows that the DI has become competitive and has assumed a position of significance in the export market. Therefore, seeking protection when the DI has shown signs of improvement, does not go in tandem with the spirit of safeguards when the DI have themselves submitted that increased production and capacity utilization are not the injury factors in their case.

88. In view thereof, considering the points put forth by the DI as well as all the Interested Parties and examination of the serious injury and threat of serious injury, it is concluded that the imposition of safeguard duty on ‘Not Alloyed Ingots of Unwrought Aluminium’ may not be justified at this stage when there is no serious injury caused to the DI and therefore, it may not be fully in the Public Interest at large.

**(J) Causal Link between Surge in Imports and Serious Injury & Threat of Serious Injury caused:**

89. Para 2 to Annexure to Rule 8 provides for causal link between increased imports and serious injury or threat thereto. It has to be demonstrated that serious injury has been caused due to increase in imports.

90. The Panel on Korea-Dairy set forth the basic approach for determining “causation”:

*“In performing its causal link assessment, it is our view that the national authority needs to analyse and determine whether developments in the industry, considered by the national authority to demonstrate serious injury, have been caused by the increased imports. In its causation assessment, the national authority is obliged to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. In addition, if the national authority has identified factors other than increased imports which have caused injury to the Domestic Industry, it shall ensure that any injury caused by such factors is not considered to have been caused by the increased imports.*

*To establish a causal link, Korea has to demonstrate that the injury to its Domestic Industry results from increased imports. In other words, Korea has to demonstrate that the imports of SMPP cause injury to the Domestic Industry producing milk powder and raw milk. In addition, having analyzed the situation of the Domestic Industry, the Korean authority has the obligation not to attribute to the increased imports any injury caused by other factors.”<sup>1</sup>*

<sup>1</sup> [Panel Report on Korea – Dairy](#), paras. 7.89-7.90

91. For the purpose of determining causation, all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry, have been evaluated. In the instant case, the following are relevant in this regard–

92. It has been submitted by the DI that there is a direct causal link between the increased imports and the serious injury to the domestic industry.

- (a) The product is largely sold in comparison/competition with imports. The landed price of imports is significantly lower than the selling prices of the domestic industry.
- (b) The domestic industry is losing sales opportunities. Consequently, sales volumes, market share, return on investment of the domestic industry declined due to presence of low priced increased imports. However, there is almost negligible inventory, rising production, rising exports and productivity in the most recent period when there is also increased imports.
- (c) The imports of the PUC have increased significantly in absolute terms and in relation to production and consumption in India. Increased imports have led to increase in market share of imports. Consequently, market share of the domestic industry declined.
- (d) The overall demand for the PUC over the injury period has declined in the most recent period and increased imports appears to have caused some injury to the domestic industry.

93. The examination of the above factors shows that though there is increase in imports yet there is no serious injury or threat thereto, as determined above. Therefore, there appears no necessity to determine causal link between the two.

**(K) Adjustment Plan:**

94. Rule 5(2) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules' 1997 requires submission of a statement on "efforts being taken or planned to be taken or both to make positive adjustment to import competition". The WTO Agreement on Safeguard provides that a member shall apply safeguard measure only to the extent necessary to prevent or remedy serious injury and facilitate adjustment.

95. The purpose of definitive safeguard measure is to provide the domestic producers with a limited period of time in which to restructure so as to more effectively compete with the imports. Section 8B (4) of Customs Tariff Act 1975 and Rule 16(2) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules' 1997 prohibits any possible extension of measure if there is no evidence that the domestic producers are adjusting.

96. Domestic Industry in this case has laid down the following Adjustment Plan:

- i. Reduction in average energy consumption:  
Power is major input cost in production of Aluminum. Power is around 35-40% of the cost of producing Aluminium. The Domestic Industry has chartered a roadmap and identified a set of projects to reduce the costs.
- ii. Raw material Cost Reduction:
  - a. Steps have been taken by the domestic industry to reduce the cost of alumina. These include- installing alumina plant. The location with good access to soft bauxite (low temp digestion) and use of double digestion process, both help in reducing alumina cost.
  - b. Steps will be taken to reduce consumption of alumina and aluminium fluoride like automisation of alumina handling and process optimisation, modernisation of FTP etc.
  - c. Manufacturing Cost: Keeping manufacturing cost into control through system strengthening by adopting various initiatives like Asset optimization, 6 Sigma initiative and proper value addition of generated scraps into system.
- iii. Reduction in melt loss:  
Domestic industries are investing on technology and practices to cut down the Melt loss are planned in coming years.
- iv. Reduction in Manpower Cost :  
Lot of focus is given on reducing the manpower cost by restructuring the manpower allocation, increasing the productivity and reducing non-value adding activities.
- v. Administrative and Selling Costs:

Due to various cost cutting measures, domestic industry proposes to further reduce the Administrative and selling costs in the next two years.

97. The domestic producers in this case have laid down adjustment plan which mainly focuses on cost reduction. Domestic Industry has submitted an adjustment plan detailing the efforts planned to be taken to make a positive adjustment to import competition. The plan focuses on reduction in energy consumption, raw material cost reduction, reduction in manpower cost and melting loss. However, a close scrutiny of the details given in the adjustment plan reveals that the plan does not adduce/evince any evidence with regard to the adjustment measures implemented/already in place to give a concrete view of the intentions of the DI with regard to becoming competitive due to the adjustment plan.

#### **VIII. Conclusion and recommendation:**

98. On examination of relevant factors I find that:

- i. There has been a significant increase in imports in absolute terms as well as in relation to demand and production, in the year 2013-14 as compared to the base year and immediately preceding year 2012-13. However, the imports have fallen in 2011-12 vis-à-vis the base year 2010-11. The trend however shows increase in imports since 2011-12.
- ii. On analysis of the updated data, it is observed that the position of the domestic industry has improved in respect of factors of production, sale (including sale in exports) profitability ( in last quarter of 2013-14) and capacity utilization. There is no serious injury or threat thereto, since in my view there is no significant overall impairment.
- iii. The domestic industry has been able to demonstrate that the developments in the market for the Product under Consideration were unforeseen so far as increased imports from Middle East countries are concerned.
- iv. The DI has been able to demonstrate that the imposition of the safeguard duty on the PUC is minimal and therefore, it is in Public Interest. However, when the DI has improved its profitability even in the wake of rising imports and declining sales with almost nil inventory, even the minimal impact on public at large would not be fully in public interest as then it would show providing protection to a viable, robust and good performing industry, which may not get along with the idea of safeguard duty protection.
- v. The prime objective of the Designated Authority under the law is to assess significant overall impairment of the industry. The competent authority cannot be governed by the sheer number of parameters favouring the DI. Even if one parameter is against the DI but the same parameter is so crucial that it compensates substantially to the DI and improves the overall picture of the domestic industry then the safeguard measure cannot be imposed. In this case, profitability of DI has significantly improved in recent period, so as to compensate any adversity/injury to them due to other safeguard parameters. Even if the submission of the DI regarding factoring in of cost of interest of one of the constituent unit of the DI is considered, still the DI is running into profits. In such situation, I am of the view that there may be impairment in the position of the DI but the same is neither significant nor overall. Further, the position of the DI in respect of production, utilization, total sale, inventory etc. has also improved.

99. In view of above, safeguard duty on the imports of 'Not Alloyed Ingots of Unwrought Aluminium' is not recommended and investigation in this regard is terminated.

(R. K. Singla)  
Director General