DIRECTORATE GENERAL OF SAFEGUARDS
CUSTOMS AND CENTRAL EXCISE
2ND FLOOR, BHAI VIR SINGH SAHITYA SADAN,
BHAI VIR SINGH MARG, GOLE MARKET
NEW DELHI-110001
Telefax: 23741542, 23741537
e-mail : dgsafeguards@nic.in

Subject: Safeguard Investigation concerning Imports of "Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)" into India- Preliminary Findings-Reg

G S R D- **22011/10/2016/Pt-II**. Dated 21/04/2016 , having regard to the Customs Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 thereof;

(A) Procedure:

1. An updated application has been filed before me on 19/04/2016 under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, by (i) M/s. Vedanta Limited –Aluminium & Power, Bhurkamunda, Distt. Jharsuguda-738202, Odisha (ii) M/s Bharat Aluminium Company Ltd, Aluminium Sadan,Core -6, Scope Office Complex, Lodi Road, New Delhi-110003 and (iii) M/s Hindalco Industries Limited, Century Bhavan, 3rd Floor, Dr Annie Besant Road, Worli, Mumbai 400030 for imposition of Safeguard Duty on imports of "Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)" into India to protect the domestic producers of "Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)" against serious injury /threat of serious injury caused by the increased imports of "Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)". The domestic industry has also requested for imposition of provisional safeguard duty in view of steep deterioration in performance of the domestic industry as a result of increased imports of "Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)".

2. In order to satisfy the requirements under Rule 5 of the said Safeguard Rules, the information presented by the applicant was verified to the extent considered necessary. The non-confidential version of verification report is kept in the public file. Having been satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of "Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)" into India was initiated vide Notice of Initiation dated 19th April, 2016 and published in the Gazette of India, Extraordinary on the same day.

3. A copy of the Notice of Initiation dated 19th April,2016 along with copy of non-confidential version of the application filed by the domestic industry were forwarded to the Central Government in the Ministry dealing with Commerce and other Ministries concerned, Governments of major exporting countries through their embassies in India, and other

interested parties as mentioned in the application filed by domestic industry, in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

4. Questionnaires were sent to the known interested parties as per the information available with a request to make their views known in writing within 30 days of the initiation notice.

(B) Preliminary Observation and Findings of the Director General (Safeguards):

5. I have carefully gone through the application filed by the domestic industry and report of verification conducted by the officers of the Directorate General of Safeguards from the excise records. My observations, findings and recommendations are discussed in the succeeding paras.

(I) The product under Consideration (PUC):

6. The product under consideration is "Unwrought Aluminium (Aluminium not alloyed and Aluminium alloys)" classified under Customs heading No.7601 of Chapter 76 of the Customs Tariff Act,1975. It covers the entire product range under chapter heading 7601.

(II) Domestic Industry(DI):

7. Section 6(b) of the Customs Tariff Act 1975 defines domestic industry as follows:
"Domestic industry" means 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.

8. The application has been jointly filed by (i) M/s. Vedanta Limited –Aluminium & Power, (ii) M/s Bharat Aluminium Company Ltd and (iii) M/s Hindalco Industries Limited for imposition of Safeguard Duty on imports of PUC. On perusal of the application and latest data provided by the applicants it is seen that the applicants account for more than 50% of the total production of PUC in India and hence, the applicants qualify as Domestic industry (DI).

(III) Period of Investigation (POI):

9. The Customs Tariff Act, 1975, the Customs Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguards and the Article XIX of GATT do not specifically define what the Period of Investigation should be. From several case laws on safeguard measures, it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguards and Article XIX of GATT provide specific guidelines on the period of investigation except the fact that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury. The period of

investigation in this case has been taken from 2011-12 to 2015-16 which is long enough to take into consideration the market conditions and to ascertain the need, if any, for imposition of Safeguard Duty.

(IV) Source of Information:

10. The import data till January, 2016 for the PUC has been taken from Export Import data bank, Ministry of Commerce (http://www.commerce.nic.in/eidb/icomq.asp) and the domestic data from 2011-12 to 2015-16 has been submitted by the applicant and the same has been verified by the department on the basis of excise records and other records maintained by the units to the extent deemed necessary.

(V) Confidentiality of Information submitted:-

11. The DI has provided some information on confidential basis and sought confidentiality on the information /data submitted. The DI provided non confidential version of the application for safeguard measures as per the provisions of Safeguard Duty Rules 1997 and Trade Notice No. SG/TN/1/97 dt. 06.09.1997. Further the DI has submitted reasons for seeking confidentiality at the time of filing the application.

12. Rule 7 of the Safeguards Duty Rules, 1997 and Art. 3.2 of WTO Agreement on Safeguards also provide for confidentiality. The applicant is not required to disclose such information which is confidential information of the company, disclosure of which can cause serious prejudice to the business interests of the company, which is not in public domain and which the applicant has not disclosed before public at large in the past. I have examined both the confidential as well as non-confidential version of the application and so far as the data and economic parameters being discussed here in the preliminary findings are concerned, the confidentiality, relating to those, as prayed for by the DI, is granted.

(VI) Unforeseen developments:

13. The Agreement on Safeguards read with Article XIX of GATT obligates the national authorities to examine the unforeseen developments which led to serious injury to the DI. Some of the unforeseen developments are detailed below:

    (i) It is observed that China, which is a major producer accounting for almost half of the world Aluminium production, has witnessed a recent, sudden and unexpected drop in the growth rate of its economy leading to reduced consumption of Aluminium. This has resulted in huge surplus of Aluminium production capacities in China. The excess supply of Aluminium which was hitherto being consumed within China is now available for sale in the world market creating a glut and thus causing price depression in Aluminium to record low levels. In a number of cases, the Chinese Aluminium smelters are now being supported by the provincial Governments by way of powers subsidies, to keep those smelters running, as any closure of smelters would result in job cuts which the provincial Governments are unwilling to face. Therefore, despite being unviable due to weaker demand, the smelters continue to operate and feed the already over supplied world Aluminium market. Since China has export tax on Ingots and tax rebate on value added products, the exports from China is taking place on value added products of Aluminium. Some of the value added products also known as fake semis are exported with a view to avail the export rebate and avoid export tax. These fake semis are ultimately meant for re-melting into Ingots at the place of destination. All this was unforeseen by the Domestic Industry

(ii) On the other hand in the Middle East, a very significant increase in production capacity of Aluminium in the recent past, backed by very low energy cost, have resulted in surplus capacities at their end. With the already existing glut of Aluminium due to the excessive Chinese export to the world market, the Middle East producers have focussed their attention on the nearby freight friendly market of India.

14. It is observed that the above circumstances are unforeseen which has lead to significant increase in the imports of the PUC into India.

(VII) Increased Imports:

15. Imports of PUC into India are as detailed below::

Financial Year	Total Import (MT)	Import Indexed
2011-12	2,42,533	100
2012-13	3,08,279	127
2013-14	3,48,889	144
2014-15	3,43,428	142
2015-16 (April - Jan, 2016)	3,60,308	
2015-16 (Annualized)	4,32,370	178

It is seen that imports of the PUC have sharply increased during the injury period. The imports have increased from 2,42,533 MT in 2011-12 to 4,32,370 MT till 2015-16 (Annualized) recording an increase of 78 %. The most recent increase, between 2014-15 to 2015-16, has been quite sharp and significant.

(VIII) Serious Injury and Threat of Serious Injury:

16. **Serious Injury:** The applicants have claimed that the increased imports of PUC have caused and are threatening to cause serious injury to the domestic producers of PUC. They have in their petition, provided production, demand, inventory and other economic parameters of the industry justifying their claims. The data provided by the DI has been analysed as below:

a) **Production:** The domestic production of DI has increased during the period of investigation as shown below:

Financial Year	Production (MT)	Production Indexed
2011-12	8,87,286	100
2012-13	9,31,776	105
2013-14	10,51,100	118
2014-15	13,53,271	153
2015-16	15,63,639	176

b) **Increased Imports w.r.t total production:** PUC is imported into India from a number of countries, and mainly from UAE, Malaysia, Russia, South Africa, Oman, Qatar, Bahrain and Thailand. The imports of PUC have shown an increasing trend in absolute terms and as compared to the total production. The imports (Annualized) and production of PUC during financial year 2011-12 to 2015-16 are as under:

Financial Year	Total Imports (MT)	All India Production (MT)	% of import with respect to all India production
2011-12	2,42,533	19,27,464	13
2012-13	3,08,279	20,73,367	15
2013-14	3,48,889	20,88,900	17
2014-15	3,43,428	25,49,372	13
2015-16	4,32,370(Annualised)	28,18,978	15

The Imports have increased from 242533 MT in 2011-12 to 432370 MT in 2015-16 (Annualised) which shows an increase of 78%. It may be seen that import in the recent year 2015-16 has increased by 26% when compared to immediate preceding year 2014-15 which in my view is sudden, sharp and significant .

c) Market Share & Changes in levels of Sales: (MT in 000's)

Financial Year	Import	Sales of DI	Captive consum-ption	Sales of other Indian Producers	Total Demand	% of Market Share			
						Import	DI (excluding captive consum-ption)	DI (including captive consum-ption)	Others
2011-12	243	637	444	945	2,268	11	28	48	42
2012-13	308	718	568	997	2,592	12	28	50	38
2013-14	349	671	619	940	2,579	14	26	50	36
2014-15	343	670	605	1,135	2,754	12	24	46	41
2015-16	432 (Annua lised)	894	538	1,064	2,928	15	31	49	36

During the period 2011-12 to 2015-16 the demand of the PUC has increased. The market share of import (Annualised) has increased from 11% in 2011-12 to 15% in 2015-16. During the same period the share of DI increased from 28% to 31%. However, when seen along with captive consumption, the share of DI has increased only by 1%.

d) Capacity Utilization: Even though there has been significant increase in demand of the PUC, the increasing imports have resulted in significant idling of production capacity of the domestic producers as can be seen in the Table below:

Financial Year	Installed Capacity (MT)	Production (MT)	Capacity Utilisation (%)	Total Demand
2011-12	23,25,096	8,87,286	38	22,68,453
2012-13	23,17,954	9,31,776	40	25,91,862
2013-14	25,57,393	10,51,100	41	25,78,900
2014-15	29,04,841	13,53,271	47	27,54,114
2015-16	32,58,465	15,63,639	48	29,27,819

e) Profit/loss –The profitability of the DI has steeply deteriorated in 2015-16 and the DI has recorded losses as can be seen from the table below:-

Financial Year	Domestic profit/loss (Rs/Kg) (Indexed)
2011-12	100
2012-13	11
2013-14	(4)
2014-15	154
2015-16 (Up to Dec,15)	(231)

f) Inventories –The table below depicts the inventory levels during the POI.

Financial Year	Inventory (in MT) Indexed
2011-12	100
2012-13	53
2013-14	46
2014-15	97
2015-16	49

g) Productivity & Employment: There is increase in the level of employment keeping in tandem with increasing capacity.

Financial Year	Production (MT)	Employment (Nos.)	Productivity per employee (MT)
2011-12	8,87,286	100	77
2012-13	9,31,776	95	85
2013-14	10,51,100	112	81
2014-15	13,53,271	111	105
2015-16	15,63,639	105	129

h) Price depression: It is noticed from the table below that during the last financial year 2015-16 there was price under selling due to the higher cost of sales vis-à-vis the landed price of imports which put the pressure on the domestic industry causing losses.

Particulars	Unit	2011-12	2012-13	2013-14	2014-15	2015-16
Cost of sales (Indexed)	Rs/KG	100	109	110	117	118
Sales realisation	Rs/KG	100	104	104	119	99
Landed value (indexed)	Rs/KG	100	102	106	115	104
Profit/(loss) (Indexed)	Rs/KG	100	11	-4	154	-231
Price Under selling (Indexed)	Rs/KG	100	40	66	96	-32

17. There are a number of parameters on which the DI is showing positive trends, however, the most significant and the most dominant factor is profitability of the DI which has shown a serious downturn in the recent past due to increased imports arriving at depressed prices. In view of the above, it is seen that there is a deterioration in the financial parameters of the domestic industry causing losses to the DI due to which the domestic industry has suffered serious injury and immediate protection is required in the form of safeguard duty with a view to save the domestic industry from further injury.

18. Besides, threat of serious injury is also present in the current investigation. The imports of the PUC have increased significantly in absolute terms and in relation to production. As a result of significant surge in imports, the Domestic Industry has suffered serious injury and in all likelihood, the imports of the PUC will further increase and continue to threaten the domestic industry with serious injury.

(IX) Causal Link between Increased Import and Serious injury or Threat of Serious injury:

19. The Panel on Korea — Dairy (Para's. 7.89–7.90) 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."

20. A comprehensive evaluation of parameters enumerated above demonstrates that serious injury and threat of serious injury is being caused by increased imports. 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 –

    i) The imports of PUC in absolute terms have increased significantly from 100% to 178% during the period of investigation.
    ii) The market share (including captive consumption) of domestic industry has remained stagnant leading to low capacity utilization despite increasing domestic demand.

iii) The product is largely sold in comparison /competition with imports.

iv) The landed price of import is significantly lower than the cost of sales in the recent period of 2015-16.

v) Domestic industry is forced to export at a price lower than the domestic price in order to curtail the piling of inventories and to sustain production.

vi) Profitability of domestic industry has deteriorated and they have incurred significant losses during 2015-16.

21. In view of the above I find that there is a direct correlation between the increase in imports and serious injury suffered by the domestic industry as imports increased by 78% during the year 2015-16(annualised) as compared to the base year 2011-12. This has affected the overall performance of the domestic industry which resulted in severe losses in the year 2015-16. It is therefore, evident that the injury suffered by DI is caused by increased imports.

(X) Developing Nations:

22. The percentages of imports from developing nations have also been examined for the year 2015-16. Except Malaysia, South Africa and Thailand other developing nations individually and collectively have less than 3% and 9% share respectively of total imports into India. Therefore, in terms of Notification No.19/2016-Cus dated 05.02.2016 imports of the product under consideration originating from developing nations except Malaysia, South Africa and Thailand will not attract Safeguard Duty in terms of proviso to Section 8B (1) of the Customs Tariff Act, 1975.

(XI) Critical Circumstances:

23. As per Rule 2(b) of Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 the "Critical circumstances" means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause serious injury to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry.

24. Rule 9 of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 notified vide Notification No. 35/97-NT-Customs dated 29.07.1997 prescribes that the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he/she may record a preliminary finding regarding "serious" or "threat of serious injury". The principles governing investigations have been provided in the Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. The harmonious reading of Rules 6 and 9 of the said Rules leads to a conclusion that the Rules provide for expeditious recommendation of provisional Safeguard duty based on preliminary findings. Rule 15 of the said Rules provide for refund of differential Safeguard

duty in case safeguard duty imposed after conclusions of the investigations is lower than the provisional duty already imposed and collected.

25. The import of PUC into India has shown significant increase. Imports have increased by 78% in 2015-16 as compared to the base year of 2011-12 and 26% between 2014-15 and 2015-16. This increase in import at low prices have led to depression of price in the domestic market, forcing the DI to sell at prices below cost of sales, thus leading to unutilized and idling of huge capacities of the domestic industry during the period of investigation. Though domestic industry has huge installed capacity, it is unable to increase its production despite increase in domestic demand of the PUC.

26. Profitability of the domestic industry has sharply declined over the period to a situation where the domestic industry is now suffering severe financial losses and may not be able to sustain for a longer period of time without suffering irreparable damage to its future viability.

27. I observe that these are the factors which constitute critical circumstances in the instant case that have affected the overall performance of the domestic industry and have caused serious injury or threat of serious injury to the domestic industry. It is therefore considered appropriate to arrest the surge in imports in order to prevent further damage to the domestic industry.

(XII) Conclusion and recommendation:

28. On the basis of the preliminary findings above, I observe that increased imports of PUC have caused serious injury and threat of serious injury to domestic industry. As a result, the domestic industry has incurred financial losses in recent period 2015-16. The extent of financial losses may lead to a situation where it may make the DI, under the burden of financial liabilities, unviable in future. Thus, I find that critical circumstances exist where delay in imposition of safeguard measure would cause irreparable damage to the domestic industry, thus, necessitating immediate imposition of provisional Safeguard duty for a period of 200 days pending final determination of serious injury and threat of serious injury. Considering the average cost of sales of PUC by the domestic producers (confidential), a reasonable return on cost of sales excluding interest, the present level of import duties and present average import prices of PUC, provisional Safeguard Duty at the rate of 5% ad- valorem minus anti-dumping duty, if any, for 200 days which is considered to be the minimum required to protect the interest of domestic industry, is recommended to be imposed on imports of PUC.

(XIII) Further Process:

29. The information provided by various parties may be subjected to further verification where necessary, for which they will be informed separately

30. A public hearing will be held in due course before making a final determination, for which the date will be informed separately.

(Vinay Chhabra)
Director General.