



9th GNLU International Moot Court Competition, 2017



Gujarat National Law University

9TH GNLU INTERNATIONAL MOOT COURT COMPETITION, 2017

*Puerto Sombra – Safeguard Measures on
Unwrought Aluminum*

FEBRUARY 1 - 5, 2017



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1. Puerto Sombra is a developing country with a population of 100 million that is steadily growing every year. As of 2007, the country's population was primarily rural with agriculture and certain basic industries being the primary contributors to its economy. Over the last 5 years however, there has been a major change in Puerto Sombra's economy owing to rapid urbanization primarily fueled by the development of the services sector in the country. This sudden spurt in urbanization has also led to an increase in infrastructural activities and consumerism, among other things, in Puerto Sombra.
2. While global growth was uneven and on a decline in certain segments, Puerto Sombra was one of the few countries that was experiencing positive growth. Being one of the few markets with positive growth, Puerto Sombra was also experiencing an increase in imports of certain products, largely various construction materials and consumer products. Unwrought aluminium is one of the products that had begun to flood the market in Puerto Sombra.
3. In addition to the above developments, Puerto Sombra has also recently begun to make its mark in the international trade arena. Puerto Sombra is being recognized as a growing economy and has got the attention of investors across the globe. Although the investment climate in Puerto Sombra has not always been favourable for foreign investment, the government in Puerto Sombra has begun to make small changes to attract foreign investment. Even the indigenous companies in Puerto Sombra are starting to expand operations by looking towards export markets. Particularly as Puerto Sombra is amongst the handful of countries that is enjoying positive growth among other world economies where growth is stagnant, Puerto Sombra's government is actively entering into discussions with various countries to assist its domestic industry to expand to new markets that are growing.
4. One of the countries with which Puerto Sombra's government has been actively involved in discussions to conclude a free trade agreement is Pueblo Faro which is in the same continent as Puerto Sombra. Pueblo Faro is a developed country. Pueblo Faro's GDP has been floundering in the aftermath of the 2009 global recession and in 2015 its GDP growth has reduced to 5.4%, while the projected GDP growth rate for 2016 is 5.9%. Pueblo Faro's local industries have started exporting a significant portion of production to various markets as demand for major commodities is declining in Pueblo Faro. Pueblo Faro has a strategic advantage with respect to being located in an area that is rich in various natural resources. Its manufacturing industry has been primarily responsible for its growth over the last few years. Interestingly, Pueblo Faro's government has imposed high taxes on exports of raw materials but provides incentives on exports of finished products, thereby promoting the manufacturing industry in the country to export the products and inhibiting the exports of the raw materials. Pueblo Faro's main exports are



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iron and steel products, machinery and equipment, electronic equipment, among other products.

5. A key factor that has stalled the negotiations between Puerto Sombra and Pueblo Faro for the free trade agreement is Puerto Sombra's unwillingness to reduce its tariffs on certain key base metals and articles. Puerto Sombra's iron and steel, as well as, aluminium producers have been actively lobbying with the government to prevent the inclusion of base metals in the free trade agreement. However, one of the main reasons for Pueblo Faro entering into negotiations for the free trade agreement is to get certain concessions on these products. Puerto Sombra's domestic producers' prime argument against including these products in the free trade agreement is that at present, even without the presence of any concessions, Pueblo Faro's exports of aluminium as well as various iron and steel products is very high. Moreover, Puerto Sombra has a competent local industry for these products that have the capability to cater to the domestic demand.
6. Over the past year, Puerto Sombra's primary aluminium industry has been facing intense competition from imports. Imports of unwrought aluminium have been steadily increasing and the imports are coming primarily from Pueblo Faro. In order to protect themselves, Puerto Sombra's primary aluminium industry filed an application before the National Trade Commission ("NTC") for initiation of a safeguards investigation regarding imports of unwrought aluminium. After examination of the application filed by the domestic industry, the NTC initiated the investigation on 31 July 2016. The initiation notification is provided as Exhibit 1.
7. The application for imposition of the safeguard measure was filed by the major producers of unwrought aluminium, namely Kimp Aluminium Corporation, Puerto Sombra National Aluminium Corporation and Raven National Aluminium Corporation. These producers were found to constitute the domestic industry for the safeguard investigation, and further on an examination by the NTC of their performance parameters, it was found that any delay in providing protection to the domestic industry would cause severe damage to it, particularly in light of the significant increase in imports of unwrought aluminium. The NTC therefore imposed provisional safeguard measures on imports of unwrought aluminium on 2 August 2016.
8. The key parameter on the basis of which the NTC took the decision to impose the provisional safeguard measures was sharp increase in imports over the period concerned, which had led to a significant decline in the profitability of the domestic industry. Notably, imports during the same period were coming in at prices that was forcing the domestic industry to sell at prices below their costs so as to compete with the imports and stay in the market. The provisional determination issued by the NTC is provided as Exhibit 2.



9. Puerto Sombra, a founding member of the World Trade Organization (“WTO”), in keeping with its WTO obligations notified the WTO of the initiation of the safeguard investigation and the decision to impose the provisional safeguard measure on 15 August 2016 under Articles 12.1(a) and 12.4 of the Agreement on Safeguards (“AoS”), respectively. The notification relating to the imposition of the provisional safeguard measure under Article 12.4 of the AoS also invited member countries for consultations. The notification provided all pertinent details as required under the WTO notification requirements.
10. Subsequent to the notification to the WTO, a number of WTO members, including Pueblo Faro, posed questions to Puerto Sombra, through the Committee on Safeguards regarding the measure imposed. In particular, the countries questioned whether there existed critical circumstances, and further, whether there was clear evidence indicating that the increased imports were causing the domestic industry serious injury within the meaning of Article 6 of the AoS. A number of member countries also raised objections stating that the measure imposed by Puerto Sombra was protectionist in nature and went against the intent of the WTO which was to promote international trade.
11. Subsequent to the imposition of the provisional safeguard measure, a public hearing was held on 30 October 2016. Leading up to the public hearing, there was a lot of news coverage regarding the imposition of the measure. A leading newspaper in Puerto Sombra ran a detailed article on the state of the aluminium industry, and particularly focused on the corruption prevalent in the tenders for bauxite mines, that is a key raw material for the production of the unwrought aluminium. The Chief Executive Officer of Kimp Aluminium Corporation was quoted in the article as accepting that a major reason for the inability of the domestic industry to compete with the imports was the high prices of bauxite as the tenders were until now won by Baux Corporation or its subsidiaries, which are mining companies. The CEO opined that unless this monopoly ended, the prices of bauxite in the market would remain artificially high as Baux Corporation was taking advantage of demand in the market for bauxite. The article also got comments from the Chairman of Aluminium Metal Producers Association who was quoted as under:

The unwrought aluminium industry has been gradually deteriorating over the last few years as a result of the increase in imports from various countries. The domestic industry is not only having to compete with increased imports but also cheap imports. The Association supports the imposition of safeguard measures that are necessary to ensure that the domestic industry does not shut down. We are in no way targeting imports but are only seeking for protection to ensure that imports come in at fair prices. Moreover, the Association has the capability to cater to the total demand in Puerto Sombra and there is no



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reason for imports to be permitted on the pretext of filling an apparent demand-supply gap.

12. The public hearing conducted by the NTC was attended by a record number of participants. A number of environmental and labour groups also participated in the investigation urging the NTC to impose the safeguard measure as it would be in public interest, since the manufacturers in Pueblo Faro were openly conducting their operations in contravention of international environmental and labour standards. The other interested parties in the investigation, namely the domestic industry, certain exporters, importers and user associations also presented their views at the public hearing.
13. Following the conduct of the public hearing, the NTC conducted a verification on the premises of the producers that constituted the domestic industry to examine the veracity of the data submitted. There were no discrepancies noted and the NTC proceeded to issue the final determination imposing the definitive safeguard duty. The definitive safeguard duty was imposed on 15 November 2016. The NTC confirmed the conclusions in the provisional determination and imposed the definitive safeguard measure for a period of two and half years. The measure was imposed on imports of all countries with the exception of certain developing countries. The final determination issued by the NTC is provided as Exhibit 3.
14. Puerto Sombra notified the WTO on 25 November 2016 concerning the decision to impose the definitive safeguard measure. The notification provided all the essential details in the prescribed format. One of the key questions that was raised by certain developed countries subsequent to the notification to the WTO was the exclusion of Puerto Santo from the imposition of the measure. In particular, Puerto Santo has been recognized as a developing country by Puerto Sombra and since its exports constituted less than 3 percent of the total volume of imports, it was excluded from the imposition of the measure, in furtherance of the obligation under Article 9.1 of the AoS. The argument put forth by the developed countries that were being subject to the measure was that nearly all the other WTO members consider Puerto Santo a developed country and its annual GDP per capita was USD 18,562. Therefore, there was no reason for Puerto Santo to be considered as a developing country and accorded the benefit under Article 9.1 of the AoS.
15. In early December 2016, Pueblo Faro requested for consultations with Puerto Sombra under the WTO Dispute Settlement Understanding (“DSU”). The dispute was covered extensively by the media in both the countries as well as internationally. The fact that both the countries were negotiating to conclude a free trade agreement was an additional reason for the parties to settle the dispute through consultations. However, the consultations were unsuccessful.



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16. Pueblo Faro requested for the establishment of a WTO Panel. Puerto Sombra objected to the request. Thereafter, Pueblo Faro sent a second request for establishment of a WTO Panel. The DSB thereafter established a panel in January 2017 and the Panel was composed in late January 2017.
17. The terms of reference for the Panel as per the request for establishment of the Panel filed by Pueblo Faro are as under:

Puerto Sombra's imposition of provisional and definitive safeguard measures are in contravention of its WTO commitments under -

- i. Article XIX:2 of the GATT 1994 and Article 12.3 of the Agreement on Safeguards, as Puerto Sombra did not provide an opportunity to hold consultations prior to the imposition of the provisional safeguard measure and the information relating to these matters was only released after the actual imposition of the measure. Further, Article 12.4, first sentence of the Agreement on Safeguards, as Puerto Sombra failed to make a notification to the WTO before imposing the provisional safeguard measure.*
- ii. Article 6 of the Agreement on Safeguards, as there is no reasoned or adequate explanation in the provisional determination demonstrating that critical circumstances existed warranting immediate application of safeguard measures.*
- iii. Article XIX:1(a) of the GATT 1994 as the safeguard measure is not based on a proper determination or reasoned and adequate explanation of any unforeseen developments and the effect of GATT obligations that led to increased imports that caused or threatened to cause serious injury to the domestic industry.*
- iv. Article XIX:1(a) of the GATT 1994 and Articles 2.1, 4.1(a), 4.2(a) and 4.2(b) of the Agreement on Safeguards, as the safeguard measure is not based on a proper determination or a reasoned and adequate explanation of such increased imports, which led to a significant overall impairment in the position of the domestic industry.*
- v. Article I of the GATT and Article 9.1 of the Agreement on Safeguards, as the benefit/immunity from safeguard duty granted to Puerto Santo was incorrect because Puerto Santo is a developed country.*



National Trade Commission
Ministry of Finance
1, Prime Block, Puerto Sombra
Telephone: +7775 237415, +7775 237416
E-mail: ntc@minfin.ps

Initiation Notification

NTC/SG/No.1/2016-1

1. **Dated:** 31 July 2016
2. **Product concerned:** Unwrought Aluminium classified under International Harmonised System Customs Tariff Heading 7601 of Chapter 76. The applied customs duty since 2013 on imports of the product concerned is 5%. The bound customs duty as per Puerto Sombra's WTO Schedule of Concessions is 40%. The table below is extracted from Puerto Sombra Customs Tariff Schedule, 2016:

Tariff Item	Description of Goods	Unit	Rate of duty	
			Applied	Bound rate
7601	Unwrought Aluminium			
7601 10	- Aluminium, not alloyed:			
7601 10 10	--- Ingots	Kg	5%	40%
7601 10 20	--- Billets	Kg	5%	40%
7601 10 30	--- Wire bars	Kg	5%	40%
7601 10 40	--- Wire rods	Kg	5%	40%
7601 10 90	--- Other	Kg	5%	40%
7601 20	- Aluminium alloys:			
7601 20 10	--- Ingots	Kg	5%	40%
7601 20 20	--- Billets	Kg	5%	40%
7601 20 30	--- Wire bars	Kg	5%	40%
7601 20 40	--- Wire rods	Kg	5%	40%
7601 20 90	--- Other	Kg	5%	40%

3. **Domestic industry:** Kimp Aluminium Corp., Puerto Sombra National Aluminium Corp. and Raven National Aluminium Corp. are the applicants that account for more than 50% of the total production of the product concerned in Puerto Sombra. For the purpose of this investigation, these three applicants qualify as domestic industry under Puerto Sombra Safeguards Act, 1996 ("Act"). The other three producers in Puerto Sombra, One Aluminium Corp., Vidin Metal Corp., and Cable Aluminium Corp. are supporting the application filed by the domestic industry.



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4. **Period concerned:** January 2016 to June 2016 (Annualised) and previous two calendar years.
5. **Source of import data:** The domestic industry has provided import data in their application sourced from a private agency. The National Trade Commission (“Commission”) also obtained import data from Puerto Sombra Customs, a government department that records import-export transactions in Puerto Sombra. For the purpose of this investigation, the Commission shall rely on import data from Puerto Sombra Customs.
6. **Evidence of serious injury:** The domestic industry or applicants claim that increased imports of the product concerned have caused and are threatening to cause serious injury to them. The domestic industry has supplied data on several economic indicators to demonstrate the above:

- a. **Imports:** Data pertaining to imports of the product concerned is as follows:

Year	Total imports (MT)	Indexed Imports
2014	250,000	100
2015	300,000	120
January to June, 2016	190,000	-
2016 (Annualised)	380,000	152

Quarter-wise analysis for January to June 2016 is as below:

Period	Imports (MT)	Indexed Imports
January to March, 2016	90,000	100
April to June, 2016	100,000	111

It seems that imports have increased in a sudden, sharp, significant and recent manner. Not only have imports increased significantly in 2016 (Annualised) in comparison to 2015, but in the most recent quarter also, imports have increased by 11% in comparison to the first quarter of 2016.

- b. **Production:** Production figures of applicants are as follows:

Year	Production of Applicants (MT)	Indexed Production
2014	150,000	100
2015	200,000	133
January to June, 2016	110,000	-
2016 (Annualised)	220,000	147



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It appears that the domestic industry has been able to increase its production during 2015 and 2016 (Annualised) in comparison to 2014.

- c. Total Production: Total production in Puerto Sombra is as follows:

Year	Total Production (inclusive of supporters to the application) (MT)	Indexed Production
2014	250,000	100
2015	310,000	124
January to June, 2016	180,000	-
2016 (Annualised)	360,000	144

It appears that total production of the product concerned has increased in Puerto Sombra during 2015 and 2016 (Annualised) in comparison to 2014.

- d. Sales: Sales figures of applicants are as follows:

Year	Sales of Applicants (MT)	Indexed Sales
2014	120,000	100
2015	150,000	125
January to June, 2016	80,000	-
2016 (Annualised)	160,000	133

It appears that sales of the domestic industry have increased during 2015 and 2016 (Annualised) in comparison to 2014.

Year	Total Sales (inclusive of supporters to the application) (MT)	Indexed Sales
2014	220,000	100
2015	270,000	123
January to June, 2016	150,000	-
2016 (Annualised)	300,000	136

It appears that total sales of the product concerned have increased in Puerto Sombra during 2015 and 2016 (Annualised) in comparison to 2014.

- e. Total Consumption: Consumption pattern of the product concerned in Puerto Sombra is as follows:

Year	Total Consumption (MT)	Indexed Sales
2014	470,000	100
2015	570,000	121
January to June, 2016	340,000	-
2016 (Annualised)	680,000	145

It appears that consumption of the product concerned has significantly increased in Puerto Sombra in 2015 and 2016 (Annualised) in comparison to 2014.

f. Market share: Market share of imports vis-à-vis applicants is given below:

Year	%age of imports in total production	Share of imports in total consumption	Share of applicants' in total consumption
2014	60%	53%	26%
2015	97%	53%	26%
January to June, 2016	106%	56%	24%
2016 (Annualised)	106%	56%	24%

It appears that imports of the product concerned have sharply increased in total production of the applicants in 2015 to 97% and in 2016 (Annualised) to 106% in comparison to 2014, when share of imports in total production was only 60%. Share of imports in total consumption has increased from 53% in 2014 and 2015 to 56% in 2016 (Annualised). On the other hand, share of applicants in total consumption has declined from 26% in 2014 and 2015 to 24% in 2016 (Annualised).

g. Capacity utilisation: Capacity utilisation of the domestic industry is as below:

Year	Capacity	Production of applicants	Capacity Utilisation
2014	200,000	150,000	75%
2015	300,000	200,000	67%
2016 (Annualised)	300,000	220,000	73%

The domestic industry has increased its capacity for the product concerned in 2015 in view of increase in consumption of product concerned in Puerto Sombra. It appears that despite increase in consumption, the domestic industry has not

been able to utilise its capacities fully. Capacity utilisation of the domestic industry declined in 2015 to 67%, but increased to 73% in 2016 (Annualised). However, capacity utilisation in 2016 (Annualised) was still below 2014.

h. Productivity and Employment:

Year	Production of applicants (MT)	Productivity per day (MT)	Employment (Indexed)	Productivity per day per employee (Indexed)
2014	150,000	428.57	100	100
2015	200,000	571.43	120	113
2016 (Annualised)	220,000	628.57	130	111

It appears that the domestic industry has been able to improve its productivity.

i. Profits and Losses: The profitability of the domestic industry has been deteriorating since 2015 and in the most recent period, it has come down critically. The domestic industry is now suffering losses.

Year	Profitability (USD) (Indexed)
2014	100
2015	50
January to June, 2016	-20

7. **Request for duty:** The domestic industry has requested in their application that safeguard duty should be immediately imposed on imports of the product concerned for a period of four years. The domestic industry has requested for imposition of provisional safeguard duty in light of the sharp fall in profitability of the domestic industry due to sudden, sharp, significant and recent increase in imports of the product concerned.
8. **Initiation:** The Commission has examined the application and is of the view that the application satisfies the requirements of the Act. Despite improvement in production, sales and productivity, the domestic industry's capacity utilisation, market share and profitability has come down sharply. It appears that imports of the product concerned are the primary reason for deterioration in the domestic industry's status. Prima facie, the evidence on record demonstrates serious injury being caused to the domestic industry by sudden, sharp, significant and recent increase in imports of the product



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concerned. In view of this, the Commission has decided to initiate this investigation through this notice to further investigate the matter.

9. **Timelines:** Interested parties are invited to register for this investigation and make their views known within a period of 37 days from the date of this notice to:

Ms. Jamie Gordon, Chairperson
National Trade Commission
Ministry of Finance
1, Prime Block, Puerto Sombra
Telephone: +7775 237415, +7775 237416
E-mail: ntc@minfin.ps

The Commission intends to complete this investigation within six months from the date of this notice. Any comments or views made known to the Commission in confidential form should also be filed with the Commission in non-confidential form so that the non-confidential version can be placed in the public file for access by interested parties. A copy of this notice is also being forwarded to all the diplomatic missions of various countries in Puerto Sombra.

10. **Public hearing:** A public hearing shall be held during the course of this investigation. All parties duly registered as interested parties for this investigation shall be notified of the time and venue of the public hearing in due course. All parties that present oral submissions during the public hearing are requested to file their oral submissions in writing as well within 10 days of the public hearing. If an interested party files written submissions and/or any accompanying evidence in confidential form, it is requested that a non-confidential version of the same should also be filed along with confidential written submissions. Written submissions or evidence, that is not marked as confidential on top of each page shall be deemed to be non-confidential by the Commission. Once written submissions are filed, they shall be exchanged between parties and parties shall have further 10 days to file their rebuttals in writing.
11. **Public file:** A public file shall be maintained in the office of the Commission during the course of this investigation. All data/documents, application by the domestic industry, submissions by various interested parties, data/information obtained by the Commission shall be placed in the public file in non-confidential version. Interested parties, their authorised representatives or authorised attorneys may access the public file between 10 am and 1 pm during week days. It is requested that parties or their representatives should provide one day notice to the Commission before accessing the public file.



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Provisional Determination

NTC/SG/No.1/2016-2

Dated: 2 August 2016

A. General Background and Procedure

1. The general background and procedure followed in the investigation is explained in paragraphs 1 to 5 and paragraphs 7 to 11 of the Initiation Notification NTC/SG/No.1/2016-1 dated 31 July 2016.

B. Economic analysis

a. Increased imports

2. Imports of the product concerned in Puerto Sombra are as detailed below:

Year	Total imports (MT)	Imports (Indexed)
2014	250,000	100
2015	300,000	120
January to June, 2016	190,000	-
2016 (Annualised)	380,000	152

3. Imports have not only increased from base year 2014 to 2016 (Annualised) by 52%, they have also increased year-on-year in a significant fashion. Imports increased to 300,000 MT in 2015 from 250,000 MT in 2014. This itself is an increase of 20%. Thereafter, imports sharply increased to 380,000 MT in 2016 (Annualised) compared to 300,000 MT in 2015. This is an increase of 32% and overall increase of 52% when compared with 2014. This is a sudden, sharp, significant and recent increase in imports of the product concerned.
4. Quarter-wise analysis of imports for the first two quarters of 2016 throws more light on the level of imports into Puerto Sombra:

Period	Imports (MT)	Imports (Indexed)
January to March, 2016	90,000	100
April to June, 2016	100,000	111

5. It seems that imports have increased in a sudden, sharp, significant and recent manner in the first two quarters of 2016. Not only have imports increased significantly in 2016 (Annualised) in comparison to 2015, but in the most recent quarter also, imports have increased by 11% in comparison to the first quarter of 2016.
6. Now the Commission shall examine if the increased imports have affected the economic parameters of the domestic industry. The Commission notes that Puerto Sombra has adopted the Agreement on Safeguards (“AoS”) in domestic law under Puerto Sombra Safeguards Act, 1996 (“Act”). The obligations under the Act directly arise from the AoS. Section 4.2(a) of the Act as well as Article 4.2(a) of the AoS prescribe that an investigating authority should examine certain relevant economic indicators, in particular, the following ones:

i. Production

7. Production figures of the domestic industry are as follows:

Year	Production of Applicants (MT)	Indexed Production
2014	150,000	100
2015	200,000	133
January to June, 2016	110,000	-
2016 (Annualised)	220,000	147

8. It appears that the domestic industry has been able to increase its production during 2015 and 2016 (Annualised) in comparison to 2014. However, whether increase in production has also led to increase in sales, is also relevant for examination. Further, whether increase in production of the product concerned in Puerto Sombra is leading to profitable sales is also relevant for examination. The Commission has examined the same later.

ii. Total Production:

9. Total production of the product concerned in Puerto Sombra is as follows:

Year	Total Production (inclusive of supporters to the application) (MT)	Production (Indexed)
2014	250,000	100
2015	310,000	124
January to June, 2016	180,000	-
2016 (Annualised)	360,000	144

10. It appears that total production of the product concerned has increased in Puerto Sombra during 2015 and 2016 (Annualised) in comparison to 2014.

iii. Sales:

11. Sales figures of the domestic industry are as follows:

Year	Sales of Applicants (MT)	Sales (Indexed)
2014	120,000	100
2015	150,000	125
January to June, 2016	80,000	-
2016 (Annualised)	160,000	133

12. It appears that sales of the domestic industry have increased during 2015 and 2016 (Annualised) in comparison to 2014.

Year	Total Sales (inclusive of supporters to the application) (MT)	Sales (Indexed)
2014	220,000	100
2015	270,000	123
January to June, 2016	150,000	-
2016 (Annualised)	300,000	136

13. It appears that total sales of the product concerned have increased in Puerto Sombra during 2015 and 2016 (Annualised) in comparison to 2014. As mentioned in paragraph 9, even though sales of the domestic industry as well as total sales have increased in the period concerned, what is relevant for examination is whether these sales are profitable. This examination is done later.

iv. Total Consumption/Demand:

14. Consumption/demand pattern of the product concerned in Puerto Sombra is as follows:

Year	Total Consumption (MT)	Sales (Indexed)
2014	470,000	100
2015	570,000	121
January to June, 2016	340,000	-
2016 (Annualised)	680,000	145

15. It appears that consumption of the product concerned has significantly increased in Puerto Sombra in 2015 and 2016 (Annualised) in comparison to 2014. It is also important to examine the domestic industry's share in consumption in comparison to imports, which is done below.



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v. Market share:

16. Market share of imports vis-à-vis the domestic industry is given below:

Year	%age of imports in total production	Share of imports in total consumption	Share of applicants' in total consumption
2014	60%	53%	26%
2015	97%	53%	26%
January to June, 2016	106%	56%	24%
2016 (Annualised)	106%	56%	24%

17. It appears that imports of the product concerned have sharply increased in total production of the domestic industry in 2015 to 97% and in 2016 (Annualised) to 106% in comparison to 2014, when share of imports in total production was mere 60%. Share of imports in total consumption has increased from 53% in 2014 and 2015 to 56% in 2016 (Annualised). On the other hand, share of the domestic industry in total consumption has declined from 26% in 2014 and 2015 to 24% in 2016 (Annualised).

18. Imports have indeed captured the market share of the domestic industry. This trend will be further examined during the course of the investigation. However, it is provisionally determined that imports of the product concerned have captured a significant portion of consumption in 2016 (Annualised), which has led to loss of market share for the domestic industry.

vi. Capacity utilisation:

19. Capacity utilisation of the domestic industry is as below:

Year	Capacity	Production of applicants	Capacity Utilisation
2014	200,000	150,000	75%
2015	300,000	200,000	67%
2016 (Annualised)	300,000	220,000	73%

20. The domestic industry has increased its capacity for the product concerned in 2015 in view of increase in consumption of the product concerned in Puerto Sombra. It appears that despite increase in consumption, the domestic industry has not been able to utilise its capacities fully. It is indeed true that newer capacities may not be fully utilised as soon as they are set up, because it takes time for an industry to stabilise newer capacities and achieve optimum efficiency. Nonetheless, within a year, the domestic industry has stabilised its capacities to a great extent, but capacity utilisation in 2016 (Annualised)

remains below 2014. A holistic examination reveals that capacity utilisation of the domestic industry declined in 2015 to 67%, but increased to 73% in 2016 (Annualised). However, capacity utilisation in 2016 (Annualised) was still below 2014. As demonstrated later in the analysis, despite increase in capacity utilisation in 2016 (Annualised) the domestic industry could not make profitable sales and suffered losses in the period January – June 2016.

vii. Productivity and Employment:

Year	Production of applicants (MT)	Productivity per day (MT)	Employment (Indexed)	Productivity per day per employee (Indexed)
2014	150,000	428.57	100	100
2015	200,000	571.43	120	113
2016 (Annualised)	220,000	628.57	130	111

21. It appears that the domestic industry has been able to improve its productivity. The number of employees did increase commensurate to increase in capacity, but productivity per day per employee in 2016 (Annualised) was below the level attained in 2015. It is to be noted that exact number of employees and productivity per day per employee have been claimed confidential by the domestic industry as these are business sensitive. Therefore, the Commission has only disclosed non-confidential figures in indexed form to supplement its observations here.

viii. Profits and Losses:

22. The profitability of the domestic industry has been deteriorating since 2015 and in the most recent period, it has come down critically. The domestic industry is now suffering losses. It is to be noted that exact figures of profitability have been claimed confidential by the domestic industry as these are business sensitive. Therefore, the Commission has only disclosed non-confidential figures in indexed form to supplement its observations here.

Year	Profitability (USD) (Indexed)
2014	100
2015	50
January to June, 2016	-20

23. Despite increase in production, sales and consumption in the domestic market, the market share of the domestic industry has declined in the period concerned coupled with decline

in capacity utilisation, productivity per day per employee, and a significant decline in profits. In fact, the domestic industry is now suffering losses. This is of serious concern and indicates that the domestic industry is facing serious injury due to sudden, sharp, significant and recent increase in imports of the product concerned.

C. Causal link

24. It is relevant to discuss the prices at which imports are landing into Puerto Sombra. To arrive at the landed value, the Commission relied upon the CIF value of imports as given in the import data obtained from Puerto Sombra Customs. To this, the Commission added 1% landing charges and 5% customs duty. The analysis of landed value vis-à-vis cost of production of the domestic industry, selling price of the domestic industry and profitability of the domestic industry is given in the table below:

Year	Landed Value (USD/MT) (Indexed)	Cost of production (USD/MT) (Indexed)	Selling Price (USD/MT) (Indexed)	Profitability (USD) (Indexed)
2014	100	100	100	100
2015	101	130	101	50
January to June, 2016	80	110	91	-20

25. Landed value of product concerned did increase to 101 indexed points in 2015, however, it sharply declined to 80 indexed points in the period January - June 2016. An explanation of this sharp fall in landed value is given under the section where unforeseen developments are examined. For discussion here, we examine the impact of landed value on other economic parameters of the domestic industry. Indeed, it is true that the domestic industry heavily invested in 2015 to increase its capacities, which led to increase in its cost of production in 2015. But the domestic industry was able to tame its cost of production between January and June, 2016 when it went down to 110 indexed points. However, the domestic industry could not recover even its cost of production in this period, and was forced to sell its goods at mere 91 indexed points because, the landed value of the product concerned had declined to a significant low of 80 indexed points. The domestic industry was forced to match the prices of the subject imported goods. We have on record e-mail communications from the domestic industry, where it is shown that buyers have clearly threatened the domestic industry that if it does not bring down its prices to match prices of imported product concerned, buyers would not buy from the domestic industry. The domestic industry was left with no option but to decrease its prices. This explains the sharp decline in profits to -20 indexed points in January to June, 2016. In this period, the domestic industry has not made any profitable sales.



26. There is clear correlation among fall in landed value, decline in selling prices of the domestic industry leading to sharp fall in profitability of the domestic industry in January – June, 2016. This coincides with the sudden, sharp, significant and recent increase in imports of the product concerned during this period. Even though the production and sales of the domestic industry have increased in 2016 (Annualised), the same is not leading to profitable sales as the imported product concerned are priced lower than the selling price of the domestic industry. The domestic industry's capacity utilisation, market share and productivity per day per employee has also declined in the period concerned. The domestic industry is being forced to lower its prices in line with declining landed value of the imported product concerned. This establishes causal link between increased imports and serious injury being faced by the domestic industry.

D. Unforeseen developments

27. Article XIX of the GATT requires that investigating authorities conduct an examination of the developments that were unforeseen that led to increase in imports of a product in such quantities as to cause or threaten serious injury to the domestic industry. The domestic industry claims that Pueblo Faro, which is a major economy accounting for more than 60% of global production of the product concerned is experiencing a saturation in domestic demand of the product concerned. It is claimed in the application by the domestic industry that consumption of the product concerned has been on the decline in recent years in Pueblo Faro, and its manufacturers are looking for overseas' markets to dump their goods.

28. It is contended by the domestic industry that five other major economies, which are big consumers of the product concerned have either put anti-dumping duties or countervailing duties on imports of Pueblo Faro in the past two years. Anti-dumping and countervailing duties last for 5 years. Puerto Sombra is now the natural choice for manufacturers of Pueblo Faro. The Commission notes that the claims of the domestic industry are indeed true. Like Puerto Sombra, Pueblo Faro joined WTO in 1995. Puerto Sombra is a rapidly growing economy, with its GDP touching annually at 9%. Consumption of the product concerned has been on the rise in the past three years due to rapid expansion in infrastructure sector. It is worthy to note that the 2009 global recession has led to decline in infrastructure projects globally, but such projects are on the rise in Puerto Sombra. Pueblo Faro is unable to export the product concerned to many major economies as they are still struggling with the impact of global recession. Infrastructure investment in such economies has been low since 2009. Such economies have reduced their consumption of the product concerned since 2009. In addition to this, five major economies which are also major consumers of the product concerned have imposed anti-dumping or countervailing duties on imports of the product concerned from Pueblo Faro in the past



two years. Exporters from Pueblo Faro are left with no choice but to export to Puerto Sombra, and that too at very low prices since it cannot command high prices in international market which is experiencing surplus of the product concerned. There is huge surplus of the product concerned in Pueblo Faro as per various media reports in reputed trade journals.

29. From an analysis of import data, the following becomes evident:

Year	Share of imports from Pueblo Faro in total imports of the product concerned in Puerto Sombra	Share of imports from other countries in total imports of the product concerned in Puerto Sombra
2014	60%	40%
2015	75%	25%
January to June, 2016	82%	18%

30. Imports of the product concerned from Pueblo Faro have witnessed sudden, sharp, significant and recent increase since 2014. Exporters from Pueblo Faro have been receiving an export incentive of 5% on FOB value of their exports of the product concerned since January 2015. This gives further incentive to manufacturers in Pueblo Faro to export the product concerned in increased quantities to avail this incentive.
31. The 2009 global recession leading to global decline in infrastructure investment causing global decline in demand for the product concerned; anti-dumping and countervailing duties by five major economies on imports of the product concerned from Pueblo Faro in the past two years leading to export push to Puerto Sombra; surplus capacities of the product concerned with manufacturers in Pueblo Faro and their urge to channel their goods in overseas markets such as Puerto Sombra; export incentive of 5% on FOB value of the product concerned by the government of Pueblo Faro; and high demand for the product concerned in Puerto Sombra since 2014 constitute unforeseen events. It is also peculiar how these unforeseen events have coincided in time in such a manner so as to result in such increased imports of the product concerned in Puerto Sombra in the period concerned. Imports of the product concerned have witnessed 52% increase in 2016 (Annualised) when compared to 2014.

E. Effect of obligations under GATT

32. Article XIX of the GATT requires that an investigating authority conduct an examination of the effect of obligations incurred under GATT, including tariff concessions, which led to increase in imports of a product in such quantities as to cause or threaten serious injury to the domestic industry. It is worthy to note that Puerto Sombra has bound its tariffs on



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the product concerned at 40% in its WTO Schedule of Concessions. There, however, is an overarching obligation on WTO members to reduce their tariffs further so as to better assimilate and integrate in the global market and be part of the globalisation project. Most of the WTO members have over the years reduced their applied tariffs on various products and maintain tariffs at lower rates than bound tariffs, which raises an obligation on other WTO members to lower tariffs to further promote and encourage international trade. This demonstrates the underlying obligation on the WTO membership to continue reducing their tariffs to encourage and promote global trade. The Commission notes that applied tariffs on the product concerned were 15% till end of 2013 in Puerto Sombra. Keeping in view the obligation Puerto Sombra has under its WTO commitments, the tariffs on the product concerned were further lowered on many products including the product concerned by 10%. From 31 December 2013, the applied tariff on the product concerned has been 5%. This has directly resulted in increase in imports of the product concerned since 2014. Consider the table below for ease of reference:

Year	Total imports of the product concerned (MT)	Indexed Increase in Imports	Increase in imports year-on-year
2012	100,000	100	-
2013	120,000	120	20%
2014	250,000	250	108%
2015	300,000	300	20%
January to June, 2016	190,000	-	
2016 (Annualised)	380,000	380	27%

33. The above data sheds astonishing light on increase in imports of the product concerned. The Commission notes that on overall basis, imports of the product concerned increased by 280% in 2016 (Annualised) in comparison to 2012. Year-on-year, the trend is explained as follows:

- a. Between 2012 and 2013, imports of the product concerned increased by 20%;
- b. Imports of the product concerned increased by 108% in 2014 in comparison to 2013, when import tariffs reduced to 5% in Puerto Sombra;
- c. Imports of the product concerned increased by 20% in 2015 in comparison to 2014;
- d. Imports of the product concerned further increased by 27% in 2016 (Annualised) in comparison to 2015.

34. The above trends overwhelmingly establish a sudden sharp, significant and recent increase in imports of the product concerned.

F. Critical circumstances



35. Section 6 of the Act and Article 6 of the AoS empowers the Commission to levy provisional safeguard measures for 200 days in critical circumstances where delay would cause damage to the domestic industry which would be difficult to repair. In the present facts, the Commission holds that the circumstances enumerated in paragraphs 25 and 26 above are indeed critical and warrant immediate intervention by the Commission. Further delay by the Commission would only worsen the situation of the domestic industry.

G. Conclusion

36. The Commission approves levy of 20% provisional safeguard duty for a period of 200 days, commencing 2 August 2016. In the meanwhile, the Commission shall expeditiously conduct this investigation and complete it by 30 January 2017. A public hearing shall be conducted in due course and all registered interested parties shall be notified of the same separately.



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Final Determination

NTC/SG/No.1/2016-3

Dated: 15 November 2016

A. General Background and Procedure

1. The general background and procedure followed in the investigation is already explained in the Initiation Notification NTC/SG/No.1/2016-1 dated 31 July 2016 and Provisional Determination NTC/SG/No.1/2016-2 dated 2 August 2016.

B. Interested parties

2. The following parties registered themselves for this investigation within the timelines mentioned in the initiation notification:
 - i. The People's Republic of Pueblo Faro ("Pueblo Faro")
 - ii. Pueblo Faro Metal Corp, Pueblo Faro
 - iii. True Metal Corp, Pueblo Faro
 - iv. Pacific Metal Corp, Pueblo Faro
 - v. Aluminium Metal Producers Association, Puerto Sombra
 - vi. Aluminium Metal Importers & Users Association, Puerto Sombra
 - vii. Preserve Environment Group, Puerto Sombra
 - viii. Labour Protection Rights Group, Puerto Sombra
 - ix. Free Trade Open Borders International, Puerto Sombra
3. The aforementioned parties made their views known within the timelines mentioned in the Initiation Notification. A few parties also made comments on the provisional determination in their submissions.

C. Procedure and events after Provisional Determination

4. The National Tariff Commission ("Commission") conducted a public hearing on 30 October 2016. Ms. Jamie Gordon chaired the public hearing. During the public hearing, the domestic industry presented its oral submissions first. Thereafter, the aforementioned



interested parties made oral submissions one by one during the public hearing. The domestic industry was then allowed to make a brief rebuttal. The Chairperson Ms. Jamie Gordon interjected during the public hearing to clarify certain facts and legal arguments that parties presented during the public hearing. The public hearing lasted for 3 hours.

5. At the end of the public hearing, the Chairperson requested all parties to make their written submissions summarising their oral submissions within 10 days of the public hearing. All parties made their submissions within the timelines. Several parties made written submissions in confidential versions, which were accompanied by non-confidential versions. The confidential versions have been perused by the Commission. The non-confidential versions of the written submissions were placed in the public file for inspection by interested parties. Interested parties were allowed to make copies of the non-confidential written submissions and other documents in the public file on request.
6. Thereafter, parties filed their rebuttals in writing within 10 days.

D. Submissions by Parties

7. Submissions by various parties during the course of this investigation are summarised below:
 - i. Pueblo Faro: The government of Pueblo Faro has raised the following contentions during this investigation:
 - a. The Commission took a decision in haste by imposing provisional safeguard duty within two days of initiation of the investigation. The facts on record do not indicate presence of critical circumstances that warranted imposition of provisional safeguard duty.
 - b. The circumstances identified by the Commission in the provisional determination cannot be termed as critical. Critical circumstances mean such circumstances where the domestic industry is in need of urgent protection, otherwise, the industry would not survive one more day. Imports had increased only by mere 27% in 2016 (Annualised) in comparison to 2015. When many crucial economic parameters of the domestic industry show improvement, while imports do not show an alarming increase at all, it is not understood on what basis the Commission found critical circumstances that warranted imposition of provisional safeguard duty. The Commission's analysis fails to demonstrate existence of critical circumstances that satisfies the requirements of the Agreement on Safeguards ("AoS").



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- c. The events identified by the Commission as unforeseen do not qualify as unforeseen developments within the meaning of Article XIX of GATT. Further, the Commission has failed to identify any obligation under GATT, which led to increase in imports of the product concerned. Further, there is no obligation under GATT to reduce import tariffs below bound tariffs.
- d. The Commission failed to realise that the domestic industry is stressed under heavy debt. The domestic industry had borrowed huge capital to expand its capacity during 2014 and 2015. Interest rate in Puerto Sombra is as high as 14%. With such piles of debt, the domestic industry was already under a lot of stress. Further, capacity expansion in 2015 also led to huge increase in fixed costs of the domestic industry. New capacities also led to high depreciation cost for the domestic industry. These facts are available in the annual reports of the domestic industry. The Commission should examine the annual reports and financials of the domestic industry.
- e. The domestic industry could not recover its cost of production by selling its products at a higher price, as the product concerned cannot command a high price in the market when internationally the market is saturated and prices are at an all-time low. This is simple demand-supply logic.
- f. There does not appear to be any causal link between alleged increase in imports and injury being faced by the domestic industry.
- g. The AoS and Article XIX of GATT does not envisage use of annualised data for examination of economic factors. Data should be actual and not notional. Since the Commission's examination is based on notional data for 2016 and not on actual data, the economic analysis is faulty and fails to satisfy Article XIX of GATT and Article 4 of the AoS.
- h. The investigation should be terminated immediately. The Commission should not levy any definitive safeguard duty on imports of the product concerned. Further, under the AoS, Pueblo Faro reserves its right to claim trade compensation from Puerto Sombra in terms of Article 8(1) of the AoS.
- i. It is rather unfortunate that Puerto Sombra has excluded Puerto Santo from the scope of the provisional safeguard duty by treating it as a developing country. Puerto Santo is not a developing country. It is a developed country and a majority of the WTO membership recognises it as such in trade remedy investigations and for other purposes. Its annual GDP per capita is USD 18,562 as per the latest report of the World Bank, which is as high as any developed country. Puerto Santo's



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GNP per capita crossed USD 1000 per annum in 2005 itself, within 10 years of joining the WTO. It is a highly industrialised economy with a high human development index comparable to any developed country. The Commission should apply the law in a fair manner in terms of Article I of the GATT and impose safeguard duty on Puerto Santo as well.

- ii. Pueblo Faro Metal Corp, True Metal Corp, Pacific Metal Corp, Pueblo Faro: These parties are manufacturers and exporters of the product concerned in Pueblo Faro. They have raised the following contentions during this investigation:
 - a. There did not exist such critical circumstances that warranted imposition of provisional safeguard duty within two days of initiation. The Commission could not have possibly accomplished an objective examination of the facts on record within two days of initiation of the investigation. This only demonstrates bias on the part of the Commission and an intent on unreasonably protecting the domestic industry from foreign competition. No WTO member has ever levied provisional safeguard duties in such a short span of time.
 - b. It is well known that the applicants/domestic industry are stressed in huge debt and facing high interest rate. The domestic industry's cost of production is also very high. These intrinsic reasons led to the decline of the domestic industry. Injury to the domestic industry is only due to these other factors and not due to alleged increase in imports of the product concerned.
 - c. It is well known that manufacturers of the product concerned in Pueblo Faro are backward integrated. All manufacturers have their own bauxite mines in Pueblo Faro. Due to ample and easy supply of ore (raw material), the cost of production of the product concerned is low in Pueblo Faro. That is the reason that the prices of the product concerned exported from Pueblo Faro are low. The exporters from Pueblo Faro are not dumping the product concerned in Puerto Sombra. However, if the domestic industry is concerned with dumping of the product concerned, it should approach the anti-dumping commission in Puerto Sombra. The present Commission does not have jurisdiction to handle this investigation.
 - d. Provisional safeguard duty should be withdrawn and this investigation should be terminated immediately.
- iii. Aluminium Metal Producers Association, Puerto Sombra: This is an association of aluminium metal manufacturers registered under the laws of Puerto Sombra. The Association has raised the following contentions during this investigation:



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- a. Levy of provisional safeguard duty is a welcome step. The rapid dumping by Pueblo Faro's exporters had to be tackled immediately. The Commission has taken a wise decision by imposing provisional safeguard duty for 200 days.
 - b. The Commission should now impose definitive safeguard duty on imports of the product concerned for four years.
- iv. Aluminium Metal Importers & Users Association, Puerto Sombra: This is an association of importers and users of aluminium metal registered under the laws of Puerto Sombra. These users utilise the product concerned to manufacture downstream products. This Association has raised the following contentions during this investigation:
- a. Levy of provisional safeguard duty is a disastrous step for importers and users of the product concerned. The importers/users have to pay safeguard duty on the imported product concerned, which has increased the total cost for users of this product. Ultimately, the selling price of the downstream product has also increased and such high prices are not good for consumers of the downstream product. Such safeguard duty is against public interest.
 - b. The provisional safeguard duty is only protecting a few big corporations, while the importers/users are being forced to pay higher price for importing the product concerned. Further, even the domestic industry has now increased its prices since the imposition of provisional safeguard duty. This is an overall loss for the importers/users and consumers of downstream products.
 - c. The data in the provisional determination clearly shows that there is a huge demand-supply gap for the product concerned in Puerto Sombra. Therefore, users have to depend on importing the product concerned. The domestic industry cannot meet the entire demand of the product concerned in Puerto Sombra. Despite these facts, the Commission has overlooked this essential factor.
 - d. Provisional safeguard duty should be withdrawn and this investigation should be immediately terminated. The government of Puerto Sombra should refund the provisional safeguard duty collected from importers/users in terms of the Puerto Sombra Safeguards Act, 1996 ("Act") and the AoS.
- v. Preserve Environment Group, Puerto Sombra: This is a non-governmental organisation ("NGO") registered under the laws of Puerto Sombra. Submissions by this NGO are as below:



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- a. The manufactures in Pueblo Faro are known to employ bonded labour in their bauxite mines. They pay less than minimum wages to their workers to keep their cost of production low. No safety gear is provided to workers. The workers live in inhumane conditions around the mines. Aggressive mining has depleted the ore in Pueblo Faro and contaminated the surrounding areas.
 - b. Products manufactured by employing such unethical practices should not be allowed in Puerto Sombra. Puerto Sombra should continue safeguard duty against Pueblo Faro until the manufacturers/exporters in Pueblo Faro correct their unethical practices.
- vi. Labour Protection Rights Group, Puerto Sombra: This an NGO registered under the laws of Puerto Sombra. Submissions by this NGO are as below:
- a. The manufacturers in Pueblo Faro are known to exploit their workers. Less than minimum wages are provided to them. The Supreme Court of Pueblo Faro has taken cognizance of the widespread human rights violations by these manufacturers and registered a case against them. Allowing imports of the product concerned that is manufactured employing such unethical practices would encourage such manufacturers to continue their unethical practices and send a wrong message to society.
 - b. The government should take a stand against such exploitation and put a ban on imports of the product concerned from Pueblo Faro.
- vii. Free Trade Open Borders International, Puerto Sombra: This is a think-tank registered under the laws of Puerto Sombra. Its submissions are recorded as below:
- a. Safeguard duties or any other types of trade remedies are protectionist measures that distort international trade. Such measures decrease overall wealth for the society while a select few, such as the domestic industry in this case, generate wealth at the expense of others.
 - b. Provisional safeguard duty has not only increased prices of imports but the domestic industry has also increased its prices in the shadow of the provisional safeguard duty. As a result, the prices of the product concerned have increased than earlier. The importers/users and consumers of downstream products shall pay the price of this increase.
 - c. The importers/users are dependent on imports of the product concerned because the domestic industry cannot meet the entire demand of the product concerned in



Puerto Sombra. Rather than increasing capacity and production to compete with imports, the domestic industry has sought levy of safeguard duty to increase its market share. These practices are uncompetitive and the Commission should have examined the real motives of the domestic industry behind their application for initiating this case.

- d. The domestic industry has presented a very vague adjustment plan, which fails to demonstrate how it will achieve structural adjustment during the safeguard duty. The domestic industry merely states in their application that as part of structural adjustment, the domestic industry will i) retrain its workers to achieve better efficiency; ii) expand its capacity to cater to the increasing demand of the product concerned in Puerto Sombra; iii) bid for bauxite mines in Puerto Sombra in the upcoming tenders and if it is able to win mining rights, it will result in lowering its cost relating to raw materials; iv) purchase new machinery; and v) lower its debt. There is an inherent inconsistency in the above adjustment plan. The first four points indicate that the domestic industry is going to increase its costs by undertaking such activities. Obviously, the domestic industry will take on more debt to accomplish these milestones because as per its latest annual financial reports, it has no ready funds to undertake these activities. With more debt, it is questionable how the domestic industry would lower its debt to structurally adjust to increasing imports. Such a plan is doomed to fail and does not qualify as structural adjustment in terms of the AoS. Further, the domestic industry's structural adjustment is contingent upon winning mining rights in the upcoming tenders. If the domestic industry fails to win mining rights, its cost of production will not reduce. The AoS requires that structural adjustment plans should be workable or achievable. Contingent plans do not qualify as workable structural adjustment plans. The Commission should take note that the domestic industry has failed to provide a workable structural adjustment plan in its application, and in view of the same, should terminate this investigation.
- viii. Domestic industry: The domestic industry raised the following contentions during this investigation:
- a. Interested parties wrongly contend that the Commission has imposed provisional safeguard duty in haste. The facts on record strongly demonstrate existence of critical circumstances that warranted imposition of provisional safeguard duty. There is no bar in the GATT and AoS to impose provisional safeguard duty within a few days of initiation of safeguard investigation.
- b. The Commission's economic analysis is correct and satisfies the requirements of Article 4 of the AoS. The domestic industry has correctly identified unforeseen

events and obligations under GATT, which led to sudden, sharp, significant and recent increase in imports of the product concerned. The Commission's analysis in this regard in the provisional determination is correct and the same should be confirmed in the final determination as well.

- c. Interested parties wrongly contend that the domestic industry is facing injury due to high debt, high interest rate, high fixed cost and high depreciation cost due to capacity expansion. The sole reason for injury to the domestic industry is increased imports, which has led to overall impairment of the domestic industry. The Commission has also confirmed the domestic industry's contentions in the provisional determination.
- d. Interested parties wrongly contend that Article XIX of the GATT and AoS do not envisage use of annualised data for examination of economic factors. Nevertheless, the domestic industry has provided actual data for 2014, 2015 and January – June 2016, as the same were available as on the date of filing the application, which is 25 July 2016. The Commission has arrived at the annualised data for 2016 based on the actual data for January – June 2016. There is no bar in Article XIX of the GATT and AoS to annualise the data based on actual data of six months.
- e. The structural adjustment plan of the domestic industry is based on thorough risk assessment and strategy of the domestic industry. The plan is both workable and achievable. Retraining the workers would not lead to additional cost as the domestic industry has in-house technicians that can train the workers. Even though capacity expansion is capital intensive, the domestic industry can stabilise its cost of production in a year's time. The domestic industry expanded its capacity in 2015, which led to a slight increase in cost of production. But by end of June 2016, the domestic industry successfully tamed its cost of production and brought it down. This demonstrates that the domestic industry is fully capable to keep its cost of production in control in the event it expands its capacity in future. Safeguard duty would allow the domestic industry to sell its products at fair prices. Profitable sales would help the domestic industry lower its debts.

E. Analysis of contentions

8. The Commission finds no merit in the contentions raised by various exporters, importers, users, NGOs and think tanks. The Commission addresses their contentions below:
 - a. There is neither any legal bar under Article XIX of the GATT nor under the AoS to levy provisional safeguard duty within a few days from initiation of the

investigation. The only requirement under the law is that critical circumstances should exist that warrant immediate imposition of safeguard duty. The Commission has provided detailed analysis in the provisional determination in this regard. The Commission confirms that analysis and holds that there did exist critical circumstances that warranted levy of provisional safeguard duty.

- b. The Commission has done a detailed analysis pertaining to unforeseen developments and the effect of obligations under GATT in the provisional determination. The interested parties have failed to substantiate how each of the events identified by the Commission do not qualify as unforeseen. Further, the Commission disagrees with interested parties that there is no obligation on WTO members to reduce tariffs below bound rates. The Commission confirms its analysis in paragraphs 27 to 34 of the provisional determination.
- c. The Commission confirms the economic analysis in paragraphs 2 to 26 of the provisional determination and holds that the economic parameters indicate that the domestic industry is suffering serious injury and there is causal link between increased imports of the product concerned and serious injury. Further, the Commission observes that there is no bar under Article XIX of the GATT or under AoS to rely on annualised data for the most recent period. The Commission has examined both the annualised data for 2016 and actual data for January – June 2016 to make its determination. Therefore, there is no inconsistency in the Commission's examination. The domestic industry is not suffering injury solely due to huge debt, high interest rate, high fixed cost and high depreciation cost. Injury to the domestic industry is due to increased imports of the product concerned. A detailed analysis in this regard is already present in the provisional determination.
- d. The Commission rejects the contention that Puerto Santo should be included in the purview of safeguard duty. Puerto Sombra recognises Puerto Santo as a developing country under domestic law. Since imports from Puerto Santo are below 3% and collective imports of the product concerned from developing countries are below 9% of total imports of the product concerned, developing countries have not been subject to safeguard duty.
- e. The domestic industry has presented a structural adjustment plan based on its capability and track record. The domestic industry has undertaken that as part of its structural adjustment, it shall i) retrain its workers to achieve better efficiency; ii) expand its capacity to cater to increasing demand of the product concerned in Puerto Sombra; iii) bid for bauxite mines in Puerto Sombra in the upcoming tenders and if it is able to win mining rights, it will result in lowering its cost



relating to raw materials; iv) purchase new machinery; and v) lower its debt. The Commission finds the adjustment plan acceptable and shall monitor the same during the course of the safeguard duty. The domestic industry shall be required to present an annual report to the Commission on the steps taken to achieve the milestones as per the adjustment plan.

- f. Many interested parties have claimed that manufacturers in Pueblo Faro adopt unethical practices and the Commission should levy safeguard duty until the time such manufacturers correct their practices. The Commission understands the concerns of the parties but it should be noted that Article XIX of the GATT and AoS do not allow investigating authorities to levy safeguard duties to correct unethical practices of exporters. Such parties may approach appropriate forums for redressal.
- g. The Commission understands that there is demand-supply gap with regard to the product concerned. However, the Commission has not banned imports of the product concerned. Importers/users can still import the product concerned on payment of safeguard duty. Safeguard duty is levied to enable the domestic industry to structurally adjust to huge increase in imports and become more competitive to foreign competition. Safeguard duty is not in conflict with public interest. It is in the public interest that domestic manufacturers become more competitive so that users can procure the product concerned domestically rather than having to import it. Still, users are free to import the product concerned as long as they pay safeguard duty. There is no ban on imports of the product concerned. The impact on users and consumers is temporary as the safeguard duty would only be for a short period.

F. Conclusion

9. Based on the above discussion and analysis, the Commission levies definitive safeguard duty on the product concerned in terms of Sections 5(1), 7(1) and 7(4) of the Act and Articles 5(1), 7(1) and 7(4) of the AoS, as per the following schedule:
 - a. After 200th day of levy of provisional safeguard duty till 1 August 2017, @ 20% ad valorem of landed value;
 - b. From 2 August 2017 to 1 August 2018, @ 15% ad valorem of landed value;
 - c. From 2 August 2018 to 1 February 2019, @ 10% ad valorem of landed value.
10. As the imports from developing countries do not exceed 3% individually and 9% collectively, the imports of the product concerned from developing countries will not attract safeguard duty.