TEAM CODE: 103R

9TH GNLU INTERNATIONAL MOOT COURT COMPETITION, 2017

IN THE WTO PANEL

Puerto Sombra- Safeguard Measures on Unwrought Aluminium

WT/DSXXX

Pueblo Faro ……………………………………………………………………….Complainant

Vs.

Puerto Sombra…………………..…………………………………………………Respondent

MEMORANDUM ON BEHALF OF THE RESPONDENT

Table of Contents

LIST OF ABBREVIATIONS

...... 3

INDEX OF AUTHORITIES...... 5

STATEMENT OF FACTS 7

MEASURES AT ISSUE...... 9

SUMMARY 10

LEGAL PLEADINGS 12

ISSUE 1. Whether by facts of the case can it be shown that Puerto Sombra's imposition of safeguard measures are in contravention of its WTO commitments under Article XIX:2 of the GATT,1994, Article 12.3 and Article 12.4 of AoS? 12

ISSUE 2. Whether there exists a reasoned and adequate explanation in the provisional determination demonstrating critical circumstances warranting immediate application of safeguard measure under Article 6 of the AoS?...... 17

ISSUE 3. Whether safeguard measure imposed under Article XIX:1(a) is based on properly determination and reasoned and adequate explanation of its elements....... 21

ISSUE 4: Article XIX: 1(A) of the GATT 1994 and Articles 2.1, 4.1 (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....... 27

ISSUE 5: Whether by uncontroverted facts of the case, it can be proved that the imposition of the provisional and definitive safeguards by Puerto Sombra are in contravention of its WTO commitments under Article 1 of GATT and Article 9.1 of the Agreement on Safeguards 31

REQUEST FOR FINDINGS 34

LIST OF ABBREVIATIONS

%	Percentage
/	Or
AB/R	Appellate Body Report
AD	Anti-Dumping Duties
AoS	Agreement on Safeguards
BISD	Basic Instruments and Selected Document
CIF	Cost, Insurance and Freight
CNCE	Comisión Nacional de Comercio Exterior
CVD	Countervailing Duties
DSU	Dispute Settlement Understanding
EC	European Communities
ed.	Edition
EEC	European Economic Community
EU	European Union
FOB	Free on Board
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSP	Generalised System of Preferences
i.e.	That is
MFN	Most Favoured Nation

MT	Metric Ton
NTC	National Trade Commission
para.	Paragraph
PF	Pueblo Faro
PS	Puerto Sombra
R	Report
U.S.	United States
UN	United Nations
USA	United States of America
USD	United States Dollar
Ver.	Version
Vol.	Volume
WT/DS	World Trade/ Dispute Settlement
WTO	World Trade Organisation

INDEX OF AUTHORITIES

WTO APPELLATE BOARD REPORTS

Appellate Body Report, *Korea– Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, (12 January 2000) 11

Appellate Body Report, United States – *Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/AB/R, (8 March 2002)....................31

Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, (19 January 2001)....................22

Appellate Body Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/AB/R, adopted 25 February 1997....................12

Appellate Body Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/AB/R, WT/DS178/AB/R 20

WTO PANEL REPORTS

Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric*, WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R 32

Panel report, *Guatemala–Anti-dumping Investigation regarding Portland Cement from Mexico,* WT/DS60/R....................14

Panel Report, United States – *Definitive Safeguard Measures On Imports of Certain Steel Products*, WT/DS248/R (10 December 2003)....................31

Report of the Intersessional Working Party on the Complaint of Czechoslovakia Concerning the Withdrawal by the United States of a Tariff Concession under Article XIX of the GATT, GATT/CP/106, (22 October 1951)....................22

AGREEMENT, TREATIES AND CONVENTIONS

- Agreement on Safeguards, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 1A
- United Nations Vienna Convention on the Law of Treaties, May 23, 1969
- General Agreement on Tariffs and Trade, October 13, 1947

PUBLICATIONS

The Law School, University of Chicago, The Safeguards Mess: A Critique of the WTO Jurisprudence, Alan O. Sykes 20

U.S. International Trade Commission, Certain Motor Vehicles, Inv. No. TA-201-44, Pub. No. 1110, 2 I.T.R.D. 5241 (1980).. 21

WEBSITES

http://unstats.un.org/unsd/methods/m49/m49.htm.. 31

http://unstats.un.org/unsd/methods/m49/m49regin.htm#ftnc 31

http://www.law.uchicago.edu/Publications/Working/index.html.. 20

STATEMENT OF FACTS

Procedural timeline

- Puerto Sombra (PS) applied to National Trade Commission (NTC) for applying safeguard measures.
- Investigation was initiated on 31st July, 2016. Notification of this initiation was sent.
- NTC applied Provisional Safeguards Measure on 2nd August, 2016.
- Notification of the decision of the measure was provided on 15th August, 2016.
- Public hearing heard environment, labour groups; domestic industries; exporters; importers; user associations on 30th October 2016.
- The NTC verified to check the veracity and found no discrepancy. Definitive safeguards measure was imposed on 15th November 2016 for a period of 2 ½ years.
- WTO was notified of imposition of such a measure on 25th November 2016
- Pueblo Faro's (PF) request for consultation was unsuccessful.
- PS objected its request for establishment of Panel. Panel was established on the 2nd request for establishment of panel in January 2017. Its scope was limited by the terms of reference.

Background:

- Post the 2009 global recession, markets around the world saw a decline in global growth, PS's markets on the other hand had positive growth.
- PS's earlier agricultural economy now saw rapid urbanisation and development of services sector, infrastructural activities and consumerism. Changes were made to attract foreign investment.
- PS had an active export market as well. On the other hand, PF, a country in the same continent as PS, imposed high tax on the export of raw material and incentivised the manufacturing industry.
- PS in its attempt in protecting competent domestic industry of unwrought aluminium, from rising, cheap imports, has been reluctant in reducing tariffs and hence stalled their negotiations on a Free Trade Agreement.

Facts in Brief:

- The initiation notification set forth the procedure for investigation. In its analysis it brought up the difference in bound and applied customs duty, injury being caused and threatened to be caused by increased imports, production, sales, consumption, productivity. Decline in capacity utilisation and losses led to the commission discerning a prima facie case of injury and thereby decide to initiate the investigation to further investigate the matter.
- The NTC examined in the provisional determination if increased imports affected economic parameters. It scrutinized whether increase in production led to the increase in sales and whether these sales were profitable. Sales although shown to have increased, wasn't seen to be profitable. It was provisionally determined that imports captured significant portion of the consumption and hence domestic industry lost market share. Furthermore, it was determined that an increase in consumption didn't ensure utilisation of newer capacity and in spite of increase in capacity utilisation in 2016, industry still faced losses when seen with respect to 2014. Productivity and employment and profitability were in indexed figures and the real figures were kept confidential. Causal link was drawn between the sudden, sharp, significant and recent increase in imports and the domestic industry's sharp fall in profitability. These critical circumstances warranted immediate intervention as any delay would worsen conditions. Unforeseen developments were – 2009 global recession, anti-dumping and countervailing duties by 5 major economies on imports from PF, surplus capacities with PF manufacturers, export incentive of 5% FOB value and high demand in PS. The commission thereby approved the levy of 20% provisional safeguard duty for 200 days, commencing 2nd August 2016
- PF then questioned the NTC regarding the measures, the existence of critical circumstances, evidence proposing the injury causing imports under Article 6, their protectionist nature and violations under WTO. A leading newspaper wrote about the corruption in bauxite mine (raw material) tenders. CEO of Kimp Aluminium Corporation (applicant) also spoke of Baux Cooperation's monopoly. Public hearing was conducted, and the commission levied definitive safeguard duty in terms of section 5(1), 7(1) and 7(4).

MEASURES AT ISSUE

ISSUE 1. Whether by facts of the case can it be shown that Puerto Sombra's imposition of safeguard measures are in contravention of its WTO commitments under Article XIX:2 of the GATT,1994, Article 12.3 and Article 12.4 of AoS?

ISSUE 2. Whether there exists a reasoned and adequate explanation in the provisional determination demonstrating critical circumstances warranting immediate application of safeguard measure under Article 6 of the AoS?

ISSUE 3. Whether the safeguard measure is based on a proper determination or 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 as per Article XIX:1(a) of the GATT, 1994?

ISSUE 4: Whether Article XIX:1(a) of the GATT, 1994 and Articles 2.1, 4.1(a), 4.2(a) and 4.2(b) of the AoS has been violated by Puerto Sombra in applying the safeguard measures?

ISSUE 5. Whether Puerto Sombra has violated Article I of the GATT and Article 9.1 of the AoS by granting immunity to Puerto Santo?

SUMMARY

ISSUE 1. Whether by facts of the case can it be shown that Puerto Sombra's imposition of safeguard measures are in contravention of its WTO commitments under Article XIX:2 of the GATT,1994, Article 12.3 and Article 12.4 of AoS?

- The existence of critical circumstances in the instant matter warranted the application of the provisional safeguard measures under Article XIX:2 of the GATT
- Article 12.4 and not 12.3 applies to the case at hand as the latter deals with definitive safeguards and the respondents had imposed provisional safeguard measures

ISSUE 2. Whether there exists a reasoned and adequate explanation in the provisional determination demonstrating critical circumstances warranting immediate application of safeguard measure under Article 6 of the AoS?

- An imminent injury or threat to injury is sufficient to attract Article 6.
- Critical circumstances exist and are not anticipated.
- NCT has come up with a detailed, reasoned and adequate explanation for attracting Article 6.

ISSUE 3. Whether the safeguard measure is based on a proper determination or 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 as per Article XIX:1(a) of the GATT, 1994?

- The declining demand of the product in Pueblo Faro was an unforeseen development which caused increase in share of imports from Pueblo Faro in Puerto Sombra, is an unforeseen development.
- Other countries imposing duties on Pueblo Faro, is intrinsically related with rise in share of imports in the total consumption is an unforeseen development.
- There existed surplus capacities in Pueblo Faro of the product, is an unforeseen development.
- The FOB incentive cannot be said to have made the increase in imports foreseeable.
- The increase in demand could not have been foreseen.
- The lowering of tariffs for acknowledging the GATT obligations has caused an increase in imports.

ISSUE 4: Whether Article XIX:1(a) of the GATT, 1994 and Articles 2.1, 4.1(a), 4.2(a) and 4.2(b) of the AoS has been violated by Puerto Sombra in applying the safeguard measures?

- The imports have increased, both in relative and absolute terms as compared to the domestic production. The increase has been sharp and significant, as per Article XIX:1 (a) and Article 2.1 of the AoS.
- A significant overall impairment in the position of the domestic industry, according to Article 4.1 (a) of AoS, as share of the domestic industries in the total consumption has reduced.
- The investigation has been carried thoroughly by NCT, whereby, they have established and verified all the data. It has considered all the factors under Article 4.2 (a) and (b).

ISSUE 5. Whether Puerto Sombra has violated Article I of the GATT and Article 9.1 of the AoS by granting immunity to Puerto Santo?

- Article 9 of the AoS provides for a unilateral determination of developing countries, subject to the 'de minimis' test, to be excluded from the safeguards measures.
- Article 9 of the AoS is an exception to the Most Favoured Nation (MFN) principle of Article 1 of the GATT.

ISSUE 1. WHETHER BY FACTS OF THE CASE CAN IT BE SHOWN THAT PUERTO SOMBRA'S IMPOSITION OF SAFEGUARD MEASURES ARE IN CONTRAVENTION OF ITS WTO COMMITMENTS UNDER ARTICLE XIX:2 OF THE GATT,1994, ARTICLE 12.3 AND ARTICLE 12.4 OF AOS?

Article XIX of the GATT and the Agreement on Safeguards, both deal with application of Safeguard measures and before any such measure is imposed, both should be satisfied[1].

1.1 Whether there was no contravention of WTO commitments under Article XIX:2 of the GATT,1994 by Puerto Sombra?

i. Article XIX:2 of the GATT primarily places an obligation on the member states trying to impose safeguards on other member states (by restricting imports), to hold consultations with the parties on whom such restrictions are being imposed. This is because, the parties have substantial interest as exporters and hence are required to be notified/consulted. But this burden is discharged when "critical circumstances" exist and any delay in imposing safeguards would "…cause damage that would be difficult to repair…"

There existed "critical circumstances" that warranted the provisional application of safeguards

ii. For the application of GATT XIX:2, the prerequisite is the existence of "critical circumstances", though what it encompasses and entails, is not mentioned. The Article merely lays down a condition and places the burden on the party intending to exercise the provisional safeguard measures to discharge the burden of proving that "critical circumstances" existed. Though, such "critical circumstances" are not

[1]Appellate Body Report, *Korea– Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, (12 January 2000) Page 21 [hereafter referred as *Korea-Dairy Case*]

"…susceptible of a quantitative description…"[2], the determination of these has to be done on a case to case basis[3].

iii. In the instant matter, the provisional determination by the National Trade Commission of Puerto Sombra clearly elucidates that the market share of the Domestic Industry has dropped down to 24% in 2016 from the initial 26% in 2014. This data when contrasted against the import percentages shows that in the same period between 2014-2016, the percentage of imports in total production increased from 60% in 2014 to a significant 106% in 2016 (annualized); while the share of imports in total consumption in the same duration increased from 53% to 56%.

iv. The capacity utilization during the same reference period (2014-16) had dropped to 73% from 75%. These factors along with a sizeable 56% increase in imports during the reference years are testimony to the fact that critical circumstances indeed existed, and if not checked would lead to damage to the Domestic Industry that would have been difficult to repair. These imports moreover, were coming in at prices that forced the domestic industry to sell at prices below their costs so as to compete with them for market share[4].

v. Hence, Puerto Sombra was under no obligation to hold consultations pursuant to Article XIX:2 of the GATT and thus has not committed contravention of the same.

Puerto Sombra complied with all the provisions of GATT XIX:2 pertaining to imposition of provisional safeguards

vi. Puerto Sombra, after imposing the provisional safeguard measures, notified the WTO of its decision on the 15th of August. It also invited all the member countries to hold consultations which is harmonious with its commitments under the GATT Article XIX:2. Subsequent to this notification, consultations indeed took place and hence the burden placed on Puerto Sombra by Article XIX:2 is discharged.

B. Whether there was any contravention of WTO commitments under Article 12.3 and Article 12.4 of the Agreement on Safeguards?

---

[2] Appellate Body Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/AB/R, adopted 25 February 1997, Page 11 [hereafter referred to as *US- Underwear Case*]

[3] *US-Underwear Case*

[4] Moot Proposition, Paragraph 8

vii. Pueblo Faro has claimed the contravention of Article 12.3 of the Agreement on Safeguards by Puerto Sombra. It is the Respondents stand that no such contravention could be accorded to the Respondents.

Article 12.3 is not applicable in the instant matter

viii. Article 12.3 of the Agreement on Safeguards provides that a member "…proposing to apply or extend a safeguard measure…" shall give provide adequate opportunity for prior consultations with those members having a substantial interest as exporters of the product concerned.

ix. The keyword here is "…proposing to…" which when interpreted, denotes that the safeguard measure hasn't been applied yet, but is rather in discussion and deliberations.

x. If it is argued that the safeguard mentioned in the Article is provisional in nature, it would be in direct contradiction of Article XIX:2 and an impasse would be reached. Thus the safeguard has to be definitive in nature for both, i.e. Article 12.3 of the AoS and Article XIX:2 of the GATT to be interpreted without any contradiction.

xi. Hence, it is the Respondents contention that they did not intend to apply or extend a definitive safeguard measure, but rather a provisional one, which palpably falls outside the purview of the Article. Since the application of the Article itself fails, the need to hold consultations in furtherance of the Article also do not arise.

Puerto Sombra complied with the provisions stated under Article 12.4

xii. Puerto Sombra, through NTC initiated the provisional safeguards investigation on the 31st of July and also issued a notification numbered NTC/SG/No. 1/2016-1in lieu of the same. A copy of this notice was also forwarded to all the diplomatic missions of various countries in Puerto Sombra.

xiii. Article 12.4 is two-fold:

a. The Committee on Safeguards should be informed before taking provisional safeguard measure under Article 6.

b. Consultations must be initiated immediately after the measure is taken.

xiv. Consistent with the guidance issued by the Committee on Safeguards, P.S notified WTO of its decision to impose the provisional safeguard measure. It also followed the Technical Cooperation Handbook on Notification Requirements.

xv. It is important to analyse why notification has to be given to Committee on Safeguards. On the WTO website: Technical Information on Safeguard Measures, it is stated:

"The Committee's role generally is to monitor (and report and make recommendations to the Council for Trade in Goods on) the implementation and operation of the Agreement, to review Members' notifications, and to make findings as to Members' compliance with respect to the procedural provisions of the Agreement for the application of safeguard measures, to assist with consultations, to monitor the phase-out of pre-existing measures, to review proposed retaliation, and to perform any other functions determined by the Council for Trade in Goods."[5]

xvi. The same has been reiterated in: "Article 12 serves to provide transparency and information concerning the safeguard-related actions taken by Members." The statement of the Panel in *Guatemala - Cement* was: "… [a] key function of the notification requirements in the [Anti-dumping Agreement] is to ensure that interested parties, including Members, are able to take whatever steps they deem appropriate to defend their interests…."[6]

xvii. Having read this, it becomes amply clear that the purpose of giving a prior notification is to ensure, by keeping a close watch that all the procedures to follow are just, equitable and unbiased. The same has been complied with in the instant case by P.S.

xviii. Moreover, the complete absence of a notification must be distinguished from a notification. The Committee on Safeguards was notified on 15th August, 2016. The consultations were also carried out keeping in mind the agreements of WTO. But a mere delay should not vitiate the entire proceedings. The procedures have been complied with but a small defect had crept in because of the dire need of the situation. The situation being so critical that the provisional safeguard measures was the only tool, owing to the increasing imports, in the hands of P.S to regulate the domestic market.

---

[5] https://www.wto.org/english/tratop_e/safeg_e/safeg_info_e.htm#provisional , last accessed on 5:13 pm, 13th January, 2017

[6] Panel report, *Guatemala–Anti-dumping Investigation regarding Portland Cement from Mexico,* WT/DS60/R, Para. 7.42, (25 November 1998) [hereafter called as *Guatemala – Cement I]*

xix. The Panel suggests that: “We note finally that no specific number of days is mentioned in Article 12. For us this implies that there is a need under the agreement to balance the requirement for some minimum level of information in a notification against the requirement for “immediate” notification. The more detail that is required, the less “instantly” Members will be able to notify. In this context we are also aware that Members whose official language is not a WTO working language, may encounter further delay in preparing their notifications.”[7]

xx. Also, the fact that NCT had been sensitive to the issue of imposing safeguard measures is evident from the fact that it tried to come to the final determination at the earliest. It cannot be contended in this light that P.S had acted in an imprudent manner while exercising its obligations under the WTO Agreements.

Hence, it is submitted that P.S has not violated any of its WTO commitments under Article XIX:2 of the GATT,1994, Article 12.3 and Article 12.4 of AoS.

[7] Para 7.128, *Korea- Dairy Case*

ISSUE 2. WHETHER THERE EXISTS A REASONED AND ADEQUATE EXPLANATION IN THE PROVISIONAL DETERMINATION DEMONSTRATING CRITICAL CIRCUMSTANCES WARRANTING IMMEDIATE APPLICATION OF SAFEGUARD MEASURE UNDER ARTICLE 6 OF THE AOS?

Neither GATT nor AoS enlist the circumstances that constitute 'critical circumstances'. However, Article 6 of the AoS makes it clear that critical circumstances mean any situation where delay would cause damage which would be difficult to repair.

For attracting Article 6 of the AoS, the essentials should be:

i) critical circumstances should exist and not be anticipated. Such circumstances existed in Puerto Sombra as the injury factors mentioned below, show a decline.

ii) A delay would have caused damage which would have been difficult to repair. This can be inferred from the fact that imports were increasing not only on a yearly basis but also significantly increasing on quarterly basis in 2016.

iii) Clear evidence that increase in imports have caused injury or threatening to cause injury must exist. The injury that existed was coincidental to the increase in imports and an explanation based on above factors must expressly prove that increased imports have caused injury and threats of injury also exist.

A. Whether decline was sharp, significant and sudden

xxi. "The appreciation of when such [critical] circumstances may reasonably be regarded as having arisen, can only be done in concrete cases and on a case-to-case basis."[8] Subsequently, Puerto Sombra relied upon fall in landed value and a consequent decline in selling price of domestic industry, domestic industry's capacity utilisation, market share and productivity per day per employee to determine critical circumstances. It is also stated that there was a decline in all these factors which was sudden, sharp and significant. However, for attracting Article 6 of the AoS, there is no mandate to prove a sudden, sharp or significant decline in any injury factor. An imminent injury or threat to injury is sufficient to attract Article 6.

xxii. The provisional determination and later the investigation by National Trade Commission prove that there was a decline in all the factors enlisted above. The injury caused or the imminent threat to injury is evident from the following data obtained from the Puerto Sombra Customs:

[8] Page 19, *US– Underwear Case*

Increased Imports

xxiii. Imports had increased between 2014 to 2016 by 56%. As compared to 2014, the increase in imports in the year 2015 was by 20%. A further increase occurred in 2016. A quarterly analysis of the first two quarters of 2016 has been provided in the Provisional Determination Report. An annualised increase of 32% occurred in 2016, whereas, an 11% increase occurred in second quarter of 2016 as compared to the first quarter alone. This shows a sudden, significant and sharp increase in imports.

Capacity Utilisation

xxiv. The capacity utilisation for three years (2014-1016) shows that in the year 2014 the capacity utilisation was 75%, in the year 2015 was 67% and in the year 2016 was 73%. The capacity utilisation continues to be lower than those levels of 2014. This comes at a time when the consumption has also risen. The decline in capacity utilisation has been significant.

Market Share

xxv. The analysis of market share of the applicants' in the consumption of domestic industry is given for the years 2014-2016. The pattern shows the market share to be 26% in the year 2014 and 2015 but 24% in 2016. The decline has occurred in 2016 grossly affecting the profitability of the domestic companies. If the trend continued, the loss would have grown.

Productivity per day per employee

xxvi. The indexed values of productivity per day per employee have been claimed confidential as these are business sensitive. Apparently, it was 100 in the year 2014, 113 in the year 2015 and 111 in the year 2016. This pattern shows that productivity per day per employee has declined in 2016 to a level of 111 as against 113 in 2015. Clearly, this comes as a sudden and sharp fall as the trend could not have been predicted.

Selling Price

xxvii. The selling price of the domestic industry has declined. There are evidences (mails) bringing to light the fact that buyers had threatened the domestic industry that if it

does not bring down its prices to match the prices of imported goods, it shall not buy from them. The domestic industry was forced to bring down its prices to catch up with the declining landed value of the imports.

xxviii. The basis for the conclusion with respect to the threat of serious injury and the existence of critical circumstances lies in the fact that the imports would have continued the growth trend already verified throughout the investigation period if the specific import duties had not been applied.

B. Whether delay would cause damage difficult to repair

xxix. The domestic industry has been facing injuries from the rise in imports. It is the respondents case, that immediate safeguard measures, could prevent damage, and any delay in its imposition would cause damage which would be difficult to repair. Till 2015, the damage was only suffered in their profitability, and capacity utilisation. But in 2016, the domestic industry's market shares also dropped, this injury could be repaired by the interim 200-day provisional measure. Delay in imposing a measure, would make the injury permanent for 2016, as the year's capacity cannot be utilised, and hence, the injury would be irreparable for the year. Hence it is the respondents case that critical circumstances exist and hence, provisional safeguard measures under Article 6 must be imposed.

xxx. Table in Paragraph 32, Page number 20 of the provisional determination report, suggest that the steep rise in imports only occurred when the tariffs on the product dropped to 5% (2014). Implying that when the tariffs were high, the imports were not as high as they were, once the tariffs fell. Hence, on imposition of tariffs again and at rates higher than before 2013, would cause a distinct decline in imports.

xxxi. Decrease in level of imports would automatically mean the increase in demand for or the **market share of domestic goods**. Since the domestic industry has already invested in its **capacity**, increase demand, will not require it to bear any additional costs and will instead ensure its efficient **utilisation**, thereby reducing productions costs and hence **selling price**, ensuring **productivity** and **employment**. This way the injury to the industry can be remedied, and 2016 won't see the hit in market share, and subsequent repercussions.

xxxii. A delay in imposing safeguard measures, would cause damage to the industry for the year 2016 or till the final determination is complete, this damage would not be

repaired, as the new year would require new investment into capacity, and the old capacity cannot be utilised anymore.

xxxiii. Critical circumstances hence exist, and reasonable and adequate explanation is available to apply provisional safeguard duties in the given circumstance.

It is hence submitted that there is has been a reasoned or adequate explanation, provided by the NCT, in the provisional determination demonstrating that critical circumstances existed warranting immediate application of safeguard measures under Article 6 of AoS.

<u>ISSUE 3.</u> WHETHER SAFEGUARD MEASURE IMPOSED UNDER ARTICLE XIX:1(A) IS BASED ON PROPERLY DETERMINATION AND REASONED AND ADEQUATE EXPLANATION OF ITS ELEMENTS.

It is Puerto Sombra's case that all essentials of Article XIX:1(a) were complied with and based on proper determination or reasoned and adequate explanation of unforeseen developments and effect of GATT obligations that led to increase in imports and conditions which caused or threatened serious injury.

xxxiv. It is the respondent's case that as a result of several unforeseen developments and as an effect of the GATT obligation to reduce tariffs (discussed further), the imports have increased in such increased quantities and under such conditions, so as to cause injury to the domestic market. The domestic market, increased its capacity, in light of 2,200 MT deficit that it faced in not being able to sell as much as demanded, owing to the domestic need for an initial final inventory and thereby insufficient supply. The increased capacity in 2015, was not utilised, owing to the increase in imports resulting from the unforeseen developments and in effect of the GATT obligations. Hence the cost per unit increased, and the increased cheap imports, forced the domestic industry to sell well below its cost of production. This damage, caused harm not only to the profitability of the industry, but since insufficient capacity utilisation automatically affects the employment and productivity, the injury was fourfold.

xxxv. Alan O. Skyes in his analysis of causation analysis, between increased imports and injury, suggested the liberal approach towards the word "cause", since, he suggested that in real world economics, demand, supply, world price, all are a result of exogenous factors and hence, imports can never really be the distinct cause of the injury. [9]

xxxvi. But in order to interpret GATT Article XIX, the U.S. Lamb Case[10] suggested the **"correlation approach"** to prove causation. The correlation between the import increase and the injury, with no external hindering factors is sufficient. The injury may be a result of other exogenous factors, but the injuriousness of the event must be attributed to the increase in imports.

---

[9] The Law School, University of Chicago, The Safeguards Mess: A Critique of the WTO Jurisprudence, Alan O. Sykes; http://www.law.uchicago.edu/Publications/Working/index.html

[10] Appellate Body Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/AB/R, WT/DS178/AB/R, (16 May 2001), Page 4051 [hereafter referred to as *US-Lamb Case*]

xxxvii. Further in the case of the unwrought copper, commission reports suggested the application of the **“hypothetical quota approach”** to determine the true cause of the injury.[11]

xxxviii. Additionally, jurisprudence has also taken note of the **“import supply curve”** theory that divided the potential causes of the injury into three groups: forces that cause shifts in domestic supply schedule, forces that cause shifts in the domestic demand schedule and the forces that cause shifts in the import supply schedule. The harm attributed to the shifts in import supply curve alone was to be deemed as the result of increased imports.[12]

(a) Saturation in demand

xxxix. Puerto Sombra couldn’t have foreseen the declining demand of the product in Pueblo Faro, it is hence an unforeseen development and for the purposes of Article XIX:1(a) the result of such unforeseen development i.e. increase in share of imports from pueblo Faro in Puerto Sombra is the result of decline in domestic demand in Pueblo Faro. The burden to prove under Article XIX:1(a) is whether the decline of demand resulted the described import surge and not whether the global recession lead to the global decline. Hence the result of such a development, is the product “being imported” i.e. in the review period 2014-16, in conditions and increase in import must be in nature to cause injury to domestic industry. The table at paragraph 29 of the provisional determination provides, the proportionate decrease of imports by countries other than Pueblo Faro, such imports of product from pueblo Faro “being imported” in injury causing and threatening conditions and increase in imports. The increase in imports as in paragraph 2 of the provisional determination shows a distinct increase in imports which owing to Faro’s contribution to imports can be attributed to it.

xl. In the question whether the conditions of imports and increase in imports are injury causing or threatening, it is the submission of the applicants’ that since the domestic production is also increasing, the sign of injury is analysed from paragraph 16 of the report, where the share of applicants’ in consumption of the product is decreasing with a proportionate rise in share of imports in the total consumption.

---

[11] U.S. International Trade Commission, Certain Motor Vehicles, Inv. No. TA-201-44, Pub. No. 1110, 2 I.T.R.D. 5241 (1980)

[12] Wood Shakes and Shingles, U.S. International Trade Commission, Inv. No. TA-201-56, Pub. No. 1826 (1986)

xli. The Working Party in the *Hatter Fur's* case[13] held:

"that the term 'unforeseen developments' should be interpreted to mean developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated."

xlii. It is the case of the Puerto Sombra, that Article XIX:1(a) proposes 3 stages, first the result of and effect of unforeseen developments and GATT obligations respectively. Second the product "being imported" and third injury being caused or threatened as a result of the conditions and increase of imports.

xliii. In *Argentina – Footwear* the Appellate Body said that although by referring to "unforeseen developments" the opening clause of Article XIX.1(a) did not establish independent conditions for the application of a safeguard measure, it did describe "certain *circumstances* which must be demonstrated as a matter of fact in order for a safeguard measure to be applied consistently with the provisions of Article XIX of the GATT 1994."[14]

xliv. "In essence, Article XIX requires a logical chain which starts with incurring obligations under GATT 1994, followed by an intervening unforeseen development, which results eventually in increased imports, causing serious injury. It should be noted that not the increase in imports must be unforeseen but rather the "development" which has led, together with GATT obligations, to increased imports."[15]

xlv. Since the issue being debated is that of unforeseen developments, which is argued to be the saturation in demand, the result of this unforeseen development is the rise in share of imports into Puerto Sombra. Now that the product is being imported, the conditions surrounding and the increase lead to decline in rate of consumption of Puerto Sombra. This decline can be attributed to the increase, owing to the proportionate rise in share of imports in the total consumption of the product, and since by 2016, 82% of the imports into Puerto Sombra of the product were from

[13] Report of the Intersessional Working Party on the Complaint of Czechoslovakia Concerning the Withdrawal by the United States of a Tariff Concession under Article XIX of the GATT, GATT/CP/106, (22 October 1951) [hereafter referred to as *Hatters' Fur Case*]

[14] Para, 92, *Argentina – Footwear Case*

[15] Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, (19 January 2001) Para 52, Page 76 [hereafter referred as *Wheat-Gluten Case*]

Pueblo Faro, the increase and conditions surrounding such import can be said to cause the injury of declining consumption.

(b) Anti-dumping and countervailing duties by five major economies on Pueblo Faro

xlvi. These export push resulting from the dumping measures imposed, were developments unforeseen by Puerto Sombra. Article XIX:1(a) did not require the element of foreseeability. The question as to whether the development could have been foreseen doesn't arise. Merely the fact that it was not foreseen is material to the discussion. The predictability or the capability of being foreseen, foretold or anticipated[16] is a higher burden, and is not necessary when discussing Article XIX:1(a). The provision needs a lower standard of evaluation, i.e. whether it was unforeseen, not whether it was capable of being foreseen.

xlvii. Hence, this development of other economies imposing duties on Pueblo Faro, is intrinsically related with rise in share of imports in the total consumption, since 82% of the imports were from Pueblo Faro in 2016. The deterioration in the consumption of domestic product is well recorded within the review period.

xlviii. In 2014 with the imposition of antidumping duties imposed on imports by its major markets, the consumption in those countries dropping, invariably leading to rise in its share in consumption in Puerto Sombra causing injury to the domestic industry. The injury caused as a result of the increase in imports and the conditions of the import were of various forms over the span of time of the coming in of such imports. 2014 saw a buffer between consumption and sales, with the latter overshooting the former. 2015 saw a drastic shift in this pattern, where the consumption was lesser than actual sales of the product. Hence, the undervaluing of product, and hence the injury to domestic industry. The drop in selling price of products as is apparent, over the years, led to the surge in demand, and this time the domestic industry being incapable of sustaining selling price, defected in meeting the demand, thereby suffered the larger loss in profitability. In spite of the production being high, the domestic industry was still unable to sell to fulfil demand.

(c) Pueblo Faro's surplus capacities of the product

---

[16] *Argentina – Footwear Case*

xlix. Although only in fact brought out by media reports and reputed journals, the surge in imports as an effect of the surplus capacities, substantiates the application of the escape clause (Article XIX:1(a)). The surplus capacities in Pueblo Faro is seen as an unforeseen development, and the differential between the products produced, sold and consumed, we can see the distinct surplus resulting in the increase in imports. The imports cause the similar injury as discussed earlier.

(d) 5% export incentive on FOB value

l. FOB incentives, incentivise only production of products and not their freight and insurance. Hence, for the purposes of Article XIX:1(a), the import of the product alone causes the injury, the cost of insuring and transport, doesn't contribute to the injury, the product along does. It was imposed in 2015 which provides us with a comparative injury analysis, and thereby justifies the need for the argued measure. Therefore, the effect of this unforeseen development results in the product being imported in amount and conditions to cause injury to the domestic industry.

(e) High demand in Puerto Sombra

li. The high demand for the product can be seen from the increase in paragraph 14 of the provisional determination. This unforeseen development led to the imports come in, in injury causing increased amounts and injury causing conditions. The injury causing increased amounts, is the increase in imports' share in consumption and the decreasing share of domestic producers in the consumption.

(f) Effect of GATT obligations

lii. Lowering of tariffs directly impact the quantum and nature of imports coming into the country. This requirement for the application of measures under Article XIX:1(a) is different from the requirement of it being unforeseen. The effect of GATT obligations incurred, causing the product to be imported in injury causing increased amounts and conditions, is sufficient for fulfilment of the requirement. The timeline provided in paragraph 32, corroborates with the increase in imports. Also, such increase in imports and other such conditions cause injury to the domestic industry, since the

increase in imports has resulted in its increase in share in demand, and decrease in domestic industry’s decrease in demand.

This provides for suitable grounds for application of Article XIX:1(a).

<u>ISSUE 4:</u> ARTICLE XIX: 1(A) OF THE GATT 1994 AND ARTICLES 2.1, 4.1 (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.

It becomes important to analyse whether conditions under all the Articles under AoS are met.

A. Conditions under Article 2.1:

1. Increased imports, in relative or absolute domestic production
2. importing of products that produce like or directly competitive products
3. such imports so as to cause or threaten to cause serious injury.

liii. Article XIX:1(a) of the GATT 1994 and Article 2.1 of AoS do not speak only of an "increase" in imports. The imports have increased on a year-to-year basis since 2014. As compared to 2014, the increase in imports was as much as 20% in 2015 and subsequently in 2016 the increase was 32% as compared to 2015. Thus, an overall increase in imports was as high as 52% in 2016 as compared to 2014. Also, in 2016 quarter-wise increase can also be seen, with 11% increase in the second quarter as compared to the first quarter. The increase has been sharp and significant as a relative analysis with the domestic industry's market share shows a drop in consumption.

B. Article 4.1(a)

liv. Article 4.1 (a) defines "serious injury" to include significant overall impairment in the position of the domestic industry. In analysing whether this condition is fulfilled, the total consumption must be seen. The total consumption has increased and so has the sales. But, the share of the domestic industries in the total consumption has reduced significantly, and on the other hand, that of the imports have increased. The profitability index of the domestic industry has also reduced in 2016. This shows the impaired and pitiful condition of the domestic industry.

C. Conditions for determining whether there exists a threat of serious injury under Article 4.2 (a) and (b):

1. the investigating authority shall evaluate all relevant factors which have to be objective as well as quantifiable in nature
2. the above shall be done by taking into consideration, particularly, increase in imports (in relative and absolute terms), the share of the domestic industry,

changes in level of sales, production, productivity, capacity utilization, profits and losses, and employment.

3. The objective evidence of the investigation must show existence of causal link between increased imports and the injury caused or threatened to be caused
4. In case the injury is being caused by any other factor other than increased imports, at the same time, the injury shall not be attributed to increased imports.

lv. In the case of Wheat Gluten, it was said by the Appellate Body, "It is not our role to collect new data, nor to consider evidence which could have been presented to the USITC by interested parties in the investigation, but was not."[17] The investigation has been carried thoroughly by NCT, whereby they have established and verified all the data. The data is appropriate. In many cases, not all the factors under Article 4.2 have been analysed, but the Panel has still accepted the plea. In the instant case, however, the relevant factors under Article 4.2 have been fully analysed in light of increased imports. The contentions of Pueblo Faro have been addressed point-wise by the NCT, giving a sound and reasoned order of imposing safeguard measures. The only argument raised by the parties before the NCT was that of "corruption", which was not taken up as it was a non-quantifiable thing and lies out of the purview of investigation as per Article 4.2.

lvi. The question that arises is whether all the factors enlisted under Article 4.2 must show a downfall or necessary adverse effect. To answer the same, it becomes important to analyse the paragraph from the US Wheat Gluten Case:
"….. the language in this provision is mandatory ("shall…"). Furthermore, this list is preceded by the term "in particular…". On the basis of the text of the provision, [it must therefore be concurred that]…… all of the factors listed in Article 4.2(a) must be evaluated.[18] Of course, an examination of any one of those factors in a given case may lead the investigating authority to conclude that a particular factor is not probative in the circumstances of a particular industry or a particular case, and therefore is not relevant to the actual determination."[19] The judgement, thus, make it amply clear that not all the factors must show an adverse effect.

[17] Page 8, *Wheat Gluten Case*
[18] Appellate Body Report in *Argentina – Footwear Case*
[19] Page 17, *Wheat Gluten Case*

lvii. The Appellate Body has stated: "We agree with the Panel's interpretation that Article 4.2(a) of the *Agreement on Safeguards* requires a demonstration that the competent authorities evaluated, at a minimum, each of the factors listed in Article 4.2(a) …". [20]

lviii. It is clear to us that Article XIX:1(a) of the GATT 1994 and Article 2.1 AoS contain the initial threshold requirement that there be an increase in imports. The statistics provided by the Customs clearly show a sudden, sharp and significant increase in imports, attracting imposition of measures under the GATT and AoS.

lix. The nature and role of a "relevant factor having a bearing on the situation of the industry" may be either as indicative of serious injury or as a possible causal factor contributing to, or detracting from, serious injury, or both.[21] As analysed earlier, there has been a drop in various economic factors which adversely affected the domestic industry. This coincided with the increase in imports in the same period. This is sufficiently a clear evidence which establishes the causal link between serious injury and the increased imports.

lx. It is also argued that any determination of serious injury must pertain to the *recent* past. This flows from the wording of the text of Article XIX:1(a) of the GATT 1994 and Article 2.1 AoS, which requires an examination as to whether a product "is being imported" "in such increased quantities … and under such conditions as to cause or threaten serious injury…". The use of the present tense of the verb in the phrase "is being imported" in that provision indicates that it is necessary for the competent authorities to examine recent imports.[22] It seems logical that the increase in imports that the investigating authorities must examine must be recent, so also must be any basis for a determination by the authorities as to the situation of the domestic industry. Given that a safeguard measure will necessarily be based upon a determination of serious injury concerning a previous period, it is essential that *current* serious injury be found to exist, up to and including the very end of the period of investigation. The same has been complied with in the instant case by NCT. All the data shows a relevant period of 2014-2016. The imports have been risen in this period and this coincides with the sharp downfall in the share of the domestic industry in the market.

lxi. In the case of US Wheat Gluten Case it was held: "We consider that an appropriate approach for a panel to take in assessing whether a Member has fulfilled the

---

[20] Appellate Body Report, *Argentina-Footwear*, para. 136

[21] Page 25, Wheat Gluten Case

[22] Para 130, Appellate Body Report, *Argentina-Footwear Case*

requirements of Article 4.2(a) and (b) AoS with respect to causation consists of a consideration of: (i) whether an upward trend in imports coincides with downward trends in the injury factors, and if not, whether an adequate, reasoned and reasonable explanation is provided as to why nevertheless the data show causation; (ii) whether the conditions of competition between the imported and domestic product as analyzed demonstrate the existence of the causal link between the imports and any injury; and (iii) whether other relevant factors have been analyzed and whether it is established that injury caused by factors other than imports has not been attributed to imports. We observe that this three-step approach to causation was also followed by the panel in *Argentina-Footwear Safeguard* and that the Appellate Body saw "no error" in that panel's approach.[23] We note that, before us, the European Community espoused the latter panel's approach and the United States did not specifically object to it."

lxii. The same has been thoroughly and strategically been followed by NCT in carrying out the investigation.

lxiii. In the case of Korea Dairy Panel, Para. 4.51 it said: "The Agreement on Safeguards requires a Member's competent authority to determine whether increased imports caused serious injury to the domestic industry. In assessing serious injury under Article 4.2(a), the competent authority is not required to give any specific weight or significance to any particular criterion. Under Article 4.2(a) of the Agreement, no criterion gives conclusive guidance as to whether serious injury occurred. The Agreement also does not require that each criterion be considered in isolation. Moreover, the Agreement on Safeguards contemplates that the competent authority may use other factors that are more relevant to a particular domestic industry in assessing serious injury."[24]

lxiv. The analysis and reports presented by the NCT evidently bring forth reasoned and adequate explanation of link between increased imports and serious injury caused to the domestic injury.

[23] Para 145, Panel Report, *Argentina - Footwear Safeguard*, para. 8.229; Appellate Body Report, *Argentina – Footwear Safeguard*

[24] Page 13, Panel report, *Korea- Dairy Case*

<u>ISSUE 5:</u> WHETHER BY UNCONTROVERTED FACTS OF THE CASE, IT CAN BE PROVED THAT THE IMPOSITION OF THE PROVISIONAL AND DEFINITIVE SAFEGUARDS BY PUERTO SOMBRA ARE IN CONTRAVENTION OF ITS WTO COMMITMENTS UNDER ARTICLE 1 OF GATT AND ARTICLE 9.1 OF THE AGREEMENT ON SAFEGUARDS

A. There is no contravention of its commitments by Puerto Sombra under Article I of the GATT

lxv. Article I:1 of GATT sets out the general most favoured nation (MFN) principle, which is also applicable within the sphere of the Agreement on Safeguards. Any deviation from this principle must have a legal basis. one of them being the possibility to exclude certain developing countries found in Article 9 of the Agreement on Safeguards.

lxvi. Article I:1 of GATT and Article 2.2 of the Agreement on Safeguards require most favoured nation treatment – the same treatment to all Members. When a Member affords developing country Members the same treatment as developed country Members, it is acting *in conformity with* Article I:1 and Article 2.2. Article 9.1 acts to require differential treatment inconsistent with those Articles, and provides a defense against a claim from developed countries that Article I:1 or Article 2.2 entitles them to the same differential treatment. Therefore, the Respondents argue, if a Member fails to provide treatment consistent with Article 9.1 to a developing country Member, it has acted inconsistently with Article 9.1, but not with Article I:1 or Article 2.2.

B. There is no contravention of its commitments by Puerto Sombra under Article 9.1 of the Agreement on Safeguards

<u>The onus to decide as to who falls in the Developing Countries exception is on the country imposing the Safeguard Measures</u>

lxvii. It is humbly submitted by the respondent that the WTO Agreement on Safeguards, does not define the term "developing country" nor does it establish a procedure or method for determining when a Member qualifies for that status. Even according to the United Nations Statistics Division, there is no established convention for the designation of "developed" and "developing" countries or areas in the United

Nations system[25] and it notes that the designations "developed" and "developing" are intended for statistical convenience and do not necessarily express a judgement about the stage reached by a particular country or area in the development process[26].

lxviii. Therefore, in assessing this claim, the Panel need not address the procedure used by the Respondent for identifying developing country Members as a general matter[27]. Under Article 9.1, it is the Member applying a safeguard measure that has the obligation to identify the developing country Members not subject to application of the measure and such interpretation is derived from the ordinary meaning of Article 9.1 and its context within the Agreement on Safeguards and WTO Agreement. The footnote 2 to Article 9.1 reads "[a] Member shall immediately notify an action taken under paragraph 1 of Article 9 to the Committee on Safeguards" and this obligation was promptly discharged by the Respondents[28]. Neither the footnote nor the Article 12 provides any role in this process for exporting Members, indicating that the importing Member alone has the obligation to identify which Members are developing country Members and which of those to exclude. It is submitted that the structure of Article 12 supports this conclusion. Under this Article, the Member that makes a decision or takes an action with respect to a safeguard measure is the party that provides notification of such decision or action. It is asserted that the Appellate Body confirmed this interpretation in *US – Line Pipe*[29], when it stated, "we agree with the United States that Article 9.1 does not indicate how a Member must comply with this obligation".

lxix. Therefore, the Article 9.1 requirement that the Member taking a safeguard measure notify any exclusion of developing country Members demonstrates that it is the Member taking the measure that has the obligation to decide which countries qualify for exclusion

Puerto Santo qualifies the 'de minimis' test

---

[25] Composition of Macro Geographical (continental) Regions, Geographical sub-regions, and Selected Economic and other Groupings, http://unstats.un.org/unsd/methods/m49/m49regin.htm#ftnc (revised 26th September, 2016), last accessed, 11:23 am, 13th January, 2017

[26] Standard Country or Area Codes for Statistical Use, http://unstats.un.org/unsd/methods/m49/m49.htm , last accessed, 11:29 am, 13th January, 2017

[27] Panel Report, United States – *Definitive Safeguard Measures On Imports of Certain Steel Products*, WT/DS248/R (10 December 2003)

[28] Additional Clarifications to the Moot Proposition, Point 8

[29] Appellate Body Report, United States – *Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/AB/R, (8 March 2002)

lxx. Article 9.1 of the Agreement on Safeguards lays down an imperative pre-requisite that has to be satisfied before the country before actually impose a safeguard measure. This is called the *'de minimis'* test. Under this a Safeguard measure shall not be applied against a developing country if the its share in the imports does not exceed 3% individually, and the percentage of imports from these developing countries *in toto* does not exceed 9%.

lxxi. There is a degree of flexibility regarding the way in which each Member may comply with this Article[30]. Irrespective of the way in which each Member complies with this provision, however, the Member concerned must show that it has made the efforts it can to exclude all those Members covered by the provision in Article 9.1 of the Agreement on Safeguards.

lxxii. Puerto Santo, though has a high GDP is considered a developing country by Puerto Sombra and the review of such a decision on merits is not within the ambit of the Article 9.1. Only substantive compliance with the '*de minimis'* test is needed and Puerto Sombra has conformed with this requirement.

[30] Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric*, WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R, (22 February 2012)

REQUEST FOR FINDINGS

Wherefore in light of the Issues Raised, Arguments Advanced, the Respondent requests this Panel to:

a) Find that the imposition of Safeguard measures was consistent with GATT Articles I, XIX:1(a) and XIX:2

b) Find that the imposition of Safeguard measures was consistent with Articles 2.1, 4.2 (a), 4.2 (b), 6, 9.1, and Articles 12.3 and 12.4 of the Agreement on Safeguards

All of which is respectfully affirmed and submitted,

Counsel for the Respondent,

103R.