

MINISTRY OF FINANCE

(Department of Revenue)

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

NOTIFICATION

New Delhi, the 13Th- November, 2009

Subject:-Safeguard Duty investigation against imports of Coated Paper and Paper Board in to India -Final Findings

G S R Having regard to the Customs Tariff Act, 1975 and Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 thereof;

PROCEDURE

1. An application was filed before me Under Rules 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 by (1) ITC Limited -Paperboards and Specialty Papers Division, 106, Sardar Patel Road, Secunderabad – 500003, Andhra Pradesh, (2) Ballarpur Industries Limited, First India Place, Tower C, Mehrauli Gurgaon Road, Gurgaon (Haryana) – 122001 and (3) JK Paper Limited, Nehru House, 4 Bahadur Shah Zafar Marg, New Delhi-110 002 supported by Indian Paper Manufacturers Association, PHD House, (4th floor), 4/2 Siri Institutional Area (Opp. Asian Games Village), New Delhi-110 016 for imposition of Safeguard Duty on increased imports of Coated Paper and Paper Board made primarily from virgin chemical pulp into India to protect the domestic producers of Coated Paper and Paper Board against serious injury and continued threat of serious injury caused by the increased imports of Coated Paper and Paper Board made primarily from virgin chemical pulp into India..
2. Having satisfied that the requirements of Rule 5 were met, the Notice of Initiation of Safeguard investigation concerning imports of Coated Paper and Paper Board into India was issued under Rule 6 of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 20th April, 2009 and was published in the Gazette of India Extraordinary on the same day.
3. A copy of the notice was sent to the Governments of exporting countries through their Embassies in New Delhi. A copy of initiation notice was also sent to all known interested parties listed below:

Domestic Producers

- i. ITC Limited -Paperboards and Specialty Papers Division, Secunderabad, Andhra Pradesh.
- ii. Ballarpur Industries Limited, Gurgaon, Haryana.
- iii. JK Paper Limited, New Delhi.

Domestic Producers Association

- i. Indian Paper Manufacturers Association, PHD House, (4th floor), 4/2 Siri Institutional Area, (Opp. Asian Games Village), New Delhi-110 016

Importers and Users

- i. Chimanlal Fein Paper Pvt. Ltd, Mumbai, Maharashtra.
- ii. Infinity Industries Pvt. Ltd, Mumbai, Maharashtra
- iii. Ajanta Offset and Packaging Limited, Faridabad, Haryana.
- iv. Aero Exports, Manesar, Gurgaon, Haryana.
- v. Nutech Photolithographic, New Delhi.
- vi. Replika Press Private Limited, Haryana.
- vii. Brijbasi Printers, New Delhi.
- viii. Rajaram, Chawri Bazar, Delhi.
- ix. Shoba Cards, Darya Ganj, New Delhi.
- x. Suneja Sons, Chawri Bazar, Delhi.

Exporters & Foreign Producers

- i. Gold East Paper(Jiangsu)Co.,Ltd., 8Xing Gang Dong RD., Dagang, ZhenJiang, JiangSu, China, 212132
- ii. APP – Indonesia, Pt. Pindo Deli Pulp and Paper Mills, Plaza B11- Menara II, 9th Floor, JL MH Thamrin no. 51, Jakarta.
- iii. SAPPI : M/s Sappi Deutschland, GMBH Berliner allee, 14 D- 30175 Hannover,C/o Sappi Singapore pte Anson Road 079903
- iv. Stora Enso Oyj, P.O. Box 309, FI-00101 Helsinki, Finland.
- v. Chenming Paper Co. Ltd, Nanchan Changbei Economic and Techniacl Development zone, Jiangxi, China
- vi. M/s. Stora Enso Suzhou Paper Co. Ltd 600 Binhe Road, Sozhou New District Suzhou City, China.
- vii. M-real corporation, PO Box 20, Metsa 02020, Finland
- viii. Moorim Paper Co., 281 – 1 Sangyong – dong , Jinju – sl , 660903, South Korea
- ix. Hong Wong Paper Mfg. Co. Ltd, #14,Imgwang Bldg , Migeun – dong , Seoul , South Korea
- x. Hansol Paper Co. Limited , 22nd floor , Hansol Bldg, 736-1 ,Yeoksam – dong Gangnam – gu –Seoul, 135 – 080 , South Korea.

- xi. Gold East Trading (HONGKONG) Co Ltd, Unit 501-504A, Empire Centre 68 Mody Road, T SimshaTsui East Hongkong
- xii. Kowa Company Ltd, 6-29 Nishiki 3- Chome Naka-Ku Nagoya, Japan
- xiii. Vital Solutions pte Ltd, Singapore 069532
- xiv. Daiei Paper (S.A.) Pte Ltd, 3. Shenton way, # 11-08,Shenton House, Singapore
- xv. Cellmark asia Pte Ltd, 47 Scotts road , # 12-01 Goldbell Towers, Singapore

Exporting Nations

- i. The Republic of China through their Embassy in New Delhi.
 - ii. Jakarta through their Embassy in New Delhi.
 - iii. Singapore through their Embassy in New Delhi.
 - iv. Japan through their Embassy in New Delhi.
 - v. Hongkong through their Embassy in New Delhi.
 - vi. Republic of Korea through their Embassy in New Delhi.
 - vii. Finland through their Embassy in New Delhi.
4. After taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time were allowed and the parties concerned were accordingly informed.
5. After expeditious conduct of investigation, preliminary findings were issued on 24th April 2009. On the basis of the preliminary findings it was seen that increased imports of coated paper and paperboard have caused serious injury to domestic producers of coated paper and paperboard. The Director General (Safeguards) recommended safeguard duty at the rate of 20% (twenty percent) ad-valorem to be the minimum required safeguard duty to protect the interest of domestic industry and imposed on imports of “coated paper and paperboard made primarily from virgin chemical pulp and classified under sub-heading Nos. 48101310, 48101320, 48101330, 48101390, 48101410, 48101420, 48101430, 48101490, 48101910, 48101920, 48101930, 48101990, 48102900, 48103100, 48103200, 48109200 and 48109900 of Schedule I of the Customs Tariff Act 1975” into India.
6. A public hearing was held on 11th September 2009, notice for which was sent on 12th August, 2009. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997. Copy of written submission filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinder, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.

7. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination. As there are large number of interested parties who have filed their submissions, their contentions and the issues arising there-from are dealt with at appropriate places without referring to specific name of the interested party for the sake of brevity.
8. The information presented by domestic producers was verified by on-site visits to the plants of the domestic producers to the extent considered necessary. Further, the cost data has also been verified and certified by cost accountant. The non confidential version of verification report is kept in the public file.

Views of Domestic Producers in India

The applicants have made following submissions:-

9. The domestic industry has said that product falling under 48101310, 48101320, 48101330, 48101390, 48101410, 48101420, 48101430, 48101490, 48101910, 48101920, 48101930, 48101990, 48102900, 48103100, 48103200, 48109200 and 48109900 of HSN as well as Customs Tariff Act, 1975 should be considered as the 'product under consideration'.
10. Surge in imports are taking place at lower price, making them lose their market share.
11. Fall in demand in exporting countries has forced manufacturers in those countries to get rid of their surplus inventories through excessive discounts of export and this is a cause for sudden increase in imports which is causing serious injury and threatening to cause serious injury to domestic industry.
12. Profitability and return on capital employed of domestic industry has gone down.
13. Imposition of safeguard duty on Coated Paper and Paper Board shall not cause harm to public interest as prices of domestic Coated Paper and Paper Board are more or less stable in India.
14. As per Budget Speech of 2005-06 it has been the policy of Government of India to encourage capacity additions in paper industry so that India can reduce its dependence on imports.
15. The size of Indian Paper Industry is too small when compared to global size of the industry. A small diversion of paper from foreign producers is capable of killing the Indian paper industry.
16. Paper Industry is a labour intensive industry. The industry provides employment to more than 1.2 lakh people directly and 3.4 lakh people indirectly down the line i.e. 4.6 lakh people all together.
17. The coated paper and paperboard segment is supporting 48750 families i.e. roughly 2.5 lakh people through plantation activities.
18. The paper industry is highly capital intensive with a long gestation period. Ballarpur Industries Limited (BILT) has added 1, 90,000 MT additional capacity

- and JK Paper Limited has added 60,000 MT additional capacities in last two years in the Coated Paper and Paperboards segment.
19. Globally, paper industry has realized a linkage between production of paper and the farming community thereby infusing huge capital in agricultural economy.
 20. The paper industry is primarily rural based with close linkages with the farming community. Over the years it has evolved into an agro-based industry from its earlier character of a forest-based industry.
 21. The coal which is the main fuel for generation of steam and power required for manufacturing paper is available at a cheaper price to foreign producers.
 22. The capacities of overseas mills are huge and not comparable with Indian mills.
 23. The paper industry is actively pursuing agro forestry in the vicinity of factories to generate employment opportunities in rural India.
 24. Large agricultural subsidies being provided to farmers and agri-business corporations in the rich and developed countries. Protecting paper industry in a way, amounts to protecting the Indian farmers engaged in pulp wood plantation. Therefore the imposition of safeguard duty on coated paper and paper board is in the larger public interest.
 25. In India roughly two third of the population depends on agriculture, the interest of farming community cannot be overlooked. Farmers' interest outweighs everybody else's interest worldwide.
 26. The allegation of Printers Association that the products manufactured by domestic industry are of poor quality is baseless. It is to be submitted that coated paper and paper board manufactured by domestic industry is of world class quality and the same has been certified by Indian as well as international certifying agencies. All the units are holding ISO certifications.
 27. In the recent period of first nine months of 2008-09 monthly imports of subject goods have increased from 11057 MT per month in 2007-08 to 16872 MT per month; a growth of more than 50% from 2007-08. The imports of coated paper and paperboard have thus increased in absolute terms as well as in relative terms compared to total domestic market.
 28. The Export price to India has shown a steep decline during the period of investigation since September 2008, the period in which situation became worse.
 29. When the import prices started crashing, some manufacturers of Indian domestic industry finding it difficult to compete with imported product closed their plants.
 30. The Profitability and return on capital employed of domestic industry has gone down. The plants have seen drastic reduction in profitability and Return on capital employed.
 31. The leading information provider for the Global Forest Products Industry RISI in its Outlook Briefings 2009 has reported following unforeseen developments relevant for the coated paper and paperboard segment of paper industry viz. fall in Demand in developed countries, price trends of imports of Coated Paper, demand growth for paper and board is expected to be more muted than in the early part of this decade.

32. The Chinese Central Government is running a national plan of building a complete industrial chain between the forestation and paper industry by 2010. As a result massive capacities additions have been announced in China.
33. Unprecedented uneven recession in various countries has led to sudden increase of imports into India, which has a better growth compared to other countries.
34. Adjustment Plan: The present capacities of 6.14 lakh MT can take care of present domestic demand of around 4.5 lakh MTs. Further capacity expansions are planned to take care of future growth in the demand of coated paper and paperboard. We have already submitted a detailed concrete and viable adjustment plan (confidential) which focuses on Capacity expansion, cutting raw material costs through aggressive agro forestry measures, Cutting energy costs, Cutting other costs. We have already demonstrated by our capacity expansion of 2008-09 that we are committed towards this adjustment plan.

VIEWS OF EXPORTERS

35. Exporters M/s. Asia Pulp and Paper Co. Ltd. , M/s Sinar Mas Paper (China) Investment Co., Ltd., M/s PT Pabrik Kertas Tjiwi Kimia Tbk. Indonesia, M/s PT Pindo Deli Pulp And Paper Mills, Indonesia, M/s Gold East Paper (Jiangsu) Co. Ltd., M/s Gold East Trading Co. Ltd. (China), M/s Ningbo Zhonghua Paper Co. Ltd. have submitted the following points for consideration through their counsel.
36. The adverse conditions prevailing in India as stated by the domestic industry are irrelevant from the point of view of Safeguard Duty Investigation. None of these factors are the cause of the alleged increase in imports.
37. In the submissions of the Domestic Industry they are attributing their so called injury to other factors and not to the alleged increased imports. Injury caused to the domestic industry by factors other than increased imports 'shall not be attributed to increased imports.'
38. That the Domestic Industry changes the period of investigation as per their whims and fancies. The domestic industry has chosen the last three quarters for inventory growth analysis. The period of investigation is not compared against the previous periods as has been done for certain other parameters
39. The Applicants have failed to provide the correct computation of total demand in the country.
40. The imports in the month of April, September, October, December 2008 show a decreasing trend.
41. The contention of the applicants regarding the falling import prices is totally false and incomplete. No information has been supplied for the previous years on this.
42. There is no decrease in Sales and Market Share of the Domestic Industry. As already submitted in the written submissions, it is evident that there is no loss of market share.
43. Demand analysis has to be done in the context of the total domestic sales and not only for the applicant domestic industry.

44. The Domestic Industry despite the “growing market” was not “equipped” to handle the needs of the market which was fulfilled by the imports of the necessary goods in the country.
45. The statements with regard to restructuring and unforeseen circumstances made by the applicants are nothing but conjectures and surmises.

Views of Confederation of European Paper Industries (CEPI)

The CEPI represents the European Paper industry based in Europe, which accounts for about 95 % of the total European paper capacities. CEPI have submitted the following comments on the case:

46. Although there is some increase in imports, the figures reported by the Indian authorities is not correct. The share of paper & board coming from Europe into India has decreased over the last year. The share which was 45 % in 2000 went down to 34 % in 2007. According to the EU statistics, the exports of the paper grades targeted by the Indian authorities to India have decreased by 5 % in 2008 compared to 2007 and have shown a decrease of close to 30 % over the first 5 months of 2009.
47. The injury analysis is incomplete. Analysis should have been carried out on the basis of trends established for full years during the investigating period. The injury analysis for 2008-09 was based on a period of only 9 months for that year.
48. Production and sales figures given in the complaint shows an overall increase and profit is still close to 5 % which does not point to serious injury.
49. The actual causes of any serious injury (if any) are not clearly identified. The causality analysis is also not conclusive.
50. Indian domestic paper and board industry are not able to meet the needs of the Indian population.
51. The analysis on the public interest test is poor as substitutability of products locally produced and those imported cannot be limited to the price.
52. The adoption of safeguard measures would lead to monopolistic practices by the domestic industry leading to shortages and much higher prices for the local printers and publishers and packers.

Views of the European Commission

53. The injury analysis is neither complete nor objective or conclusive and lacks transparency. The aggregated figures relating to the relevant injury indicators have not been disclosed. The comparability of data to analyze trends was not ensured. The period analysed covered the fiscal years 2006-07, 2007-08 and only 9 months of 2008-09.
54. Production and sales increased overall, and profit is still close to 5 %, which does not point to serious injury.

55. The causal link analysis between the imports and the alleged serious injury is weak and incomplete.

Views of M Real Corporation, Finland:

M Real Corporation, Finland has submitted the following views through their counsel.

56. The data regarding imports are totally wrong. More than one like product has been considered as PUC leading to wrong analysis. Assuming the applicant's data to be correct, it reflects that the share of imports in the domestic market has increased by less than 3 % per year which is not significant. Also during the corresponding period, sales of domestic producers have grown by 19 % over the last year. There is as such no surge in imports.
57. M Real products are totally different in quality and price as compared to the domestic paperboard. The product exported by M Real to India does not compete with the product manufactured by the applicants and what ever demand is there for the product exported by M Real has to be met through imports, as no product is produced by the domestic industry is able to meet the characteristics and specifications of M Real's product. No injury is caused by these products let alone serious injury.
58. Applicants have attributed the increase in imports to the global recession which is not an unforeseen circumstance. Recession finds mention in applicants' Annual Reports. Now as announced by our government, turnaround has started and all economic parameters are showing reversal of recessionary trend- so any impact of recession on the domestic industry is no longer there.
59. Applicants do not form the domestic industry as their collective output constitutes less than 50 % of the total production. As per ITC Annual Report 2007-08, top 5 manufacturers account for only 45 % of the total domestic production of PUC and there are over 100 manufacturers. For Coated Paper and Paper Board, even if taken together, the 3 applicants even as per their own submission show production of only 314970 MT but total domestic production is 1.24 million MT.
60. Coated paper and paperboard are not like products and cannot be clubbed together.

Views of Stora Enso Oyj, EU.

Stora Enso Oyj, EU has submitted the following views through their counsel.

61. Lack of transparency and absence of accurate or adequate information in the application.
62. Applicants have presented fresh evidence at the Hearing that cannot be relied upon.
63. Stora Enso's coated paper products are unlike articles and do not substitute the domestic products.
64. No surge in imports noticed. Injury, if any, has not been caused by imports
65. Imports of coated paper are not coming at a low price.

66. From the market share, production, inventories, capacity and profits data provided by the applicants' it appears there is no 'serious injury' caused.
67. The Indian customers will suffer and costs of educational publications are likely to rise if safeguard measures are imposed.
68. Export trends in coated paper market, both globally and within India are not 'unforeseen developments'.
69. No re-structuring or adjustment plan was made in the application.
70. The real problem of corporate forestry in India cannot be resolved through safeguard measures.

VIEWS OF IMPORTERS

Views of the Chemicals & Allied Products Export Promotion Council

71. The cost of basic raw materials i.e. pulp and fuel have gone down and international paper manufacturers have passed the benefits to the consumers. Indian printers printing for the international market have to give competitive rates at international quality. Once safeguard measures are imposed, the Indian printers will lose the competitive edge.
72. The exporters are not selling their product below cost. Since the cost of raw material fell so did the price of the final product. The exporters are all making profit.
73. The share of imported paper is just 1.13 % of the total domestic consumption.
74. The Indian paper manufacturers are making profit as per their annual returns. Also they have no inventory at the end of the month.
75. Imported paper is needed by Indian printers because of its quality, availability on time and some varieties are not manufactured in India.
76. If safeguard duty is imposed on paper, prices of paper will increase by 20-25 %. It will make books more expensive. Libraries, readers, authors will suffer. Education will become more expensive.
77. Indian printers will become non-competitive in the international market. India will lose the advantage of being a printing hub for the international publishing industry.
78. Safeguard measures will help select paper manufacturers of India at the cost of printing and publishing industry.

Views of Federation of Paper Traders Association:

Federation of Paper Traders Association has submitted the following views through their counsel.

79. The applicants do not have the standing to file the application as they constitute only 38 % of the domestic industry. The application has been filed by ITC Limited, Ballarpur Industries Limited and J.K. Paper Limited on behalf of domestic producers and supported by IPMA. But the application provides data for only the three producers who constitute 38 % of the total domestic production.

80. Data is provided in the application for only three producers accounting for 38 % of the production and not for all members of IPMA.
81. The application does not provide critical data available in the public domain under guise of confidentiality without providing valid reasons for keeping it confidential as provided under Rule 7(2).
82. The application does not provide the adjustment plan which is in violation of the rules.
83. Coated Paper and Paperboard are distinct products, not sharing the manufacturing process and are not easily substitutable in their end uses. These cannot be treated as like and directly competitive products.
84. The application fails to prove serious injury or threat of serious injury as the application does not provide data / information showing any unforeseen circumstances, surge in imports, fall in sales or market share, fall in international prices due to reduction in raw material prices, fall in capacity utilization, loss of employment or loss in annual reports.\
85. The application fails to prove any causal link, a reasoned explanation for quantum of duty.
86. The injury caused to the applicants is not because of increased imports but can be attributed to other factors.
87. The applicants have not provided the data regarding the number of people employed by the paper industry.
88. The imposition of safeguard duty will affect the members of the Federation and the businesses that buy paper from the Federation.
89. The agro forest industry does not manufacture the product but it is merely an input used in the manufacture of the product. The plight of the farmers involved in the agro forestry is important to the nation as a whole. This investigation centers around the paper industry. Safeguard investigations are product specific, i.e. they are on like or directly competitive products.
90. The applicants have not provided any breakup as to how much investment out of Rs 13,000/- crores is channeled to other products.
91. The raw material scenario in India is not relevant to the current investigation. The Government of India has made a policy decision not allowing corporate farming in India, while Governments around the world have allowed the same. Therefore the right solution is to approach the government to change its policy rather than imposition of safeguard duty.
92. Energy costs are independent of the quantity of imports. So the injury caused by high energy costs cannot be attributed to increased imports.
93. The applicant's claim that all the products under Chapter 48 have similar use is misleading.
94. Data provided by a supporter of the application, IPMA, clearly shows that the applicants account for a mere 38 % of the domestic production.
95. Increase in imports has been less than the increase of sales of the applicants.
96. The applicants have failed to provide a meaningful summary of restructuring plan.

Views of the All India Federation of Master Printers

97. The import prices of coated paper and paperboard have shown a sharp increase during the last few years.
98. Alongwith the international market, the domestic manufacturers also increased the prices.
99. Based on the enormous profitability of the industry, BILT increased capacity by 190000 T by end 2009 and J K Paper Ltd. added 60000 T per annum capacity in mid 2007-08
100. Rather than lowering the price of paper and paperboard in view of the sharp decline in raw material prices, the domestic manufacturers have sought for relief by getting safeguard duty imposed.
101. There has been no surge in imports of paper and paperboard as per figures obtained from DGCIS. Rather there is a sharp decline in imports.
102. India still does not manufacture varieties of papers required for export of printed materials.
103. There is a significant increase in domestic production and sales during 2008-09 over 2007-08.
104. There is no fall in capacity utilization.
105. The annual and quarterly results of the applicants show that profitability has been more than satisfactory and there is no injury whatsoever.
106. Paper is an essential commodity of mass utility and consumption. Any revision in prices will affect the Government's programme of spreading literacy.

Views of Thomson Press (India) Ltd.

Thomson Press (India) Ltd. has submitted their views through their counsel

107. The application filed by the applicants does not contain a proper definition of the product under consideration.
108. Import data provided in the application is not reliable as it includes certain gsm-types of coated paper that were not manufactured in India.
109. Application contains unsubstantiated claims concerning fall in demand in China, Indonesia etc., huge capacities created in Far East, huge inventory piled up in China, Indonesia, Thailand, Europe, indiscriminately low priced imports.
110. Excessive claims of confidentiality in the application
111. Case initiated without examination of the accuracy and adequacy of the evidence.
112. No injury or threat of injury based on financial results and public data.
113. No causal link established.
114. Imposition of safeguard duty is against public interest as it shall result in further increase in the cost of production for the Indian publishing industry.
115. Applicants must establish how the paper industry in India will be affected if duties are not imposed.
116. The high energy costs can be a factor to injury but it cannot prove increase in imports.

Views of others:

The summary of views presented by other interested parties is as follows:

117. Accurate or adequate information regarding imports, production, sales, market share, inventories, and profit data are not provided in the application. The information submitted by the applicant relating to sales, production, capacity utilization, profit and losses and others do not show serious injury.
118. The problem of corporate forestry in India cannot be resolved through safeguard measures.
119. Introduction of safeguard measures would lead to monopolistic practices by the domestic industry leading to shortages and much higher prices for the local printers and publishers and packers.
120. Injury to the domestic industry, if any, is not due to increase in imports but other reasons for which safeguard measures cannot be introduced.

Findings of D.G.

121. I have carefully gone through the case records and the replies filed by the domestic producers, users/importers, exporters and exporting government. Submissions made by the various parties and the issues arising there from are dealt with at appropriate places in the findings below.
122. **Product under consideration:** The applicants have alleged that increased imports of Coated Paper and Paper Board into India have caused serious injury to domestic industry and is continuing to threaten serious injury to domestic industry. The domestic industries manufacture Coated Paper and Paper Board made primarily from virgin chemical pulp falling under various headings of chapter heading 4810. The domestic industry has submitted that their products are directly competing products with imported products falling under 48101310, 48101320, 48101330, 48101390, 48101410, 48101420, 48101430, 48101490, 48101910, 48101920, 48101930, 48101990, 48102900, 48103100, 48103200, 48109200 and 48109900 of HSN as well as Customs Tariff Act, 1975. The applicants have alleged serious injury caused to the domestic producer by the increased imports of Coated paper and paperboard made primarily from virgin chemical pulp into India and falling under above headings at eight digit level.
123. Papers and paperboards are made using pulp obtained by chemical or mechanical process or a combination of both. Further the pulp can be obtained either using fresh plant sources or from recycled paper. The present application covers coated paper and paperboard primarily made with virgin pulp using chemical process. The coating may be either on one side or both sides. Blade coating technology is most common for coating these papers and paperboards. The domestic industry has argued that the products falling under the headings mentioned above at eight digit level are same as far as their technical characteristics, chemical composition and other basic features are concerned. The products of all these headings find similar uses. Therefore these products are like and directly competing products. Despite possible minor superficial differences,

- in terms of quality, these products have the similar basic physical characteristics and similar end uses.. Thus the domestic industry has argued that in view of above, for the purposes of safeguard investigation the product basket consisting of products mentioned above needs to be considered as the ‘product under consideration’.
124. Some of the interested parties have contended that Coated Paper and Paper Board are distinct products and thus these two cannot be termed as directly competitive to each other. Further, the quality of paper varies in terms of quality. Therefore, it is not appropriate to consider all such products together.
125. The issue has been analyzed. The domestic industry manufactures both Coated Paper and Paper Board. There are imports of both coated paper and paper boards. Further, the coated paper and paper boards are imported in various sizes and these products are also manufactured by domestic industry. There is no evidence produced by the interested parties, which shows that any particular article is imported into India, but the same is not produced by the domestic industry and the imported product does not compete with the product manufactured by the domestic industry.
126. The product under consideration is a group of products. While determining whether the group of imported products is ‘like or directly competitive’ to the group of products produced by domestic industry or not, it is not necessary to prove that each of the products of the group are ‘like or directly competitive’ to all the other products of the group. Instead, it is to be seen whether there exists a corresponding ‘like or directly competitive’ product of each of the imported products.
127. It is observed that the group consists of large number of products of similar nature and similar origin. The imported products falling under these headings at each of the eight digit level are similar as far as their technical characteristics, chemical composition and other basic features are concerned. These products have similar uses. These imported products are directly competing or have potential to compete with such products produced by domestic industry. Despite possible minor superficial differences, in terms of quality, these products have the similar basic physical characteristics and similar end uses. These are sold via similar or identical sales channel. In view of above, the product basket consisting of coated paper and paperboard (as specified above) are the ‘product under consideration’ for the purposes of safeguard investigation.
128. **Domestic Industry** - The application has been filed by (1) ITC Limited - Paperboards and Specialty Papers Division, 106, Sardar Patel Road, Secunderabad – 500003, Andhra Pradesh, (2) Ballarpur Industries Limited, First India Place, Tower C, Mehrauli Gurgaon Road, Gurgaon (Haryana) – 122001 and (3) JK Paper Limited, Nehru House, 4 Bahadur Shah Zafar Marg, New Delhi-110 002 supported by Indian Paper Manufacturers Association, PHD House, (4th floor), 4/2 Siri Institutional Area (Opp. Asian Games Village), New Delhi-110 016 for imposition of Safeguard Duty on imports. These three applicants produce nearly 100% of the coated paper and paper board out of virgin chemical pulp.

Therefore, these industries constitute domestic industry in terms of clause (b) of subsection (6) of Section 8B of the Customs Tariff Act, 1975.

129. **Period of Investigation:** The domestic industry has supplied information up to 2008-09 (up to December) and claimed threat of serious injury based on comparison of 2008-09 (Up to December) with the information of past two years i.e 2007-08 and 2006-07. The preliminary finding was based on 2008-09 (up to December) as period of investigation. The domestic industry has neither relied upon nor submitted data for subsequent period on the ground that the period of investigation should not be extended as it would be against the norm of natural justice. They also contended that the subsequent information is not necessary to be considered as the same might have been influenced by the initiation of Safeguard investigation.
130. The issue has been examined. The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard or the relevant Article XIX of GATT does not specifically define what the Period of Investigation should be. However, the issue of period of investigation has been dealt extensively in the panel's report on Argentina Footwear as well as Appellate Body Report on Argentina Footwear, which are being produced below;

“Argentina– safeguard measures on imports of Footwear; Report of the Panel

8.216 *Regarding the investigation's almost exclusive reliance on end-point-to-end-point comparisons in its analysis of the changes in the situation of the industry, we have the same concerns as were noted above with regard to the "increased imports" analysis. Here we note in particular that if intervening trends are not systematically considered and factored into the analysis, the competent authorities are not fulfilling Article 4.2(a)'s requirement to analyse "all relevant factors", and in addition, the situation of the domestic industry is not ascertained in full. For example, the situation of an industry whose production drops drastically in one year, but then recovers steadily thereafter, although to a level still somewhat below the starting level, arguably would be quite different from the situation of an industry whose production drops continuously over an extended period. An end-point-to-end-point analysis might be quite similar in the two cases, whereas consideration of the year-to-year changes and trends might lead to entirely opposite conclusions.*

We believe that consideration of changes over the course of the investigation period in the various injury factors is indispensable for determining whether

an industry is seriously injured or imminently threatened with serious injury. An end-point-to-end-point comparison, without consideration of intervening trends, is very unlikely to provide a full evaluation of all relevant factors as required

Appellate Body Report

Note 130:

The Panel, in footnote 530 to para. 8.166 of the Panel Report, recognizes that the present tense is being used, which it states "would seem to indicate that, whatever the starting-point of an investigation period, it has to end no later than the very recent past." (emphasis added) Here, we disagree with the Panel. We believe that the relevant investigation period should not only end in the very recent past, the investigation period should be the recent past.

131. From the above it is apparent that neither the Agreement on Safeguard nor the relevant provisions of WTO provide specific definition or interpretation of the period of investigation. The Appellate Body Report has given the finding in unequivocal terms that the relevant investigation period should not only end in the very recent past; the investigation period should be the recent past. Therefore, the period after filing of the application cannot be ignored in safeguard investigation. However, in order to meet the requirement of natural justice, it is imperative that the information received or collected after initiation of investigation is made accessible to the interested parties. As far as the contention of the domestic industry that it is not necessary to examine the information relating to subsequent period, it is noted that irrespective of the fact whether the examination of information for the period subsequent to initiation of investigation is mandatory or not, the availability of such information certainly helps to have the latest status of domestic industry.
132. However, in the instant case, the domestic industry has not relied on information of the period other than referred to in the application. Therefore, the period of investigation is limited to the period 2008-09 (upto December).
133. **Increased Imports:** The table below gives the imports of product under consideration. The average monthly imports have gone up by 52.59% during April-December, 2009 compared to 2007-08. The average monthly imports had gone up by 124% in 2007-08 compared to 2006-07. Therefore, it is noted that the imports have been increasing since 2006-07.

Table 1

	2006-07	2007-08	2008-09 (upto December)
Total Imports (MT)	106993	132684	151848
Average Monthly Imports (MT)	8916	11057	16872

134. **Value of Imports:** The import price of the product under consideration has increased from US\$655 per MT in 2006-07 to US\$763 in 2007-08 and US\$ 910 in 2008-09. The import price has increased by 19.3% and 16.5% in 2008-09 and 2007-08 respectively compared to their preceding years. Therefore, it is seen that the imports prices are increasing.

Table 2

	2006-07	2007-08	2008-09 (upto December)
Value (USD/MT)	655	763	910

135. **Share of Imports relative to production:** The table below gives imports relative to their production. The share of imports has gone up by 6% during April-December 2008-09, compared to 2007-08.

Table 3

	2006-07	2007-08	2008-09 (upto December)
Share of Imports (%)	30%	33%	39%

136. Therefore, it is noted that there is increase in import in quantitative terms as well as in relative term. However, the imports are at higher prices than previous years.

Serious Injury and Causes Thereof
Statutory framework:

137. "Serious injury" means as an injury causing overall impairment in the position of a domestic industry;¹
138. The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 technically requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant decline in sales, employment and productivity which will show "significant overall impairment" in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall *position* of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.²
139. Accordingly, in analyzing serious injury all factors, which are mentioned in the rules as well as other factors, which are relevant, have been considered. No single factor has been considered as dispositive. All relevant factors within the context of the relevant business cycle and conditions of competition, which are relevant to the affected industry, have been considered to evaluate the overall position of the domestic industry.

Examination of factors:

140. **Rate of increase of imports:** The rate of increase of imports increased to 52.59% in 2008-09 from 24.01% in 2007-08

Table 4

	2006-07	2007-08	2008-09 (upto December)
Rate of Increase of Imports		24.01%	52.59%

141. **Market Share of domestic industry taken by imports:** As apparent from the table below, the market share of domestic industry has gone down by 6 % in 2008-09 (April-December). The market share had gone down by 3% in 2007-08 compared to 2006-07.

¹ Section 8B(6)(c) of the Customs Tariff Act, 1975.

² Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

Table 5

	2006-07	2007-08	2008-09 (upto December)
Share of domestic industry (%)	70	67	61

142. **Production:** The average monthly production during 2008-09 (April-December) has gone up by 18.81% compared to 2007-08. The production had gone up by 8.14% in 2007-08 compared to 2006-07.

Table 6

	2006-07	2007-08	2008-09 (upto December)
Total Production (MT)	246664	266751	237699
Average Monthly Production (MT)	20555	22229	26411

143. **Sales:** The average monthly sales during 2008-09 (April-December) have gone up by 18.81% compared to 2007-08. The rise in sales in 2007-08 was 8.14% in 2007-08.

Table 7

	2006-07	2007-08	2008-09 (upto December)
Total Sales(MT)	252146	264452	236565
Average Monthly Sales (MT)	21012	22038	26285

144. **Capacity Utilization:** The installed capacity of domestic industry increased by 2500 MT/Month during 2007-08 and 2008-09 (up to December). In spite of the increase in installed capacity, the capacity utilization increased in 2008-09 (up to December) to 74% from 67% in 2007-08. This means the domestic industry has been able to increase the production by a quantity, which is more than the expansion of capacity.

Table 8

	2006-07	2007-08	2008-09 (upto December)
Total Installed Capacity(MT)	366000	396000	319500

Installed Capacity (MT/Month)	30500	33000	35500
Capacity Utilization	67	67	74

145. **Employment and Productivity:** The domestic industry has not provided information about their employment and productivity and thus no analysis could be carried out.

146. **Profitability:** The profitability has gone down by 2808.98 in 2007-08 compared to 2006-07 and the ROCE % has gone down from 14.06 % in 2006-07 to 7.34 % in 2007-08 and further to 4.27 % in 2008-09 (April to December 2008). The fall in profitability is primarily on account of increased cost of raw material, and depreciation. It has been admitted by the domestic industry that the cost of raw material is higher on account of lack of corporate farming and high energy cost in India. The depreciation is higher in the instant case on account of increased investment on capital goods for capacity expansion. These reasons are not related to increased imports. It is also seen that import prices have gone up over the period and there is no evidence produced by the domestic industry that the increased imports are causing pressure on domestic prices. Therefore, the fall in profitability is not attributable to increase in imports.

Table 9

Year	2006-07	2007-08	2008-09 (upto Dec)
PBT per MT	4187.26	1378.28	317.69
ROCE % (EBIT/Capital Employed)	14.06	7.34	4.27

147. **Evaluation of Overall position of industry:** The domestic industry has expanded their installed capacity in 2007-08 and 2008-09 (up to December). During these periods the production and sales have gone up substantially. The production and sales increased by 18.81% during 2008-09 (up to December) compared to only 8.14% increase in 2007-08. The capacity utilization went up by 7% to reach 74% in 2008-09 from 67% in 2007-08, even after increase in installed capacity. The production, sales and capacity utilization has been the maximum during 2008-09 (up to December). There has been some fall in profitability, but the domestic industry is still in profit even during recession period. Further, the analysis of fall in profitability shows that the fall is not on account of increased imports.

148. The term 'serious injury' means significant overall impairment in the position of the domestic industry. The profit making domestic industry, which has the maximum production, maximum sales, maximum capacity utilization and has

- been undertaking capacity expansion during the entire period of consideration, cannot be said to be in the position of significant overall impairment. Further, there is no evidence that the increased imports at higher prices are threatening to cause serious injury to the domestic industry.
149. Therefore, there is no serious injury or threat of serious injury to the domestic industry.
150. As there is no serious injury or threat of serious injury, the question of its causal link with increased imports does not arise.

Conclusion and Recommendation:

151. Based on the above, it is concluded that there is no serious injury or threat of serious injury.
152. Accordingly, no safeguard duty on imports of Coated Paper & Paper Board is recommended.

(Praveen Mahajan)
Director General (Safeguards)
F No D-22011/25/2009