



रक्षोपाय महानिदेशालय
(केन्द्रीय उत्पाद एवं सीमा शुल्क बोर्ड)
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NOTIFICATION

F.No. **D-22011/20/2013**

Dated : 16.09.2014

Subject:-Safeguard investigation concerning imports of Sodium Citrate – Final Findings.

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

I. Procedure

1. An application has been filed before me under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (hereinafter referred to as Safeguard Rules) by M/s. Posy Pharmachem Private Limited, No. 187/1A, Karoli, Nr. Khatraj Ckokdi, Ta. Kalol, Dist. Gandhinagar, Gujarat through their consultant M/S TPM Solicitors & Consultants for imposition of Safeguard Duty on imports of 'Sodium Citrate' into India, to protect the domestic producers of Sodium Citrate against serious injury/threat of serious injury caused by the increased imports of "Sodium Citrate" (hereinafter referred to as Product Under Consideration, i.e., PUC) into India.
2. In order to satisfy the requirements under Rule 5 of the said Safeguard Rules, the information presented by the applicant was got verified by on-site visit to the plant of the domestic producer to the extent considered necessary. The non-confidential version of verification report is kept in the public file. On being satisfied that the requirements of the said Rule 5 were met and the application was updated on dated 24/2/2014, the Notice of Initiation of Safeguard investigation concerning imports of Sodium Citrate into India was issued under Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 4th March, 2014 and was published in the Gazette of India Extraordinary vide G.S.R.140 (E) on the same day i.e. 4th March, 2014.
3. A copy of the Notice of Initiation dated 4th March,2014 along with copy of non-confidential version of the application filed by the Domestic Industry were forwarded to the Central Government, in the Ministry of Commerce and other Ministries concerned, Governments of major exporting countries through their embassies in India, and the Interested Parties listed below, in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997:

(I) Domestic Industry

- a. **POSY PHARMACHEM PRIVATE LIMITED**, No. 187 / 1 A,Karoli,Nr. Khatraj chokdi, Ta. Kalol, Dist: Gandhinagar, Gujarat - 382 721.

(II) Other Indian Producers

- a. Sunil Chemicals, 311, Janki Centre, Off. Veera Desai Road, Andheri (W), Mumbai 400 053
- b. Ishita Drugs And Industries Drugs And Industries Ltd Drugs And Industries Ltd., 11, Valmik Complex, C.G.Road, Ahmedabad. 380006, Gujarat.

- c. G.Amphray Laboratories, Sambava Chambers, 4th Floor, Sir P.M.Road, Navnidh Pharma Lab. 37, Bindal – East, Sakinaka, Mumbai. Maharashtra.
- d. Navnidh Pharma Lab, 37, Bindal – East, Sakinaka, Mumbai.
- e. Wang Pharmaceuticals & Chemicals, A – 77, Vishal Enclave, New Delhi – 110027.
- f. V M Chemicals., C / 1,243, Gidc, Ii Phase, Ambavadi, Wadhavan, Surendranagar, Gujarat. 363035

(III) Importers

- a. Crystal Crop Protection Pvt. Ltd., GI-17, GT Karnal Road, Industrial Area, Azadpur, Delhi – 110033
- b. Desmo Exports, 125-Arenja Arcade, Sector 17, Vashi, Navi Mumbai – 400703, Maharashtra.
- c. New Drug & Chemical Co., 4, Jay Mahal Estate, 2nd Floor, 20/48, Lohar Chawl, Maharashtra.
- d. Colorcon Asia Private Limited, 38-AB, Govt Industrail Estate, Charkop, Kandivali West, Mumbai, Maharashtra.
- e. ACID-India, Mulratra 2nd Floor, 334-Narshi Natha Street, Mumbai – 400703, Maharashtra.
- f. Pradip kumar Pharma Pvt. Ltd., Address: 701, Arun Chambers, 80, Tardeo Road, Mumbai – 400034, Maharashtra.
- g. Amijal Chemicals, 5/4, Mungekar Industrial Estate, Off Aarey Road, Goregaon (E), Mumbai, Maharashtra.
- h. Adani Pharmachem Pvt. Ltd., Plot No. 2729 to 2731, Road-I-1, Lodhika, G.I.D.C, Village, Metoda, Tal. Lodhika, Rajkot-360021, Gujarat.
- i. Sujata Chemicals, 802, GIDC, Makarpura, Vadodara-390010, Gujarat.
- j. Prakash Chemicals Pvt. Ltd., Induchacha House, Opposite Cchani Octroi naka, Vadodara, Gujarat.
- k. RM Chemicals, Guru Kripa Complex, 131, Anna Pilai Street, Sowcarpet, Chennai - 600001, Tamil Nadu.
- l. Pfizer Limited, Pfizer Center, Patel Estate, SV Road, Jogeshwari (W), Mumbai-400102, Maharashtra.
- m. FDC Limited, B-8, MIDC Area, Waluj-431136, Aurangabad, Maharashtra.
- n. Wallance Pharmaceutical Ltd., 3rd Floor, Dempo Trade Centre Building, Pattp Plaza, EDC Complex, Panaji-403001, Goa.
- o. Kaira District Co-op Milk Producers Union Ltd., Station Road, Anand-388001, Gujarat.
- p. Schreiber Dynamix Daries Ltd., E-94, MIDC, Bhagwan Road, Baramati, Dist. Pune – 413133, Maharashtra.
- q. Vasa Pharmachem Pvt. Ltd., D1 & D2, 2nd Floor, "Nikumbh", NR. Reliance House, CG Road, Ahmadabad – 380006, Gujarat.

(IV) EXPORTERS

- a. Qingdao Sonef Chemical Company Limited, Rm 1504, Jinhua Building 1, No. 100, Nanjing Rd, Shandong, Qingdao, China.
- b. Weifang Vot International Business Co. Ltd. No. D2704, Dong Feng Street, Shandong - 261000 Weifang, China.
- c. Hai Hui Group Cp., Ltd. Industrial Park of Ju County, Shandong - 276500 Rizhao, China.
- d. Foodchem International Corporation Building 9, 2277 Zuchongzhi Road, Zhangjiang Hi-Tech Park, Shanghai – 201203, China.
- e. Yixing Zhenfen Medical Chemical Co. Ltd. Zhoutie Town, Yixing City, Jiangsu Province – 214262, China.
- f. Hainan Huarong Chemical Co. Ltd. 21A, Beijing Building, No. 56, Guomao Road, Hainan Haikou – 570125, China.
- g. Lianyungang Dongtai Food Ingredients Co. Ltd. Room 201, Unit 1, No. A3, Building, 28 Yingzhou Road, Xinpu District, Jiangsu - 222000 Lian Yungang, China.
- h. Lianyugang Shuren kechuang Food Additive Co. Ltd. The East of Linhong Road, Dapu Chemical Industry Zone, Lianuungang TEDA, Jiangsu – 222000, China
- i. Honson Pharmatech Group Ltd, 275 Don park Road, Markham, Ontario, Canada.
- j. Gadot Biochemical Industries LTC, P.O.Box 10636, Haifa Bay, 26118 Israel.
- k. Showa Kako Corporation, Nissho Bldg.6F,2-2, Dojima 1-chome,Kita-ku, Japan.
- l. Chemical Supply Co LLC, 10405 NW 37th Terrace, Miami, Florida,
- m. Archer Daniels Midland Company, 4666 Faries Parkway Decatur, IL 62526, United States of America, USA.
- n. Cargill INC. 15407 Mcginty Rd W Wayzata, Mn 55391-2365 (800) 227-445
- o. Tate & Lyle PLC, 1 Kingsway London WC2B 6AT, United Kingdom.

(V) Exporting Nations:

- a. The Embassy of People's Republic of China, 50-D, Shantipath, Chanakya Puri, New Delhi - 110021.
 - b. The Embassy of United States, Shanti Path, Chanakya Puri, New Delhi -110021.
 - c. The Embassy of Spain, 12, Prithviraj Road, Khan Market, New Delhi -110001.
4. Questionnaires were sent to the known exporters, known importers/users in India and other interested parties as per the information available, with request to make their views known in writing within 30 days of the Notice of Initiation.
5. Requests to consider them as interested parties were received from the following parties:-
- a. Trade & Economic Section, Delegation of the European Union of India, 65, Golf links, New Delhi-110003. E-mail- chaitanya.kaushal@eeas.europa.eu
 - b. Minister Counsellor (Economic Affairs) High Commission of Malaysia, 50-M, satya Marg, Chanakyyapuri, New Delhi. E-mail- brecta.robort@miti.gov.my
6. All requests were accepted.
7. Following Interested Parties have filed the Questionnaire response:
- a. Domestic Industry: POSY PHARMACHEM PRIVATE LIMITED, No. 187 / 1 A, Karoli, Nr. Khatraj chokdi, Ta. Kalol, Dist: Gandhinagar, Gujarat - 382 721.
 - b. Importer: (i) M/S Adani Pharmachem Private Limited, Tal. Lodhika, Distt. Rajkot-360021
 - c. M/s FDC Limited, 142-148, S.V. Road, Jogeshwari(W), Mumbai. C) M/s Kaira District Co-operative Milk Producers' Union Ltd, Anand-388001, Gujarat.
8. Submissions were also received from the following Interested Parties in response to the Notice of Initiation:
- a. Desmo Exports Ltd. vide letter dated 21/3/2014
 - b. Ishita Drugs And Industries Ltd Pharmaceuticals. vide letter dated 17/3/2014
 - c. Prakash Chemicals Agencies Pvt. Ltd. vide letter dated 09/4/2014
 - d. New Drug & Chemical Co. vide letter dated 27/3/2014
 - e. Wang Pharmaceuticals & Chemicals. vide letter dated 03/4/2014
9. Ministry of External Affairs, Eurasia Division vide F No. WI(AD)123/04/2012 dated 19th June, 2014 forwarded a letter enclosing therewith a note verbal no. 923/n dated 5th June, 2014 from Mr. Viktor Evtukhov, Deputy Minister of Industry and Trade of the Russian Federation wherein it is said that during the period of investigation from 2010-2013, the import of goods falling under sub-heading 29181520 of the Customs Tariff Act 1975 and importing from the Russian Federation to India did not exceed three per cent, and therefore, in accordance with the Safeguard Provisions under the Customs Tariff Act, 1975 (Section 8B) and the Article 9 of the WTO Safeguards Agreement the Russian Federation should be excluded from the list of countries under investigation.
10. M/s Sunil Chemicals, 311, Janki Centre, Off. Veera Desai Road, Andheri (W), Mumbai 400 053 vide their letter dated 11th November, 2013 gave their support to the Domestic Industry in filing an application for safeguard measures against increased imports of Sodium Citrate into India. They also co-operated in the investigation by providing data regarding production, sales, and inventory of the PUC; which was considered and taken on record for overall injury analysis.
11. All the views expressed by the interested parties have been taken into account in making appropriate determination. The non-confidential information received or acquired has been kept in the public file.

Views of the Interested Parties (Post-Notice of Initiation) :

12. Only a few Interested Parties submitted their comments in response to the Notice of Initiation issued in this case, which is as below:

A. Desmo Exports Ltd.

- a. No anti dumping duty on sodium citrate should be imposed.

B. Ishita Drugs And Industries Ltd Pharmaceuticals.

- a. Wrong interpretation of the raw data on imports, domestic production and sales and any consequent action detrimental to the national interest, especially SSI manufacturers.
- b. Crude PUC imported is further processed and purified form is sold in domestic and export markets and any duty would make the export uncompetitive and lead to loss in foreign currency earnings.
- c. Total demand is much higher than provided in the Notice of Initiation as significant percentage of sales of other Indian manufacturers is after processing the imported sodium citrate. Also, the sales of DI are much higher than in Notice of Initiation and so a detailed investigation is necessary.
- d. Any duty would lead to duopolistic situation and lead to increase in PUC prices and other finished products like butter, cheese, life saving ORS, dialysis reagents, etc.

C. Prakash Chemicals Agencies Pvt. Ltd.

- a. The petitioners cannot apply for both anti dumping and safeguard duties at the same time which they have, as objectives of the both are different.
- b. Petition does not give actual production of other four domestic producers which if taken in to account make the claim of petitioners of 90% of production unacceptable.
- c. The supporter producer has no production since 2010-11 till date whereas the application attributes 44% share to it. Thus, the Notice of Initiation is not supported by the facts.
- d. None of the exporters mentioned in the petition are actual exporters and even if they export, quantities are too insignificant.
- e. The petitioners are admittedly exporters of PUC, thus, no serious injury due to imports.
- f. Petitioners do not mention total demand. The estimated demand of 14000 MT cannot be met by production claim of 4000MT by the petitioners and any duty would create monopoly in favour of petitioners.
- g. No significant value addition in PUC manufacturing vis a vis value of raw materials and hence, safeguard duty on such product makes no economic sense.
- h. Duty would make the operation of downstream users unviable and cause significant disadvantage to the consumers due to price increase of end products especially, Pharma.

D. New Drug & Chemical Co.

- a. Safeguard duty on PUC would make Chinese manufactures increase supply of citric acid which is the raw material of PUC used by the Indian manufactures.
- b. Petitioners produce only pharma grade PUC catering only to pharma & food industries and not to other chemical industries like agrochemicals, electroplating etc.
- c. Safeguard duty on PUC will make other than pharma & food industries suffer as domestic producers other than petitioners manufacturing those items have pending orders and cannot cater to the demand.

E. Wang Pharmaceuticals & Chemicals.

- a. Due to cheap imports from China, sodium citrate industry is in bad shape. USA and Europe have already imposed huge ADD (anti dumping duty) on products from China and we expect at least 35% ADD for at least 3 years to safeguard our industry.

Public Hearing:

- 13.** A notice for holding a Public Hearing was sent on 20th June, 2014 to all the Interested Parties which was scheduled for 23-06-2014. However, due to some unavoidable circumstances, the Public Hearing was re-scheduled and was finally held on 07-07-2014. Following parties attended the hearing:

- a. Posy Pharmachem Pvt Ltd (Domestic Industry)
- b. Sunil Chemicals (Supporter)
- c. Wang Pharmaceuticals (other domestic producer)
- d. Ishita Drugs & Industries Limited (other domestic producer)

- e. Prakash Chemicals Agencies Pvt. Ltd (importer)
- f. Minister Counsellor (Economic Affairs), High Commission of Malaysia.

14. All Interested Parties who participate in the public hearing are required to file a written submission of the views presented orally in terms of Sub Rule (6) of Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Thereafter, copy of written submissions filed by an Interested Party is made available to all other Interested Parties. Interested Parties are also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties, including that of the Domestic Industry. In the instant Public Hearing, all interested parties who participated in the public hearing were requested to file a written submission of the views presented orally by 17th July 2014. Copy of written submissions filed by one interested party was made available to all the other interested parties, including the Domestic Industry. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties, including Domestic Industry, by 25th July, 2014. 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. However, one Interested Party, namely, Minister Counsellor (Economic Affairs), High Commission of Malaysia who participated in the Public Hearing, neither made any oral submission nor filed any written submission nor any rejoinder to the written submission by the Domestic Industry.

Post-Public Hearing written submissions:

15. Written Submission by M/s Posy Pharmachem Private Limited vide letter dated 17th July 2014 as follows:

- a. The product under consideration in the present petition is “Sodium Citrate”. Sodium Citrate is a chemical compound that comes in the form of monosodium citrate, disodium citrate and trisodium citrate. Goods produced by them are like article to the goods imported in India. The product under consideration can also be transacted by following alternate names –
 - i. Sodium Citrate
 - ii. Tri sodium Citrate
 - iii. Tri sodium citrate dihydrate
 - iv. Sodium citrate dihydrate
 - v. Tribasic sodium citrate
 - vi. Sodium Citrate Tribasic Dihydrate
 - vii. Sodium Citrate Dibasic Sesquihydrate
 - viii. Sodium Citrate Monobasic Bioxtra
- b. Sodium Citrate is mainly used as an expectorant and a urine alkanizer. It is also used as a pharmaceutical aid and as a food additive in dairy Industries which cater in cheese manufacturing and beverages. It is also a water treatment chemical and as a laboratory reagent.
- c. The goods produced by the petitioners are like article to the goods imported in India. Both the products have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc. Comparison of essential product properties in respect of domestic product and imported product would show that the goods produced by the domestic industry are comparable to the imported goods in terms of essential product properties.
- d. Present application has been filed by M/s Posy Pharmachem Private Limited. The application was supported by M/s Sunil Chemicals.
- e. M/s Ishita Drugs And Industries Ltd, M/s Navnidh Pharma Lab, M/s G.Amphray Laboratories, M/s Wang Pharmaceuticals & Chemicals and M/s V M Chemicals are the companies who have been selling the product under consideration in the market. As per the market intelligence of the petitioner, some marginal producers like M/s Vasa Pharma, M/s Adani Pharma and M/s Sujata Chemicals who were earlier producing product concerned have shifted to imports and started trading the imported product due to continued dumping.
- f. Petitioner has considered their known sales volumes and presumed the same as production. The production of the applicant constitutes a major proportion of domestic production of sodium citrate and hence, the petitioner constitutes Domestic Industry.

- g. M/s Wang Pharmaceuticals, and M/s Ishita Drugs and Industries Ltd. have participated in the investigation as domestic producers. It is requested that the Director General may seek their production details and accordingly determine the standing of the petitioner.
- h. M/s Wang Pharmaceuticals has extended support to the plea for imposition of safeguard duty during the oral hearing.. However, surprisingly, M/s Ishita Drugs and Industries Ltd., who has also claimed to be a domestic producer of the subject goods, has opposed imposition of safeguard duty. The reason for such strong opposition seems to be that the company is importing the product under consideration and selling the same in the domestic and international market.
- i. The requirement under the law is that imports should have shown sudden and significant surge. WTO in the matter of **Argentina Footwear (EC)** has held that increased imports must be sudden and recent:

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

- j. The petitioner submits that the imports of Sodium Citrate have shown sharp increase in absolute terms as well as in relative terms. The increase in imports is sudden and significant, causing market disruption and threat of market disruption. Thus imports of product under consideration has “increased within the meaning of the rules”
- k. Imports of Sodium Citrate have shown sharp increase in absolute terms as well the imports of the product under consideration from 2010-11 up-to March 2014. It would be seen that the actual figures of 2013-14 have shown further increase in imports.

Parameter/Year	2010-11	2011-12	2012-13	2013-14
Imports	2,621	2,877	3,721	5,300

- l. Imports of product under consideration in India have increased rapidly in relation to production of the domestic industry and the increase is higher than the increase observed at the time of Initiation of the safeguard investigation.
- m. The imports of product under consideration have increased rapidly in relation to Indian consumption of product under consideration. Imports have increased to such an extent that the imports in relation to consumption constitutes 71% of Indian consumption.

Parameter/Year	2010-11	2011-12	2012-13	2013-14
Imports in relation to consumption	57%	55%	57%	71%

Corrected by DI in Rejoinder 69%in place of 71% in 2013-14

- n. Reasons for increase in imports:
- i. Majority of imports into the domestic market are from China which has excessive capacities and are therefore exporting sodium citrate. The US has conducted an anti-dumping investigation against imports of Citric Acid and certain Citrate Salts, which includes Sodium Citrate as well, wherein the US authorities have held that China has significant capacities.

Year	2006	2007	2008	2009	2010
Apparent Consumption					
Capacity	1443	1932	2047	2193	2195
Production	1247	1719	1807	1779	1834

GAP (production –consumption	924	1259	1332	1190	1227
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* in '000 pound; Source: USA Findings

- ii. There exists significant demand supply gap which is further forcing the exporters from China PR to export the goods to India.

o. Serious Injury and Threat of Serious Injury to the Domestic Industry

- i. Demand for the product under consideration has been determined by the petitioner, as the imports of product into India, domestic sales of the domestic industry and domestic sales of other domestic producer. This also includes captive consumption, which is not present in this case. The overall demand for the product under consideration over the injury period has increased.

- ii. Production of the domestic industry has declined after increasing till 2012-13.

Parameter/Year	2010-11	2011-12	2012-13	2013-14
Production	1,184	1,211	1,531	1,521

- i. Capacity utilization of the domestic industry has also declined in the recent period after increasing till 2012-13. Industry is facing significant un-utilized capacities due to low priced imports and surge in imports in last two years despite sufficient capacities in India. Domestic Industry is utilizing only 45% of its capacities.

Parameter/Year	2010-11	2011-12	2012-13	2013-14
Capacity Utilisation	44	45	56	46

- ii. Increased imports have led to increase in market share of imports and reduction in market share of the domestic industry.

- iii. Sales of the domestic industry have also declined after increasing till 2012-13.

	2010-11	2011-12	2012-13	2013-14
Domestic Sales (In MT)	505	632	1036	999

- iv. Landed price of imports is significantly lower than the (a) selling price of the domestic industry and (b) cost of production of the domestic industry. The imports are significantly undercutting the domestic prices. The price undercutting is resulting in price suppression.

- v. The domestic industry is suffering financial losses. Further, the losses suffered by the domestic industry kept increasing throughout the injury period

	2010-11	2011-12	2012-13	2013-14
Profit/Loss (In Rs/MT) (indexed)	-100.00	-198.76	-184.14	-593.15

- vi. Return on investment was also negative and deteriorated over the injury period.

	2010-11	2011-12	2012-13	2013-14
ROI (%) (Indexed)	-100	-155	-146	-549

- p. In addition to the serious injury already inflicted on the domestic industry, increased imports of Sodium Citrate are threatening serious injury to the domestic industry. The price difference between domestic and imported product is quite significant. The foreign producers are holding significant unutilized capacities. Resultantly, the foreign producers are looking for additional markets to the extent possible.

	Unit	2010-11	2011-12	2012-13	2013-14
Landed price (avg.)	Rs/MT	44.67	52.62	53.87	48.92
Landed price (avg.)	Indexed	100.00	117.80	120.67	109.51
Domestic Selling Price (avg.)	Rs/MT				
	Indexed	100.00	123.58	114.00	125.32

q. Whereas the imports of the product under consideration are already causing serious injury, the same is likely to intensify in due course, should the safeguard duties not be imposed immediately.

r. Domestic industry submits that, it can be concluded that

- i. the imports of the product under consideration have increased significantly in absolute terms and in relation to production and consumption in India;
- ii. imports are significantly undercutting the domestic prices.
- iii. whereas cost of production was increasing, the domestic industry was not able to increase its prices in proportion to the increase in cost of production. Resultantly, imports were suppressing the domestic prices.
- iv. as a result of significant surge in imports, the market share of the domestic industry has significantly declined;
- v. imports have caused serious injury to the domestic industry in terms of decline in market share of the domestic industry, decline in production, capacity utilization, sales volumes, profits, significant losses and negative ROI.

s. Other factors causing Injury

- i. Demand of the product under consideration has increased. Thus, the injury to the domestic industry is not due to any decline in demand.
- ii. The pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have contributed to the injury to the domestic industry.
- iii. There is no trade restrictive practice which could have contributed to the injury to the domestic industry.
- iv. Technology for production of the product has not undergone any change. Developments in technology are therefore, not a factor of injury in this case.
- v. The analysis of injury is in respect for domestic operations only. Therefore, possible deterioration in the export performance of the domestic industry is not a possible cause of injury to the domestic industry.
- vi. Claimed injury to the domestic industry is on account of product under consideration. Petitioner has segregated data and provided in respect of product under consideration only.

t. **Causal link**

- i. There is a sudden and sharp spike in volume of imports into the domestic market in the recent period.
- ii. Volume of imports is very high and shows an increasing trend throughout the injury period.
- iii. The imports in relation to Indian production and demand have increased significantly.
- iv. Production, sales and capacity utilization have declined in the most recent past. The domestic industry is faced with significant unutilized capacities in view of significant imports into India.
- v. The imports are causing (i) price suppression (ii) financial losses (iii) negative returns on capital employed (iv) under-utilization of production capacities of Domestic Industry.
- vi. Imports have increased and are significant in relation to production and consumption in India. As a direct consequence, whereas the market share of imports has increased rapidly, that of the Indian industry has remained very low and declined.
- vii. Price suppression caused by the increased imports at low prices has led to severe decline in profitability.

- viii. The domestic industry has been facing negative return on capital employed, lower levels of productivity, underutilized capacities, and financial losses.

u. Public Interest

- i. The effect of safeguard measures on public interest is commonly studied from the perspective of three different parties – the producers, the consumers and the general public. When considered in this context, imposition of safeguard duty in the present case shall be in public interest.
- ii. The imposition of safeguard duty on imports of product under consideration would be in the interests of domestic manufacturers. The measure would prevent further injury to the domestic industry from increased imports. Domestic industry is suffering significant injury and imposition of safeguard duty would prevent this injury to the domestic industry.
- iii. Imposition of safeguard duty would be in the interests of domestic consumers, as it is in the consumer’s interest to have a competitive Indian domestic industry capable of supplying the product under consideration to the consumers and compete with foreign producers. This is possible only when the domestic industry is able to recover from the injury suffered due to the increased imports.
- iv. It is in the interests of the public at large to have a strong, competitive Indian domestic industry. This will not be possible if injury to the domestic industry as a result of increased imports is allowed to continue.
- v. The consumption segment of Sodium Citrate is as follows:

Consumption Segment	Approx Consumption (MT)
CHEESE	As preservative
COUGH SYRUP	As Expectorant
SOFT DRINKS	As Salty & Tangy taste
JELLY	As Salty & Tangy taste
PHOTOGRAPHIC INDUSTRY	As Anti Coagulant
PHARMACEUTICAL INDUSTRY B	As Anti Coagulant
BEVERAGES	As Salty& Tangy taste

- vi. The eventual impact on the cost of the end products is insignificant on the consumer segment. Accordingly, a detailed costing of impact on different user sector has been provided by the Domestic Industry. That Public interest has to be considered as the interests of domestic producers, domestic consumers and public at large. In this regard, considering almost negligible impact on the eventual end product and considering that survival of the domestic industry is must, it must be concluded that the imposition of safeguard duty shall be in public interest.

v. Adjustment Plan

- i. Petitioner at present has 3300 MT capacity. Petitioner plans to increase its capacity gradually from present levels to 6600 MT per annum.
- ii. Higher volume would result in higher requirements / sourcing of raw material. This would allow company to enter into quarterly contracts with raw material suppliers. Sourcing of higher volume of inputs would provide company bargaining power and this would result into reduction of cost of production gradually.
- iii. Higher capacity and production would be achieved by the company by Automation of present setup like conveyor belt, FSS (feel, seal, stitch) machine etc. This would result into better productivity by lower

number of individual. This automation would provide cost saving in terms of labour cost, repair & maintenance cost, manufacturing expenses, depreciation per unit of production.

- iv. Company intends to use solar energy as additional source of power. This would mean reduction of cost of power.
- v. Increase in capacity and production, would not require any significant change in administration and sales manpower.

16. Written Submission by M/s Wang Pharmaceuticals & Chemicals vide letter dated 17th July 2014 as follows:

- a. The increased volume of imports is causing serious injury to the Domestic Industry & eventually may result in closure of the domestic industry.
- b. Even if the demand for this product increases in the country by two or three fold in next five years, as claimed by representatives opposing the safeguard duty, it will not be difficult for the Domestic Industry to fulfill the increased demand
- c. Since The Drug controller of India, has imposed restriction on import of Sodium Citrate without registration process, lot of imports are coming in this country by labeling / describing the same material as “Not for Pharma / Medicinal use”. In fact, the product is such that it cannot be processed further. The importers are claiming so merely to evade the regulation and prohibition.
- d. As against the submissions of M/s Ishita Drugs and Industries Ltd contention, it is submitted that it is very strange that a company who claims itself as a producer of the product for past several years is opposing safeguard duty. There can be no rationality why such an old producer will oppose safeguard duty.
- e. There is no truth in their statement that larger public interest demands that the product need not be produced in the country and can be imported from China.
- f. There is no truth in the claims of monopoly or the argument that imposition of safeguard duty would significantly increase the prices of the end products. All statements of such parties in the name of larger country's interests are bogus and the real objective of these parties is to import the product because of low price and earn higher profits
- g. USA has earlier imposed anti dumping duties ranging from 90% to 150% on Chinese imports during 2009-10. If a powerful developed economy such as USA considers imposition of anti dumping duties necessary to protect their industry, there is no reason why safeguard duties should not be imposed by India.

17. Written Submission by M/s Sunil Chemicals vide letter dated 17th July 2014 as follows:

- a. We are in full agreement with Posy Pharmachem that the product is being imported in increased volumes and the same is causing very serious injury to the Indian industry.
- b. The country has sufficient demand for the product and there is no need for any imports for the product in the country
- c. Some of the imports are being made by describing the product as “not for Pharma/Medicine use”. It is claimed that these imports are processed further and the product is sold in the Indian market for pharma or food application. The fact, however, is that there is no processing of the imported material and the product is merely repacked to claim pharma or food grade product. In fact, the product is such that it cannot be processed further. The importers are claiming so merely to evade the regulation and prohibition.
- d. It is very strange that a company who claims itself as a producer of the product for past several years is opposing safeguard duty. There can be no rationality why such an old producer will oppose safeguard duty. As rightly pointed out by the counsel of Posy Pharmachem at the time of hearing, this is being done for different reasons – (a) to export the product to US market where Chinese producers are now attracting anti dumping duties; (b) to take advantage of low priced imports in the country and earn better profits in trading as compared to profits that are available in manufacturing.
- e. There is no truth in the claims of monopoly or the argument that imposition of safeguard duty would significantly increase the prices of the end products. All statements of such parties in the name of larger country's interests are bogus and the real objective of these parties is to import the product because of low price and earn higher profits by trading instead of producing the product in the country
- f. It is highly contradictory on the part of such parties to claim that they carry out significant processing on the imported Sodium Citrate to make it Pharma grade and even when we are producing the product by undertaking

full production activity, they say there is no significant activity being carried out by us on the produced sodium citrate. This clearly shows significant contradictory approach by such companies whose sole objective is to take advantage of low priced imports and earn higher profits by trading in the imported product.

18. Written Submission by M/s Ishita Drugs And Industries Ltd vide letter dated 17th July 2014 as follows:

- a. Petitioner has wrongly clubbed tri-sodium citrate, mono-sodium citrate and di-sodium hydrogen citrate as all these products are different with different chemical properties and different chapter heading and molecular formula. All these 3 products are different, distinct chemical entities with different chemical properties, with different chapter heading nos. and different molecular formulae.
- b. 100% of imported products are not for medicinal use. The imported product has to be further processed chemically to make it suitable for pharma use and therefore are not directly competitive article.
- c. Claim that petitioner and Sunil Chemical constitutes 90% of the Indian production is not credible. It is in contradiction with the information in the initiation notification on Indian production.
- d. Increase in imports is almost equal to increase in production of the DI. Increase in imports in relative terms is also not significant.
- e. No severe injury. Production of DI in relation to total production has lagged behind the total growth in production. Petitioner could not increase its production.
- f. Sales and market share given by the petitioner is misleading as it ignores the export sales of Indian manufacturers of Sodium Citrate which should be included in calculating demand. M/s Ishita Drugs and Industries have recast (the table as below on the basis of the data taken from Website of Deptt. of Commerce) the table given on page 3 of the Notice of Initiation as that Sales of DI has increased by 140% and market share has increased by 50%.

Year	Import	Domestic sales of DI	Sales of other Indian producer	Exports of all Indian producers	Total Demand (Domestic & Export) @	Market Share (%)	
						DI	Import
2010-11	2621	505	1454	704	2663	10%	50%
2011-12	2877	632	1769	690	3091	11%	48%
2012-13	3721	1036	1787	1067	3890	14%	49%
2013-14	4791	1214	1236	1232	3682	15%	57%

Data taken from Website of Deptt. of Commerce.

- g. Safeguard duties cannot be imposed to wipe away losses of DI papering over inherent inefficiencies in the system.
- h. Detailed data on month wise/quarter wise import price has not been provided to substantiate claims of undercutting. In a situation of where exchange rate has been fluctuating and volatile, average prices is not acceptable. Bills of imported goods, import invoices for different months should be called for.
- i. Idle capacity cannot be directly attributed to Sodium Citrate. Sodium Citrate is a very old product and involves a single step simple manufacturing process. It does not require any specialized equipment. Whatever equipment is used for manufacture of Sodium Citrate, can be used for manufacture of other chemical products bulk drugs as well. No fresh investment has been made to enhance the capacity.
- j. Costing and selling of sodium citrate is dependent on citric acid which is imported into India. Indian manufacturers are affected by the import price of citric acid and fluctuations thereof.
- k. Sodium citrate has been a low margin product. Since liberalisation, sodium citrate manufacturers have always enjoyed very low margins, irrespective of level of imports. This has more to do with the fact that the manufacturing process of Sodium Citrate is very simple and it requires no special equipment investment. The low margins are not a result of increase in imports of Sodium Citrate.
- l. It is not explained whether claimed undercutting is being caused by foreign company selling sodium citrate or by Indian importers.

- m. Companies exporting sodium citrate are the companies also producing citric acid (raw material) and therefore their costing is naturally lower.
- n. One of the major uses of Sodium Citrate IP I BP I VSP (Pharma grade) as manufactured by the petitioner is in manufacture of life saving ORS sachets. Prices will shoot up, and since sodium citrate is most commonly used in life saving ORS sachets, butter, cheese, etc., prices of these commodities of common use will also increase.
- o. Safeguard duty will also increase prices of everyday food items, fuelling further the problem of food inflation.
- p. Safeguard duty will also lead to retaliation by countries, on some products exported by India to these countries, thereby causing loss of foreign exchange and some industry.
- q. No concrete adjustment plan has been given. Mere plan of expanding capacity is not sufficient as all manufacturers depend on citric acid. Proposed capacity would only be about a small percentage of the capacity available with the foreign producers.
- r. The total demand for Sodium Citrate in India (including its domestic demand and its exports) have always been met through imports in a major way and this is not a sudden or recent phenomenon.
- s. Imposition of ADD in USA has no relevance. Imposition of ADD is by way of extension of ADD on citric acid, of which there is huge capacity in USA. USA imposed duties to protect the manufacturers of citric acid and sodium citrate. Whereas India has no capacity for citric acid and sodium manufacturer will always be dependent on citric acid.

19. Written Submission by M/s Prakash Chemicals Agencies Pvt. Ltd vide letter dated 17th July 2014 as follows:

- a. Their business in terms of sales volume or quantity has increased during the period of Investigation POI (2011-2014).
- b. Sodium citrate Market is growing with more than 20%-25 % year on year basis and within one or two years demand will be more than 15000 MT which cannot be satisfied by petitioner and its supporters.
- c. There is no meaning to protect the interest of two or three manufacturers who has only purpose to earn higher profit by safeguard duty and which will create serious damage to more than 1000 end consumers of sodium citrate due to higher cost of Sodium Citrate
- d. In respect of the same product the same manufacturers cannot seek to impose both safeguard duty as well as anti-dumping duty.
- e. If more than 25 small and big manufacturers can survive and they do not have any problem then only two or three manufacturers are suffering may be due to lack of skill and capability to remain in competitive market.
- f. There are few more applications of sodium citrate which are growing very fast with more than 25 % consumption growth rate ignored by the petitioner.
- g. There is no specific information on total Indian Consumption, production data of other manufacturers and multipurpose production plant and equipment which are being shown as installed capacity of sodium citrate.
- h. Import as well as domestic production is increasing with growing demand of sodium citrate more than 20 % per year.
- i. Imported Product market share (16%) is stagnant when compared to domestic Industry market share growth rate (52%) during POI.
- j. There are few more industries which are growing very fast in India with more than 25 % consumption Growth rate and petitioners have ignored this and also of new applications in different industries such as Soap & Detergent, Fertilizers, Ceramics industry and Animal feed Industry.
- k. There is no evidence of decrease in domestic production so there is no injury in terms of sales & production. Growth rate in Capacity utilization is 25 % during POI, growth rate in sales is 116 % during POI, Growth rate of Market share of Domestic industry is 52 % during POI, Growth rate of Market share of Imports is 16 %. Only profit data shows some negative impact on petitioner which is not credential because petitioner is manufacturer of more than ten products.
- l. Petitioner did not clarify about their plant utilization for multi products or sodium citrate, it is very difficult to justify that their entire plant capacity and employees are employed only for manufacturing of sodium citrate.
- m. Website of the petitioner shows the petitioner to be a manufacturer / seller of various products. Their installed plant capacity is utilized by so many products, which is misleading the authority to understand the demand and supply data.

- n. Other producers understand that buying Citric Acid monohydrate and giving the process by using valuable resources like people and machinery with even small capital investment is not wise business when the end product “Sodium Citrate” is available at same price.
- o. Price of Sodium citrate raw material “Citric Acid Monohydrate” and end product “Sodium Citrate” is same. There is no economic logic to import raw material at same price of finish product and then use our domestic valuable resources like people, Machinery, Energy and Skills to produce sodium citrate.
- p. Imposition of safeguard duty will lead to increase in the demand of citric acid monohydrate which in turn will lead to increase in the price of Citric Acid Monohydrate which will adversely impact the domestic consumer of citric acid monohydrate.
- q. There does not exist sufficient capacity with the domestic industry to cater the whole demand.
- r. Due to competitive price of imported sodium citrate, many new industries have started using sodium citrate and have become competitive in world market today. Imposition of safeguard duty will result into rendering the operation of a much larger community of downstream users unviable.
- s. If Government want to support domestic industry then Safeguard duty must be with reference to price of Citric Acid Monohydrate.
- t. Safeguard duty must be 10 % basis of chemistry and production norms, to convert citric acid to sodium citrate there is only 3-4 % additional cost compare to price of Citric Acid monohydrate.
- u. Sodium citrate manufacturers must be not allowed to charge more than 10 % price compare to citric acid monohydrate to control the inflation and injustice to Domestic consumers of sodium citrate.

20. Rejoinder Submissions by the Domestic Industry vide letter dated 21st July 2014 with regard to the issues raised by M/s Ishita Drugs and Industries Ltd. as follows:

- a. Di-sodium hydrogen citrate has not been included as product under consideration. Sodium Citrate is a chemical compound that comes in the form of monosodium citrate, disodium citrate and trisodium citrate. Mono, Di and Tri sodium citrate is merely a form of the product under consideration having same Physical and chemical properties and same customs classifications. The production technology and process used for producing these forms are same. The consumers also use them interchangeably which shows they are one and the same and directly competitive and similar products.
- b. It is submitted that goods produced by the petitioner are for all type of industries like pharma / food / pesticide / ceramic etc. In any case, the fact is that there is no processing of the imported material and the product is merely repacked to claim pharma or food grade product. In fact, the imported product is such that it cannot be processed further.
- c. The fact is that a number of companies who have been selling the product under consideration are actually importing the product and selling the same. Yet, the petitioner, as a conservative approach considered their sales as their production.
- d. Imports have increased significantly in absolute terms. Imports have increased by more than 100%, whereas the production has increased only by 13% over the injury period. This also shows misleading statements by these interested parties with an intention to impede the investigation.
- e. As against the contention that total Indian production has not increased significantly in comparison to the production of the domestic industry by this interested party, it is submitted that the fact is that other Indian producers have gradually turned to trading. Behaviour of M/s Ishita Drugs And Industries Ltd. also establishes the same.
- f. It would be seen that whereas demand for the product under consideration was positive and growing, domestic sales of the domestic industry increased till 2012-13 and declined in 2013-14. The domestic industry is faced with significant piling up of inventories and has been constrained to increase exports in order to liquidate inventories.
- g. Sales of the domestic industry have declined after increasing till 2012-13. Market share of the domestic industry has declined whereas market share of the imports have increased. Market share figure for imports given in the written submission had typographical error. The corrected figure is as follows:

	2010-11	2011-12	2012-13	2013-14
DI Domestic Sales (MT)	505	632	1036	999
Demand	4,580	5,278	6,544	7,705
Imports	2,621	2,877	3,721	5,300
Market share in demand				
Petitioner	11%	12%	16%	13%
Other producers+ Supporter	32%	34%	27%	18%
Imports	57%	55%	57%	69%

- h. In response to the argument that the Export sales are required to be analyzed and included in demand it is submitted that Interested party lack appreciation of safeguard laws. The relevant information required for safeguard investigation pertains to the domestic market. Export sales are irrelevant in determining market share in domestic market. Assessment of Demand and market share” pertains to the demand of the product concerned in the domestic market and the share of the imports and the petitioners of this demand in the domestic market. It is absurd to include export sales into demand and then calculate the market share. This is impermissible under law. The interested party is merely trying to mislead the Authority, who has consistently considered demand to be a sum of total imports, sale of DI and sale of all other producers together (including captive consumption, if any). Exports are considered separately. Therefore, it has no relevance.
- i. Domestic industry made dedicated efforts to improve sales and production, results of which can be seen in some improvement in volume parameters, which has however, declined in the recent period despite such efforts been made.
- j. No inherent inefficiencies have been substantiated by the interested parties. Major issue raised by petitioner at the time of oral hearing is why M/s Ishita Drugs And Industries Ltd. has stopped manufacturing the product and has turned to import of the product from China despite having production capacity.
- k. The consistent practice as per law has been followed. Contrary to the argument of interested parties, in fact, a month wise or quarter wise analysis would be misleading because of significant fluctuation in exchange rate. The significant fluctuation in exchange rate may in fact show highly distorted position.
- l. The petitioner has dedicated plant for the product under consideration, which was also verified during on-site verification. Since capacity of the petitioner for the product under consideration is dedicated, the claim of idle capacity is directly attributed to increased imports.
- m. The interested parties stated at the time of hearing that production of the product under consideration does not involve significant investment. Nor setting up or enhancement of capacities is a long drawn process in the product under consideration. Such being the case, in any case, fresh investments by the domestic industry is not a critical parameter.
- n. However, contrary to the arguments of the Interested Party, in order to become more competitive and with a legitimate anticipation to grab a larger share in the rising demand of the PUC, the petitioner has already purchased a new machine in the month of March 2014. The capacity has now increased to 5000MT. This is in pursuance to a viable adjustment plan given by the petitioner to the authority. It is stated that the same is under trial production and commercial production will commence once the situation of the petitioner improves.
- o. Even if it is assumed that the product is a low margin product, the domestic industry is suffering severe losses, leave aside profits as can be seen from the table below:
- p.

	2010-11	2011-12	2012-13	2013-14
(Indexed)	(100)	(199)	(184)	(593)

(Indexed)	(100)	(249)	(378)	(1,174)
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The claim in fact, further substantiates the need to protect the domestic industry which is getting severely injured by the increase in low priced imports.

- q. M/s Ishita Drugs And Industries Ltd Drugs claimed that it imports the product in chemical grade, undertakes “significant value addition” and then sell the product in the Indian market for Pharma and food application. In other words, the consumers are still getting the imported product at higher prices, even higher than the import price. If so, there is no reason why imposition of safeguard duty would have adverse impact on the consumers.
- r. Barring China, imports have come only from Canada. Such being the case, when the safeguard duty will not even apply on other developing countries and when developed countries have not even exported the product, there is no basis for the argument that the proposed duty will lead to retaliation by other countries.
- s. The petitioner has given viable adjustment plan which focuses on expansion of capacity and lowering of costs. Expansion of capacity is in fact considered as a viable adjustment plant.
- t. Imposition of ADD on sodium citrate, at the least, shows that (a) the USA market is no longer available to the Chinese producers to freely dump their goods. Therefore, they are targeting Indian market, (b) one of the most powerful developed economies in the World considered it appropriate to protect its domestic industry by imposition of hefty 90-150% anti dumping duty.
- u. The unforeseen development/reason for increased imports as given in our application and submission is summarized as follows:

- a. Excess capacity with the producers across the countries. Majority of imports into the domestic market are from China and very recently from Canada.

Country	Quantity (MT)				Share of import			
	2010-11	2011-12	2012-13	2013-14	2010-11	2011-12	2012-13	2013-14
Austria	-	2	5		0%	0%	0%	0%
China PR	2,578.00	2,804.00	3,526.00	4,350.48	98%	97%	95%	82%
Canada				699.60	0%	0%	0%	13%
Germany	11.02	64.80	19.57	41.16	0%	2%	1%	1%
Poland	0.05		0.17	0.95	0%	0%	0%	0%
Spain	23.00	4.90	165.04	90.01	1%	0%	4%	2%
Thailand	4.00				0%	0%	0%	0%
Uk	4.40	0.38	0.30	0.50	0%	0%	0%	0%
USA	0.27	1.06	2.74	117.59	0%	0%	0%	2%
Unspecified			2.00		0%	0%	0%	0%
Total	2,620.74	2,877.21	3,721.12	5,300.29	100%	100%	100%	100%

It is submitted that the Chinese market has excessive capacities and are therefore exporting sodium citrate. US has conducted an antidumping investigation against imports Citric Acid and Certain Citrate Salts, which includes Sodium Citrate as well, wherein the authorities have held that China has significant capacities. The capacity estimated for Citric Acid and Certain Citrate Salts was projected at 2195911 MT for 2010, which in all likelihood would have further increased.

- b. Significant demand supply gap

China has built capacities far excess than the domestic demand. There exits significant demand supply gap as can be seen from the table below, which is further forcing the exporters from China PR to export the goods to India.

Year	2006	2007	2008	2009	2010
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Apparent Consumption					
Capacity	1443	1932	2047	2193	2195
Production	1247	1719	1807	1779	1834
GAP (production – consumption)	924	1259	1332	1190	1227

* in '000 pound; Source: USA Findings

c. Antidumping duties imposed on Sodium Citrate by various countries

▪ Anti dumping duties on Sodium Citrate from China and Canada by USA

US has imposed anti dumping duties on imports of Sodium Citrate originating in China and Canada in 2009. It is also pertinent to note that imposition of anti dumping duty by the US against China in 2009-10 has changed the course of the trade of this product across countries. Earlier, China was selling this product in the US market, which after 2009-10 became restricted/closed. Accordingly, the Chinese exporters started searching for new markets and India, with its growing demand for the said PUC, became a natural destination. This led to worsening of the condition of the domestic industry, which from a situation of profit in 2009-10, went on to pose loss for the first time in 2010-11; and continues to be in losses which has aggravated steeply in 2013-14.

▪ Anti dumping duties on Sodium Citrate from China by EU

The EC has imposed antidumping duties on imports of Citric Acid, which includes sodium Citrate vide Council Regulation (EC) No 1193/2008 on 1st December 2008. The expiry review has also been initiated on 30th Nov., 2013 and is being undertaken currently.

The EC in its preliminary finding which was upheld in the final finding, held the product under consideration as follows:

The product concerned is citric acid (including sodium citrate), an acidulant and pH regulator for many applications such as beverages, food, detergents, cosmetics and pharmaceuticals. Its main raw materials are sugar/- molasses, tapioca, corn or glucose (obtained from cereals) and different agents for the submerged microbial fermentation of carbohydrates.

It is submitted that the market of EU was also restricted for China with the imposition of anti dumping duties. China with its surplus capacity had to divert its export to another favorable destination and hence started exporting to India.

▪ Anti dumping duties on Sodium Citrate from China by Brazil

Brazilian domestic industry also became the victim of increased imports from Chinese producers of Sodium Citrate and therefore the Brazilian industry imposed anti dumping duties on imports of Sodium Citrate from China vide CAMEX Resolution No. 52. It is thus seen that the market of Brazil also became restricted for the Chinese Industries and this also became the reason for surge in imports from China, in the recent period, to India.

v. It is therefore, pertinent to note that imposition of anti dumping duty by several countries like the US, EU and Brazil against China has changed the course of the trade of this product across countries. Earlier, China was selling this product in the US market and EU & Brazil markets, which after 2009-10 became restricted. Accordingly, the Chinese exporters started searching for newer markets and India, with its growing demand for the said PUC, became a natural destination. This led to worsening of the condition of the domestic industry, which from a situation of profit in 2009-10, went on to pose loss for the first time in 2010-11; and continues to be in losses which has aggravated steeply in 2013-14.

w. Indian industry has sufficient capacities to meet the demand for the product in the country. In fact, the producers who attended Public Hearing alone supporting imposition of safeguard duty could meet the entire Indian

demand. Furthermore, there is no dispute that capacity additions in the product under consideration are not significant issues either in term of time frame or the capital investment.

- x. Increase in imports has led to decline in productivity of the domestic industry as can be seen from the table below:

(In MT)	2010-11	2011-12	2012-13	2013-14
Productivity per day (indexed)	100	102	129	128

21. Domestic industry has submitted with regard to the issues raised by Prakash Chemicals as follows:

(a) Interested parties concede that the expansion of capacities in the product under consideration is not a long drawn or heavy investment process. If the market is protected, even companies such as M/s Ishita Drugs And Industries Ltd would turn back to production. As stated by Ishita Drugs And Industries Ltd, they were producing the product for quite long. The only reason for them to shift to trading is high profit margin in trading as compared to manufacturing. Therefore growth in demand could be catered by the domestic industry.

(b) Assuming a situation where the domestic industry does not have dedicated capacity for the product under consideration and the capacities are being shared with other products, the domestic industry has been given protection under the law. The Director General (Safeguards) has earlier recommended and the Govt. of India had imposed safeguard duty on imports of, for instance, Hot Rolled Stainless Steel products of 304 series where the domestic industry does not have dedicated capacity.

© Petitioner has not claimed that there are 25 domestic producers. The petitioner has provided a list of companies who are producers of the product under consideration and claimed that the petitioner and supporter production constitutes 90% of Indian production. Therefore, how M/s Prakash Chemicals can make such sweeping statements that these manufacturers are suffering due to lack of skill and capability to remain in competitive market, is difficult to understand.

(d) Specific details of Indian demand, Indian production has been provided. Further, the initiation notification also notifies the total demand of the product in India and production of the product under consideration in India. Petitioner has dedicated production plant. Prakash Chemicals is a trader and has no knowledge about the facts.

(e) Major issue raised by petitioner at the time of oral hearing is why M/s Ishita Drugs And Industries Ltd. has stopped manufacturing the product and has turned to import of the product from China despite having production capacity. Even when the owner of the company was present at the time of hearing, no satisfactory reply was forthcoming from the company. Eventually the company conceded that they are importing the product and selling the same in food & pharma application and exporting the product to US market.

(f) Argument that buying Citric Acid monohydrate and giving the process by using valuable resources like people and machinery with even small capital investment is not wise business when the end product “Sodium Citrate” is available at same price, further substantiates that the exporters are selling the product at low price which is why the importers are buying imported product. This is precisely the reason that manufacturers such as M/s Ishita Drugs And Industries Ltd have started importing PUC. The argument of the opposing party implies that wherever Chinese producers are backward integrated, the Indian industry should close down manufacturing capacities and should depend 100% on imports. This is certainly against public interest. Moreover, the mere fact that Chinese producers have their own citric acid and sell sodium citrate does not imply that the Indian industry should not be protected.

(g) Considering the export price to India, landed price and high injury margin, petitioner request safeguard duty for four years to address injury to the domestic industry.

(h) The profits earned by the traders by mere trading appear more than 10%. And such traders believe that a 10% mark up on citric acid is sufficient to take care of conversion costs, overhead costs, interest, depreciation, wages, return on capital employed. This clearly shows the approach of these traders, whose limited objective is to earn profits by trading.

(i) Imposition of safeguard duty will be in public interest. Sodium Citrate is primarily consumed in ORS, Cheese, cough syrups, soft drinks, jellies, photographic industry, beverages and pharmaceutical industry. Petitioner has tried to quantify the impact of safeguard duty on the Sodium Citrate at 30% safeguard duty as is shown in the table below:

Product	Role	Consumption	Estimated cost (INR)	Cost Impact at 30% duty
ORS	As ingredient	2.9 GM/LITER	0.1885 / LITER	0.008%
Cheese	As preservative	2.30%	0.13 / 100 GM	0.016%
Cough syrup	As expectorant	1.1 GM/ ML	0.0715 /100 ML	0.049%
Soft drinks	As salty & tangy taste	< 2%	< 0.12 / LITER	0.090%
Jelly	As salty & tangy taste	< 2%	< 0.12 / 100 GM	0.018%
Photographic industry	As anti coagulant	< 2 %	< 0.12 / 100 GM	0.004%
Beverages	As salty& tangy taste	< 2 %	< 0.12 / LITER	0.072%
Pharmaceutical industry	As anti coagulant	< 2 %	< 0.12 /100 GM	0.004%

Petitioner has considered the estimated consumption of sodium Citrate in each of the above mentioned consumer segment and have then calculated the impact on the eventual cost. It would be seen that the eventual impact on the consumers of Sodium citrate is negligible.

Examination and Findings:

22. I have carefully gone through the case records, the replies filed by the domestic producer, user/importers, exporters and exporting nations. The submissions made by the various parties and the issues arising there from are dealt with at appropriate places in the findings below.
23. Section 8B of the Customs Tariff Act, 1975 deals with imposition of Safeguard Duty on imports. Its sub-section (1) provides for imposition of Safeguard duty by the Central Government on an article if the article is being imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the Domestic Industry.
24. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provide the manner and principles governing investigation.
25. The investigation has been conducted in accordance with the said rules and the Final Findings are recorded through this notification. Various issues raised by the interested parties have been addressed at appropriate places in these findings and herein below:
 - i. Some interested parties have contended that the domestic industry cannot seek imposition of both anti dumping duty and safeguard duty. It is noted that the issue of simultaneous imposition of anti dumping duty and safeguard duty is well addressed in the law itself. It is a fact that petitioner domestic industry has also sought imposition of anti dumping duty and the investigation is at present on-going. The Designated Authority has not yet recorded a finding and anti dumping duty has not been recommended as yet. The investigation may or may not establish justification for imposition of anti dumping duty. It is also noted that anti dumping duty is also a trade remedy measure to counter and neutralize the ill effects of dumped imports through imposition of anti dumping duty. Safeguard duty is a measure to protect the domestic industry from injurious effects of increased imports by raising tariff barrier. Both the duties have one function in common i.e neutralizing injurious effects of imports, besides other functions. Therefore, it is

imperative that the safeguard duty may be imposed and continued only when the existing trade remedies measures, in whatever form, are not able to protect the domestic industry. It is also implied that the multiple protection is available only to the extent it is necessary. In the instant case, it is a fact that imports increased many fold and the Designated Authority has not yet established the need for imposition of anti dumping duty. The increase in imports have caused or threatened to cause serious injury to the domestic industry. The existing tariff, which did not include anti-dumping duty, was not sufficient enough to prevent imports in large quantity. Therefore, it would be appropriate to consider whether imposition of safeguard duty is necessary. It is also noted in this regard that some interested parties contended that Chinese companies exporting sodium citrate are the companies also producing citric acid (raw material) and therefore their costing is naturally lower. This implies that the entire difference in the import price of the product and domestic costs is not due to dumping of the product.

ii. Product under Consideration (PUC):

a. The product under consideration is ‘Sodium Citrate’ (hereinafter referred to as PUC) which is imported into India under Custom Tariff Heading 29181520 of Chapter 29 of First Schedule to the Customs Tariff Act, 1975. The product under consideration i.e., “Sodium Citrate” is a chemical compound that comes in the form of mono-sodium citrate, di-sodium citrate and tri-sodium citrate. It is sodium salt of citric acid and has a sour and salty taste. Sodium Citrate is mainly used in pharma industries as an expectorant and urine alkalinizer. It is also used as a pharmaceutical aid, food additive in dairy industries, laboratory reagent in water treatment, acidity regulator in drinks, an emulsifier for oils when making cheese and an antioxidant in food etc. The product under consideration can also be transacted by following alternate names

- a. Sodium Citrate
- b. Tri sodium Citrate
- c. Tri sodium citrate dihydrate
- d. Sodium citrate dihydrate
- e. Tribasic sodium citrate
- f. Sodium Citrate Tribasic Dihydrate
- g. Sodium Citrate Dibasic Sesquihydrate
- h. Sodium Citrate Monobasic Bioxtra

26. The Interested parties have argued that tri sodium citrate, mono sodium citrate and di-sodium hydrogen citrate have been wrongly clubbed together, it is clarified that di-sodium hydrogen citrate is not included in the scope of the product under consideration. Further, Mono/di/tri sodium citrate is merely a form of Sodium Citrate and has the same use, function as well as identification under customs classifications. The production technology and process used for producing these forms are one and same. The consumers also use them interchangeably. It is therefore, found appropriate to hold any reference to mono/di/tri sodium citrate as sodium citrate, which is the product under consideration.
27. Some of the Interested Parties have argued that the domestic industry produces Sodium Citrate for Pharma grade only. It is however noted that the interested party has not provided any information to substantiate the same. As against this contention, it is noted that the domestic industry produced the PUC and has sold it to different segments like Pharma / food / pesticide etc., which shows no restriction or limitation on the part of the PUC produced and sold by the domestic industry to only pharma sector. In view of the above, it is concluded that the goods produced by the applicant domestic industry are used in all type of industries like Pharma / food / pesticide etc.
28. Some of the interested parties have contended that the product was imported in crude form and it was processed further in India. The domestic industry has claimed that there is no processing of the imported material and the product is merely repacked to claim pharma or food grade product. The domestic producers have contended that the imported product in fact cannot be processed considering the technicalities involved in production or processing the product. Domestic industry contended that since pharma grade product cannot be imported into the country, these parties are importing the product by stating "not for medicine use", showing processing and then selling in the market. It is noted that the interested parties have not elaborated on the production process carried out by them on the imported product, nor these parties have refuted the claims of the domestic industry in this regard. It is also noted that the product is being imported by some of those parties who were earlier producer of the product under consideration in India. These parties claimed to have suspended production and now importing the product. It is however not clear whether these parties are selling the product as a goods produced by them or as a trader. It is thus not established that in fact imported product is being further processed by the importers.

i. Some interested parties have contended that petitioners produce only pharma grade PUC catering only to pharma & food industries and not to other chemical industries like agrochemicals, electroplating etc. The petitioner has however provided documentary evidence (commercial invoices) substantiating that the petitioner has produced all types of product under consideration.

ii. It has been contended that the petitioner is admittedly exporter of the PUC and, thus, no serious injury is caused due to imports. It is however noted that the fact that the petitioner has been exporting the product does not imply that the petitioner has not suffered injury due to increased imports. Export of goods is only one of the modes of sale of the product.

iii. It has been contended by the interested parties that no significant value addition is done by the petitioner. It is however noted that at the same time, these interested parties have contended that they import the product in crude form, do significant value addition and then the product. This clearly shows contradictory arguments advanced by these interested parties. In any case, the production facilities of the petitioner were verified by undertaking on the spot verification and it is found that the petitioner is undertaking significant production related activities.

iv. Some Interested parties have argued that applicant is a multi product company and the capacity is used to make various other products as well. However, it is seen from the information duly verified as per excise records, that petitioner has dedicated plant for the product under consideration.

29. Therefore, it is held that the product under investigation is “Sodium Citrate” falling under Custom Tariff Heading 29181520 of Chapter 29 of First Schedule to the Customs Tariff Act, 1975. The scope of the product under consideration includes all forms of sodium citrate. Accordingly, it is also held that domestically produced Sodium Citrate falls under the ambit of like or directly competitive article in all respects to the imported product under investigation and that the domestically produced Sodium Citrate is a like article to the imported Sodium Citrate within the meaning of Rule 2(e) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

30. **Domestic Industry (DI):**

i. Section 8B(6)(b) of the Customs Tariff Act 1975 defines domestic industry as follows:

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

ii. The application has been filed by M/s Posy Pharma Pvt Ltd. for imposition of Safeguard Duty on imports of Sodium Citrate. The application has been supported by M/s Sunil Chemicals. The applicant has identified a number of other producers who are known to have created capacity to produce product concerned in India as well as who have been selling the product in the country. However, in absence of concrete information as producers, their known sales have been considered as their production. The information on record shows volume of production of like or directly competitive article in the country as shown below:

Particulars	2010-11	2011-12	2012-13	2013-14
Petitioner	1,184	1,211	1,531	1,521
Petitioner + Supporter	2,423	2,674	2,992	2,783
Other Indian Producers	133	207	235	109
Total Indian Production	2,556	2,881	3,227	2892
Share in Indian Production				
Petitioner	46%	42%	47%	53%
Petitioner + Supporter	95%	93%	93%	96%
Other Indian Producers	5%	7%	7%	4%
Total Indian Production	100%	100%	100%	100%

iii. From the above table, it is noticed that the output of the applicant constituted a major share of the total production of Sodium Citrate in India. Interested parties have argued that petitioner along with M/s Sunil Chemical does not constitute 90% of the Indian production. It is however noted in this context that none of the other producers have provided data on the capacity available with them. Therefore information as provided by the petitioner has been adopted as the best available information. There is no evidence on record of the Designated Authority establishing that the claims of the petitioner in this regard are not appropriate. On the contrary, one of the parties claimed that the supporting producer, M/s Sunil Chemical has not produced the goods. However, Sunil Chemical has provided information containing therein their production over the relevant period. In any case, if Sunil Chemical production is to be treated as zero, the same implies that the production of the petitioner shall constitute significantly higher share than what has been considered in the present findings. Furthermore, it is not the contention of any of the other interested parties that the petitioner does not constitute a major proportion of the total Indian production.

iv. Accordingly therefore, I hold that M/s Posy Pharma Pvt. Ltd. has the largest share amongst all producers and fulfils the criteria of Domestic Industry in this case, having 52% share in the Indian production in most recent period and with the supporter, M/s Sunil Chemicals, around 96% share in the Indian production. During the investigation (in Public Hearing), another domestic producer, namely M/s Wang Pharmaceuticals & Chemicals has also lend their support to the applicant, which completely wipe out any doubt about the standing of the applicant as Domestic Industry, individually or with supporters. Therefore, it is held that the applicant domestic producer constitutes and represents the Domestic Industry (DI) within the meaning required and defined under Section 8B(6)(b) of the Customs Tariff Act, 1975.

31. Source of Information:

a. The product under investigation is imported into India under Custom Tariff Heading 29181520 of Chapter 29 of First Schedule to the Customs Tariff Act, 1975. The Safeguard investigation was initiated on the basis of import data taken from DGCI&S, Kolkata (Transaction wise) from April, 2010 till September, 2013 and for the period from Oct'13 to Jan'2014, it was procured from IBIS, Mumbai. The domestic data on various economic parameters from 2010-11 to 2013-14 (up to Oct', 2013) has been verified by on-site visit by the department to the extent deemed necessary and available during visit. Domestic industry data for the period thereafter till Jan., 2014 was verified from Excise records and this verified data was taken into consideration for injury analysis at the time of Notice of Initiation. The notice of initiation was therefore based on information for the period upto Jan., 2014. During the course of the present investigation, data for additional period till Mar'2014 in respect of various economic parameters have been considered as per central excise records as furnished by the applicant, duly certified, in order to arrive at yearly consolidated data for the year 2013-14 for injury analysis. Imports for the period 2013-14 is now based on the imports information published by the DGCI&S. The additional information was made available to interested parties through Public File as required under Rule 6(7) of Safeguard Rules 1997. The data for three years or longer has been provided by the Domestic Industry in the form and manner decided by DG (Safeguard) under Rule 5(2) of Safeguard Duty Rules 1997 r/w the Trade Notice No-SG/TN/1/97 dated 06/09/1997. The non-confidential version of the verification report has been placed in the public file for comments by all concerned. The cost data and calculations of injury margin have been provided by the petitioner duly certified by an independent Cost Accountant.

b. It is also noticed that none of the interested parties have raised any objection to the import data considered or have provided information with regard to gross imports of Sodium Citrate to India or have disputed the data furnished by the applicant/domestic industry.

c. M/s. Prakash Chemicals Agencies Pvt. Ltd. and Ishita Drugs & Industries Ltd have not provided any information about their imports or gross imports of the product under consideration in India. These companies have not filed questionnaire responses also.

32. Period of Investigation (POI):

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

“We note that the Agreement contains no requirements as to how long the period of investigation in a safeguards investigation should be, nor how the period should be broken down for purposes of analysis. Thus, the period of investigation and its breakdown is left to the discretion of the investigating authorities. In the case before us the period selected by the ITC was five years and six months, which is a period similar in length to the one used by the Argentine investigating authority in Argentina-Footwear Safeguard. However, we note that the Appellate Body, in the findings relied upon by Korea to argue the question of the length of the period of investigation, emphasized not the length of the period per se, but that there should be a focus on recent imports and not simply trends over the period examined. In the case of the line pipe investigation the ITC did not merely compare end points, or look at the overall trend over the period of investigation (as Argentina had done in the investigation at issue in Argentina-Footwear Safeguard). It analyzed the data regarding imports on a year-to-year basis for the 5 complete years, and also considered whether there was an increase in interim 1999 as compared with interim 1998. We are of the view that by choosing a period of investigation that extends over 5 years and six months, the ITC did not act inconsistently with Article 2.1 and Article XIX. This conclusion is based on the following considerations: first, the Agreement contains no specific rules as to the length of the period of investigation; second, the period selected by the ITC allows it to focus on the recent imports; and third, the period selected by the ITC is sufficiently long to allow conclusions to be drawn regarding the existence of increased imports.”(paras. 7.196, 7.199 and 7.201)

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

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

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

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

33. Confidentiality of Information submitted

- i. Rule 7 of the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 and Article. 3.2 of WTO Agreement on Safeguards provides for confidentiality treatment to certain information. The rules provide that an Interested Party is not required to disclose such information on actual basis which is confidential information of the company and disclosure of which can cause serious prejudice to the business interests of such party, which is not in public domain and which the petitioner has not disclosed before public at large in the past.
- ii. The Domestic Industry has provided some information on confidential basis and sought confidentiality on the information /data submitted. The Domestic Industry provided non- confidential version of the application for safeguard measure as per the provisions of Safeguard Rules 1997 and Trade Notice No. SG/TN/1/97 dated 06.09.1997. Further, the Domestic

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

34. Increased Imports

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

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

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

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

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

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

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

f. The Panel on US — Wheat Gluten⁴, interpreted the phrase “in such increased quantities” as follows:

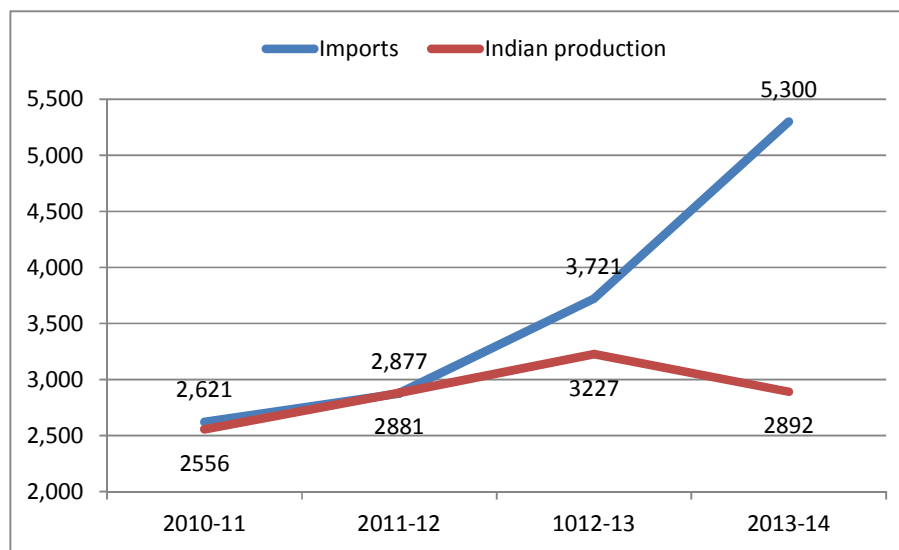
“8.31 [A]rticle XIX:1(a) of the GATT 1994 and Article 2.1 [of the Agreement on Safeguards (“SA”)] do not speak only of an ‘increase’ in imports. Rather, they contain specific requirements with respect to the quantitative and qualitative nature of the ‘increase’ in imports of the product concerned. Both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

g. The analysis of the increased imports of the product under consideration has been conducted in the light of the above mentioned evaluations. Imports of product under consideration into India have shown sharp increase in absolute terms as well as in relative terms. The increase in imports in absolute terms is sudden and significant, causing severe injury to the domestic industry. The data relating to imports of product under consideration in absolute terms from 2010-11 to 2013-14 is as under.

35. Increase in Imports in absolute terms:

a. Sodium Citrate is imported into India from a number of countries, and primarily from China. The imports of the product under consideration have increased throughout the injury period in absolute terms. There is a sudden, sharp and significant increase in imports in the recent period. The Imports increased from 2,621 MT in 2011-12 to 5,300 MT in 2013-14 which is an increase of 102%, a very steep surge in imports, as shown below:

Financial Year	Total Imports (MT)	All India Production (MT)	Increase in %
2010-11	2,621	2,556	
2011-12	2,877	2,881	10%
2012-13	3,721	3,227	42%
2013-14	5,300	2,892	102%



It is seen that while the imports increased gradually between 2010-11 and 2011-12, the imports increased rapidly thereafter.

35. Increase in imports in relation to production:

b. Besides increase in imports in absolute terms, it is noticed that the imports of product under consideration in India during the POI have also increased in relation to production of the Domestic Industry. It is seen from the table below that the import with respect to total production increased from 103% in 2010-11 to 183% in 2013-14, i.e., by 80%, which is a clear surge. In absolute terms, while all India production increased by only 336 MT, the imports increased by 2679 MT, thus showing that whereas Indian production increased only by 13%, imports increased by 102%.

Financial Year	Total Imports (MT)	All India Production (MT)	Imports in relation to Indian production (%)
2010-11	2,621	2,556	103%
2011-12	2,877	2,881	100%
2012-13	3,721	3,227	115%
2013-14	5,300	2,892	183%

i. One of the interested parties has argued that the increased imports and serious injury should be determined after including export sales of the domestic industry. It is noted that exports sales made by the domestic industry cannot be included in determining domestic consumption of the product under consideration and therefore, sales of the domestic industry should be examined after excluding export sales.

ii. It is evident from the above that there is a surge in imports during the Period of Investigation, both in absolute terms as well as in relation to domestic production. The increase in imports in absolute terms is a clear surge in imports and has a rising trend which is significant enough to constitute “increased imports” within the meaning of Section 8B of the Customs Tariff Act’ 1975.

36. Serious Injury and Threat of Serious Injury:

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

“Serious injury” means an injury causing overall impairment in the position of a Domestic Industry; and “threat of serious injury” means a clear and imminent danger of serious injury.

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

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

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

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

4. The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Customs Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is “declining”. In one case, for example, there may be significant decline in sales, employment and productivity which may show "material injury" to the Domestic Industry, and therefore may justify a finding of market disruption. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "material injury" to the Domestic Industry.

5. 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.

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

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

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

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

[W]e do not consider that a negative trend in every single factor examined is necessary in order for an industry to be in a position of significant overall impairment. Rather, it is the totality of the trends, and their interaction, which must be taken into account in a serious injury determination. Thus, such upturns

in a number of factors would not necessarily preclude a determination of serious injury. It is for the investigating authorities to assess and weigh the evidence before them, and to give an adequate, reasoned and reasonable explanation of how the facts support the determination made.”

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

37. Market Share:

i. It is seen from the table below that the market share of the domestic industry in the total consumption has declined, whereas the market share of the imports has increased.

Financial Year	Total Imports (MT)	Sales of DI (MT)	% of Market share	
			DI	Import
2010-11	2,621	505	11	57
2011-12	2,877	632	12	55
1012-13	3,721	1036	16	57
2013-14	5,300	999	13	69

ii. Market share of the applicant increased till 2012-13 and has declined thereafter. On the other hand, the market share of the imports has increased significantly from 57% in 2010-11 to 69% in 2013-14, which is an increase of 12%. The sizeable part of market share has been seized by imports. Further, the market share of the domestic industry has declined despite un-utilised capacities and increased production by the domestic industry.

38. Production:

The production of the domestic industry has improved over the period. The domestic industry has contended that they have been able to increase production as it kept prices below the levels of cost. It is seen from the table below that despite the efforts made, the production has marginally declined in 2013-14 with significant surge in imports during the same period. The marginal decline in production in 2013-14 is despite 18% increase in demand in this year as compared to the preceding year.

Financial Year	Production (MT)
2010-11	1,184
2011-12	1,211
2012-13	1,531
2013-14	1,521

39. Capacity

utilization:

Domestic industry increased its capacity in view of the increase in demand. Capacity utilization of the domestic industry has increased up to 2012-13 to 56% and then declined significantly in 2013-14 to 46% (but

higher than the base year) despite increase in demand and efforts made by the domestic industry to increase production and sales. Domestic Industry is facing significant unutilized capacities due to low priced imports and surge in imports despite sufficient capacities in India. It was examined whether the decline in capacity utilisation is because of increase in capacities. For the purpose, capacity utilisation of the domestic industry was determined considering the capacity in 2012-13.

Financial Year	Capacity (MT)	Capacity Utilization (%)
2010-11	2,700	44
2011-12	2,700	45
2012-13	2,725	56
2013-14	3,300	46

In order

declining trend in capacity utilization from 2010-11 onwards. Interested parties have argued that there does not exist sufficient capacity with the domestic industry to cater the whole demand, it is noted that applicant has already enhanced its capacity in March 2014. Therefore, capacity with the applicant along with the capacity of the supporter is itself sufficient to cater the demand of the end consumers in the country.

40. Changes in the level of Sales:

Sales of the domestic industry increased till 2012-13 and have thereafter declined from 1036 MT in 2012-13 to 999 MT in 2013-14, by about 4%. This decline in sales is despite the fact that the demand increased from 6544 MT in 2012-13 to 7287 MT in 2013-14, i.e., by about 18%. This clearly shows that the Domestic Industry suffered loss in sales at the cost of surge in imports as is shown in the table below:

Financial Year	Domestic Sales (MT)	Total Demand (MT)
2010-11	505	4,580
2011-12	632	5,278
2012-13	1,036	6,544
2013-14	999	7,705

41. Employment:

The domestic industry has increased number of employees in the product under consideration over the injury period. Applicant has submitted that employees have been added because of increase in capacities, increase in efforts to produce and sell the product and the fact that employees are not dedicated to the product under consideration alone. It is considered that employment is dependent on a number of other parameters and not reflective of impact of imports on the Domestic Industry.

		2010-11	2011-12	2012-13	2013-14
No of Employees	Nos	53	96	105	105

42. Productivity:

With the rise in production, the productivity increased till 2012-13 from the base year, and then declined marginally in 2013-14. Productivity per unit employee of the domestic industry however, declined in 2011-12 and increased thereafter due to increase in employees.

Financial Year	Productivity per day (MT) (indexed)	Productivity per employee (indexed)
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2010-11	100	100
2011-12	102	56
1012-13	129	65
2013-14	128	75

43. Profit & Loss:

a. The profitability & returns on investments of the Domestic Industry has steeply deteriorated to such an extent that the Domestic Industry is suffering financial losses. The financial losses being suffered by the domestic industry has further intensified during the POI. This is evident from the table below:-

Financial Year	Profitability (Rs/Lacs) Indexed	Profitability (Rs/Kg.) Indexed	Return on investment % (indexed)
2010-11	(100)	(100)	-100%
2011-12	(249)	(199)	-155%
1012-13	(378)	(184)	-146%
2013-14	(1174)	(593)	-549%

b. It has been contended by the domestic industry that to compete with the huge volume of imported goods in the market, the Domestic Industry had to keep its prices below the cost of sales. This has sharply affected their profitability, which has significantly intensified during the most recent period of 2013-14. The domestic industry is, thus, suffering severe financial losses on account of imports.

c. It has been contended by the interested parties that sodium citrate has been a low margin product and manufacturers have always enjoyed very low margins. It is however the contention of the domestic industry that they have suffered financial losses, leave aside low margins or profits. It is further noticed that the extent of losses suffered by the domestic industry have increased over the period.

44. Other important factors:

Para (2) of Annex to the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 lays down that the determination referred to in subparagraph (1) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the article concerned and serious injury or threat thereof and when factors other than increased import are causing "serious injury" to the Domestic Industry at the same time, such "serious injury" shall not be attributed to increased imports. However, no specific factor has been listed either under Indian Rules or under WTO Agreement. The Director General is required to examine factors that come to the knowledge of the Director General during the course of the investigations. Further, the Director General has also examined certain generally known factors and which have been specifically prescribed under anti dumping legislation in the absence of specific obligation in safeguard legislation.

44.1 Demand/consumption: As such, the possible other factors that may be attributed to the serious injury to Domestic Industry have been examined. Followings are relevant in this regard: –

a. **Demand of the product:** Demand for the product under consideration has shown significant positive trend. Therefore, possible decline in demand for the product is not a possible cause of serious injury to the domestic industry. In fact, while overall demand has increased, it is seen that rate of increase in imports was much higher than the rate of increase in demand. Market share of the imports have increased significantly and imports hold substantial share of the domestic market. It is, thus, clearly seen that the increased imports have taken away the major share of the demand.

- b. Demand or apparent consumption of the product in India has been determined as the sum of sales of all Domestic producers and imports from all sources. It is noted that the demand of Sodium Citrate has shown a positive trend throughout the period. It is also noted that whereas demand increased by 68%, imports increased by 102%, thus showing that the increase in imports was more than increase in demand for the product in the Country.

Demand	Unit	2010-11	2011-12	2012-13	2013-14
Domestic industry's sales	MT	505	632	1,036	999
Other producers (including supporter)' sales	MT	1454	1769	1787	1405
Total Imports	MT	2,621	2,877	3,721	5,300
Demand/consumption	MT	4,580	5,278	6,544	7,705

- c. Some interested parties contended that the actual demand for the product in the country is much higher than the demand determined by the petitioner. The authority however notes that the consumption has been determined considering imports of the product under consideration and sales by the Indian producers. All available information in this regard has been taken into account. As none of the Interested Parties have provided any data in support of their claim, their claim of estimated demand is not substantiated by facts.
- d. The decline in production in 2013-14 is despite 18% increase in demand in this year as compared to preceding year. Further, whereas sale declined marginally in 2013-14, demand of the PUC in the domestic market increased significantly. It is also noted that capacity utilization of the domestic industry has been low, which shows that the production of the domestic industry is much lower than what the domestic industry could have produced in the absence of increased imports. The domestic industry would have apparently fully utilized its capacities in the absence of surge in imports.

44.2 Increase in imports in relation to consumption:

Besides increase in imports in absolute terms and in relation to Indian production, it is noticed that the imports of product under consideration in India during the POI have also increased in relation to consumption of the product in the Country. It is seen from the table and graph below that the import with respect to total consumption increased from 57.23 % in 2010-11 to 68.80% in 2013-14, i.e., by 11%, which is a significant increase.

Financial Year	Total Imports	Consumption	Imports in relation to consumption
	(MT)	(MT)	(%)
2010-11	2,621	4,580	57.23%
2011-12	2,877	5,278	54.51%
2012-13	3,721	6,544	56.86%
2013-14	5,300	7,705	68.80%

44.3 Inventories: The Domestic Industry is faced with accumulated inventories which have shown rising trend throughout the POI, which is about 5 times more in 2013-14 as was in base year, i.e. 2010-11. When compared with 2012-13, it is about 65% more in 2013-14 despite a marginal decline in production in 2013-14 as compared to preceding year.

Financial Year	Average Inventories (MT)
2010-11	18
2011-12	37
2012-13	52
2013-14	86

It is seen

that the inventories with

the domestic industry increased significantly as a result of inability of the domestic industry to increase its sales in proportion to increase in demand for the product in the market, causing serious injury.

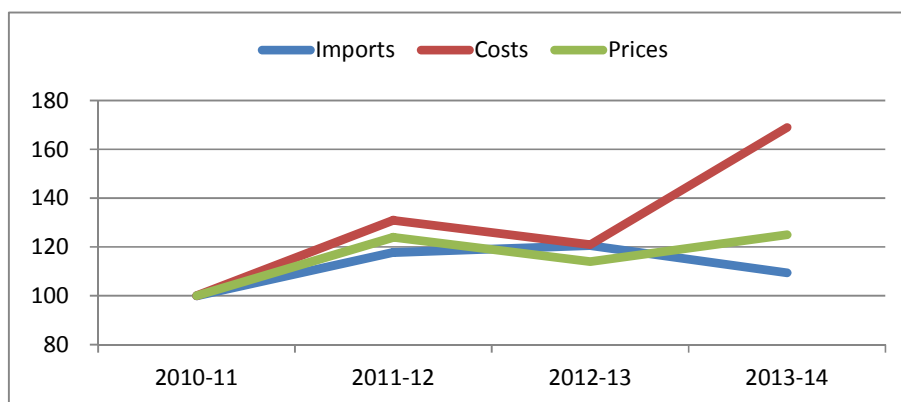
44.4 Export performance: Applicants have exported the product under consideration. It is noted that the export volumes of the domestic industry has declined throughout the POI have also declined by about 10% in 2013-14 as compared to 2012-13. Therefore, export has been at the cost of DI sales, which increased till 2012-13 and declined thereafter, which implies increased availability of the product for the domestic market. In any case, the claimed injury to the Domestic Industry is on account of domestic operations. Applicants have provided costing and injury information for domestic operation. No evidence has been put forth by any Interested Party about non-supply of PUC by the DI, citing export requirement or vice-versa. Domestic industry has contended that it has been forced to export only because of increase in imports of the product under consideration. The focus of the domestic industry is domestic market and domestic industry would cater to the same and export the product only when the domestic industry is not able to sell the production in the domestic market. Claimed injury to Domestic Industry, therefore, cannot be attributed to exports, which is thus accepted.

Period	Export (MT)
2010-11	674
2011-12	545
2012-13	501
2013-14	448

44.5 Price undercutting, suppression/depression:

- a. It is observed that the landed price of the imports of Sodium Citrate is significantly lower than not just the selling price of the Domestic Industry but also the cost of production of the domestic industry. There is a significant price difference between the domestic and imported product. The variation in cost of sales and selling price with respect to landed prices of imports are as under:-

	Unit	2010-11	2011-12	2012-13	2013-14
Landed price of imports	Rs/Kg	44.67	52.62	53.87	48.92
	Trend (indexed)	100	118	121	110
Cost of Sales	Rs/Kg (Indexed)	100	131	121	169
Selling Price	Rs/KG (Indexed)	100	124	114	125



- b. It is seen from the table and graph above that selling price of the domestic industry has remained below the levels of costs throughout the POI. Whereas the cost of sales and the selling price both increased over the period, the rate of increase in cost of sales is much more than the rate of increase in selling price. Further, whereas the landed price of imports by 10% over the injury period, the selling price increased by 25%, whereas costs

increased by 69%. The fact that the landed value in 2012-13 was higher than the cost of production and selling price of the DI, it got reflected in the sharp rise in sale in that year as compared to 2011-12 with a resultant easing of losses. Therefore, there is a definite link between cheap imports causing price suppression and depression by the DI, leading to increased losses. Thus, the imports are suppressing and depressing the prices of the domestic industry causing serious injury to the domestic industry.

- c. The argument by the interested parties that the price of the raw material for producing Sodium citrate, i.e., “Citric Acid Monohydrate” and end product “Sodium Citrate” is almost similar and therefore it is not a wise decision to produce Sodium Citrate. This argument in fact shows that the imports are coming at a price much below the cost of production of the DI. This appears to also be the reason due to which manufacturer like M/s Ishita Drugs And Industries Ltd. has shifted to imports. It is claimed by the DI that it is against the interest of the public at large to argue that sodium citrate production in the country is not a wise decision in view of low priced imports available in the country. Depending only on imports is not in the interest of consumers. The existence of a domestic industry is in the interest of the public at large. Moreover, as it has been made out by the Interested parties, it is an attempt on their part to mislead the authority regarding price of the finished product and raw material, which is not so simple as it has been made out to be. It is noted that production of 1 kg. sodium citrate requires only about 0.75 kg of citric acid monohydrate, besides other raw materials also. As submitted by the DI therefore, it would be misleading to compare sodium citrate price with citric acid monohydrate price alone.
- d. Interested parties have argued that month wise/quarter wise import price has not been provided for substantiate claims of undercutting. It is seen that a peculiar circumstance warranting analysis of month wise/quarter wise import data has not been shown and the consistent practice as per law has been followed. Further as contended by the domestic industry the significant fluctuation in exchange rate may in fact show highly distorted position.
- e. **Other changes causing serious injury or threat thereof:**
 - a) **Changes in the patterns of consumption:** It is claimed by the Domestic Industry that there is no change in the pattern of consumption with regard to the product under consideration. None of the interested parties have contended change in the patterns of consumption and therefore the record does not show that pattern of consumption has undergone any material change as far as the Indian market is concerned. Since none of the Interested Parties has brought out any evidence to dispute this claim of the Domestic Industry, and is, as such, accepted.
 - b) **Trade restrictive practices of and competition between the foreign and domestic producers:** There is no evidence on record that trade restrictive practices or competition between the foreign and domestic producers could have contributed to the injury to the Domestic Industry.
 - c) **Developments in technology:** The applicant has claimed that the technology for production of the product has not undergone any change. This has not been refuted by any Interested Party. Developments in technology are therefore, not a factor of injury, in this case.
 - d) It is thus noted that possible other factors have not caused injury to the Domestic Industry. There are no other factors that can be attributing to the serious injury to the Domestic Industry other than surge in the low priced imports.

45. **Conclusion Regarding Serious Injury:**

- a. The imports of the product under consideration have increased significantly in absolute terms and in relation to production in India. The volume of imports of Sodium Citrate has surged significantly in 2013-14. As a result of this surge in imports, the Domestic Industry has suffered serious injury in various economic parameters.
- b. Performance of the domestic industry has declined with the surge in imports during the POI. Market share, production, domestic sales, capacity utilization, increased upto 2012-13 with efforts put in by the domestic industry, however, performance in all these parameters declined thereafter in 2013-14, with surge in imports. The

DI has not been able to increase its sales despite increase in demand for the PUC. The DI is selling the PUC below its cost of production due to cheap imports.

- c. Parameters such as profitability and return on investment have remained negative and the domestic industry's losses have further increased over the POI. Price undercutting was seen throughout the period. Landed price of imports are below the cost and selling price of the domestic industry thus preventing the price increase by the Domestic Industry in proportion to increase in cost.
- d. Thus, an evaluation of the overall position of the Domestic Industry, in the light of all the relevant factors having a bearing on the situation of the Domestic Industry, shows 'a significant overall impairment'. It is, thus concluded that Domestic Industry has suffered serious injury as a result of increased imports of the product under consideration during the POI.

46. Threat of Serious Injury:

- a. There is also a threat of serious injury to the Domestic Industry producing Sodium Citrate in India due to the surge of imports and the current trend of import volumes entering into India. Imports are entering India in significant volumes. The market share of imports has also substantially increased over the period. Considering the production capacities available with foreign producers and their export orientation, there is a high likelihood of continued increase in imports.
- b. The price difference between selling price and imports of Sodium Citrate renders the Indian market an attractive destination for exports. It is noted that the import price is much below the levels of cost of production and selling price of the domestic industry. The industry is already incurring financial losses. Any further increase in imports as a result of this will threaten and pose severe threat of serious injury to the Domestic Industry in future.
- c. In light of the current financial situation of the Domestic Industry in terms of profitability, and return on investment, with rising trend in imports, it is concluded that in the absence of levy of safeguard duty, the Domestic Industry which has suffered serious injury in the POI, also faces a further threat of serious injury which may accentuate the already precarious condition of the DI.

47. Causal Link between Increased Import and Serious injury or Threat of Serious injury:

1. As per Rule 8 of the Customs Tariff(Identification and Assessment of Safeguard Duty) Rules' 1997, the Director General(Safeguards) is obligated to "*determine serious injury or threat thereof of serious injury to the domestic industry taking into account, inter alia, the principles laid down in Annex to the these rules*". Further, paragraph 2 of the Annex requires establishment of causal link between alleged increased imports and serious injury or threat thereof. The Paragraph 2 of Annex to Rule 8 provides as follows:

The determination referred to in paragraph (1) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the article concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

1. The Panel on Korea — Dairy set forth the basic approach for determining "causation":

"In performing its causal link assessment, it is our view that the national authority needs to analyse and determine whether developments in the industry, considered by the national authority to demonstrate serious injury, have been caused by the increased imports. In its causation assessment, the national authority is obliged to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. In addition, if the national authority has identified factors other than increased imports which have caused injury to the Domestic Industry, it shall ensure that any injury caused by such factors is not considered to have been caused by the increased imports. To establish a causal link, Korea has to demonstrate that the injury to its Domestic Industry results from increased imports. In other words, Korea has to demonstrate that the imports of SMPP cause injury to the Domestic Industry producing milk powder and raw milk. In addition, having analyzed the situation of the Domestic Industry, the Korean authority has the obligation not to attribute to the increased imports any injury caused by other factors."

2. Comprehensive evaluation of parameters as above demonstrates that serious injury and threat of serious injury is being caused by increased imports. For the purpose of determining causation, all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry have been evaluated. In the instant case, the following are relevant in this regard –
 - i. Imports are undercutting the prices of the Domestic Industry. Resultantly, the volume of imports has increased significantly;
 - ii. As the imports are available at prices lower than the selling price of Domestic Industry, the consumers are switching over to imports due to which the Domestic Industry is faced with losing sales and rising inventory;
 - iii. Imports prices are in fact lower than the cost of sales of the domestic industry, thus imports are preventing the domestic industry to increase its prices even to the level of costs of production.
 - iv. The price suppression/ depression effect of dumped imports was on significant decline in profitability to the Domestic Industry to such an extent that Domestic Industry is suffering huge financial losses.
 - v. Market share of imports increased and captured the market share of the domestic industry.
 - vi. Due to increased imports at low prices, the Domestic Industry is unable to increase its production and sales in tandem with the increase in demand/consumption of product under consideration in India.
 - vii. The capacity utilization, sales, market share, profits, return on investment, all declined in 2013-13 due to increased imports.
- c. It is thus evident that serious injury to the Domestic Industry has been caused by the increased imports which are also threatening further injury.

48. Adjustment Plan:

- a. Rule 5(2) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules' 1997 requires submission of a statement on "efforts being taken or planned to be taken or both to make positive adjustment to import competition". The WTO Agreement on Safeguard provides that a member shall apply safeguard measure only to the extent necessary to prevent or remedy serious injury and facilitate adjustment.
- b. The purpose of definitive safeguard measure is to provide the domestic producers with a limited period of time in which to restructure so as to more effectively compete with the imports. Section 8B (4) of Customs Tariff Act 1975 and Rule 16(2) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules' 1997 prohibits any possible extension of measure if there is no evidence that the domestic producer is adjusting.
- c. The domestic producer in this case has laid down adjustment plan which focuses on capacity expansion to cater the growing demand, automation of machinery/technology, use of solar power for energy cost saving and cost reduction.
- d. The Applicant submitted that in pursuant to their adjustment plan submissions in their petition, they have already purchased a new machine in the month of March 2014. The capacity has now increased to 5000MT. It has been submitted that the plant expansion would enable the company to face fair competition from imports. Accordingly, the petitioner has requested safeguard duty for a period of four years so that they are in a position to face the import competition.
- e. It is further clarified by the applicant that owing to the above adjustment plan, the company would be in a fair position to meet the international competition as well as will be able to meet the potential demand of subject goods in India. Interested parties have argued that mere plan of expanding capacity is not sufficient, as all manufacturers depend on citric acid. It is however noted that the argument that that Indian industry is dependent on citric acid is entirely immaterial for the purpose of present investigation concerning imports of Sodium Citrate.
- f. In view of the above, it is concluded that the applicant has provided a viable adjustment plan which focuses on cost reduction, capacity enhancement to cater the growing demand of Sodium Citrate.

49. Unforeseen Developments:

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

Article XIX of GATT 1994 states as follows:

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

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

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

c.1 Increase in capacity in China leading to diversion of export to India:

It is seen that majority of imports into India are of Chinese origin and recently from Canada, as seen below:

Country	Quantity (MT)				Share of import			
	2010-11	2011-12	2012-13	2013-14	2010-11	2011-12	2012-13	2013-14
Austria	-	2	5		0%	0%	0%	0%
China PR	2,578.00	2,804.00	3,526.00	4,350.48	98%	97%	95%	82%
Canada				699.60	0%	0%	0%	13%
Germany	11.02	64.80	19.57	41.16	0%	2%	1%	1%
Poland	0.05		0.17	0.95	0%	0%	0%	0%
Spain	23.00	4.90	165.04	90.01	1%	0%	4%	2%
Thailand	4.00				0%	0%	0%	0%
Uk	4.40	0.38	0.30	0.50	0%	0%	0%	0%
USA	0.27	1.06	2.74	117.59	0%	0%	0%	2%
Unspecified			2.00		0%	0%	0%	0%
Total	2,620.74	2,877.21	3,721.12	5,300.29	100%	100%	100%	100%

It is seen that imports from China constitutes almost 82% of the total imports into India during the POI (cumulative imports from China were 4351 MT as against cumulative imports of 5300 MT). This is because there is excess capacity with the producers across the countries like China. Chinese market has excessive capacities.

US have conducted an antidumping investigation against imports of Citric Acid and Certain Citrate Salts, which include Sodium Citrate, wherein the USA has held that China has significant capacities. The capacity estimated for Citric Acid and Certain Citrate Salts was estimated at 21, 95,911 MT for 2010. This has led into significant demand supply gap in China. China has built capacities far excess than the domestic demand. There exists significant demand supply gap as can be seen from the table below, which is further forcing the exporters from China PR to export the goods to India. The demand supply gap as projected in the US Findings is shown below:

(Demand Supply gap in China) in '000 pound –					
Year	2006	2007	2008	2009	2010
Apparent Consumption	323	460	475	589	607
Capacity	1443	1932	2047	2193	2195
Production	1247	1719	1807	1779	1834
GAP (production –consumption)	924	1259	1332	1190	1227

Source: US Findings.

It is seen that the present surplus capacities with the Chinese producers are significantly high considering the gross Indian demand for the product in India. The capacity with various Chinese manufacturers is far more than the total demand in India. It has been contended by the petitioner that continuous rising imports show that the producers in these countries have created significant surplus capacities which force them to exports to various markets at cheap prices. India being large market with positive growth in product, demand is lucrative to them. The foreign producers are highly export oriented and have created significant production capacities and hence are competing to maintain a stronghold on the Indian markets by increasing exports to India.

c.2 Anti dumping duty imposed by various countries (US, EC & Brazil):

It is submitted by the DI that several countries have earlier imposed anti dumping duty on imports Citric Acid and Certain Citrate Salts, which includes product under consideration, primarily from China. The EC has even undertaken review of its anti dumping measures imposed earlier on the PUC against China. Imposition of anti dumping duties by these countries on the import of PUC restricted these markets for China. Therefore, China with its surplus capacity had to divert its export to another favorable destination and hence started exporting to India.

Having regard to the information on record and submissions made by the interested parties, it is observed that the imports of the product under consideration from China have increased on account of surplus capacity, significant demand supply gap in China and imposition of anti dumping duty on exports of sodium citrate and citric acid by various countries. Producers from China are compelled to search for the growing market for their product and India being a viable choice was targeted, leading to increased imports in India. All these factors taken together, as claimed by the DI, appear to form the unforeseen circumstances for the increase in imports of Sodium Citrate, which is primarily from China.

Therefore, I hold the rise in import of Sodium Citrate due to imposition of anti dumping duty by the various countries against imports of Sodium Citrate from China aided by huge demand supply gap for this product in China due to excessive capacities, to be an unforeseen development resulting in increase in imports causing serious injury and threat of serious injury to the domestic industry.

50. Public Interest:

a. Article 3 of the Agreement on Safeguards states as follows:

“A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The

competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.”

- b. In an economy there are varying and sometimes competing interests of different economic players. The imposition of safeguard duty can affect different players differently and the impacts may not always be most suitable for all the different economic players when they have competing interests. Therefore, interests of various economic player groups have been analyzed based on the available information.
- c. The landed price of imports is lower than the (a) selling price of the Domestic Industry, and (b) cost of sales of the Domestic Industry. The imports are significantly undercutting the domestic prices. The price undercutting is resulting in price suppression. It is seen that the selling price of the Domestic Industry is far lower than the cost of sales. In order to sustain in the market, the Domestic Industry was unable to increase its selling price in proportion to increase in cost of sales thereby suffering huge losses. With the rate of decline in profits and return on investments, in case of non levy of safeguard duty, the Domestic Industry, as claimed by them, would be left with no option but to close down its business.
- d. It has been claimed by the Domestic Industry that the imposition of safeguard duty would be in public interest as it will not only prevent injury to the Domestic Industry but also would help in checking further decline of the Domestic Industry. As regards the impact of safeguard duty on consumers/users, it is observed that Sodium Citrate is primarily consumed in ORS, Cheese, cough syrups, soft drinks, jellies, photographic industry, beverages and pharmaceutical industry.
- e. The Domestic Industry has cited an example and has tried to quantify the impact of 30% safeguard duty on eventual downstream products. Domestic Industry has considered the estimated consumption of sodium citrate in each of the above mentioned consumer segment and have then calculated the impact on the eventual cost. Domestic industry have claimed that the 30% increase in price on account of safeguard duty, if fully passed onto the eventual end product (assuming that the Domestic Industry increases the prices by 30%) would be negligible on the eventual end products, as is seen from the following table:-

Sector-wise PUC Consumption and Cost per Unit of the Finished Goods

Product	Role	Consumption	Estimated cost	Cost Impact at
			INR	30% duty
ORS	As ingredient	2.9 GM/LITER	0.1885 / LITER	0.008%
Cheese	As preservative	2.30%	0.13 / 100 GM	0.016%
Cough syrup	As expectorant	1.1 GM/ ML	0.0715 /100 ML	0.049%
Soft drinks	As salty & tangy taste	< 2%	< 0.12 / LITER	0.090%
Jelly	As salty & tangy taste	< 2%	< 0.12 / 100 GM	0.018%
Photographic industry	As anti coagulant	< 2 %	< 0.12 / 100 GM	0.004%
Beverages	As salty& tangy taste	< 2 %	< 0.12 / LITER	0.072%
Pharmaceutical industry	As anti coagulant	< 2 %	< 0.12 /100 GM	0.004%

- f. The above claim of Domestic Industry has not been disputed by Interested Party in these investigations. In view of the absence of any contrary submissions/rejoinders having been filed by any Interested Party in this case, the

submissions made by the Domestic Industry are considered justified. As shown by the Domestic Industry, it appears that the impact of the safeguard duty on different segments of the users of the subject product would be minimal. It is concluded that if the prices are increased by 30%, the impact of the same on the eventual end product would not be significantly adverse, and that the imposition of the safeguard duty will not result in significant increase in the prices of eventual end products.

- g. Some interested parties contended that imposition of safeguard duty shall result in duopolistic situation and shall lead to increase in product prices and downstream product. However, even when all interested parties were advised at the time of oral hearing to substantiate whatever claim they have with regard to present investigations, it is noted that these opposing parties have not provided any supporting evidence. These parties have not even established how the claim of the domestic industry with regard to negligible impact on the consumers is incorrect. The investigation has shown that the impact of the proposed safeguard duty shall be negligible on the eventual end product. Further, imposition of safeguard duty shall not lead to duopolistic situation. There are admittedly a number of producers of the product in the Country. Interested parties agree that the investment involved in settling up production facilities for the product under consideration are not high, nor it requires significant time to set up or enhance capacities. Therefore, it is not a case that imposition of safeguard duty would lead to duopolistic situation.
- h. Some interested parties contended that imposition of safeguard duty would make the operation of downstream users unviable and cause significant disadvantage to the consumers due to price increase of end products especially, pharma. It is however noted that the impact of the proposed safeguard duty would be negligible and therefore it is not established that imposition of safeguard duty would make the operation of downstream users unviable.
- i. In the light of the facts on record, it is concluded that imposition of safeguard duty would be in public interest and the interests of end users would not be very adversely impacted.

51. Developing Nations:

- a. The percentages of imports from developing nations have also been examined. Except China PR who constitutes 82 % of total imports in India during FY 2013-14, other developing nations individually and collectively are less than 3% and 9% share respectively of total imports in India. Therefore, imports of product under consideration originating from developing nations except China PR may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.
- b. Interested parties have argued that Safeguard duty will lead to retaliation by countries, on some products exported by India to these countries. There has never been a retaliatory action taken by any country against safeguard duty levied. India is also a signatory to WTO and has enacted its law in consonance with the WTO Safeguard Agreement. The WTO itself empowers the member countries to protect its industry after following the procedure established under the law.

52. Conclusion:

On the basis of above examination and analysis done, it is concluded that :-

- a. There has been a significant increase in imports of Sodium Citrate, the Product Under Consideration (PUC) in absolute terms as well as in relation to domestic production over the entire Period of Investigation (POI). Thus, it can be concluded that there is a significant surge in imports of PUC so as to cause or threaten to cause serious injury. This surge in imports is also quite significant in relation to total demand as well.
- b. The Domestic Industry has been able to demonstrate that the developments in the market for surge in imports of the Product under Consideration were unforeseen, especially with regards to China PR (82% of total imports).
- c. The investigation has shown that the domestic industry has suffered serious injury, considering overall performance, on the basis of listed economic parameters, i.e., market share, sales, capacity utilization, production and productivity in 2013-14 as compared from 2012-13. However, profitability has steeply declined from the base

year till 2013-14. Though employment has increased, the productivity per employee has severely declined from base year till 2013-14 and the inventory has risen steadily till 2013-14 from the base year. The Domestic Industry has been able to demonstrate serious injury caused in the form of mounting losses and accumulated inventories by way of declining sales even when demand for the PUC rose in the country. It is also seen that the growth in production of the domestic industry is far lower than the growth in demand for the product under consideration in the Country and the domestic industry has significant unutilised capacities. This has caused significant overall impairment to the position of the domestic industry. Moreover, the market share of DI has declined in 2013-14 as compared to 2012-13 with a corresponding rise in the market share of imports in the same period. It establishes the causal link between the rise in imports and serious injury caused to the Domestic Industry during the POI.

- d. It is also seen that the Domestic Industry has sought protection in the form of Safeguard Duty for a period of 4 years, for which they have provided an adjustment plan. The adjustment plan is also found to be reasonable. The contention of the Domestic Industry that they have already expanded their capacity and they along with other domestic producers are fully capable to cater to the demand of the product under consideration in the domestic market appears acceptable.
- e. The Domestic Industry has also been able to show that imposition of safeguard duty in this case would be in Public Interest because the probable impact of the safeguard duty on end users/consumers would be minimal. It is also found that no Interested Party has refuted or disputed this aspect during the course of investigation.

53. Recommendations:

a. Increased imports of Sodium Citrate into India have therefore, caused and threaten to cause serious injury to the domestic producers of Sodium Citrate and it will be in the public interest to impose safeguard duty on imports of Sodium Citrate into India, in terms of Rule 12 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997, for a period of 3(Three) years. Considering the average cost of sales of Sodium Citrate by the domestic producer, after allowing a reasonable return on capital employed, safeguard duty, which is considered to be the minimum required to protect the interest of Domestic Industry, is hereby recommended to be imposed on imports of Sodium Citrate falling under Custom Tariff Heading 29181520 of the First Schedule to the Customs Tariff Act, 1975 (HS code is only indicative and the product description shall prevail in all circumstances) as shown below:-

Period	Rate of Safeguard Duty
First year	55 % <i>ad valorem</i>
Second year	50 % <i>ad valorem</i>
Third year	40 % <i>ad valorem</i>

b. As the imports from developing nations except China PR do not exceed 3% individually and 9% collectively, the import of product under consideration originating from developing nations except China PR may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

(R.K.SINGLA)
Director General.