

**DIRECTORATE GENERAL OF SAFEGUARDS  
CUSTOMS AND CENTRAL EXCISE  
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New..Delhi, 7<sup>th</sup> June, 2013  
F.No. D-22011/ 14/2012

**Sub: Review of safeguard Duty on imports of Phthalic Anhydride(PAN) into India under provisions of Section 8B(4) of Customs Tariff Act, 1975 read with Rule 16 and Rule 18 of Customs Tariff(Identification and Assessment of Safeguard Duty)Rules, 1997 –Final Findings -regarding**

G S R D- 22011/14/2012 dated 7<sup>th</sup> June, 2013 having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 thereof;

**A. Procedure**

1. An application for review and extension of safeguard duty had 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 (1) M/s. Thirumalai Chemicals Ltd, Ranipet Tamilnadu, (2) M/s. IG Petrochemicals Ltd Raigad Maharashtra, and (3) M/s. Mysore Petrochemicals Ltd, Raichur Karnataka, for continuation/extension of Safeguard Duty on imports of Phthalic Anhydride (PAN) into India, after expiry of the existing safeguard duty, alleging that increased imports of Phthalic Anhydride was causing and/or threatening to cause serious injury to the domestic producers of Phthalic Anhydride in India. The Notice of Initiation of Safeguard investigation for review of safeguard duty on imports of Phthalic Anhydride(PAN) into India was issued on 26th October, 2012 and was published in the Gazette of India Extraordinary on the same day vide GSR 793 (E) dated 26<sup>th</sup> October, 2012. A copy of the Notice of Initiation dated 26<sup>th</sup> October, 2012 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, Govts of exporting countries through their Embassies/ High Commission in New Delhi and all known interested parties listed below in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguards Duty) Rules, 1997:

**Domestic Producers**

- a. M/s Thirumalai Chemicals Ltd, Ranipet Tamilnadu
- b. M/s. IG Petrochemicals Ltd, Raigad Maharashtra
- c. M/s. Mysore Petrochemicals Ltd, Raichur Karnataka

**Importers**

- a. KLJ Plasticizers Ltd, KLJ House,63, Rama Marg, Najafgarh Road, New Delhi.
- b. PCL Oil & Solvents Ltd. M-105, 2nd Floor, Connaught Place, New Delhi.
- c. Silvassa Plast, KLJ House, 63, Rama Marg, Najafgarh Road, New Delhi.
- d. Mechemco Industries, 170/6, Shiv Smruti, 27th Road, Sion West, Mumbai, Maharashtra..
- e. Micro Inks Ltd. 512/513, Midas, 5th Floor, Saharplaza Complex, J.B.Nagar, M.V.R.D., Andheri (E), Mumbai, Maharashtra..

- f. Heubach Colour Pvt. Ltd. Plot No 9002-9010, GIDC Estate, Ankleshwar, Gujrat.
- g. Sanman Trade Impex Pvt. Ltd. 1410, Maker Chamber V, Nariman Point, Mumbai, Maharashtra.
- h. A-One Chem Trade Pvt. Ltd. 302, Shanti House, NR. Madhusudan house, Opp: Navrangpura Telephone Exchange, Off C.G. Road, Ahmedabad.
- i. Sanjay Chemicals (India) Pvt. Ltd. 507, Matru Chhaya, 378/380, Narshinatha Street, Mumbai, Maharashtra.
- j. Mazda Colours Limited, NKM International, 178, Backbay Reclamation, Mumbai, Maharashtra.
- k. Lona Industries Limited, Alta Bhavan, 532 Senapati Bapat Marg, Dadar, Mumbai, Maharashtra.
- l. Aarti Industries Limited, Udyog Kshetra, 2nd Floor, Mulund Goregaon Link Road, Mulund (W), Mumbai, Maharashtra.
- m. Rachna Plsticizers, Plot No. 116&117, Piparia Indl.Estate, U.T. Of D & NH, Silvassa.
- n. Phthalo Colours & Chemicals (I) Ltd. Nanavati Mahalya, 18, Homi Mody Street, Fort Mumbai, Maharashtra.
- o. Ramniklal S. Gosala & Co. National House, 608, B.J. Marg, Jacob Circle, Mumbai, Maharashtra.
- p. Petrochem Middle East (India) Pvt Ltd, 201, Business Square, B. Wing, Andheri Kurla Road, Mumbai, Maharashtra.
- q. Amjey Chemicals, 5-A, Old Nagardas Road, 101, Adinath Tower, Andheri (E), Mumbai, Maharashtra.
- r. Hazel Mercantile Limited, 181, Ashoka Shopping Centre, 2nd Floor, G.T. Hospital Complex, Mumbai, Maharashtra.

#### **Exporters**

- a. Aekyung Petrochemical 106-3, Guro-Dong, Guro-Ku, Seoul, SouthKorea
- b. LG Petrochemical, 23-4, Youido-Dong, Yongdungpo-Gu, Seoul 150-010, South Korea
- c. Union Petrochemical (UPC Group), Linyuan Plant: 3, Kung-Yeh, 2nd Rd, Lin- Yuan, Kaohsiung Country 832, Taiwan, R.O.C.
- d. OCI Company Limited, 50 Sogong-Dong Jung-Gu, Seoul 100-718, South Korea.
- e. Nan Ya Plastics, No.201, Tung Hwa, North Rd.Taipei, Taiwan.
- f. Gadiv Petrochemical Industries Ltd. Hahistadrut St, P.O.B 32 Haifa, Israel 31000.
- g. Farabi Petrochemicals Co, North Gandhi, Ave-Sanei, STR-NO 35/2 Zip Postal Code-1969933641, Tehran, Iran.
- h. Isfahan Petrochemicals Co., 2499, Vanak Sq Vali Asr AV, Zip Postal Code-1969713113, Tehran, Iran.

#### **Exporting Nations:**

- a. Republic of Korea, through their Embassy in New Delhi
- b. Taiwan, through their Embassy in New Delhi.
- c. Islamic Republic of Iran, through their Embassy in New Delhi.
- d. Israel, through their Embassy in New Delhi.

- e. Russia, through their Embassy in New Delhi.
  - f. People's Republic of China, through their Embassy in New Delhi.
2. Questionnaires were also sent, on the same day, to all known domestic producers, importers and exporters and they were asked to submit their response within 30 days.
3. Requests to consider them as *interested parties* were received from the following parties and all the requests were accepted:
- (i) Ministry of Economic Development of the Russian Federation
  - (ii) Trade Representation of the Russian Federation in India.
4. Requests for an extension of time to submit their replies were made by the following parties:
- i. M/s Amarchand Mangaldas. on behalf of Gadiv Petrochemicals Industries Ltd, Israel (15 days from Dec 2, 2012).
  - ii. M/s ELP Advocates & Solicitors on behalf of M/s KLJ Plasticizers -3 weeks.
- 5 After taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time to submit reply as per Rule 6(4) of Safeguard Rules were allowed, as prayed for.
- 6 The information presented by the applicants was verified by onsite visits to the plants of the domestic producers to the extent considered necessary. The non confidential version of verification report was kept in the public file.
- 7 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.
- 8 A public hearing was held on 10<sup>th</sup> January, 2013, notice for which was sent on 6<sup>th</sup> December, 2012. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Copy of written submissions filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties. However, due to change in the designated authority wef 11<sup>th</sup> January, 2013 and a new designated authority being appointed and notified by the Ministry in due course, a fresh public hearing was held by the new designated authority on 2<sup>nd</sup> May, 2013 and the entire process detailed above was repeated. All the views expressed by the interested parties, post second public hearing, either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination. There was a delay of two working days in submission of written copy of the rejoinder by the consultant for the domestic industry which was condoned by the Director General.

**B. Brief history:** An investigation was initiated by the DG (safeguards) earlier on the application filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as "Safeguard Rules"] by (1) M/s. Thirumalai Chemicals Ltd, Ranipet Tamilnadu, (2) M/s. IG Petrochemicals Ltd Raigad Maharashtra, (3) M/s. Mysore Petrochemicals Ltd, Raichur Karnataka, seeking imposition of Safeguard Duty on imports of Phthalic Anhydride into India alleging that increased imports of Phthalic Anhydride was causing and/or threatening to cause serious injury to the domestic producers of Phthalic Anhydride in India. Having satisfied that the requirements of Rule 5 of Safeguard Rules *ibid* were met, safeguard investigation against imports of Phthalic Anhydride was initiated vide notice of initiation dated 10th August, 2011 published in the Gazette of India, Extraordinary on the same day. After expeditious conduct of investigation preliminary findings were issued on 23<sup>rd</sup> September, 2011. Central Government levied provisional safeguard duty for a period of 180 days at the rate of 10% with effect from 17th January 2012 vide customs notification No.1/2012-Cus(SG) dated 17th January 2012 based on the recommendation of DG Safeguard. Director General (Safeguard) issued Final Findings G.S.R. 263(E), dated the 29th March, 2012, recommending

definitive Safeguard duty for a period of one year, i.e. from 17-01-2012 to 16-01-2013. The Central Government imposed definitive Safeguard duty for one year @ 10% from 17.01.2012 to 16.01.2013 vide customs notification No 3/2012-Cus(SG) dated 29<sup>th</sup> May, 2012. As mentioned above, the safeguard duty was in vogue till 16<sup>th</sup> January, 2013. However, the instant application has been filed by the domestic industry for continuation/extension of safeguard duty for a further period of two year with the purpose to enable the domestic industry to improve its competitiveness in order to survive.

**C. Views of Domestic industry**

a. There is a previous history of increased imports leading to the recommendation of DG safeguards and imposition of provisional and final safeguard duty vide notification No.9/2009-Customs and 75/2009-Customs respectively.

b. Subsequently, another investigation was initiated by the DG, Safeguards on the application filed by the domestic industry and on the recommendations of the DG, provisional and definitive safeguard duty was imposed by Central Govt vide notifications no. 1/2012-Cus(SG) dated 17<sup>th</sup> January, 2012 and 3/2012-Cus(SG) dated 29<sup>th</sup> May, 2012, respectively.

c. D G Anti Dumping had initiated anti dumping investigation vide notification dated 29<sup>th</sup> April 2011 against dumping of subject goods from Republic of Korea, Taiwan and Israel and recommended imposition of anti-dumping duty against such imports vide notification dated 28<sup>th</sup> Sep, 2012. On the recommendations of DG, Anti Dumping, Govt of India imposed anti-dumping duty on imports of PAN from these three countries vide Notifn No 58/2012-Customs (ADD) dated 24<sup>th</sup> Dec, 2012 for a period of five years.

d. Section 8B(4) prescribes only two conditions which need to be fulfilled while extending the period of imposition of safeguard duty viz Adjustment Plan and necessity to extend safeguard duty. Existence of imports or increase in imports is not a prerequisite at the time of extension of duty and also existence of injury is not a prerequisite at the time of extension

e. The meaning of the term ‘mutatis mutandis’ under rule 18 of safeguard rules, 97 is necessary changes, meaning thereby that matters or things are generally the same, but to be altered, when necessary. Therefore, it does not imply applicability of provisions as it is; but the provision has to be applied with necessary changes.

f. At the stage of extension of safeguard duty, there is no requirement of existence of either increased imports or serious injury to the domestic industry. The domestic industry is taking measures to become competitive and the process is underway. Under these circumstances, if the safeguard duty is not extended, the domestic industry would once again suffer serious injury.

g. Domestic industry may not have been suffering injury because of the very imposition of safeguard duty and therefore existence or otherwise of injury to domestic industry cannot be a pre-requisite for extension of safeguard duty.

h. The petitioners constitute domestic industry as per Customs Tariff Act’75 as they constitute the major proportion in the total Indian production of PAN as per the table below.

S.No.	Year	Petitioner	Other Indian producers	All Indian producers
1	2009-10	89%	11%	100%
2	2010-11	87%	13%	100%
3	2011-12	88%	12%	100%
4	2012-13	88%	12%	100%

i. There has been a sudden, significant, recent and sharp increase in the imports of PAN in terms of Panel findings in Argentina Footwear case The imports in Q4 of 2012-13 have risen sharply vis a vis the imports in preceding quarter. Further, the imports have increased both in absolute terms as well as in relation to production and consumption in recent period.

- j. Producers in China are setting up new plants for manufacturing PAN thereby enhancing their capacities. Further, export oriented producers in Korea and Taiwan are looking for new markets like India with declining exports to China. The demand of DOP globally declined as a result PAN demand declined in global market.
- k. Increased imports have led to increase in market share of imports and reduction in the market share of the domestic industry in the most recent period. Decline in market share of domestic industry has adversely impacted the production and capacity utilization of the domestic industry.
- l. The sales of the domestic industry increased till Q2 of 2012-13 but declined thereafter.
- m. Export sales of the domestic industry have declined over the period.
- n. The level of inventories have increased significantly throughout the injury period. Inventory levels have declined during Q4 2012-13 with the curtailment of production. However, inventories have still remained at significant levels as compared to the previous years.
- o. The landed price of imports is lower than the selling price of the domestic industry, cost of production of the domestic industry and the price difference between the domestic prices and imports increased in Q4 of 2012-13. The imports are significantly undercutting the domestic prices. In order to sustain in the market, the domestic industry has to reduce its prices far lower than the cost of sales thereby suffering significant losses.
- p. Profitability of the domestic industry has steeply declined in the most recent period. Profitability improved after imposition of safeguard duty, however it has declined after safeguard duty lapsed.
- q. The margin between the raw materials and Phthalic Anhydride is declining to such a significant extent that the same has now become negative.
- r. Employment and productivity are dependent on a number of other parameters and not reflective of the impact of imports on the domestic industry.
- s. M/s Thirumalai Chemicals Ltd and M/s Mysore Petrochemicals Ltd had to shut down their plants partially due to increased imports of PAN into India. The companies informed the Bombay Stock Exchange in this regard.
- t. Threat of serious injury is being established by following factors.
- I. The imports are entering into the Indian market at an increased rate despite safeguard duty in existence.
  - II. The market share of imports has increased in the most recent period whereas that of domestic industry has declined despite safeguard duty in existence.
  - III. The domestic industry is unable to increase its sales in the proportion of increase in demand of the product under consideration in India.
  - IV. The prices of imports are lower than the selling price of domestic industry.
  - V. The foreign producers are holding significant unutilized capacities. Resultantly, the foreign producers are looking for additional markets to the extent possible.
  - VI. The major Chinese market for PAN has clogged for the export oriented producers of Korea and Taiwan, whereas the Indian market is quite strong.
- u. There are no other factors that may be attributing to the serious injury to the domestic industry other than dumping and the low priced imports.
- v. Imposition of safeguard duty of 10% shall have the impact on user industry to the minimal extent. The impact is quantified and - on pipes is 1.9%, on pigments 0.3% and on paints 0.1%.

w. Since there is negligible impact on the eventual end product and considering that the survival of the domestic industry is must, the imposition of safeguard shall be in public interest.

x. The petitioners have laid down adjustment plan which focuses on (a) cost of production and (b) optimum utilization of existing production capacity. The domestic industry is at present taking these measures and the process is not yet completed. Extension of safeguard duty will result in domestic industry getting sufficient time to get fully prepared to face international competition.

#### **D. Views of Exporting Nations**

Though the notice of public hearing was sent to all the embassies of the exporting nations involved well before time, yet no representative from any of the exporting nations in this case, either appeared in the Public hearing held on 2<sup>nd</sup> May, 2013, or submitted any written submissions/rejoinder subsequently.

#### **E. Views of Exporters**

##### **Gadiv Petrochemicals Industries Ltd, Israel**

i. The Petitioners are abusing the Safeguard measures by submitting three petitions within less than four years and additionally, a petition for antidumping duties.

ii. An extension of the Safeguard measure would violate India's obligations according to WTO agreement as the safeguard measure is to be imposed in special and exceptional circumstances as an emergency action only. The petition of a Safeguard measure does not depend upon unfair trade actions, as is the case with anti-dumping or countervailing measures.

iii. **During two of the last four years the domestic PAN industry in India has enjoyed artificial protection against fair imports. The Indian producers have not taken any concrete measure whatsoever to adjust themselves to fair competition from imports. Instead, now they request two additional years of protective duty, again trying to argue that they will suffer serious injury if the duty is not extended.**

iv. **The same petitioners together with one more company named SI Group India Ltd have submitted a petition before the DA alleging dumping of the same product from same countries of origin as named in safeguard petition. Based on this petition, the DA for anti-dumping recommended to impose anti-dumping duty which has since been imposed for five years vide Notifn No 58/2012-customs(ADD) dated 24.12.2012. The petitioner is seeking dual protection.**

v. The petitioners are already protected by customs duties of 7.5% adv. This adds to ever recurring safeguard duties and antidumping duties.

vi. **In case the petition is accepted and the safeguard duty is extended for two additional years without any evidence of domestic industry adjusting to the imports, it will strongly undermine the basic principles of the safeguard measure and will give the domestic producers a dangerous and very harmful weapon for getting rid of any foreign competition, especially in the present situation when they hold close to 86% of the domestic market.**

vii. **According to Rule 18 of the Safeguard Duty Rules, a safeguard duty may be extended only if the safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively. DG, Safeguard is obligated to carry out an injury analysis in terms of Rule 18(1)(i) such that the recommendation for continuation of safeguard duty is made if the DG is satisfied that it is necessary to prevent or remedy serious injury.**

viii. Rule 18(3) provides that the provisions of rules 5,6,7 and 11 shall mutatis mutandis apply in the case of review. Rules 5 and 11 require evidence of increased imports, serious injury or threat of serious injury, and causal link between the two. In the case of United Phosphorous vs Director General Safeguards, Hon'ble Delhi High Court ruled that the use of the word recommend coupled with the fact that under the rules the Director General has to consider other aspects, shows that the Director General is not bound to make recommendations for levy of duty in case the all the aspects of the matter warrant so.

ix. The offices of the DG exercise functions which are quasi judicial in nature and thus detailed reasons for recommendations of continuation of safeguard duty is a must which inter alia would have to include a detailed injury analysis.

x. The petitioners' argument that the extension of a safeguard duty does not require the existence of increased import, serious injury and causal link between the two is completely absurd and also in contradiction to safeguard rules and WTO Agreement on Safeguards.

xi. In this case, a safeguard duty may be extended only if the import has increased drastically, and such increased imports cause or threaten to cause serious injury to the domestic industry which only a safeguard duty can remedy and **additionally, there is evidence that the industry is adjusting to the competition with the imports.**

xii. There has been no drastic increase in imports. During the year 2011-12, the import volume, rather, decreased by no less than 43%. Further, the import volume decreased even in relation to the domestic production and domestic consumption. A significant decline exists even if the import volume of the first three quarters of 2011-12 are compared, (during which no duty existed), in annualized figures, with the import volumes of 2010-11.

xiii. An increase during merely a single quarter cannot establish any overall trend of increase in imports, particularly in a volatile and cyclical sector like PAN where constant ups and downs in import volumes are seen.

xiv. Imports for 2012-13 are likely to be either lower or not much different from those of the previous year.

xv. As per the decision of the WTO Panel in the cases of Argentina-Definitive Safeguard Measures on Imports of Preserved Peaches and United States- Definitive Safeguard Measures on Imports of Certain Steel Products, the investigating authority may reach wrong conclusions regarding an increase in imports, in case it considers the import data only from the most recent period, isolated from the trends of import during the previous years. Further, the Appellate Body has held in Argentina footwear case, that the increase which justifies the imposition of Safeguard duty should be sudden, sharp and significant enough, both quantitatively and qualitatively to cause or threaten to cause serious injury, which is not the case here.

xvi. **Petitioners did not provide any evidence proving that they have implemented any real measures in order to adjust themselves. Therefore, no extension of the duty should be granted even if the factors attributed to the alleged increased imports still exist.**

xvii. The gross profits of the domestic industry improved tremendously during Q1 2012-13, by no less than 207% from a loss of 177 Rs/MT during 2011-12 to a profit of 190 Rs/MT during Q1 2012-13 (annualized terms). Such tremendous improvement in the financial status of the domestic industry cannot be connected to the safeguard duty. The price undercutting during Q 1 2012-13, after imposition of the Safeguard duty, is 16.5% which is very similar to the one that existed during the year 2011-12(18.9%), although during most of 2011-12 (9 months) no duty existed.

xviii. The sales volume and value have improved during 2012-13 compared with earlier years. There is a concurrent improvement in the market share of domestic industry.

xix. Monthly average production volume of the DI improved during 2012-13 vis a vis the preceding years. Capacity utilization has also increased. The inventories have not increased. The inventories during Q 1 2012-13 are significantly lower than the ones during the corresponding quarter of the previous year.

xx. There is no evidence of any causal link. In fact, the Annual Reports of M/s Thirumalai Chemical attributes poor results in first eight months of 2011-12 to increase in prices of raw material and low margins on finished products. Further, Mysore Petrochemicals admitted decrease in production during 2011-12 was due to stoppage of PA plant for change of catalyst and due to technical faults, on a few occasions. Therefore, increased imports have no bearing on these extraneous factors resulting in lack of any causal link.

xxi. **There is no evidence of real adjustment by the domestic industry. Domestic industry applying for extension of safeguard duty is required to provide evidence regarding real measures that it has already implemented in order to adjust itself and not just plans for future measures for adjustment. In this case, the petitioners have themselves failed to follow their adjustment plan and the injury, if any, is self inflicted. Petitioners have provided only vague and unspecified information regarding several plans for future measures which they allegedly intend to implement. These are hollow declarations and do not constitute evidence of actual adjustment.**

xxii. DI has failed to file its written submissions consequent to the previous PH dated 10<sup>th</sup> Jan, 2013, thereby showing gross disregard to the directions given by the DG to file the written submissions by 17<sup>th</sup> Jan, 2013.

#### **F. Views of Importers/User Industry**

**Indian Plasticizers Manufacturers Association (IPMA):**

1. The Petitioner are having world class plants in terms of capacity as well technology. Even prior to the expansion plans, these two companies were able to compete with the biggest and best in the world. Repeated shelter of safeguard duty is damaging the user industry and should not be permitted.
2. Petitioner are having surplus power and they intend to sell power into the grid and this aspect must be considered specifically.
3. The Petitioners claim to be suffering serious injury on one hand and on the other hand continue to increase their capacities by leaps and bounds.
4. The duty differential between the input PA and output plasticizer is (post the imposition of safeguard duty) virtually nil and with continued safeguard duty this differential will be further exacerbated, leaving very little margin for the plasticizer producers to survive.
5. As per the mandate of Article 3(1) of the WTO- Agreement on Safeguards and Rule 6 of the Safeguard Duty Rules, analysis the import data & the injury parameters up to Q4-2013 was not placed in the public file while at the Public Hearing held on 2<sup>nd</sup> May, 2013, the Petitioners relied upon the same.
6. This prejudiced the IPMA and affected its ability to provide a meaningful response to it. Therefore, submissions of updated import and injury data made by the Petitioners at the Public Hearing should be ignored.
- 7. According to Article 7(2) of the WTO- Agreement on Safeguards & Rule 18 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 it is clearly mandated that in order to conduct a review and extend the safeguard duties it is necessary to establish that safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively**
- 8. In the factual matrix of the case there is no injury or threat of injury and there is no evidence of positive adjustment by the Domestic Industry.**
9. The trend in imports of the subject goods does not indicate any surge and in fact have declined by more than 25% by 2012- 13(Annualized from data available upto November 2012) as compared to 2010-11.
- 10.No information placed on record to indicate that there exists serious injury or threat of serious injury.
- 11.In the petition filed by the Petitioners, no adjustment plan was submitted. In the Final Findings in Safeguard Investigation – II, it was held that no details on efforts of positive adjustment were mandatory.
- 12.Thus, the claim made by the Petitioners at Page 25, Section VII(c) of the Petition is frivolous and misleading as the Producers did not provide any such adjustment plan in the earlier Safeguard Investigation with regard to which the instant review is conducted.**
- 13.Further, the instant petition filed by the Petitioners provides an adjustment plan giving the details of efforts planned to be taken with no information relating to present efforts being taken by the Petitioners. Therefore, the instant initiation is wrongful and is liable to terminated.**
- 14.The analysis presented in the petition and the said Initiation Notification is based on an estimate for the entire financial period of 2012-13 extrapolated merely on the basis of the information of the first quarter of 2012-13.
- 15.There are consistent and significant fluctuations observed in the impugned imports, even within the same financial year.

16. Further, it is an admitted position that the product under consideration is a cyclical product and the sales and imports vary radically from quarter to quarter which Petitioners (Thirumalai Chemicals Ltd. ) have themselves admitted in their Annual Report for 2010-2011 at Page 7.

17. As per the information sourced from IBIS, the imports of the subject goods have substantially declined. Hence, the claims of the Petitioners of continued injury and threat thereof are not justified

18. In the Final Findings in the Safeguard Duty investigation against imports of Soda Ash in to India from People's Republic of China -Final Findings dated 6<sup>th</sup> October, 2009, the information after the Period of Investigation was considered and relied upon.

19. Contrary to Rule 7 of the Safeguard Duty Rules and Trade Notice F.No. D-22011/75/2009 the Petitioners has claimed confidentiality. The following instances of gross abuse of the provisions of confidentiality.

20. Costing information & Capital Employed information completely marked confidential and the same should have at the least been indexed.

21. Information in adjustment plan relating to cost reduction claimed confidential without providing a range of the actual percentage in a summary form.

22. Blanket confidentiality claimed on the percentage or actual cost reduction claimed in the Adjustment plan by each company where an indexation or reasonable summary or even range of the same ought to have been provided.

23. Profit as % Cost, Selling Price even the notional loss calculated in case the safeguard duties are blanked, without providing a range or indexation.

24. the Association as well as its member-companies have lawfully participated in Safeguard Investigations-I & II, also been noted by DG (Safeguards) in the Final Findings and the Petitioners themselves at page 9 of the present Petition and Page 6 of the Petition have categorically declared the Association to be an interested party

25. In the present review investigation, the Association as well as its member-companies have recorded their participation as an 'interested party' to the Hon'ble Director General (Safeguards) which are available in the Public Files.

26. Petitioners submitted crucial information including the Questionnaires much beyond the prescribed period. Information about the injury parameters was circulated by the Petitioners just prior to the earlier Public Hearing on 9<sup>th</sup> January, 2012 without any justification for the inordinate delay. Further, the information for imports and injury parameters for upto Q4- 2012-13 not disclosed to the interested parties, despite being available and relied upon at the Public Hearing held on 2<sup>nd</sup> May, 2013

27. Hence, the Petitioners have no locus to allege any delay in submission by the Association.

28. Rule 18 of the Safeguard Duty Rules clearly provides that the provisions of Rules 5, 6, 7 and 11 shall mutatis mutandis apply in the case of review.

29. The claim of the Petitioners at page 18 of the present petition that there is no requirement of existence of either increased imports or serious injury to the domestic industry for the present review is misconceived.

30. Imports of the subject goods declined by 30% in the recent period as compared to 2010-11 and by more than 90% since Q1-2012-13. No evidence of a recent, sudden, sharp, and significant, surge in imports as per the WTO Appellate Body Report in **Argentina – Footwear case**.

31. The production of the petitioners has improved by 15% and the capacity utilization has improved by 10% up to 85%.

32. The domestic sale of the Petitioners have significantly increased and the sales of the subject goods have increased by about 27% in line with the growth in demand in the recent period as compared to the period of 2009-10.

33. The market share of the Petitioners has continuously increased with the increase in demand, and in fact the market share of the Imports has declined.

34. The profitability of the Petitioners in the recent period has exponentially improved, which is clearly established from the information provided by the Petitioners themselves.

35. As per the annual reports of the Petitioners, the profitability has continued to significantly increase and in 2012-13, the average profitability has increased by 500%

36. Majority of the imports made by the User-Industry are made duty free under schemes such as Advance License, to meet their export obligations.

37. It is not economically viable to purchase the subject goods from the domestic manufacturers against export licenses as it involves the payment of C.S.T to the tune of 2%. The interest for the credit charged is very high as compared to foreign suppliers

38. As per the CESTAT in the case of Thai Acrylic Fibre Co. Ltd. Vs.: Designated Authority as import made under advance license are utilised by the industrial end-users for export purposes, the said imports cannot be said to have any impact on the domestic market and cannot cause any injury to the domestic industry.

39. Clearly, the solution is not a safeguard duty, but should be at par with export against import license, without any C.S.T being made applicable and the Industrial Users be permitted supply against USD which attracts LIBOR interest @ 0.5% per annum against 12% for INR.

40. The customs duty @ 30% has been reduced to currently @ 7.5%. Hence, the Domestic Industry has resorted to seeking undue trade remedial protection, to cope with the change in governmental policies as admitted in the Annual Report of IG Petrochemicals Ltd. for the year 2009-10.

41. Petitioners claimed threat of serious injury on the capacity changes in China, as per page 14 of the present petition which is exactly the same as made in the earlier petition for Safeguards Investigation – II at page 10 the said Petition which was considered in the corresponding Final Findings.

42. The FY-2011-12 Financial Highlights of M/s. I G Petro, state the fact that the domestic industry has not seen any new entrant after IGPL. Further, China is a net importer of PA and is expected to continue to be so at least till 2015. Also with many more units in Europe and the USA expected to close down, the supply will get further constrained. All these factors will culminate in improved margins for the Company going forward. Hence, the claim of threat of serious injury presented by the Petitioners is totally fictitious and baseless

43. Article 4.2(b) of the WTO Safeguards Agreement & Rule 11 (1) (b) of Safeguard Duty Rules provides that a causal link must exist between the increased imports and serious injury or threat of serious injury.

44. The Rule 2 of the Annexure to the Safeguard Duty Rules clearly mandates that if there are any other factors, such as dumping, causing injury to the Petitioners, such injury cannot be attributed to increased imports.

45. In terms of the WTO Appellate Body Report in Wheat Gluten the injury claimed by the Petitioners is attributable to dumping of the subject goods and the Hon'ble Designated Authority has provided for an anti-dumping duty on the subject goods from Korea, Israel and Taiwan to remedy the injury vide Notification No. 58/2012-Customs (ADD).

46. As per page 14 of the present petition, the Petitioners have admitted that the imports from Korea, Taiwan and Israel are causing injury to the Petitioners. Hence, the injury to the Petitioners, if any, is clearly attributable to other factors and not to an increase in imports.

#### **G. Rejoinder by Domestic industry**

1. Domestic Industry reiterates everything presented in the earlier submissions filed with the Director General.
2. The Act does not provide that imports should have increased after imposition of safeguard duty as the condition precedent to extension of safeguard duty. The rules cannot supersede the Act.

Placement of mutadis-mutandis in the rules further makes it evident. The interested parties have read the above provision as if the word “mutatis mutandis” is absent in the above provision.

3. Facts establish that performance of the domestic industry has once again started deteriorating and suffered significant financial losses in Q4 of 2012-13 with the cessation of safeguard duty.
4. Notwithstanding the legal position that surge in import and serious injury to the domestic industry are not a condition precedent to extension of safeguard duty; the facts of the case clearly establish surge in imports and serious injury to the domestic industry.
5. The conditions for initial imposition of safeguard duty and extension of safeguard duty cannot be the same and is clearly borne out by the objective of initial imposition of safeguard duty and extension of safeguard duties.
6. Increased import in Jan-March 2013 with cessation of safeguard duty establishes increased imports without safeguard duty which shows that imports shall increase further, once the investigation is completed, if duty is not extended.
7. Imports have increased in relation to production and consumption as would be seen from the table below.

SN	Year	Volume MT	Imports in relation to	
			Production	Consumption
1	2009-10	28,098	14%	13%
2	2010-11	61,241	28%	24%
3	2011-12	38,894	16%	14%
4	Q1'(12-13)	12,907	24%	19%
5	Q2'(12-13)	11,604	19%	16%
6	Q3'(12-13)	6,625	11%	11%
7	Q4'(12-13)	13,114	25%	19%

8. Petitioners provided import data for the entirety of the period including the period July-Aug 2012 and have established increased imports. Long term pattern clearly shows increased imports.
9. As regards Q3, 2012-13, the foreign producers, faced with decline in delta between Orthoxylene and Phthalic Anhydride, reduced their operating rates, leading to reduced volumes while prices remained aggressive. Further, the delta between Orthoxylene and Phthalic Anhydride further reduced in Q4, 2012-13 and foreign producers aggressively sold the product in view of better prices in the Indian market and cessation of safeguard duty in this period.
10. The factors identified in 2011 continue to exist and there is no change in the market situation.
11. The profits of the domestic industry improved in Q1 of 2012-13 with imposition of safeguard duty and deteriorated thereafter and suffered significant financial losses in Q4 of 2012-13.
12. Allegation that when duty expires there would be no significant change in undercutting levels is factually incorrect rather price undercutting increased with cessation of safeguard duty.
13. Sales volumes of domestic industry have declined in the last two quarters of 2012-13. At the same time, market share of the domestic industry has also declined.
14. There are no other factors causing serious injury to the domestic industry other than dumping and the low priced imports.
15. While there are no listed known other factors that are required to be examined by the Director General (Safeguards), petitioners examined possible injury due to some known other factors.
16. Information over the injury period would show that there is no contraction in demand of Phthalic Anhydride in India and thus, possible decline in the demand has not caused injury to the domestic industry.
17. The pattern of consumption with regard to PAN has not undergone any change.
18. There is no trade restrictive practice which could have contributed to the injury to the domestic industry.
19. Technology for production of PAN has not undergone any change and not a factor of injury.
20. injury to the domestic industry is due domestic operations and cannot be attributed to exports.
21. injury to the domestic industry is due to PAN and not due to performance of other products.

22. The product sold in competition with imports and landed price of imports is significantly lower than the selling prices and cost of sales of the domestic industry.
23. Production, capacity utilization, profits, return on investment and cash flow of DI declining due to continued presence of low price imports.
24. Low prices of the foreign producers surging the imports further despite low prices of DI and is forced to reduce its prices to such an extent that they are suffering huge losses.
25. Increased market share of imports and reduction in market share of the domestic industry, has adversely impacted the production and capacity utilization.
26. Annual Reports of petitioner companies state factors such as high raw material prices and dumping as causes for losses suffered by them.
27. Annual Report establishes that increased imports are causing injury. Quantum of anti dumping duty imposed, establishes that dumping was only one of the causes and the injury suffered by the domestic industry is far higher than that.
28. The reference to increased raw material price in the Annual Report is to the global increase. DI is buying raw material as per prevailing international prices and the raw material prices have increased for the foreign producers as well.
29. The petition and submissions contains significant information with regard to unforeseen developments leading to increased imports.
30. Chinese producers setting up new plants for manufacturing PAN leading to its increased supply in China thereby reducing the market opportunity to the foreign producer.
31. Good market opportunity attracted the producers cum exporters of Korea and Taiwan to export PAN in India leading to tremendous increase in Imports.
32. Exports of downstream production of product have declined, thus leading to increased availability of PAN with the foreign producers.
33. The property bubble-burst in China has impacted most in the current PAN demand leading Chinese Government to take strict regulatory measures.
34. Initially a net importer of PAN and plasticizers, China started exporting to Eurozone and other countries, give it significant excess capacity and nil demand in domestic market post-Olympics. But in light of Eurozone debt crisis, the demand of DOP in these markets declined, leading to decline in demand of PAN and plasticizers.
35. A significant impact in PAN demand has been due to floods in Thailand resulting in diversification of Chinese Inventories to other viable markets. This situation persists in light of already existing capacities with known Korean and Taiwanese.
36. One Taiwanese producer is in process of starting up its under construction facility in July 2013, comprising 1,40,000 / year PAN plant.
37. Despite no demand in its domestic market and worsening Eurozone crisis, Chinese producers are still adding on their capacities.
38. Most of the producers across China and other Asian countries are operating their plants in the region of 50%-80% of their total capacity. As such the uneconomical production has compelled the producers to clear their goods at whatever prices.
39. Taiwan's Nan Ya Plastics aims to maintain its combined PAN operating rate at below 25% capacity and China's Shandong Hongxin Chemicals combined PAN operating rate is around 40% capacity at present given the weak demand from the downstream DOP market. Under the circumstances, access to Indian market shall provide significant opportunities to these foreign producers.
40. The written submissions includes measures already taken, measures initiated and measures planned to be taken.
41. OX gives 113% of PAN output. At the same time, this is exothermic reaction which gives a lot of heat which is used in electric generation for (1) self consumption and (2) sales at high rates to Grid as well. DG should consider this aspect specifically
42. The injury to the domestic industry has been established on the basis of records maintained by the company. Further, the trend of OX and PAN prices establishes that there should be a positive delta between PAN and OX prices.
43. In fact, reduction of delta in Oct 12 onwards led to foreign producers reducing their production temporarily. However, they have once again resumed full scale production and resumed significant exports to India.

44. The allegation that post imposition of safeguard duty, duty differential in PA and plasticizer is virtually NIL which will exacerbated if the SGD on PAN continued is unsubstantiated and factually incorrect.
45. The petitioner filed written submissions and the same were even served by mail to the counsel for DOP manufacturers. In fact, counsel for DOP manufacturers has not served their submissions onto the domestic industry.
46. There is no legal requirement obliging the petitioners to provide such data prior to hearing and interested parties got adequate opportunity to comment on the written submissions. The opposing parties at the time of previous hearing had referred to data upto Dec., 2012 and never served to the petitioners prior to oral hearing.
47. The petitioners have now provided data till 2012-13 and therefore the issue of cyclicity is no longer relevant.
48. The statement is factually incorrect that imports substantially declined by about 90%, post application. On the contrary, imports have surged significantly in Jan.-March, 2013 period
49. Information confidential in nature whose confidentiality is protected under the rules cannot be disclosed to other interested parties.
50. Petitioners had provided all the information through petition itself. The domestic producer questionnaire is meant for non petitioning domestic producers.
51. Detailed written submissions are referred to and relied upon which deals with the serious injury and threat of serious injury to the domestic industry.
52. Notwithstanding, it is submitted that even as per IPMA claim, the profits have declined drastically as is evident from the graph given by the IPMA in its submissions. Further, with regard to profits as per annual report, it is clarified that (i) this includes profits from products other than Phthalic Anhydride in case of TCL and (ii) annual reports of the companies includes exports operations as well. The Director General shall consider information with regard to product under consideration alone.
53. Injury due to change in Govt policy at the least justified imposition of safeguard duty. The market situation and factors have remained the same over the years
54. Causal link has already been established in the original investigations. In any case, written submissions and petition clearly establishes causal link.
55. The obligation for liberalisation is with regard to quantum and not for period. For period, the Rules clearly state that the duty can be extended for a period of ten years.
56. The table below gives date and event of safeguard case where the Govt of India imposed safeguard duty after the present duty had ceased

<b><u>Previous case dates</u></b>	Soda ash
Date of imposition of duty by Ministry of Finance	20-04-2009
Date of expiry	19-04-2010
<b><u>Extension case</u></b>	
Date of D.G. recommendations	13-04-2010
Date of MOF notification	28-06-2010

57. The issue of public interest has already been examined by the Director General in the previous investigations and has been established that imposition of safeguard duty shall be in the public interest.

#### **H. Rejoinder by EXPORTERS**

##### **Gadiv Petrochemical:**

1. Gadiv repeats all the arguments detailed in its response to the Petition and the answers to exporter's questionnaire, and in its Written Submission.
2. The Petitioners repeated arguments that the existence of increase in imports and serious injury are not a pre- requisite condition for extending a safeguard duty contradicts the provisions of the Agreement on

Safeguards (Article 7 Section 2), and the Safeguard Duty Rules.

3. Legal dictionaries and Supreme Court rulings that the Petitioners rely on confirm that the meaning of "mutatis mutandis" is that the essential requirements apply and only some technical details need to be adapted to the different circumstances.
4. Thus, when Rule 18(3) of the Safeguards Rules applies Rules 5, 6, 7 and 11 *mutatis mutandis* on a review of a safeguard measure, it implies that increase in imports causing serious injury must be found before a safeguard measure can be extended pursuant to a review.
5. Petitioners' arguments regarding the amendment to Section 8C of Customs Tariff act 1975, is misleading as it is relevant only to the import from China and not to the imports subject to the current investigation and from Gadiv.
6. The Petitioners basing their arguments regarding increase in the imports mainly on the alleged increase during single quarter i.e Q 4, 2012- 2013 cannot establish any overall trend of increase, in particular in a volatile sector like the PAN.
7. The temporary increase in the imports during Q4 12- 13, cannot be attributed to the expiration of the Safeguard measure, since the landed import price (i.e., price inclusive of all import taxes) increased by 4% on Q 4 12-13.
8. Additionally, the import volume during Q 4 2012- 2013 was almost similar to the one that existed during Q1 12-13 (12,907), before the imposition of the Safeguard measure.
9. As per Safeguard and Anti-dumping law, data of subsequent period (starting from October 2012), should be ignored, or at least not given much significance, as developments after initiation of investigation may be influenced by such initiation.
10. When import volume of the first 3 quarters of 2011- 2012, (during which no duty existed) are compared to that of 2010-2011, there is a significant decline (by 34%).
11. In *Argentina — Footwear (EC)*, the WTO Panel held that an analysis of intervening trends of imports was indispensable in order to determine a sufficient increase in imports.
12. WTO Panels and the Appellate Body held in many cases that to establish an increase in imports a comprehensive analysis of the investigation period and several years back is must, and not limited to the most recent past.
13. The temporary increase in imports during Q 4 2012- 2013 may be attributed to the initiation of the current investigation; since Indian customers increased their purchases of imported PAN in order fill their current and future needs before the price goes up following a safeguard duty.
14. Landed price of the imports increased during Q 4 12- 13, after the expiration of the Safeguard measure is the highest during 2012- 2013 in the last 3 years, thus imports' price had no negative effect on the DI.
15. The Petitioners' argument of reducing prices because of imports is contradicted by the data within the "Injury Statement" attached to their submissions (DI increased its prices by 5.5% during Q 4 12- 13, and by almost 20% during 2012- 2013). Extension of the Safeguard duty if granted will be used for additional price increases.
16. DI's costs constantly increased during the last 3 years, and during 2012-13 are 72% higher than in 2009-10 which could be attributed either to their inefficiency or is artificial inflation of costs of sales to show injury which needs verification.
17. The profitability of the DI substantially improved during 2012- 2013. The gross profits were (59) are 66% higher than during 2011- 2012.
18. If there are any financial losses to DI, should be attributed to the increase of the prices of Ortho- Xylene, the main raw material of PAN, and to the DI's inefficiency, and have nothing to do with the imports.

19. **The Petitioners repeat their vague arguments regarding projected adjustment measures that falls completely short of what is required by for an extension of a Safeguard duty. Some of the alleged "measures" detailed by the Petitioners (recovery of Benzoic Acid, reduction of energy costs, finance costs, personnel costs), were not actually implemented and no details given how the claimed recovery of Benzoic Acid from the waste will create saving.**

I. **Rejoinder by IMPORTERS/USER INDUSTRY**

**Indian Plasticizers Manufacturers' Association(IPMA):**

1. The submissions of the Petitioners made vide the Written Submissions dated 9th May, 2013 are denied and nothing contained therein may be deemed to be admitted by the Producer unless specifically done so.
2. The Central Government provided appropriate relief in both Safeguard Investigation – I and II. In fact, after the imposition of duty in Safeguard Investigation – I, no review was sought by the Petitioners and in the case of Safeguard Investigation – II, the Petitioners themselves sought for Safeguard duty protection of one year. The Petitioners have not taken any steps to positively adjust.
3. Rule 2 of the Annexure to Safeguard Duty Rules mandates that if there are any other factors, such as dumping, causing injury to the Petitioners, such injury cannot be attributed to increased imports & final findings issued in the recently concluded parallel Anti-dumping investigation has held that dumping of the subject goods from Korea, Israel and Taiwan, caused injury to the Petitioners.
4. Appropriate remedy is available in the form of a review of the anti-dumping measures and the petitioners seeking the emergency safeguard measures is a gross misapplication of the trade remedial mechanism.
5. Although the provisions empowering the Central Government to impose Safeguard Duty are contained in Section 8B of the Customs Tariff Act, 1975, the procedure required to be followed in conducting safeguard investigations are governed by the Safeguard Duty Rules.
6. In the instant case, the Hon'ble Director General (Safeguards) has been empowered under the Safeguard Duty Rules to make a determination regarding review of safeguard duty.
7. As per the ratio of Marathwada University Vs. Seshrao Balwant Rao Chavan any levy or extension by the Central Government without adherence to the Safeguard Duty Rules is tantamount to being arbitrary and unfair.
8. As per Ashok Service Centre and Ors. v. State of Orissa and Bhalchandra Bhagwan Kalwade vs Education Officer, Z.P. And Ors "Mutatis Mutandis" merely permit application of a particular Act or Rule with necessary changes without altering the essential nature of the thing."
9. Therefore, the submission that 'mutandis mutandis' permits the ignorance of requirements of establishing increase in imports, serious injury or threat of serious injury and causal link as per Rule 5 and Rule 11 of The Safeguard Duty Rules is fallacious, erroneous, a gross misapplication of the established law.
10. As per mandate of Article 7(2) of the WTO- Agreement on Safeguards and Rule 18 of the Safeguard Duty Rules in order to conduct a review and extend the safeguard duties it is necessary to establish both: safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively
11. **There has been not an iota of evidence that there is injury or threat of injury and there is no evidence of positive adjustment by the Domestic Industry. Hence, the initiation of the review is erroneous and the extension of duty is not justified.**
12. Rule 18 of the Safeguard Duty Rules clearly provides that the provisions of Rules 5, 6, 7 and 11 shall mutatis mutandis apply in the case of review.
13. Hence, the claim of the Petitioners at page 18 of the present petition that there is no requirement of existence of either increased imports or serious injury to the domestic industry for the purposes of the present review is misconceived and liable to be dismissed.

14. Imports of subject goods declined by about 59% in recent period of 2012-13 as compared to 2010-11. Hence, there is no evidence of a recent enough, sudden enough, sharp enough, and significant enough, surge in imports as held by The Appellate Body in its Report in Argentina – Footwear
15. It is pertinent to note that in the petition filed by the Petitioners in Safeguard Investigation – II, there was no adjustment plan submitted as noted In the Final Findings in Safeguard Investigation – II that no details on efforts of positive adjustment were mandatory.
- 16. Further, the adjustment plan provided by the Petitioners provides for efforts planned to be taken and no information provided of efforts taken to facilitate positive adjustment.**
17. The imports are not per se commercially substitutable with the domestic goods and are liable to be not considered as 'like article'
18. M/s SI Group which was a part of the Domestic Industry in Safeguard Investigation –II and the parallel anti-dumping proceedings has been ignored without any justification. Further, it can be clearly seen that M/s. Asian Paints Ltd., another major domestic producer having significant domestic production and sales of the subject goods has been unjustifiably excluded.
19. Petitioner failed to submit updated data of imports and injury parameters to the interested parties within prescribed time so as enable them to file meaningful response to the issues raised. It is contrary to the precedent of Safeguard Duty investigation against imports of Soda Ash.
20. As compared to 2010-11 the imports in the period of 2012-13 have declined.
21. An increase in one quarter of 2012-13(Q-4) cannot establish that the increase in imports is sudden, sharp and significant as mandated by the law. The Petitioners have admitted the product under consideration is a cyclical product whose sales and imports vary radically from quarter to quarter. There has been no relative increase in the imports; in fact the average trend reflects a slight decline.
22. The Petitioners have mentioned the capacities in China without providing any evidence to substantiate the claim.
23. Financial Highlights(FY-2011-12)of M/s. I G Petro, states that the demand for the product is on the rise and the domestic industry has not seen any new entrant after IGPL. Further, China is a net importer of PA and is expected to continue to be so at least till 2015.
24. Further, as per the import data provided belatedly by the Petitioners the imports from China are insignificant and have never been more than 7% of the total imports into India. In fact, even in the most recent period, there are almost no imports from China into India.
25. Although the demand in the country increased by 24%, the Petitioners have made no efforts to increase or enhance their capacities to adjust and cater to the increasing demand.
26. It is also to be noted that the Petitioners have provided graphical presentations of various factors such as imports, sales, profits on a quarterly basis, whereas on an annual basis no declining trend indicating an actual injury to the Petitioners can be seen.
27. The information provided by the Petitioners clearly shows that the condition of the Petitioners has substantially improved and is not suffering any injury on account of imports of the subject goods into India.
28. the sales of the Petitioners have grown at a higher rate than the growth in demand of the subject goods.

	2009-10	2010-11	2011-12	2012-13
Imports	28098	61241	34780	44250
Petitioners	156942	174318	177729	195924
Other Indian Producers	23721	23750	30634	18150
Total Demand	208761	259309	243143	258324

Trend in Petitioners	100	111	113	125
Trend in Demand	100	124	116	124

29. The submission of the Petitioners that the market share of the subject goods has been adversely affected is baseless and frivolous.
30. The production of the Petitioners has actually increased by 13% in line with the increased demand and shows no indication of any decline.
31. the capacity utilisation of the Petitioners has actually increased by 10% and has been the highest in the injury period in the year 2012-13.

	2009-10	2010-11	2011-12	2012-13
Capacity	268110	268110	268110	268110
Production	199534	217261	215124	225261
Capacity Utilisation	74	81	80	84

32. As can be seen from the chart below, the domestic sales of the Petitioners have actually increased by 25% and have been the highest in the year 2012-13.
33. Decline in the export sales of the Petitioners cannot be raised before the Director General (Safeguards) and any attempt made to redress the same at the present forum is liable to be rejected.
34. It can be seen from the chart below, that the inventories of the Petitioners have actually declined and there has been no accumulation of stock experienced by the Petitioners.

	2009-10	2010-11	2011-12	2012-13
Stock	4948	5124	4649	4761
Trend in Stock(MT)	100	104	94	96

35. As can be seen from the chart below, the selling prices of the subjects have witnessed a substantial increase of about 66%. Further, the landed prices of the imports have also increased by 71%, which is higher than the increase in the selling prices.

	2009-10	2010-11	2011-12	2012-13
Selling Price(Rs./MT)	100	102	139	166
Landed Price (Rs./Kg)	52.39	55.51	72.41	89.78
Landed Price (Rs./Kg)	100	106	138	171

36. The profitability of the Petitioner companies has continued to significantly increase and in 2012-13, the average profitability has increased by 500%
37. The submissions of the Petitioners of plant shut-down due to large inventories is frivolous and unsubstantiated. The Sales volume and selling price of the Petitioners has substantially increased and there is no significant increase in the inventory of the Petitioners and the trend of inventory reflects a decline.
38. M/s Thirumalai Chemicals Ltd. has five streams and they routinely shut-down for change of catalyst and technical maintenance. M/s Mysore Petro is merely 5% of the total Indian production, running on old plants and also routinely reports shutdowns for technical reasons. Director General (Safeguards) ought to fully verify the records of the Company and disclose the verified data pertaining to shut-down prior to considering the same.
39. Domestic Industry has not suffered on account of surge in imports or any unforeseen circumstances but it is the change in the policy of the Government that has affected the industry as per The Annual Report of

IG Petrochemicals Ltd. for the year 2009-10. Hence, the Domestic Industry has resorted to seeking undue trade remedial protection.

40. Mysore Petro Chemicals Limited 42nd Annual Report 2011-2012 at page 4 indicated that the production was severely affected due to stoppage of PA Plant on a few occasions during June-July 2011 for change of Catalyst and further during November 2011 to mid February 2012 due to certain technical faults at Plant and adverse market conditions
41. As per Article 4.2(b) of the WTO Safeguards Agreement and Rule 11 (1) (b) of Safeguard Duty Rules a causal link must exist between the increased imports and serious injury or threat of serious injury.
42. The Rule 2 of the Annexure to the Safeguard Duty Rules & the WTO Appellate Body Report in Wheat Gluten case injury caused by other factors must be excluded from the determination of serious injury and the injury claimed by the Petitioners is attributable to dumping. Hence, the "causal link" does not exist between increased imports and serious injury.
43. The submission of the Petitioner that there is no bar on the imposition of the safeguard duty for 2 years is erroneous and frivolous. The WTO-Agreement on Safeguards provides in a safeguard review the duty can only be extended only if it is established that the continuation of the same is necessary and is reiterated by Rule 16 of the Safeguard Duty Rules.
44. The Report of the Panel in Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products concludes that conclude that the "extensions" are not distinct measures, but merely continuations in time of the definitive safeguard measures
45. Present safeguard duty in force vide Notification No. 3/ 2012-Customs (SG) dated 29th May, 2012 expired on 16th January, 2013 and there has been no final findings issued by Director General (Safeguards) in the present review recommending the extension of the duty, the question of extension of a safeguard duty which is no longer in force does not arise and the present review investigation is infructuous.
46. Under Article 7(4) of the Safeguard Agreement & Rule 18 of the Safeguard Duty Rules , it is mandated that in case the safeguard duty is imposed it is firstly reduced and the duty structure is further liberalised as compared to the earlier safeguard duty.
47. The Petitioners enjoyed safeguard duty protection for one year and seeks extension of further 2 years. Extension for a duration beyond the initial period of safeguard duty application tantamount to be more restrictive than before and therefore against the Safeguard Duty Rules & WTO-Agreement on Safeguards.
48. In the instant case an extension of the duties cannot be made applicable to any new developing countries other than Pakistan, China and Thailand as this would be beyond the scope of the original safeguard duty measure and shall tantamount to review measure being 'more restrictive' and arbitrary. Hence, the claim of the Petitioners to include imports in this regard is liable to be ignored.
49. As regards the claim of the Petitioners regarding public interest is concerned, the IPMA reiterates its submission that the extension of the safeguard duty is unfair and against public interest.
50. The Petitioners have claimed excessive confidentiality and are liable to disclose the details of adjustment and provide a reasonable non-confidential version.

J. **Findings of the DG:**

Submissions made by various interested parties and by the domestic industry have been considered in the present order. Rejoinder submissions made by the interested parties have also been considered appropriately. Submissions made by the various parties and the issues arising therefrom, to the extent considered relevant, have been dealt with at appropriate places in the findings below.

a) **The product under investigation:** The product under investigation is Phthalic Anhydride (PAN) falling under heading 29173500 of the First Schedule to the Customs Tariff Act, 1975 (CTA). Phthalic Anhydride (PAN) is a principle commercial form of Phthalic acid. It is a white crystalline solid, used to manufacture synthetic resins, which act as binders in the paint products. The primary use of PAN is a chemical intermediate in the production of plastics from vinyl chloride. Phthalate esters, which function as plasticizers are derived

from PAN. PAN has another major use in the production of polyester resins and other minor uses in the production of alkyd resins used in paints and lacquers; certain dyes, insect repellents and polyester polyols for polyurethanes. The chemical formula of PAN is C<sub>8</sub>H<sub>4</sub>O<sub>3</sub>. It is produced by the catalytic oxidation of Ortho-xylene (OX) with air or by the catalytic oxidation of naphthalene. Domestic producers use the OX route. The process entails passing OX through a reactor, which is an arrangement of tubes of clay or porcelain rings coated with a catalyst. The oxidation process of OX coupled with post reactor polishing and flaking yields PAN in the form of white or pale yellow crystals. No interested party raised any issue with regard to the product under investigation. Therefore, it is confirmed that the product under investigation is "Phthalic Anhydride" falling under heading No 2917.3500 of schedule I of the Customs Tariff Act, 1975. Further, no differences in the production process, characteristics or end-uses between imported PAN and domestically produced PAN were raised by any of the interested parties during the course of this investigation. Therefore, it is also held that domestically produced PAN falls under the ambit of like or directly competitive in all respects to the imported product under investigation and that the domestically produced PAN is a like article to the imported PAN within the meaning of Rule 2(e) of Safeguard Duty Rules, 1997.

**b) Domestic Industry:** There are five domestic producers in India who manufacture PAN. Three domestic producers namely - 1) Thirumalai Chemicals Limited, Ranipet, Tamilnadu 2) IG Petrochemicals Ltd, Talaja, Maharashtra, 3) Mysore Petrochemicals Ltd, Raichur, Karnataka have joined the petition. The two producers namely, M/s Asian Paints Ltd and M/s S I Group India Ltd, have not joined the petition. Share of the three applicants varied from 89% to 85% during the period 2009-10 to 2012-13. Thus, the collective output of the applicant producers constituted a major share of the total production of PAN in India. Further no claim has been made by the interested parties against the applicants being the domestic industry. Therefore, it is held that the three applicant domestic producers constitute and represent the domestic industry(DI) within the meaning of required and defined under Sec 8B(6)(b)(iii) of the Safeguard Duty Rules 1997.

**c) Period of Investigation (POI):** The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard and the relevant Article XIX of GATT do not specifically define what the Period of Investigation should be. From several case laws on safeguard measures, it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguard and Art. XIX of GATT provides specific guidelines on the period of investigation except the fact that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury. In the notice of initiation, import data from 2009-10 up to Q1 of 2012-13 had been considered. Now, the import data has been updated till March 2013. The period of investigation has, therefore, been taken from 2009-10 to 2012-13. Further, a reasonably longer period has been considered to even out the effect of temporary fluctuations and seasonal effects, if any.

**d) Source of data:** The import data up to Jan, 2013 has been taken from DGCIS. Import data for the months of Feb and March, 2013 has been taken from IBIS, as furnished by the applicant. The data on various economic parameters submitted by the domestic industry in their petition till August 2012 has been verified by this directorate to the extent possible and the verified data has been taken into consideration for injury analysis. The data from Sep 2012 till March 2013 has been compiled and taken from the copies of the ERIs of all the applicant units furnished by the consultant to the Directorate.

**e) Increased Imports:** Phthalic Anhydride is imported into India from a number of countries, and primarily from the Republic of Korea, Israel, Russia and Taiwan. The quantum of imports of Phthalic Anhydride during 2009-10 to 2012-13 remained as under:

Financial Year	Total Imports (MT)	Domestic Production (MT)
2009-10	28098	199534
2010-11	61241	217261
2011-12	38894	215124
2012-13	43420	225262

( Source : DGCIS upto Jan 13 and IBIS for Feb & March 13 )

Imports have increased to 43420 MT in 2012-13 from 38894 MT in 2011-12. Further domestic production has increased to 225262 MT in 2012-13 from 215124 MT in 2011-12. Domestic production has therefore, increased by 5%.

f) **Market Share:** The market share of the domestic industry in total production and domestic consumption of the product in question is analyzed in the table below-

Description	2009-10	2010-11	2011-12	2012-13
Imports (MT)	28098	61241	38894	43420
Production by DI (MT)	199534	217261	215124	225262
Production by others (MT)	23721	32023	29099	29412
Total Quantity available (MT)	251353	310525	283117	298094
Share of Imports (%)	11	20	14	15
Share of Domestic production (%)	89	80	86	85
Domestic sales by domestic Industry (MT)	156942	174318	177730	196115
Sale by others (MT)	23721	23750	30634	29271
Total demand/consumption	208761	259309	247258	268806
Market share of imports (%)	13	24	16	16
Market share of domestic industry(%)	75	67	72	73
Market share of others	12	9	12	11

Share of imports in total quantity available has slightly increased to 15% in 2012-13 from 14% in the year 2011-12 which is insignificant. **Market share of imports has remained at 16% in total demand/consumption during 2011-12 and 2012-13. Further, market share of domestic industry in total demand/consumption has increased from 72% to 73% whereas share of others has come down from 12% to 11% during the corresponding period.**

Year	Imports (MT)	Domestic Sales by Industry (MT)	Sale of other producers(MT)	Consumption in India (MT)	Market share of DI
2009-10	28098	156942	23720	208760	75%
2010-11	61241	174318	23752	259311	67%
2011-12	38894	177730	30636	247260	72%
2012-13	43420	196115	29271	268806	73%

The market share of the DI has increased to 73% in 2012-13 from 72% in 2011-12. Domestic sales of the applicants have also risen to 196115 MT in 2012-13 from 177730 MT in 2011-12.

g) **Production:** The statistics relating to the production pertaining to the domestic industry is shown in the table below. The domestic production has fallen from 57661 MT in Quarter 3 (2012-13) and to 52425 MT in Q4 (2012-13).

h) **Capacity Utilisation:** Capacity utilization of the domestic industry has declined in the most recent period, from 86% in Q3 of 2012-13 to 78% in Q4 of 2012-13. The statistics relating to capacity utilization pertaining to the domestic industry is shown below.

YEAR	PRODUCTION (MT)	INSTALLED CAPACITY(MT)	CAPACITY UTILISATION(%)	Inventory (MT)
2009-10	199534	268110	74	4530
2010-11	217261	268110	81	5718
2011-12	215124	268110	80	3579

2012-13	225262	268110	84	5942
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Capacity utilization has increased to 84% in 2012-13 from 80% in 2011-12. Inventory has slightly increased to 5942 MT in 2012-13 from 3579 MT in 2011-12.

i) **Inventories:** The table above depicts the inventory position which has slightly increased to 5942 MT in 2012-13 from 3579 MT in 2011-12.

j) **Domestic sale:** The table below contains sales by domestic industry and total export.

Year	Domestic Sale (MT)	Export (MT)
2009-10	156942	43426
2010-11	174318	41756
2011-12	177730	40254
2012-13	196115	26324

(i) The domestic sales have increased to 196115 MT in 2012-13 from 177730 MT in the preceding year.

(ii) The exports have slightly decreased to 26324 MT in 2012-13 from 40254 MT in the preceding year.

k) **Employment:** There is no significant change in the level of employment and in productivity over the injury period. It has shown normal growth over the period. Petitioner submits that these parameters are dependent on a number of other parameters and not reflective of the impact of imports on the domestic industry.

l) **Profit & Loss(Cash Profit):** The profitability of the domestic industry has steeply deteriorated to such a situation that the domestic industry is now suffering financial losses. This is evident from the table below:-

Profit/loss	Indexed
Financial Year	Profitability
2009-10	100
2010-11	-39
2011-12	-177
2012-13	-59

There has been a decline in loss suffered in 2012-13 which has come down to -59 (indexed) when compared to the preceding year 2011-12, when there has been a loss of -177 (indexed).

m) **Adjustment Plan:** As this is a review case seeking extension/continuation of safeguard duty, the question of adjustment plan is of vital importance in this case. Rule 18(1) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 deals with review safeguard investigation. Rule 18(1) and 18(1)(i) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 is reproduced below –

#### 18. Review

(1) The Director General shall, from time to time, review the need for continued imposition of the safeguard duty and shall, if he is satisfied on the basis of information received to him that,

(i) safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of duty.

(ii) there is no justification for the continued imposition of such duty; recommend to the central Government for its withdrawal:

A close study of this provision reveals that the incumbent domestic industry has to produce evidence of adjusting positively to the Director General to enable him/her to recommend for the continued imposition of duty. Further, Rule 16(1) of Safeguard Duty Rules *ibid*, states that the duty levied under rule 12 shall be only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate positive adjustment. This means that the domestic industry has to commence positive adjustment in line with availment of protection through safeguard duty. The applicants were categorically asked to submit detailed evidence of the positive adjustment steps undertaken by them since the imposition of safeguard duty on the subject product with effect from 17<sup>th</sup> Jan, 2012, prior to initiation of this investigation. However, the consultants, vide their reply dated 26<sup>th</sup> Sep, 2012, merely furnished the details of the adjustment plans proposed by the Domestic Industry in near future. Meanwhile, during onsite verification of the three units of the domestic industry, conducted as per orders by the competent authority, the domestic industry were especially asked to furnish documentary evidence of positive adjustment steps undertaken by the unit as per the provisions of Rule 18(1)(i) of Safeguard Duty Rules, 1997. However, none of the units verified, furnished any such evidence. Initiation of safeguard investigations were ordered ruling that the question of adjustment plan will be considered at the time of passing the review order.

Now, since the question of submitting evidence of positive adjustment plan is of vital importance in this case, a view regarding the contents of letter dated 26<sup>th</sup> Sep, 2012 and post PH submissions pertaining to adjustment plans by the domestic industry is required to be taken at this juncture. As is evident on perusal of the contents of the letter dated 26<sup>th</sup> Sep, 2012 and post PH submissions pertaining to adjustment plan, both these letters talk of only futuristic plans and proposals for future adjustments and nowhere dwell upon the details of positive adjustment steps undertaken by them since the imposition of safeguard duty on the subject product from 17<sup>th</sup> Jan, 2012. In fact, the written submissions post PH by the domestic industry talk of "Some steps have already been taken" without adducing any evidence as to what specific steps they have already undertaken. The letters referred above mostly mention the proposal which are proposed when M/s IG Petrochemicals will commission their third Phthalic Anhydride Plant. In fact, the consultant is requesting for extension of safeguard duty, vide letter dated 26<sup>th</sup> Sep, 2012 as well as post PH written submissions pertaining to adjustment plan, so that the domestic industry will get some time to get prepared to face the international competition implying thereby that they are yet to commence steps for positive adjustment. Further, the domestic industry has not been able to control/contain their cost of sales as a first step towards making themselves competitive. The cost of sales(indexed) has continuously risen from 100 per MT in 2009-10 to 110 per MT in 2010-11, to 148 per MT in 2011-12 and further to 172 per MT in 2012-13. Therefore, the domestic industry seem to have failed in this very important aspect towards making themselves competitive. The consultant for domestic industry have themselves emphasized in their written submissions post PH that as per Section 8B(4) of CTA, 1975 there are only two conditions which need to be fulfilled while extending the period of imposition of safeguard duty – (a) Adjustment Plan (b) It is necessary to extend safeguard duty. According to them, there are no other requirements prescribed in the law for extension of period of imposition of safeguard duty. This submission makes the question of producing evidence of positive adjustment all the more important, which the domestic industry have failed to comply.

#### **K. Conclusion and recommendation:**

In view of the findings above, it is concluded that the domestic industry have failed to adduce any evidence of positive adjustment steps undertaken by them since the imposition of the previous safeguard duty on Phthalic Anhydride with effect from 17th January, 2012 and are merely seeking extension of safeguard duty on the basis of futuristic/proposed adjustment plans without any concrete measure in place. Slight injury to them due to increased imports and other safeguard parameters, only in the last quarter of 2012-13, statedly due to expiry of the safeguard duty wef 16<sup>th</sup> January, 2013, is infact the result of their failure to take any concrete adjustment steps directed towards reduction of cost of sales/production and similar other measures to cut overheads/costs, during the period of one year when they were protected by safeguard duty. Had such steps been taken effectively, they would have been able to successfully thwart any possibility of increased imports after expiry of such duty, due to their enhanced competitiveness, lower costs and consequential competitive sales price.

As the domestic industry have failed to comply with the requirement pertaining to production of concrete evidence of positive steps undertaken, as prescribed under Rule 18(1)(i) of Safeguard Rules *ibid*, in this case, there is no justification for the continued imposition of safeguard duty and accordingly, no safeguard duty is recommended in this case.

**(G S Sarna)**  
**Director General.**