

DIRECTORATE GENERAL (SAFEGUARDS)
Customs & Central Excise
Department of Revenue, Ministry of Finance
BVS Sadan, Bhai Vir Singh Marg,
Gole Market, New Delhi-110001

NOTIFICATION

Subject:- Safeguard investigation concerning imports of Methyl Acetoacetate-Final Findings.

G S R D- 22011/8/2013 dated 8th October, 2013 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. Laxmi Organic Industries Limited, Mumbai through their consultant M/s ELP Advocates & Solicitors for imposition of Safeguard Duty on imports of Methyl Acetoacetate (hereinafter referred to as MAA) into India to protect the domestic producers of Methyl Acetoacetate against serious injury/threat of serious injury caused by the increased imports of Methyl Acetoacetate 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 plants of the domestic producers 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 Rule 5 were satisfied, the Notice of Initiation of Safeguard investigation concerning imports of Methyl Acetoacetate into India was issued under Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 6th June, 2013 and was published in the Gazette of India Extraordinary on the same day.
3. A copy of the Notice of Initiation dated 6th June, 2013 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:

A. Domestic Producers

(i) M/s Laxmi Organic Industries Limited, Chandramukhi, 3rd floor, Nariman Point, Mumbai-400021.

B. Importers/Users:-

(i) C J Shah, 105, 10th floor, Bajaj Bhawan, Nariman Point, Mumbai-400021;

- (ii) Hazel, Embassy Centre, Jamnalal Bajaj Road, Nariman Point, Mumbai-400021;
- (iii) Sarna Chemicals Pvt Ltd, GIDC Vapi, Pardi, Valsad, Gujarat-396185;
- (iv) SM Chemicals, 2-2-1137/5/B, New Nallakunta, Opposite Vijaya Apartments, Hyderabad, AP-500044;
- (v) Arch Pharmalabs Ltd, "H" wing, 4th Floor, Tex Centre, Off Saki Vihar Road, Chandivali, Andheri(E), Mumbai-400072;
- (vi) Aurobindo Pharma Ltd, Plot # 2, Maitri Vihar, Ameerpet, Hyderabad -500038, AP;
- (vii) Colourtex Industries Ltd, Survey No 91, Opp. Navin Fluorine Industries, Bhestan-395023, Surat, Gujarat;
- (viii) Kailash Chemicals, 191, Phase I, GIDC Estate, Vatva, GIDC, Ahmedabad-382445;
- (ix) Dia Chemie, 2nd floor, 56/58, Garibdas Street, Vadgadi, Mumbai-400003;
- (x) Nutan Die Chem, Plot No 2428, GIDC-Sachin, Distt Surat-394230;
- (xi) Polygon Chemicals, Plot No 337, GIDC Industrial Estate, Odhav, Ahmedabad-382415;
- (xii) Prima Chemicals, Plot No 337, GIDC Industrial Estate, Odhav, Ahmedabad-382415.

C. Exporters:-

- (i) Qingdao Double Peach Speciality Chemicals (Group) Co Ltd, 28, Hangzhou Road, Qingdao, China PC. 266031
- (ii) Zhangjiang Hope Chemicals Co Ltd, Nasha Town, Zhangjiagang City, China.
- (iii) Nantong Acetic Acid Chemical Co Ltd, No 968, Jiangshan Road, Economic & Technological Development District, Nantong City, JiangsuProvince, China.
- (iv) Wang Long Group Co Ltd, Wanglong Industrial Zone, Yuyao 315476 Ningbo, China.
- (v) Diacel, 1-1, Shinko-cho, Myoko-shi, Niigata 944-8550, Japan.
- (vi) Mitsuboshi, 1818, Ohaza-Nishinoshima Komaki 485-0077 Japan
- (vii) Lonza CH-3930 Visp, Switzerland
- (viii) Eastman PO Box 431 Kingsport, Tennessee 37662 USA

D. Exporting Nations:-

- (i) The Embassy of United States of America, Shantipath, Chanakyapuri, New Delhi-110021;
- (ii) Trade Representation of the Russian Federation, Block 50-E, Nyay Marg, Chanakyapuri, New Delhi-110021.
- (iii) The Embassy of People's Republic of China, 50-D, Shantipath, Chanakyapuri, New Delhi-110021.
- (iv) Embassy of Switzerland, Nyay Marg, Chanakyapuri, New Delhi-110021
- (v) The Trade & Economic Section, Delegation of European Union to India, 65, Golf Links, New Delhi-110003

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. Responses were received from the following parties:-

- a) M/s Eastman Chemical Company through their Advocates AZB & Partners.
- b) M/s Nantong Acetic Acid Chemical Co Ltd, China PR through M/s WTC & Advocates.
- c) M/s Xinhua Pharmaceuticals (Shouguang) Co Ltd China PR through M/s WTC & Advocates.
- d) M/s Jiangsu Tiancheng Biochemical Products Co Ltd, China PR through M/s WTC & Advocates.
- e) M/s Qingdao Double-Peach Speciality Chemical (Group) Co Ltd through WTC & Advocates.
- f) M/s C J Shah & Co through M/s TPM Consultants
- g) M/s Prima Chemicals through M/s TPM Consultants
- h) M/s Polygon Chemicals through M/s TPM Consultants
- i) M/s Aurobindo Pharma Ltd.

5. (A) Requests to consider them as Interested Parties were received from the following parties:-

- a. Importer: M/S Nutan Dye Chem, Surat (Gujarat)
- b. Importer : M/s Polygon Chemicals, Ahmedabad
- c. Importer: M/s Prima Chemicals, Ahmedabad
- d. Exporting Nation: Trade and Economic Section, Delegation of the European Union to India, 65 Golf Links, New Delhi-110003
- e. Exporting Nation : Trade Representation of the Russian Federation in the Republic of India and Ministry of Economic Development of Russia, New Delhi.

All the requests were accepted.

(B) The under mentioned parties sought extension of time for submission of a detailed reply in terms of Rule 6(4) of Safeguard Duty Rules, 1997:-

- a. M/s Polygon and Prima Chemicals
- b. M/s C J Shah & Co
- c. M/s Lonza India Pvt Ltd
- d. M/s Aurobindo Pharma Ltd

Extension of time as sought in each case was allowed.

6. 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.

II. Views of the Interested Parties (Post-Initiation) :

7. Responses to the Notice of Initiation were received from importers/exporters/exporting nations, as given below:

1. Letter dated 17th June, 2013 from Taipei Economic and Cultural Centre, New Delhi
2. M/S Sojitz India Pvt Ltd, New Delhi
3. M/S Lonza India Pvt Ltd, Hyderabad
4. M/s Nutan Dye Chem, Surat

5. M/s Aurobindo Pharma Ltd, Hyderabad
6. M/S Eastman Chemical Company, Tennessee
7. M/s Polygon Chemicals, Ahmedabad
8. M/S C J Shah & Co, Mumbai
9. M/S Prima Chemicals, Ahmedabad
10. M/S Qingdao Double-Peach Specialty Chemicals(Group) Co.,Ltd, China PR.
11. M/S Nantong Acetic Acid Chemicals Co., Ltd, China PR.
12. M/S Jiangsu Tiancheng Biochemical Products Co., Ltd, China PR
13. M/S Xinhua Pharmaceutical(shouguang) Co.,Ltd, China PR
14. M/S Laxmi Organic Industries Ltd, (Domestic Industry)

The issues raised are not being reproduced for the sake of brevity, but have been discussed at appropriate places in making determinations.

III. Public Hearing:-

8. A public hearing was held on 26th August, 2013, notice for which was sent on 5th August, 2013 to the Interested Parties. In the said Public Hearing, Domestic Industry, i.e., M/s Laxmi Organic Industries Limited as well as the following Interested Parties attended:-

1. Exporters from China PR represented by M/s WTC Consultants & Advocates as below:-
 - a. China Petroleum and Chemical Industry Federation.
 - b. Qingdao Double Peach Speciality Chemicals (group) Co. Ltd.
 - c. Nantong Acetic Acid Chemical Co. Ltd.
 - d. Jiangsu Tiancheng Biochemical Products Co. Ltd.
 - e. Xinhua Pharmaceutical(Shougang) Co. Ltd.
2. Importers/Users from India represented by M/s TPM Advocates, as below:
 - a. C.J. Shah, Mumbai,
 - b. Prima Chemicals, Ahmedabad,
 - c. Aurbindo Pharma Ltd., Hyderabad
 - d. Polygon Chemicals, Ahmedabad
3. Importer/User in India- M/s Nutan Dye Chem, represented by Mr. P. K. Shah.
4. Exporter from the USA- M/s Eastman Chemical & Co., represented by M/s AZB & Partners.

9. 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. In the course of the Public Hearing in this matter on 26th August, 2013, the Domestic Industry made oral submissions followed by a written submission. 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. Copies of written submissions filed by the interested parties were made available to all other Interested Parties. Interested Parties were also given an opportunity to file rejoinders, if any, to the written submissions of other Interested Parties. The delay in filing written submissions/updated injury data on the part of M/s WTC Consultants and M/s ELP Advocates, respectively, were condoned after considering the reasons cited by them.

10. Trade & Economic Section, Delegation of European Union to India sent a confirmation for participation in the Public Hearing and making a submission. However, no representative from their side either participated in Public Hearing or made any written submissions.

11. Accordingly, all views expressed by the Interested Parties in the written submissions post-initiation as well as post-hearing were examined and have been taken into account in making appropriate determination.

IV. VIEWS OF INTERESTED PARTIES (Post-Hearing)

Views of Domestic industry through M/s ELP Advocates & Solicitors

12. The Domestic Industry submitted as follow:-

(a) Increased imports of subject goods into India:

(i) That they differ with the views of WTO Appellate Body in Argentina-Footwear case so far as the examination of trend in imports over a five year period is concerned. The use of the present tense of the verb phrase "is being imported" in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 indicates that it is necessary to examine recent imports and not simply trends in imports during the past five years.

(ii) Imports have increased in absolute terms as well as in relation to production, sales and demand during the injury period. On end point to end point basis, the imports have increased by 28%, whereas on annual basis the imports have increased by 42% in 2012-13.

(iii) From Q4 2010-11 onwards, there is sudden, sharp and significant increase in imports.

(iv) An analysis of imports from 2009-10 when the domestic industry was not in operation is not correct. The DI submitted that the Domestic Industry commenced its operations starting from May-2010 and is the sole producer of the subject goods in India. Further, the erstwhile domestic producer M/s. Clariant shut down its operations in 2009-10 and as such there was no Domestic Industry in 2009-10. Hence, an analysis of imports from 2009-10 when the Domestic Industry was not operation is not only incorrect and misrepresentative but would lead to a serious distortion in the analysis of the imports into India. Further, the level of imports in 2012-13 has substantially increased, despite the presence of the Domestic

Industry, which clearly establishes that there is a sudden, sharp and significant increase in imports into India.

(b) Unforeseen Circumstances:

The DI has submitted the following reasons, which as per their understanding, constitute the unforeseen circumstances in the present case:-

(i) Unexpected drop in consumption in European Markets:

The European markets have reported an unexpected drop in demand as a result of the massive capacities of the subject goods in foreign countries and the foreign producers have resorted to increased exports to India.

(ii) Additional Capacities in China PR:

There has been a sudden increase in Chinese capacities leading to further diversion of imports to India. In fact, from the non-confidential Exporters Questionnaires filed, it is clearly seen that M/s Xinhua Pharmaceutical (Shougang) Co. Ltd., China PR and M/s Qingdao Double Peach Specialty Chemicals (Group) Co. Ltd. have recently set up plants in 2012-13 and have admitted to having made exports to India. Further, another producer from China, viz., M/s Ningbo Wanglong Tech Co. Ltd., has stated that the company is looking forward to start exporting to India. In fact, according to market intelligence, it appears that the installed capacity of M/s Ningbo Wanglong Tech Co. Ltd. is about eight times the installed capacity of the Domestic Industry. The above admissions clearly indicate that there is bound to be continued incessant imports to India at increasing volumes.

(iii) Unforeseeably low pricing of imports despite increase in raw material Costs:

The raw material prices were increasing throughout the course of the Period of Investigation. However, despite the global increase in raw material prices, the import prices increased only marginally. As India is a price attractive market, the low priced imports were well received by the consumers. Hence, the low priced imports led to an increased import into India.

(c) Serious Injury:

Despite the global increase in raw material prices, the import prices increased only marginally.

- (i) Production of domestic industry significantly declined in 2012-13.
- (ii) The capacity utilization of the domestic industry significantly declined in 2012-13 to 41%.
- (iii) Domestic sales have declined steeply in 2012-13 to 2017 MT.
- (iv) Productivity of the domestic industry increased upto 2011-12 and thereafter declined drastically.

- (v) The demand of the subject goods has increased over the period of investigation by 24%. However, the sales of the domestic industry have increased only by 16%, whereas the imports have increased by 28%. Increase in imports is at a greater rate than the increase in demand.
- (vi) Market share of the domestic industry has been severely impacted by the increased imports. It has declined in recent period.
- (vii) Domestic Industry has suffered significant losses during the financial years 2011-12 and 2012-13.

13. It can be clearly seen that although the cost of sales has increased by 18% in the period of investigation, in line with the increase in raw material prices, the selling prices of the Domestic Industry has increased only by 8% to compete with the landed price of the imports. In fact, the Domestic Industry is being forced to sell at the prices offered by the imports. Hence, although there is minimal under-cutting, there is significant under-selling and the Domestic Industry is selling even below the cost of sales.

(d) Threat of Serious Injury:

14. It is submitted that there is a clear and imminent danger of serious injury to the Domestic Industry on account of the continued imports of the subject goods into India. In fact, the Domestic Industry has received a communication from a foreign producer offering it to shut-down their domestic production to eliminate the competition created by the Domestic Industry and facilitate imports into the country.

15. Further, the market share of the Domestic Industry has been captured by the increased imports of the subject goods. In light of the unabated imports of the subject goods, a further decline in the market share of the Domestic Industry is threatened as well. The resultant serious injury is bound to impact the Domestic Industry severely.

16. It is also pertinent to note that new capacities have been installed in China PR and there is significant idle capacity in EU and US. While present imports continue to cause serious injury to the Domestic Industry, the potential for further production and exports from these countries is bound to lead to continued injury to the Domestic Industry.

17. Hence, there is a clear and imminent danger of serious injury to the domestic industry on account of continued imports of the subject goods into India.

(e) Causal Link:

18. There is a direct causal link between the increased imports and the serious injury to the domestic industry. It is submitted that the subject goods are sold in direct competition with the imports. The landed price of imports is significantly lower than reasonable costs and the selling prices of the Domestic Industry are determined by the import prices. Consequently, production, capacity utilization, sales, profits, return on investment and cash flow is declining due to continued presence of low price imports.

19. Given the low prices offered by the foreign producers, the imports are surging further despite low prices offered by the Domestic Industry. The Domestic Industry is forced to reduce its prices at lower than cost of sales. As a result of the increased

imports, there is a substantial increase in the market share of imports and reduction in market share of the Domestic Industry. Decline in market share of the Domestic Industry has adversely impacted the production and capacity utilization of the Domestic Industry. It is thus evident that injury to the Domestic Industry has been caused by the increased imports.

(f) Adjustment Plan:

20. Domestic Industry has submitted an adjustment plan detailing the efforts planned to be taken to make a positive adjustment to import competition, which the domestic industry plans to implement over a period of 2-3 years.

(g) Public Interest:

21. In the factual matrix of the case at hand, the Domestic Industry has made significant investments and set-up the new production facility in Mahad, Maharashtra to domestically cater to the growing Indian demand and has generated employment in India. The Domestic Industry is at a nascent stage and requires immediate relief to prevent deterioration due to aggressive marketing and low priced imports by foreign producers as India is a price attractive market.

22. Hence, it is in larger public interest to impose safeguard duty on the imports of the subject goods into India and afford immediate protection to the nascent Domestic Industry and protect the growth and direct and indirect employment opportunities created by the Domestic Industry.

Views of Exporting Nations:

23. A confirmation from Trade & Economic Section, Delegation of European Union to India for participation in the Public Hearing and making a submission was received. However, no representative from their side either participated in Public Hearing or made any written submissions.

Views of Exporters:

M/s Eastman Chemical Company filed through M/s AZB & Partners

24. M/s AZB & Partners vide their letter dated 3rd Sep, 2013 requested that their submissions vide letter dated 12th July, 2013 may be taken on record as their post-public hearing submissions also and, accordingly, the brief of the submissions is as under-

- (a) The domestic industry has performed remarkably well within only three years of entering Indian MAA market and intends to gain a competitive advantage from Safeguards.
- (b) There are no unforeseen circumstances responsible for the increase of imports.
- (c) Increased imports must be a result of unforeseen developments as per decisions of WTO Appellate Body in US-Lamb case.

- (d) The Petition and the initiation notice are completely silent on the matter of any 'unforeseen circumstances' that may have led to the alleged increase in imports of MAA into India.
- (e) That the foreign producers are export oriented can hardly be termed as unforeseen circumstances.
- (f) In accordance with the ruling of WTO Appellate Body in Argentina-Footwear case, the increase in imports is not recent, sudden, sharp and significant enough both quantitatively and qualitatively to cause or threaten to cause "serious injury".
- (g) Increase in imports must be evident both in end-point-to-end-point comparison and in an analysis of intervening trends over the period.
- (h) Imports have decreased by 40% within a short span of six months, i.e., between second and fourth quarter of 2012-13.
- (i) The petitioner is suffering neither serious injury nor any threat of serious injury. The petitioner fared well all through 2010-11 and 2011-12.
- (j) Since imports of MAA into India are showing a perceptible declining trend beginning the last quarter of the POI and the DI market share is improving, the claim that the DI is suffering injury is entirely misplaced.
- (k) Petitioner have made significant profits during the year 2010-11 and 2011-12.
- (l) Petitioner's claim on reduced profitability may be on account of its losses in the production of other Diketene derivatives or products.
- (m) Petitioner's capacity utilization is consistent with its having been a recent market entrant. Capturing 25% of the market in just three years is a remarkable achievement.
- (n) Petitioner's production has improved in the most recent quarter of 2012-13 i.e. quarter 4.
- (o) A genuine and substantial causal relationship between the imports and the alleged injury suffered by the petitioner is lacking.
- (p) Injury to DI, if any, may be on account of several factors distinct from increase in imports, none of which may be attributed to injury due to increased imports.
- (q) The injury to the DI is on its own account and cannot be attributed to imports.
- (r) The safeguard case is not in public interest as the Petitioner is the sole producer and imposition of safeguard duty would place them in a monopoly position, with the potential for extracting monopoly profits from the Indian customers that use MAA for the production of downstream products.

25. Views of China Petroleum and Chemical Industry Federation, Jiangsu Tiancheng Biochemical Products Co. Ltd, Nantong Acetic Acid Chemical Co. Ltd, Qingdao Double-Peach Speciality Chemicals (Group) Co. Ltd, Xinhua Pharmaceutical (Shouguang) Co. Ltd, all from China PR filed through World Trade Consultants & Advocates

- (a) There is no examination of the sufficiency of evidence as prescribed under Rule 5(3) of Safeguard Duty Rules, 1997.
- (b) Domestic Industry has not filed the Questionnaire for Domestic Producers and hence failed to cooperate with the Investigating Authority.
- (c) The application does not contain any evidence on unforeseen developments.
- (d) No viable adjustment plan has been provided by the applicant. No technical details regarding adjustment plan have been provided.
- (e) DGCIS data, which is considered to be the most authentic source of import statistics has not been relied upon in this case.

- (f) There is no surge in imports in the recent past either in absolute or relative terms.
- (g) Claim of the domestic industry that the prices of imports of the subject goods have decreased is totally incorrect and erroneous.
- (h) There is no accumulation of inventories.
- (i) Attributing losses to the domestic industry to imports is totally incorrect. In fact, losses have accrued due to other factors like purchase of an obsolete plant from another company.
- (j) There is absence of causal link between surge in imports and serious injury to the domestic industry.
- (k) The applicant is in expansion mode and wants to monopolise the market by eliminating imports into India.
- (l) The petition did not clarify whether the safeguard measures to the product under consideration would be in the public interest.
- (m) There is absolutely no reason for considering provisional safeguard measures as no critical circumstances exist in this case.

Views of Importers/User Industry

26. M/s Aurobindo Pharma, M/s C J Shah & Co, M/s Nutan Dyechem, M/s Prima Chemicals and M/s Polygon Chemicals through M/s TPM Consultants

- (a) M/s Laxmi Organics ventured into the product knowing very well that Clariant was not performing well in the product.
- (b) There should be evidence in support of unforeseen development claimed by the petitioner. In the instant case, the domestic industry has given no evidence at all in support of unforeseen development claimed by them.
- (c) There is no price undercutting as the petitioner is selling at prices matching the import prices.
- (d) Director General, Safeguards has invariably considered at least three complete years' data in past investigations.
- (e) There is no evidence of increased imports. The domestic industry has not established serious injury. Period of data collection suffers from lot of infirmities.
- (f) The petitioner has discarded most authentic Govt of India data and adopted secondary source data. DGCIS data should have been taken as the same is readily available. Further, even where the importers have used a classification other than the classification dedicated for the product in question, DGCIS reports the correct classification/dedicated classification.
- (g) There is a clear seasonality in the product. Import volumes are higher in Q 1 and Q 2 and lower in Q3 and Q4. In the first two quarters, imports are higher because of lower production of MAA by DI and imports are lower in subsequent two quarters because of higher production by DI.
- (h) Detailed information regarding capacity of Diketene, its consumption pattern and market price etc. should be sought from the petitioner.
- (i) The petitioner is not in a position to meet demand of the product in the country.
- (j) Production, sales, capacity utilization and market share of the company have improved in Q4, 2012-13. Inventory has shown a declining trend in the most recent period. Therefore, there is no serious injury to the domestic industry.
- (k) Imposition of safeguard duty on the product under consideration is not in public interest. Pyrazolone industry which uses MAA as raw material is already undergoing serious injury and anti dumping duty has been imposed on the

imports of Pyrazolone. By imposition of safeguard duty on MAA, the Pyrazolone industry would suffer further injury which shall not be in the public/consumer interest.

- (l) Petitioner has claimed excessive confidentiality on the adjustment plan in their application.
- (m) The steps listed by the petitioner do not constitute viable adjustment plan.

V. Rejoinder by Domestic industry

27. Rejoinder submission by M/s ELP Advocates & Solicitors on behalf of Domestic Industry

- (a) The claim of Interested Parties regarding insufficiency of evidence is without factual basis as Director General (Safeguards) conducted a complete verification of data with the excise records and other relevant records through on-site visit prior to the initiation notice.
- (b) The contention of Interested Parties that there is no actual increase in price of raw materials without requisite increase in import price is wrong as in this case it is not so and in fact import prices have not increased in proportion to the increased raw material prices.
- (c) While there is a substantial increase in the market share of the imports, the market share of the domestic industry has come down to merely 28% in the last year. Despite lowering prices, the domestic industry has been unable to compete with the abysmally low prices of the imports whereby production has come down.
- (d) As regards the contention of the Interested Parties that the investment of the domestic industry cannot be considered an unforeseen development and that Laxmi Organics ventured into a product knowing very well that the previous producer was not performing well, it is stated that the investment has to be considered in conjunction with various other unforeseen developments like low import prices, a downturn in overseas markets and additional capacities in China as all these factors are intrinsically linked.
- (e) The contention of Interested Parties that there is no noticeable accumulation of inventories of DI is wrong. Inventories of the subject goods have steadily increased and the apparently lower inventories are attributable to the increased frequency and duration of forced shut-downs faced by the DI leading to lower production.
- (f) The contention of Interested Parties that with increased sales the losses of the DI have also increased indicates that there are several other factors that are affecting the profitability, is without basis as the DI is being forced to sell at loss making prices. Therefore, it is obvious that the losses of the DI have increased despite the increase in the sales in 2011-12.
- (g) The Interested Parties have tried to differentiate between the final findings of DOP and PAN and the present investigation by claiming that there was sufficient evidence provided in the two final findings whereas there has been no evidence provided in the present investigation to substantiate the claim of the DI. This is totally wrong. The DI has relied upon ICIS reports as well as Chemistry World reports regarding unexpected drop in EU market consumption. The DI has relied upon the Exporters Questionnaire responses while specifying precisely as to which producers have installed additional capacities of the product in China PR. Further, DI has relied upon a comparison between raw material prices and the

prices of PUC imports into India for proving low prices of imports as unforeseen development.

- (h) Some Interested Parties have averred that the low prices of imports could not be classified as an unforeseen development because low import prices while costs increase is a situation of price suppression/depression which are injury parameters and not unforeseen developments. It is baseless. Merely because a parameter is relevant for injury analysis does not mean it cannot be an unforeseen development. Price depression/suppression as economic criteria are relevant for this very reason. They are indicative of possible reasons for a sudden surge in import quantity. It is widely known economic principle that consumers demand will increase in inverse proportion to price. Further, it is not for the DI to predict the pricing policies of the exporters that might have led to such low priced imports, which continue to remain an unforeseen development.
- (i) Interested Parties have contended that fluctuation in raw material prices have caused injury to the DI and the DI is able to sell at prices that match the import prices whereby there is no undercutting or injury. Both these contentions are refuted. The estimation provided by the Interested Parties on the proportion of raw material prices in the cost of the DI is unsubstantiated. Further, DI was forced to reduce its prices in order to match the import prices. Hence, although there is minimal undercutting, there is significant underselling and the DI is selling even below the cost of sales.
- (j) Interested Parties have submitted that the minimum period of investigation, as per past cases in safeguards, ought to be 36 months which is not the case here. It is submitted that the injury demonstrated by the DI's figures was sufficient to initiate the case and the DI has now filed data for the latest period, thus covering a period of more than three years.
- (k) The Interested Parties have made averments with regard to the unreliability of the import data filed by the DI and have recommended using the DGCIS import data. However, the Interested Parties have conveniently overlooked the fact that the PUC is a complex chemical product that is imported under multiple HS classifications whereby it was considered appropriate to obtain transaction wise data sourced from IBIS. Director General (Safeguards) can call for transaction wise data from the DGCIS and take the same into consideration provided that there are no undue exclusions of the PUC related data from this data.
- (l) The Interested Parties have claimed that surge in imports is not sudden, sharp and significant enough and imports should be analysed for a longer time period, from prior to the operations of the present DI. It is contended that the DI has already placed on record sufficient data and analysis to establish that the increase in imports has been sudden, sharp and significant enough. Imports have increased in absolute terms as well as in relation to the production, sales and demand during the injury period. Further, an analysis of imports from 2009-10 when domestic industry was not in operation is not only incorrect and misrepresentative but also contrary to the requirement of law.
- (m) Interested Parties have contended that a quarterly examination of data reflects a fall in import quantities. It is submitted that with the commencement of operations by the DI in 2010-11, the imports indicate a declining trend upto Q4 2010-11, with customers relying on the DI instead of imports. However, from Q4 2010-11 onwards, there is a sudden, sharp and significant enough increase in imports and the imports increased by 66% in Q1 2011-12 and by 127% in Q2 2012-13 as compared to Q4 2010-11 and continue to increase up to Q4 2012-13. Whether

examined on an annual or quarterly basis, there is a sharp, sudden and substantial increase in imports.

- (n) The DI has received a communication from a foreign producer offering it to shut down their domestic operations to eliminate the competition created by the DI and facilitate imports into the country.
- (o) Interested Parties have contended that the operations of the DI are planned in order to maximize overall profitability by allocating resources to those products which have higher profits. It is submitted that these allegations are contradictory to the import data placed on record. Over the last three years the highest surge in imports has been taking place consistently approaching the second quarter of the Financial Year. On the other hand, the lowest imports take place in the fourth quarter of every financial year. Clearly, the DI has been forced to resort to selling below reasonable cost to liquidate the stock on account of the increased low priced imports.
- (p) The Interested Parties have contended that the demand in India is higher than the capacity of the DI whereby there is bound to be a demand-supply gap leading to certain inevitable imports. It is submitted that the DI is presently at 40% capacity utilization and the argument of the Interested Parties would be tenable if the DI was at 100% capacity utilization and there were still large quantities of imports being made due to unfulfilled demand. Further, the DI's plant is a swing plant and the DI is fully capable of meeting the complete demand in the country by allocating further swing capacity towards production of the PUC, provided that the safeguard duty protection is granted to ensure fair priced imports.
- (q) The Interested Parties have contended that levying safeguard duty on the product will be contrary to public interest. As regards fate of downstream producers, particularly in the pharmaceutical sector, it is submitted, that if the DI is forced to closure, there is no substantial competition to the overseas producers and they are bound to start increasing prices to exploit their market share and lack of competition. Therefore, the existence of a robust and self sufficient DI is in the public interest of downstream producers as well and will prevent overseas producers from exploiting the lack of competition in the Indian market. Further, several of downstream pharmaceutical producers are EOUs exclusively set up for exports and do not cater to the Indian domestic demand. As regards potential injury to the producers of Pyrazolone in India, as averred by some Interested Parties, it is submitted that injury suffered by downstream producers on account of dumping of the downstream product cannot be attributed to safeguard duties being levied on the product under consideration. More importantly, the fact that the Pyrazolone producers are already suffering grave injury despite no safeguard duty on MAAE clearly implies that the cause of concern for such producers is insufficient anti dumping duty and not duties being levied on the PUC.
- (r) The Interested Parties have contended that the DI has not provided a requisite adjustment plan and the adjustment plan submitted by the DI has been claimed to be excessively confidential. It is submitted that an adjustment plan detailing the efforts planned to be taken to make a positive adjustment to import competition, which the DI plans to effectuate over a period of 2-3 years, has been provided. Specific steps regarding particular cost-reduction measures have been provided and DI has made significant investment to upgrade and enhance the machinery purchased and upgrade it to international standards. Further, the

DI has requested confidentiality in complete conformity with the requirements of the Safeguard Duty Rules.

- (s) Some Interested Parties have claimed that there is no demonstration on causation between the surge in imports and injury to the DI. It is submitted that there is a direct causal nexus between the increased imports and the serious injury to the DI. The subject goods are sold in direct competition with the imports. The landed price of imports is significantly lower than reasonable costs and the selling price of the DI are determined by the import prices. Consequently, production, capacity utilization, sales, profits, return on investment and cash flow is declining due to continued presence of low price imports.

VI. Rejoinder by EXPORTERS

28. Rejoinder submissions by M/s AZB & Partners on behalf of M/s Eastman Chemical Company

- (a) These rejoinder submissions may be read in conjunction with the written submissions dated 12th July, 2013.
- (b) DI has merely reiterated most of its averments contained in the petition and failed to adduce additional evidence. DI has cited unexpected drop in consumption in European markets as result of recession, additional capacities in China PR and unforeseeably low prices of imports despite increase in raw material prices, as the three unforeseen events. However, none of three events are correct or can be considered as unforeseen.
- (c) DI has selectively referred to an online report which at best talks about dip in demand for chemical products in general in the EU due to recessionary effects arising from 2008 financial crisis. Even if it is assumed that the demand for chemicals in EU has decreased, such decrease would have been known and very well foreseeable by the DI which entered the market in 2010, more than 2 years after the onset of the 2008 financial crisis. Further the report relied upon by the DI neither specifies that the economic slowdown has resulted in decreased demand for MAA in the EU, nor does the report indicate that the slowdown has led to increased exports of MAA to South Asian countries, including India. On the contrary, the report indicates that as a result of low demand for chemical products, most producers have sharply curtailed production. This contradicts DI's contention.
- (d) DI states that capacity addition by Xinhua Pharmaceuticals (Shougang) Co Ltd and Qingdao Double Peach Speciality Chemicals (Group) Co Ltd during 2012-13 were unforeseen and bound to result in increased exports to India. However, it is incorrect to assert that these were unforeseen and necessarily translate into sudden, sharp and significant imports of MAA into India. On the contrary, as a new entrant into the market in 2010, the DI would have known who its likely competitors would be.
- (e) As regards DI's claim regarding low price of imports despite increase in raw material prices, such an assertion is incorrect because while input costs may affect the prices of the end product, the exact proportion in which end product prices may change would depend upon the conversion ratio. It is not correct to assume that the end product prices would increase to the same extent that the raw material prices may increase.
- (f) The additional data submitted by the DI for Apr-July 2013 shows that imports have fallen and capacity utilization has improved during this period.

- (g) DI's production as compared to the trends in imports has for the most part during the POI remained above the trends in imports and has stayed consistently above imports in the most recent period.
- (h) DI has based its claim on injury and also on causal link to relatively lower prices of imports. However, as per data submitted by the DI, import prices have for most part of the POI remained above the DI's prices.
- (i) DI asserts that the increase in imports have led to reduction in DI's market shares, and hence production and capacity utilization. However, the DI's market share has seen a substantial increase over the POI, despite it being a relatively new entrant in the market. A mere assertion that the alleged increase in imports have led to injury to the DI, without establishing the causal link by way of irrefutable facts and evidence, is incorrect and in the absence of any positive evidence, the former can not be said to be cause for the later.
- (j) A cyclical trend in imports is discernible. Import volumes are higher in Q1 and Q2 and lower in Q3 and Q4. More significantly, when imports are lower in Q3 and Q4, domestic sales witness a sudden spurt. This is because during the first two quarters, DI chooses to use its limited capacity to manufacture Monomethyl Acetoacetate (MMAA) which yields higher profitability than sales of MAA. Since MMAA has a seasonal demand lasting first two quarters. Thereafter, DI starts to employ its production facility for the production of MAA. Therefore, DI's assertion that imports are displacing DI in the Indian market for MAA is incorrect. Rather, the injury, if any to the DI may be attributed to its own selective utilization of its installed capacity, which may be employed interchangeably for making both MAA and MMAA.
- (k) Despite the statutory requirement, the DI has failed to provide its response to the Domestic Industry questionnaire.

VII. Rejoinder by IMPORTERS/USER INDUSTRY

29. Rejoinder submissions by M/s TPM Consultants on behalf of M/s Aurobindo Pharma, CJ Shah & Co, Nutan Dyechem, Prima Chemicals & Polygon Chemicals

- a. A long period is required to be considered for the reason that the domestic industry does not have full existence in 2010-11.
- b. Despite specific instructions by the Director General (Safeguards) at the time of hearing, petitioner has preferred not to provide relevant information for the period April-June 2013 period to the Interested Parties. However, it is noted that the petitioner submitted the updated information only to the Director General on 5th September, 2013 and failed to provide the same to the Interested Parties in absolute contravention to the confidentiality provisions under the Rules, especially given the fact that the Interested Parties specifically argued that the data for longer period needs to be provided. The Interested Parties received the data on 10th September, a day before filing rejoinder, upon the direction of the Director General. Since not much time is available with the Interested Parties, adequate submission on the data so received shall be made subsequently. However, brief comments are being included separately hereinbelow.
- c. The written submissions of the petitioner do not contain relevant information for the period April-June, 2013. It is thus a clear situation where the petitioner has

- provided selective information and has clearly ignored the instructions given by the Director General (Safeguards) at the time of hearing.
- d. Petition did not contain quarter wise data for the three quarters of 2010-11, even when petitioner has claimed that it has commenced commercial production in May, 2010. Nor the petitioner has rectified this gap even when it was pointed out at the time of oral hearing. This is clearly malafide.
 - e. No reasons have been given by the petitioner in the petition for discarding DGCI&S data and adopting IBIS data. The petition is totally silent on this issue. Use of IBIS information is not appropriate in the present case for the reasons that (i) IBIS has reported several transactions which are duplicate, (ii) since DGCI&S information is available, the same should have preference.
 - f. The import pattern clearly reflects the behavior of MAA production by the petitioner.
 - g. Petitioner is utilizing the same intermediate diketene for manufacturing of a number of products and therefore the production of MAA suffers when product of MMAA is at peak.
 - h. Petitioner has suppressed from the Director General (Safeguards) that the product has significant seasonality because of seasonality in production of MMAA. MMAA has high seasonal demand at the time of Jan.-June, because of which the production of MAA in this period is low. Further, when demand for MMAA is low in July-Dec., the petitioner increases its production of MAA. Consequently, imports of MAA are high in first six months of a year and low in subsequent six months.
 - i. The petitioner has a capacity of 4950 MT the same is grossly insufficient to meet the demand for the product in the country. Given the growth in demand in the past, it is estimated that demand in the current year shall be in the region of 7000 MT and same in the next year when proposed safeguard duty is operative in 2014-15, demand shall be 8500 MT. Thus, demand for the product shall be in the region of 8500 MT i.e. 170% of installed capacity and 215% of achievable production by the petitioner when the proposed safeguard duty shall be operative.
 - j. Petitioner's production suffered in Q3, 2012-13 because the petitioner undertook some capital expenditure in this period, leading to production disruption in this quarter. Since the production of MAA by the petitioner was low, the consumers had to import the product to meet their requirement for the product.
 - k. Petitioner's sales, production, capacity utilization, etc. shows an improvement in Q4 of 2012-13. Petitioner has provided no information on injury for April-June, 2013. Market share has improved in Q4, 2012-13. Inventories have declined. Losses suffered by the petitioner has also declined in 2012-13.
 - l. Imposition of safeguard duty is against the interests of the user industry, i.e., Pyrazolone and Pharma Industry. Pyrazolone industry is as it is suffering financial losses, industry will not be able to further pass on the increase in its raw material costs to the consumers. Industry is already suffering from significant imports and dumping of Pyrazolone from China.
 - m. Imposition of safeguard duty on MAA would lead to change in manufacturing process of pharma industry by shifting to imports of PHPG Dane Salt instead of production of PHPG Dane Salt from MAA.
30. **Increased imports of subject goods into India:**

The safeguard duty can only be imposed if the information has established that the product under consideration has been imported into India in such increased

quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry. In the instant case, however, these conditions precedence have not been met and therefore the safeguard duty should not be imposed.

The following cases have been referred to for the applicability of the above

- i. The WTO Appellate Body in Argentina – Footwear (WT/DS121/AB/R dated 14th, Dec 1999).
- ii. The WTO Panel in US – Line Pipe (WT/DS202/R dated 29th, Oct 2001).

31. The conditions listed in the case cited have not been met in the present case and therefore safeguard duty should not be imposed.

- i. The petitioner has not provided data for the period April-June 2013 despite specific instructions from the Director General (Safeguards). We have established that the imports have declined significantly in this period.
- ii. Petitioner has not included import data for the period 2009-10 for the reason that it would have clearly shown that imports have declined.
- iii. Admittedly, petitioner commenced commercial production in 2010-11 which resulted in decline in imports in that year. Some increase in imports in 2012-13, is a reaction of loss volumes by the foreign producers in previous years and suspension of production by the petitioner in Q3 of 2012-13. Because petitioner had suspended production the demand had to be met by imports.

32. The import trend does not show a trend of sudden, sharp and recent increase in imports. It only shows correction of situation due to market earlier lost and imports being made to meet the demand left by the domestic industry. Assuming that there was no domestic industry in 2009-10 and therefore imports were higher in this period; then it shows that imports were lower in 2010-11 because the petitioner had commenced commercial production and had displaced imports to a significant extent in this period. Further, the petitioner had suspended production in 2012-13 and therefore the demand had to be met by imports.

Unforeseen Developments-

33. The Director General has examined unforeseen development in all these cases. Further, the Director General has clearly established unforeseen developments in these cases on the basis of positive evidences. In the present case, no evidence whatsoever has been given by the petitioner to establish unforeseen developments. It is a mere statement. the fact that foreign producers have not increased their prices in proportion to the increase in cost does not constitute an unforeseen development.

Serious Injury and threat of serious injury:-

34. The decline in production in 2012-13 is because of suspension of production by petitioner on account of some capital expenditure undertaken.

35. The decline in capacity utilization in 2012-13 is because of suspension of production by petitioner because of some capital expenditure undertaken.

1. The decline in domestic sales in 2012-13 is because of suspension of production by petitioner because of some capital expenditure undertaken.
2. Increase in employment does not establish any injury. Further, decline in productivity is due to production suspension because of capital expenditure undertaken.
3. The increase in sales of the domestic industry less than increase in demand is because of suspension of production by the petitioner on account of capital expenditure undertaken. Further the demand for the product is higher than the capacities with the domestic industry and therefore the demand had to be met by imports.
4. The loss of market share in 2012-13 is because of production suspension by the petitioner in Q3, 2012-13. Since the petitioner was not in a position to meet the demand of the consumers, the same had to be met by imports.

36. On the contrary, when the alleged surge has happened in 2012-13, the losses suffered by the domestic industry have reduced. Further, when imports did not surge in 2011-12 and domestic industry had highest production, sales, best capacity utilization, ironically, the losses suffered by the domestic industry were also highest. A suggestion by foreign producers to the petitioner to shut down the business does not mean a threat of serious injury within the meaning of the Rules. It is a simple business proposal. The petitioner suffered financial losses in 2010-11 with lowest volume of imports. Further, the loss increased significantly in 2011-12 when imports remained in similar region whereas the petitioner had significantly increased its production and sales. Thus, the petitioner was suffering financial losses even when imports were at low levels. This clearly shows existence of certain other issues with the petitioner because of which petitioner might have been contemplating selling of business and shutting down the production.

37. So far as submission of the DI that several plants have been installed in China PR as well as significant capacity of the US and UK will lead to continued injury is concerned, it is mere statement and not supported with any evidence.

Causal Link –

38. There is no causal link between increased imports and serious injury to the domestic industry. The imports have been made only because the domestic industry decided to divert its intermediate capacity to other product. Since the petitioner did not have significant intermediate available, it follows that the petitioner could not have produced more of the product under consideration.

Adjustment Plan –

39. Petitioner has not provided any concrete information in this regard and therefore no further rejoinder is required.

Public Interest –

40. Written submissions are relied upon.

Post-POI data:

41. On the updated data provided by the DI on the directions of the DG(S) for the period April'13-July'13 for the PUC, it appears that

1. There is decline in imports of the product under consideration in the recent period Q1 of 2013-14 and July 2013 alongwith a decline in market share of imports.
2. Petitioner's production, sale, market share, employment, productivity and capacity utilization has significantly increased in Q1 2013-14 and thereafter in July 2013. The inventory has declined in the same period. The demand for the product has significantly increased.
3. As per petitioner's claim, demand in Q1 2013-14 was in the region of 7700 MT which increased beyond 9100 MT in July 2013. As against this, the petitioner holds a capacity of only 4950 MT. Thus, capacity with the petitioner is much lower than the demand of the product in the country. Given significant and rising gap between demand and supply, it is evident that the petitioner cannot, in any case, meet the demand for the product in the country and imposition of safeguard duty shall not be in public interest.

42. The product has significant seasonality because of seasonality in production of MMAA. As submitted in the written submissions, petitioner is utilizing the same intermediate diketene for manufacturing of a number of products and therefore the production of MAA suffers when product of MMAA is at peak. Imposition of safeguard duty would have significant adverse impact on the consumers. In any case, petitioner cannot meet the demand for the product under consideration in the Country, imports are inevitable and imposition of safeguard duty is not in public interest on this account.

43. Rejoinder by M/s WTC Consultants on behalf of Exporters from China PR:-

M/s WTC Consultants appearing on behalf of exporters from China PR has filed only written submissions post public hearing, but has not filed any rejoinder.

VIII. Examination & Findings:

44. I have carefully gone through the case records, the replies filed by the domestic producers, user/importers, exporters and exporting nations. Submissions made by the various parties and the issues arising therefrom are dealt with at appropriate places in the findings hereinafter.

45. Section 8B of the Customs Tariff Act, 1975 deals with imposition of Safeguard Duty on imports. Section 8B(1) provides for imposition of Safeguard Duty by the Central Govt 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.

46. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provides the manner and principles governing investigation.

47. The investigation has been conducted in accordance with the said rules and the final findings are recorded through this notification.

A) The product under investigation:

48. The product under consideration in the present case is Methyl Acetoacetate (also known as MAA/MAAE/AAME) which is a diketene based ester or aceto-acetate. Esters are chemical compounds derived by reacting an oxoacid with a hydroxyl compound such as an alcohol or phenol. The chemical formula in respect of this product is $C_5H_8O_3$. This product is also known by the names of Methyl-3-ketobutyrate, Methyl acetylacetate, Methyl-3-oxobutanoate, Methyl acetone carboxylate, Methyl-3-oxobutyrate, Acetoacetic methyl ester, MAAE.

49. Methyl Acetoacetate is classifiable under Customs Tariff Heading 29183040 of Chapter 29 falling under First Schedule to the Customs Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigations. No interested party raised any issue with regard to the product under investigation. Therefore, it is confirmed that the product under investigation is "Methyl Acetoacetate" falling under Customs Tariff Heading 29183040 of Chapter 29 falling under First Schedule to the Customs Tariff Act, 1975. Further, no differences in the production process, characteristics or end-uses between imported Methyl Acetoacetate and domestically produced Methyl Acetoacetate were raised by any of the Interested Parties during the course of this investigation. Therefore, it is also held that domestically produced Methyl Acetoacetate falls under the ambit of like or directly competitive in all respects to the imported product under investigation and that the domestically produced Methyl Acetoacetate is a like article to the imported Methyl Acetoacetate within the meaning of Rule 2(e) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

B) Domestic Industry:

50. Section 8B(6)(b) of the Customs Tariff Act 1975 defines Domestic Industry as follows:

(b) "Domestic Industry" means the producers –

(i) as a whole of the like article or a directly competitive article in India; or

(ii) 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;"

51. M/s Laxmi Organic Industries Ltd, Mumbai is the only applicant constituting domestic industry in this case. M/s Laxmi Organic Industries Ltd, claimed that their

production accounts for 100% of the total production of Methyl Acetoacetate in the country. Thus, the collective output of the applicant producer constituted a major share of the total production of Methyl Acetoacetate in India. Further, no claim has been made by the Interested Parties against the applicant being the domestic industry. Therefore, it is held that the applicant domestic producer constitutes and represents the domestic industry (DI) within the meaning required and defined under Sec 8B(6)(b)(i) of the Customs Tariff Act'1975.

(C) Source of information:

52. The import data for the product under consideration for the period from Q1 of 2010-11 to July 2013-14 has been taken from IBIS (transaction-wise) as provided by the applicant as they have claimed that the subject goods are being imported under various other classifications as well. In such a situation, transaction-wise data had to be considered which is available in the IBIS data, which has been considered by this directorate earlier also. Hence, IBIS import data has been taken in this matter as well. Further, the data pertaining to other safeguard economic parameters for the period from 2010-11 till 2012-13 has been verified on the basis of central excise records of the petitioner to the extent necessary, through on-site verification of the unit of the applicant and such verified data for the POI has been taken into consideration for injury analysis. The data for the first quarter of 2013-14 and till July'13 has been taken as furnished by the applicant, post-public hearing. The data for three years or longer has been provided by the DI in the form and manner decided by DG (Safeguards) under Rule 5(2) of Safeguard Duty Rules 1997 vide 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 all concerned. The cost data and calculations of injury margin have been provided by the petitioner duly certified by an independent Cost Accountant.

(D) Period of Investigation (POI):

53. 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 with 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)¹

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)².

54. 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.

55. In the Notice of Initiation, period of investigation had been taken from 2010-11 to 2012-13 as the domestic industry started commercial production in May 2010 only and

¹ WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case

² WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case

accordingly, this period of investigation had been considered. One of the issues raised by opposing Interested Parties in this case, during the Public Hearing, was pertaining to the quarterly injury analysis done by the domestic industry from Q4 2010-11 onwards, in their presentation. The parties objected that the period of investigation falls below three years which is not in conformity with the prevalent norm/past precedence of the Directorate, though this is not factually correct in view of the fact that in the Notice of Initiation, the POI is clearly mentioned to be from 2010-11 to 2012-13 and the injury analysis is also done on annual basis for the same period. Further, during onsite verification also, data has been verified from Q1 2010-11 till 2012-13. It was a different matter that the DI chose to explain injury analysis from Q4 of 2010-11 and not for the full year, despite having the data.

56. It was argued by some of the Interested Parties that imports have decreased by 40% within a short span of six months i.e. between second and fourth quarter of 2012-13 and since imports of MAA into India are showing a perceptible declining trend beginning the last quarter of the POI and the DI market share is improving, the claim that the DI is suffering injury is entirely misplaced. Accordingly, the domestic industry was asked in the Public Hearing to file updated injury data for the subsequent period. The domestic Industry have filed the same vide their letter dated 5th Sep, 2013 updating it for the period upto July, 2013. This additional data has also been considered in making the final analysis of the serious injury/threat of serious injury.

57. Considering that the period selected should be sufficiently long to allow conclusions to be drawn regarding existence of increased imports, to neutralize the effect of seasonal variation in this case, the POI has been considered as 2010-11 to 2012-13. However, as stated above, additional data provided by the DI has also been considered in making the final analysis of the threat of serious injury.

(E) 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.
- iii) Further, the Domestic Industry and the Interested Parties have submitted reasons for seeking confidentiality at the time of filing the application and at the

time of filing written submissions/rejoinders, which appears to be reasonable and, therefore, have been accepted, whenever claimed.

(F) Increased Imports:

Section 8B of Customs Tariff Act, 1975 deals with the power of the Central Government to impose safeguard duty and provides as follows:

“(1) 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 .”

58. 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.

59. Rule 2 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 defines ‘increased quantity’ as follows:

“increased quantity” includes increase in imports whether in absolute terms or relative to domestic production.”

60. With regard to the nature of the increase in imports, the Appellate Body in Argentina-Footwear (EC)³, 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:

“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’.”

³ Appellate Body Reports on Argentina-Footwear (EC) WT/DS121/AB/R dated 14 December 1999

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) Increased Import in absolute terms:

61. The analysis of the trend in imports of Methyl Acetoacetate in the light of the above stated provisions has been done. Methyl Acetoacetate is imported into India from a number of countries, but primarily from China PR, the USA and Switzerland. The imports and production of Methyl Acetoacetate during financial year 2010-11 to 2012-13 were as under:

Financial Year	Total Imports (MT)	All India Production (MT)
2010-11	3985	1980
2011-12	3584	2604
2012-13	5084	2045

62. There appears to be an increased import in 2012-13 in absolute terms. The imports have increased from the base year and also increased from 3584 MT in 2011-12 to 5084 MT in 2012-13 which shows an increase of 41.85 %. It is, therefore held that imports of Methyl Acetoacetate have surged over the POI in absolute terms.

(i) Imports in relation to production:

63. The imports of product under consideration in India during the POI have also increased in relation to production of the Domestic Industry when compared with the base year as well as preceding year. The import with respect to total production increased from 201% in 2010-11 to 249 % in 2012-13 i.e. by 48 %, which is a significant increase. However, there was a dip in 2011-12 due to increase in production by the DI, but the rise in 2012-13 from 2011-12 is very significant.

⁴ Panel Report on US-Wheat Gluten WT/DS166/R 31 July 2000

Financial Year	Total Imports (MT)	All India Production (MT)	% of Import with respect to production
2010-11	3985	1980	201
2011-12	3584	2604	138
2012-13	5084	2045	249

(ii) Imports in relation to Demand:

64. For the purpose of the present investigations, the consumption or demand for the product under consideration is determined as the imports of product into India from different countries, domestic sales of the DI and domestic sales of other domestic producers. Changes in demand/consumption so determined over the period have been compared with the changes in the imports from various sources and supplies by the Domestic Industry in order to determine whether imports of product under consideration in India have increased/decreased in relation to consumption or demand for the product in the country. It is noticed, however, that the rise in import with respect to demand has been marginal, i.e., from 70% in 2010-11 to 72% in 2012-13. However, imports increased significantly with respect to demand when compared from the preceding year, i.e., from 57 % in 2011-12 to 72 % in 2012-13.

Financial Year	Total Imports (MT)	Total Demand(MT)	% of Import with respect to demand
2010-11	3985	5717	70
2011-12	3584	6263	57
2012-13	5084	7101	72

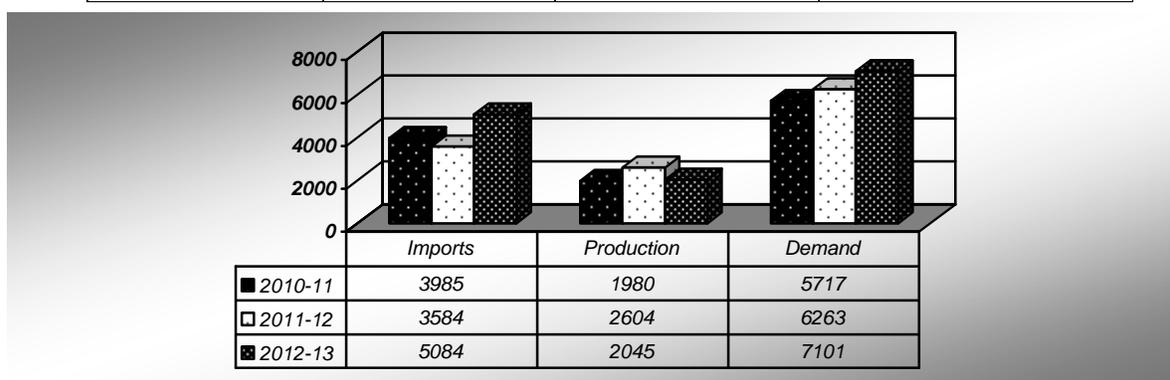
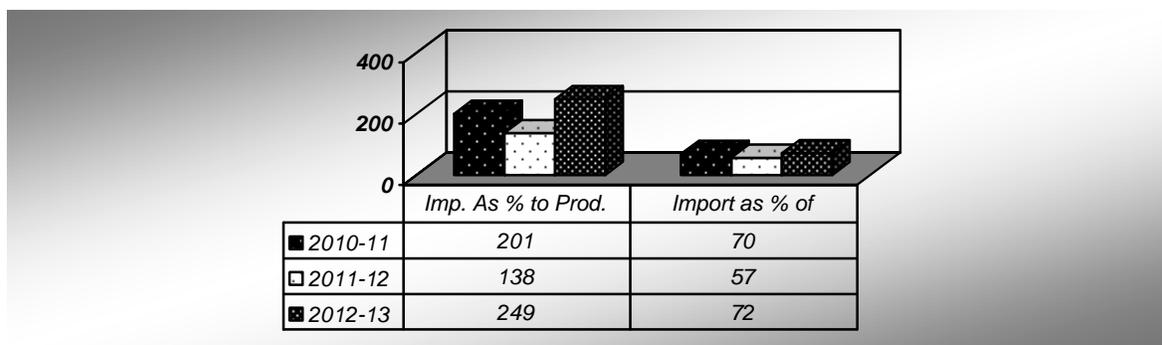


Table showing import as % of Production and Demand:



65. Some of the Interested Parties have claimed that surge in imports is not sudden, sharp and significant enough and imports should be analysed for a longer time period, from prior to the operations of the present DI. It is contended that the DI has already placed on record sufficient data and analysis to establish that the increase in imports has been sudden, sharp and significant enough, imports have increased in absolute terms as well as in relation to the production. Further, an analysis of imports prior to 2010-11, when domestic industry was not in operation is, therefore, not only incorrect and misrepresentative but also contrary to the requirement of law. Similarly, it is added by the said Interested parties, quarter-wise analysis over the POI has not been considered because the seasonality of the Product under consideration has been a clearly accepted fact by both the Domestic Industry and the Interested Parties.

66. It is apparent from the above that there is an increased import during the Period of Investigation, as compared from the base year and has surged significantly in the most recent period of 2012-13 from the preceding year. As such, overall increase in imports from the base year seems to be significant enough, to constitute “increased imports” within the meaning of Section 8B of the Customs Tariff Act, 1975.

(iii) Reasons for increase in imports/Unforeseen developments:

67. It is noted that there is no express obligation/requirement on the Director General (Safeguards) to analyze 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. It is understood that 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.

68. 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.

69. The Appellate Body, in Argentina-Footwear (EC), then held that the requirement of “unforeseen developments” did not establish a separate “condition” for the imposition of safeguard measures, but described a certain set of “circumstances”.

70. The Domestic Industry has pointed out that the following factors have led to the increased imports of the product from different countries as unforeseen circumstances in the present case:-

(a) Unexpected drop in consumption in European Markets

71. The European markets have reported an unexpected drop in demand as a result of the massive capacities of the subject goods in foreign countries and the foreign producers have resorted to increased exports to India.

(b) Additional Capacities in China PR

72. The Producers in China PR like M/s Xinhua Pharmaceutical (Shougang) Co. Ltd., M/s Qingdao Double Peach Specialty Chemicals (Group) Co. Ltd. and M/s Ningbo Wanglong Tech Co., Ltd have set up huge capacities and are looking forward to start exporting to India. This development, as claimed by the Domestic Industry, clearly indicate that there is bound to be continued incessant imports to India at increasing volumes.

(c) Unforeseeably low pricing of imports despite increase in raw material Costs

73. Despite the global increase in raw material prices, the import prices increased only marginally. As India is a price attractive market, the low priced imports were well received by the consumers. Hence, the low priced imports led to an increased import into India.

74. It has been submitted by some Interested Parties that DI has merely reiterated most of its averments contained in the petition and failed to adduce additional evidence. DI has cited unexpected drop in consumption in European markets as result of recession, additional capacities in China PR and unforeseeably low prices of imports despite increase in raw material prices, as the three unforeseen events but none of three events are correct or can be considered as unforeseen. Some have argued that the claim by the applicant that unforeseen development is not a separate requirement

or condition for imposition of safeguard measures is clearly violative of Article XIX of GATT 1994, which clearly provides that unforeseen development is required to be seen by the Director General (Safeguards).

75. As against the above mentioned arguments, it appears that DI has referred to a report which at best talks about dip in demand for chemical products in general in the EU due to recessionary effects in economy arising from the 2008 financial crisis. Even if it is assumed that the demand for chemicals in EU has decreased, the DI has not been able to demonstrate as to how such decrease, more than 2 years after the onset of the 2008 financial crisis has resulted in increased exports of MAA to South Asian countries, including India. On the contrary, the report indicates that as a result of low demand for chemical products, most producers have sharply curtailed production. This contradicts DI's contention. Further, DI states that capacity addition by Xinhua Pharmaceuticals (Shougang) Co Ltd and Qingdao Double Peach Speciality Chemicals (Group) Co Ltd during 2012-13 were unforeseen and bound to result in increased exports to India, but has not been able to demonstrate the shift in exports from China PR to India during the POI which necessarily translate into any sudden, sharp and significant imports of MAA into India.

76. Therefore, the Domestic Industry has not been able to support its claim for unforeseen developments by any concrete documentary evidence due to which these cannot be taken as unforeseen developments.

Serious Injury:

(H). Section 8B subsection 6(c) of Customs Tariff Act, 1975 provides as follows:

“Serious injury” means an injury causing overall impairment in the position of a domestic industry.

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

overall *position* of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.⁵

ii) 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 of competition which are relevant to the affected industry 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.

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

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

The Annex (1) to 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 demonstrate 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.”

(J) **Serious Injury:** In view of the facts on records, the serious injury caused or threatened to be cause to the Domestic Industry due to increased import of Methyl Acetoacetate is reflected from the analysis of the following economic parameters:

i) **Production:** The production of the domestic industry increased from 1980 MT in 2010-11 to 2045 MT in 2012-13. However, the production in 2012-13 decreased as compared to immediate preceding year 2011-12.

Year	Production of MAA (MT)
2010-11	1980
2011-12	2604
2012-13	2045

(ii) **Capacity Utilisation:** Capacity utilization of the domestic industry has decreased significantly in the most recent period, from 53% in 2011-12 to 41% in 2012-13.

Year	Installed Capacity (MT)	Capacity utilized(%)
2010-11	4950	40

⁵ Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

2011-12	4950	53
2012-13	4950	41

(iii) **Share of domestic producers in domestic demand:** Market share of domestic producer has decreased significantly. Applicant had a market share of 30% in 2010-11 which has risen to 43% during 2011-12, but has declined to 28% in 2012-13.

Financial Year	Total Import(MT)	Sales of DI (MT)	Total Demand (MT)	Market Share(%)		Inventory (MT)
				DI	Import	
2010-11	3985	1732	5717	30	70	196
2011-12	3584	2679	6263	43	57	84
2012-13	5084	2017	7101	28	72	79

iv) **Changes in the level of Sales :-** As seen in the table above, the sales of the domestic industry increased from 1732 MT in 2010-11 to 2679 MT in 2011-12, but declined significantly thereafter to 2017 MT in 2012-13.

v) **Employment:** Average employment has increased from 183 in 2010-11 to 247 in 2012-13.

(vi) **Profit & Loss:** The profitability of the domestic industry has been as under:

Financial Year	Profitability (Rs. /MT) (Indexed)
2010-11	-100
2011-12	-330
2012-13	-225

It appears that the DI is in loss, but showing signs of recovery in the most recent period of 2012-13 as compared to the preceding year.

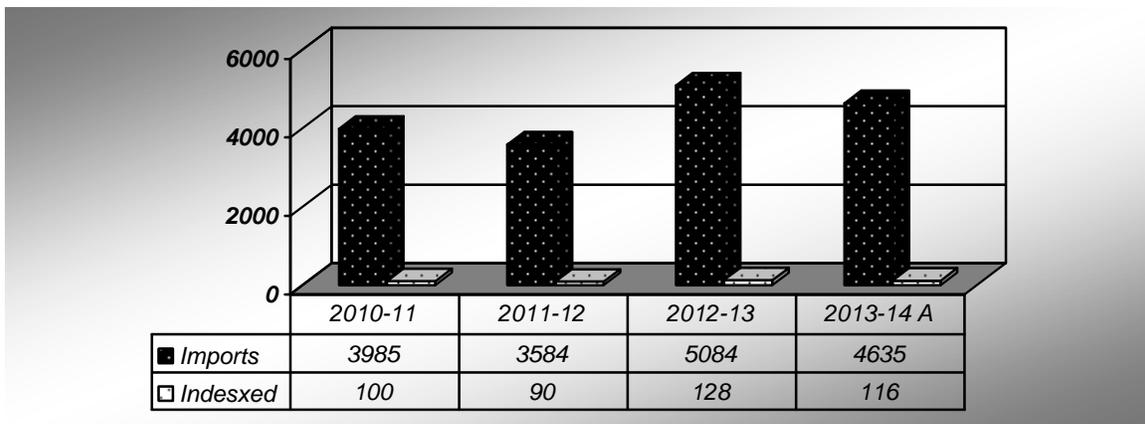
77. Based on above, it is concluded that the DI has suffered adversity on almost all the major safeguard parameters viz production, sales, market share and capacity utilization during the year 2012-13 as compared to the immediately preceding year 2011-12. However, this adversity is not as sharp when the comparison is made with the base year, because of the reason that these parameters have shown a healthy trend in 2011-12 vis a vis the base year. Even then, though, it cannot be concluded that there is a continuous surge in imports over the entire POI leading to a serious injury to the DI, it is noted that there has been significant increase in imports during 2012-13 as compared to 2011-12, so as to cause serious injury to the domestic industry.

(K) Threat of Serious Injury:

Post-POI data till July'2013 was sought during the Public Hearing in view of the submissions of some Interested Parties, who argued that since imports of MAA into India are showing a perceptible declining trend beginning the last quarter of the POI, and the DI market share is improving, the claim that the DI is suffering injury is entirely misplaced. They further submitted that imports have decreased by 40% within a short span of six months i.e. between second and fourth quarter of 2012-13 and that the petitioner's production has improved in the most recent quarter of 2012-13, i.e., quarter 4, submitted by the DI. In the given circumstances, an attempt was made to analyse the trend in the period after the POI i.e. 2013-14 (from April'13 to July'13) to draw a clear inference about the possibility of accentuation or diminishing of the injury to the domestic industry and to assess the threat perception of the DI. On examination of this data, the following is observed:

(a) Import data –

Description with source	2010-11	2011-12	2012-13	2013-14 Q1 (Apr to Jul)	2013-14 (Annualized)
As furnished at annexure 6(updated up to July 13) post Hearing, sourced from IBIS (in MT)	3985	3584	5084	1545	4635
Indexed (%)	100	90	128		116



(b) Analysis of various economic/safeguard parameters pertaining to Methyl Acetoacetate

Financial Year	2010-11	2011-12	2012-13	2013-14 (Apr. to July)	2013-14 (Annualized)
Imports as per IBIS (MT)	3985	3584	5084	1545	4635
Production of DI (MT)	1980	2604	2045	1094	3282
Domestic sale of DI (MT)	1732	2679	2017	1141	3423
Total consumption/demand(MT)	5717	6263	7101	2686	8058
Export (MT)	51	38	33	Nil	
Market share of DI (%)	30	43	28	42	42
Market share of Imports (%)	70	57	72	58	58
Installed capacity (MT)	4950	4950	4950	1650	4950
Capacity utilization (%)	40	53	41	66	66
Average Employment (No)	183	217	247		267
Inventory (MT)	196	84	79	79	79

(i) Imports- Imports have declined in 2013-14(Annualized) when compared to 2012-13, but are more than the base year.

(ii) Production- Production has sharply increased in 2013-14(Annualized) when compared to 2012-13 by almost 60.48%. It is also significantly higher than the base year's production, i.e., by 66%.

(iii) Domestic Sales- Domestic sales have increased in 2013-14(Annualized) when compared to 2012-13 by a whopping 70%, almost double the base year figure. Compared to the base year 2010-11, the increase is 98%.

(iv) Total consumption/demand- This has shown a rising trend throughout from 2010-11 to 2013-14(Annualized). Further, demand of the product in question is also much above the total installed capacity of the product resulting in demand/supply gap. However, the DI have stated that their plant is a swing plant and fully capable of meeting the complete demand in the country by allocating additional capacity towards production of the product under consideration. But, the surge in low priced imports has restricted the applicant from utilizing the swing capacity for the subject goods. Further, despite the cost of sales being higher, the domestic industry is compelled to keep prices low in order to compete with the imports into India, making it unviable for them to increase the capacity utilization and achieve higher production. It has further been submitted that presently other reactors of the applicant DI's plant are utilized to make other diketene derivatives, which in case the applicant was able to sell the subject goods at fair selling price, can be utilized for manufacture of the subject goods. However, the surge in the low priced imports has restricted the applicant from utilizing the swing capacity for the subject goods. In fact, as per the letter, the applicant can allocate the capacity of other reactors to enhance its production capacity of subject goods to 7260 MT to cater to the market demand which stands at 7101 MT for 2012-13.

(v) Exports – Exports have shown a declining trend throughout the period in question.

(vi) Market share of DI/Import – Market share of DI has increased in 2013-14(Annualized), whereas the market share of imports has decreased as compared to 2012-13. This shows the improvement in the position of the DI vis-à-vis imports, emphasizing no causal link between surge in imports and serious injury or threat of serious injury to the DI.

(vii) Capacity utilization – Capacity utilization has increased in 2013-14(Annualized) as compared to the previous year by 25%.

(viii) Average employment – This has shown a rising trend throughout the period in question.

(ix) Inventory – Inventory has decreased throughout the period in question. The reason, as contended by the DI is that the production was deliberately reduced to cope up with the absence of orders and surge of low priced imports into India.

(x) Profitability - Profit/Loss position of the party is reflected in the table below –

Financial Year	2010-11	2011-12	2012-13	2013-14 (A.)
Indexed	-100	-330	-225	-473

Losses have accentuated further in 2013-14(annualized) as compared to the preceding year 2012-13, after showing signs of improvement in the previous year. In a situation (2013-14 July'13) where the economic parameters are showing marked improvement and imports have declined, increase in losses signify presence of factors other than surge in imports for serious injury or threat of serious injury.

78. On scrutiny of the said data it is noted that during the post POI period, there is a decline in the overall imports so much so that the market share of imports has declined by about 14% as against the corresponding rise of the market share of the domestic industry by 14%. There is a significant improvement in the production, inventory position, productivity, employment with a very sharp increase in domestic sales. Even though there appears to be a fall in profitability for the domestic industry, in all fairness, in view of the above, it cannot at least be attributed to the surge in the imports. The DI has shown marked improvement in the period 2013-14 (Annualised) as compared to the immediately preceding year i.e. 2012-13. Even the loss suffered improved (in 2012-13) when the DI suffered the serious injury in relation to almost all economic parameters, but again aggravated post POI (till July'13 i.e., 2013-14 A) when the economic parameters are showing marked improvement. Thus, even though the DI seems to have suffered serious injury till 2012-13 due to surge in imports, the same cannot be said to be true for post-POI in this case. This leads to the conclusion that the threat perception expressed by the Domestic Industry is largely unsubstantiated.

(L) Price Undercutting-

79. The DI has submitted the cost data duly certified by the independent cost accountant regarding price undercutting and injury margin, as below:

Particulars	2010-11 (Indexed)	2011-12 (Indexed)	2012-13 (Indexed)
Import Price (Rs./MT)	100	107	108
Selling Price of DI(RS./MT)	106	113	114
Cost of Sales(Rs./MT)	120	143	141
Landed Value (Rs./MT)	109	115	117
Price Undercutting (RS./MT)	-3	-2	-3
% of price undercutting	-3	-2	-3

80. As against the contention of the Interested Parties that fluctuation in raw material prices have caused injury to the DI and the DI is able to sell at prices that match the import prices whereby there is no undercutting or injury, it is noticed that there is negative price undercutting between the selling price of the DI and the landed value of the imported product, as shown in the table above. It is seen that the selling price of the DI is lower than the landed value of the imported product. This further shows that the PUC is available domestically as well as imported, at a very competitive price. This further strengthens the belief that though there has been a surge in imports in the year 2012-13 over 2011-12, this is more to cater to the rising demand of the PUC at a competitive price. Besides, as per the submissions of the Interested Parties, the limitations of installed capacity vis-a-vis logic of self-controlled production and the seasonality of the PUC among the product basket also appears to have contributed at one time or the other.

M) Public Interest: 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.”

81. 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, the possible impact on interests of various economic player groups have been analyzed based on the available information.

82. In their written submissions regarding the question of public interest, the domestic industry have stated that they have made significant investment and set up the new production facility in Mahad, Maharashtra to cater to the growing Indian demand and generate employment in India and therefore it is in larger public interest to impose

safeguard duty on the imports of the subject goods into India and afford immediate protection to the nascent domestic industry. However, they have not adduced any evidence in the form of statistical data regarding the minimal impact of the imposition of the safeguard duty, if any, on the downstream industry using their product as raw material and consequential impact on the public at large using the end product manufactured by the downstream industry.

83. On the other hand, other Interested Parties have submitted that two consumer segments, viz., Pyrazolone industry and pharma industry, command majority of the consumption of MAA in India. They have further submitted that Pyrazolone producers are not large scale organizations and are small business enterprises who do not have strength to bear financial losses in the product for quite some time. Any imposition of safeguard duty would force these manufacturers to quit manufacturing of Pyrazolone and consequently eliminating the existing demand for MAA. The parties have further submitted that pharma industry consumes MAA in the production of Amoxy Formulations, which are covered under DPCO. Since the end product of the Industry is under DPCO, the Industry cannot increase the price of its product in the market. However, any imposition of safeguard duty on its raw material i.e. MAA will increase its cost and render the production of Amoxy Formulations unviable forcing the industry to close down or look for some other alternative. These factors shall not be in the consumer/public interest.

84. The domestic industry, in their rejoinder submissions, have refuted the above submissions by stating that the downstream pharmaceuticals producers are export oriented units exclusively set up for exports and do not cater to the Indian domestic demand. However, they have not put forth any documentary evidence in support of their claim.

85. As regards potential injury to the producers of Pyrazolone in India, as averred by some interested parties, it has been submitted by the DI that injury suffered by downstream producers on account of dumping of the downstream product cannot be attributed to safeguard duties being levied on the product under consideration, more importantly, the fact that the Pyrazolone producers are already suffering grave injury despite no safeguard duty on MAAE clearly implies that the cause of concern for such producers is insufficient anti dumping duty and not duties being levied on the PUC.

86. The issue has been examined. It is noticed that the DI is the only producer of the PUC in India and has 100% market share. Though some Interested Parties have contended that, if safeguard measures are imposed, the DI will gain and it may lead to a monopolistic hegemony of the DI. However, none of the Interested Parties have provided any documentary evidence in support of their claim. The DI has also not provided any tangible evidence in support of their contention that imposition of safeguard duty shall be in the Public Interest at large. They have only made averments. It has also been seen that the PUC has seasonality attached to it. The DI is producing the PUC as well as several other products, which, as has been discussed earlier, are

produced in a combination of other products in the same factory. The capacity to produce the PUC is limited to 4950 MT; but they can produce up to 7260 MT, utilizing the product-swing route.

87. It has been contended by a Interested Party that a cyclical trend in imports is discernible. It is stated by them that import volumes are higher in Q1 and Q2 and lower in Q3 and Q4. More significantly, when imports are lower in Q3 and Q4, domestic sales witness a sudden spurt. This is because during the first two quarters, DI chooses to use its limited capacity to manufacture Monomethyl Acetoacetate (MMAA) which yields higher profitability than sales of MAA, since MMAA has a seasonal demand lasting first two quarters. Thereafter, DI starts to employ its production facility for the production of MAA. Therefore, DI's assertion that imports are displacing DI in the Indian market for MAA is incorrect. As per the data available, it is seen that in the first 2 quarters of the Financial Year, the ratio of production of MMAA is much higher than the MAA, as below:

	Data Indexed			
	MAA		MMAA	
	Production	Sale	Production	Sale
2010-11(Q1)	100	60	1041	1006
2010-11(Q2)	342	232	1362	1340
2011-12(Q1)	305	453	1834	1858
2011-12(Q2)	547	520	1521	1507
2012-13(Q1)	514	542	1845	1880
2012-13(Q2)	382	336	616	582

88. Going by the actual capacity utilization in this case, there appears to be a huge gap in demand and supply of the PUC. Rather, the injury, if any, to the DI may be attributed to its own selective utilization of its installed capacity, which may be employed interchangeably for making both MAA and MMAA. The Post POI data clearly shows that the share of production is increasing at the cost of imports in relative terms and all the economic parameters like production, sale, inventory, productivity, employment and profitability are showing significant improvement on actual basis. The imports are declining and the demand is rising which means that the domestic supply of the PUC has improved. Moreover, it is already on record that the PUC is used by a large no. of sectors in India like Pharma, industry, Dyes, Paints, etc., and in one of such products, viz., Pyrazolon, anti dumping duty is already imposed. The pertinent point is that the DI has not been able to give evidence as to how imposition of safeguard duty on the PUC will not affect these consumers, a few of whom are in sensitive pharma sector, and that the impact would be minimal so as to be in Public Interest. Moreover, as per the claim of the DI - that they are capable for meeting the demand by product swing route, the possible impact of this change that will take place on the end users of the other product and the fact that it will hamper/restrict/modify/nullify the product already being manufactured at the cost of MAA has not at all been provided during the

investigation. In complete absence of any data quantifying such impact on the end users of different product signifies no public interest assessment at all by the DI.

89. Moreover, negative price undercutting means that the user/public at large have a viable choice of procurement. In this scenario, if the DI gets a protection in the form of safeguard duty on the PUC, it will render the imported goods costlier than the domestic goods, thereby creating an unfair market condition for the users of this product and the price escalation would hamper availability of cheap downstream products, including medicines. In this regard, the contention of the DI that import prices have not increased in proportion to the increased raw material prices abroad does not hold relevance in the present investigation.

90. Therefore, the fact remains that the product under consideration is being imported at a very competitive price and the performance of the DI in the period April'13-July'13 (post-POI) indicates no threat of any serious injury or any sustainable cause of concern to the DI.

91. In view thereof, considering the points put forth by the DI as well as all the Interested Parties, it is concluded that the imposition of safeguard duty on Methyl Acetoacetate may not be in the Public Interest at large.

IX. Other factors causing serious injury or threat thereof:

92. 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.

93. 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:** When overall demand increases, it is expected that, in tandem therewith, sales of the domestic industry will show rising trend; may be imports too show such a trend. However, in this case, market share of the DI has shown a decline whereas the market share of imports has risen. It is, thus, clearly seen that the increased imports have taken away the major share of the demand. However, it is also a fact that the total capacity of the DI is less than the demand of the product in the post POI (2013-14 Q1), which points to minimized or no threat to the DI, as well as no causality due to increased imports.

b) **Changes in the patterns of consumption:** It is claimed by the Domestic Industry that there is no evidence on record that the pattern of consumption with regard to the product under consideration has undergone any material change as far as the Indian market is concerned. Also, none of the

Interested Parties has brought out any evidence to dispute this claim of the Domestic Industry, and is, as such, accepted.

c) **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. However, it is a fact that the DI is having 100% market share and the imports are coming in at very competitive prices, so much so that there is no price under-cutting for analyzing injury margin.

d) **Export performance:** Applicants have exported small volumes of the product under consideration. However, the claimed injury to the Domestic Industry is on account of domestic operations.

e) **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.

94. It is thus noted that possible other factors have not decisively caused injury to the Domestic Industry.

X. Causal Link between Surge in Imports and Serious Injury & Threat of Serious Injury caused:

95. 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.”⁶

96. 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–

⁶ [Panel Report on Korea – Dairy](#), paras. 7.89-7.90

- I. It has been submitted by the DI that there is a direct causal link between the increased imports and the serious injury to the domestic industry.
- II. The landed price of imports is significantly lower than reasonable costs.
- III. Selling prices of the domestic industry are determined by the import prices.
- IV. Consequently, production, capacity utilization, sales, profits, return on investment and cash flow is declining due to continued presence of low price imports.

97. Some interested parties have claimed that there is no demonstration on causation between the surge in imports and injury to the DI and that the injury to the DI is on its own account and cannot be attributed to imports.

98. In this regard, the following observations have been relied upon for determination of the causality:

- I. There has been a surge in imports over the POI both in absolute terms and in relation to the production.
- II. There is serious injury to the domestic industry over the POI.
- III. There appears to be no threat of serious injury to the DI.
- IV. Even though the DI has swing capacity to cater to the demand as of 2012-13, it falls short to possible demand in 2013-14.
- V. The landed value of the imported MAA is higher than the selling price of MAA of the DI.
- VI. There is no price undercutting which means the Domestic Industry is selling the PUC in fair competition to imports, even then the imports are surging at the cost of DI's sale.
- VII. Market share of imports increased and, consequently, market share of the Domestic Industry declined.
- VIII. There is a marked seasonality involved for this product.
- IX. When there is a decline in imports in 2011-12 and the DI has a better performance, the DI suffered its highest loss, about 3.3 times higher than the previous year. However, when import has surged in 2012-13 and almost all parameters of the DI show serious injury, the losses have eased significantly, by about 32% from the preceding year. Again, when the DI shows overall improvement in 2013-14 (April'13-July'13), the losses jumped by 2.5 times over the corresponding period during the previous year. However, the trends in losses do not appear to conform to the causal analysis, probably due to the price factor, which is not the subject under safeguard investigations under Section 8B of the Customs Tariff Act'75.

99. The examination of the above factors, therefore, shows that there appears to be a causal link between surge in imports and the serious injury caused to the DI over the POI, but the same causality is not sustained for the latest period i.e., April'13-July'13.

XI. Adjustment Plan:

100. 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.

101. 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 producers are adjusting.

102. The domestic producers in this case has laid down adjustment plan which mainly focuses on cost reduction in the following sectors:

- i) Raw Material.
- ii) Power & Utilities
- iii) Sales and Inventory management.

103. The Applicant has submitted that the manufacturing facility was purchased from another owner and that they have already invested a large sum of money in upgrading the facilities to world standard. Moreover, their focus on raw material pertains to reduction in consumption of main raw materials by improving conversion norms and selectivity to ketene and diketene and change from batch process to continuous process. They also intend to replace oil with that of coal to reduce energy cost. They have planned efficiency boost up in their sales and inventory management for minimizing overhead costs. All these positive adjustments are planned for over a period of 2-3 years.

104. Some of the interested parties have contended that the DI has not provided the requisite adjustment plan, i.e., without any concrete details and that the adjustment plan submitted by the DI has been claimed to be excessively confidential.

105. In this regard, it has been noticed that the DI has provided an adjustment plan spread over a period of 2-3 years. As contended by the Interested Parties, no concrete time-bound plan for positive adjustments has been envisaged by the DI that is active

and almost the entirety of the adjustment plan is proposed. However, this may be probably due to the reason that the DI has already made initial investments in 2010-11 and they are still waiting to gauge the results of their investments done till date based on which they intend to improve upon. It is because of these factors that the DI has requested safeguard duty for a period of 4 years. The fact, however, remains that adjustment plan given by the DI is only proposed and, as averred, changes/positive adjustments are to be undertaken over 2-3 years. But, no actual time frame has been fixed for such changes.

XII. Conclusion and recommendation:

- (i) There has been a significant increase in imports in absolute terms in the year 2012-13 as compared to the immediately preceding year 2011-12. However, this increase is not as sharp when the comparison is made with the base year, because the imports have fallen in 2011-12 vis-à-vis the base year 2010-11. Even though increase is noticed, it is important to note that in this case, the rise in imports has been insignificant/marginal in comparison to demand in 2012-13 when compared with the base year. However, even if it cannot be concluded that there is a continuous surge in imports over the entire POI, it is noted that there has been significant increase in imports during POI so as to cause serious injury.
- (ii) On analysis of the data for the period April to June, 2013 and 2013-14(A), to arrive at a fair conclusion, it is observed that the position of the domestic industry has improved on account of factors of market share, production, sales and capacity utilization. Even the imports have declined. Based on the above, it is concluded that there is no threat of serious injury to the Domestic Industry.
- (iii) DI's assertion that imports are displacing DI in the Indian market for MAA does not seem to be correct as discussed hereinbefore. In fact, it is the restrictive/regulated production of MAA in accordance with their own suitability by the DI, that is affecting the imports of the product, especially in view of the fact that DI has claimed to have excess capacity than the total demand of the product in question.
- (iv) The domestic industry has not been able to demonstrate that the developments in the market for the Product under Consideration were unforeseen. On the contrary, even the information supplied by them does not support their case, as examined in detail in the relevant paragraphs above. Therefore, it is concluded that the DI has not been able to substantiate its claim of unforeseen circumstances leading to surge in imports of the PUC with any concrete/tangible evidences.
- (v) The DI has not been able to clearly demonstrate that the imposition of the safeguard duty on the PUC for four years is absolutely in Public Interest. When there is no threat of serious injury and the fact that imports are coming in at competitive prices establish that the DI is unable to establish that imposition of Safeguard duty as per their petition for the same would be in Public Interest.

106. In view thereof, no safeguard duty on the imports of Methyl Acetoacetate is recommended.

**Sd/-
(Ram Tirath)
Director General**