

**NOTIFICATION**  
**(F.No. D-22011/23/2008 New Delhi, 30th January, 2009 )**

**Sub: Safeguard investigation concerning imports of Linear Alkyl Benzene - Preliminary findings.**

**G S R                    D- 22011/23/08 dated January, 2009 having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguard Duty), Rules, 1997 thereof;**

**1 Procedure:** The Notice of Initiation of Safeguard investigation concerning imports of Linear Alkyl Benzene (LAB) into India was issued on 19th December, 2008 and was published in the Gazette of India Extraordinary on the same day. A copy of the Notice was also sent to all known interested parties as under:

**2 Domestic Producers**

- (i) M/s. Reliance Industries Ltd., Mumbai,
- (ii) M/s Tamilnadu Petroproducts Ltd., Chennai,
- (iii) M/s Nirma Ltd., Ahmedabad
- (iv) M/s Indian Oil Corporation Ltd., New Delhi (Supporter)

**3 Importers**

- (i) Fena Pvt Ltd, A-67&68 Mettupalayam, PIPDIC Industrial Area, Pondicherry, 605009
- (ii) Skill Dyechem, Village Panchpara, PO Radhadasi- 711309, Howrah, West Bengal
- (iii) Sai Sulphonates P Ltd, 21, Princep Street, Kolkata 700072, West Bengal
- (iv) Rohit Surfactants Pvt Ltd. (GHARI), KDC-Chaubepur unit, 117/H-2/202, Pandu Nagar, Kanpur- 200005, Uttar Pradesh

**4 Exporters**

- a) Iran Chemicals Industries Investment Companies, No.91 Saidi St Africa Ave Teheran ( 19679 ) Iran .
- b) Gulf Farabi Petrochemical Co. Al-Jubail Industrial City 31961, P.O. Box 11763, Kingdom Of Saudi Arabia
- c) Seef Limited, Qatar, Seef Limited, Post Box: 50077, Mesaieed, State Of Qatar
- d) Kolmar Group Ag, Laubehof, Metallstrasse 9, 6300 Zug, Switzerland

**5.** A Copy of the Notice was also sent to government of exporting countries through their embassies in New Delhi.

**6.** Questionnaires were also sent, on the same day, to all known domestic producers and importers and they were asked to submit their response within 30 days.

**7.** The domestic industries submitted the response to the questionnaire.

**8** Indian importers M/s Fena Pvt. Ltd, New Delhi, Sai Sulphonates Pvt Ltd, 24 Pargnas and Rohit Surfactants Pvt Ltd, Kanpur and exporters Gulf Farabi Petro

Chemical, Kingdom of Saudi Arabia and Seef Ltd, Qatar submitted preliminary objections and sought more time to submit detailed replies.

9. 24 manufacturers of soaps and detergents from all over India, both large scale and small scale, applied to be treated as interested parties and sought more time to file detailed replies. Director General after due consideration agreed to include 24 manufacturers of soaps and detergents as interested parties and also allowed extension of time till 06/02/2009. The extension of time till 06/02/2009 was also granted to original noticees as well on request. The name address of the 24 new “Interested Parties” are given below

Sl.No	Name and address of the respondents
1	Fashion Suiting (P) Ltd. 3, Chhabra Mansion, Puri Road,Bhilwara-311001
2	Shree Unicon Organics Pvt. Ltd. BS, Apjee, 130 Mumbai Samachar Marg Mumbai-400023
3	A.R Salphonates Pvt. Ltd. Plot No. N41 Additional Ambernath, MIDC Anand Nagar, Dist.Thane - 421501 Maharashtra
4	Tamil Nadu Small Scale Soap & Detergents Chateau ‘D Ampa, IV Floor , No37, Old No. 110 Nelson Manickam Road, Chennai-600029
5	Shanati Nath Detergents (P) Limited P-15, Kalakar Street, Kolkata-700007
6	Rajaram Group of Industries 14, Azeez Nagar IInd Street,Kodambakkam,Chennai.600024
7	Kishors Sons Detergents PVt. Ltd. 15-9-469, Mahanoongunj,Hydrerabad – 500012. (A..P.) India
8	Hindustan Uni Leaver Economic Laws Practiqe,Advocate and Solicitors,1502, Dalamal Towers, Nariman Point, Mumbai 400021
9	Advance Surfactants India Limited 511/2/1. Rajokri, New Delhiu-110038
10	A.R. Stanchem Pvt. Ltd.,Exporters & Manufacturers Old Court House Street,2nd Floor, Coke & Kalvay Building Kolkata 70000-1
11	New India Detergents Limited A-2/25 Model Town -1,Delhi-110009
12	M/s Small Scale Detergents 43 European Asyum Lanae , Kolkata -700016
13	Standards Surfactants Ltd 8/5 Arya Nagar,Kanpur-208002

14	Gora Mal Hari Ram Ltd. 39, Najafgarh Road, Ind Area, New Delhi- 110015
15	Detergents Manufacturers Associations 148 New Okhla, Industrial Complex-I, New Delhi-110020
16	Barkur Surfactants Pvt. Ltd. Unitop House , East West Estate ,Safed Pool, Andhari Kurla Road Mumbai-400072
17	ISRO Product Unitop House , East West Estate,Safed Pool, Andhari Kurla Road Mumbai-400072
18	S. Kumars Detergents Pvt. Ltd 4-D, Local Shopping Centre ,A Block , Ring Road,Naraina , New Delhi-110028
19	Saci- Chem 59 & 60 DSIDC, Industrial Complex ,Okhla , Phase-I, New Delhi-110020
20	Hipolin Limited , Madhuban , 4th Floor , Ellis bridge, Ahmedabad -380006
21	All India Federation of Detergents Manufacturers Delhi
22	Maharashtra Small Scale Soap Detergents Manufacturers Association Mumbai
23	Gujrat Small Scale Detergents Ahmedabad
24	Power Soaps Ltd 62-B, North Boag Road, T. Nagar, Chennai-600017

**10.** The application, submissions by interested parties and additional submissions by applicants, which are other than confidential, have been kept in the Public File. The views of the Domestic Industry, importers and other interested parties are summarized below:

**I. The Domestic Industry of LAB have made following major points:**

a. The product is defined as “All Linear Alkyl Benzene, Mixed Alkyl Benzene falling under the tariff description of Customs Heading 3817 00 11. The above product is generally known as ‘Linear Alkyl Benzene’ (for short “LAB”) in commercial market parlance. The subject goods are used for manufacture of Linear Alkyl Benzene Sulfonic Acid or the Sodium Salt of Linear Alkyl Benzene Sulfonic Acid. All Linear Alkyl Benzene and the subject goods have been classified under chapter heading 38.17 of the Customs Tariff Act, 1975.

- b. The period of investigation (POI) is April 2007 to March 2008 (12 Months). The information for the post period of investigation period (to the extent readily available) has also been provided on January 22, 2009 with reference to the DG's office letter dated 2nd January, 2009 and 7th January, 2009, primarily to establish the case for immediate imposition of provisional duties.
- c. The imports have increased not only in absolute terms but also in relation to the production and demand.
- d. A great majority of LAB imports coming to India are from Qatar, Iran and Saudi Arabia. Roughly 70% of the combined capacities of LAB in these countries and other Middle East countries are earmarked for exports. The geographical proximity of these countries combined with the strong LAB downstream sector in India, provides a huge attraction for these countries to direct their exports to India. The capacity is likely to go further up with another plant starting up in Egypt in 2007. It is therefore seen that the increase in production capacity clearly increased pressure on countries in this Region to export very large quantities of LAB (and indeed the exports from these countries increased almost five times in 2006-2007 when compared to 2005-06 and this surge continued throughout Calendar Year 2007). For most of these countries exports as a share of their total production increased during 2006-07 and even during 2007-08.
- e. It is also reported that the consumption of LAB in traditional markets such as the US and the EU market has stagnated or are steadily declining. On the other hand, India presented a sizeable market for LAB with a robust growth. These factors provided an incentive for the exporting country to ship increasing quantities of LAB at low prices.
- f. The share of imports increased appreciably from 3% to 14%. Imports from various countries, and mainly from the Middle East Region, are coming at extremely low prices. The average net sales realization of the domestic industry has increased over the injury investigation period. However, this increase in the average net sales realization of the domestic industry can be attributed as the direct result of increase in the cost. The cost/MT of the domestic industry has increased by about 33% during the POI as compared to the base year. However, it may be seen that the average selling price of the domestic industry has increased only by about 23% during the same period. Thus, the increase in the selling price of the domestic industry has not been commensurate with the increase in the cost of production.
- g. The sales volume of the domestic industry fell by about 14% during the above-mentioned period. This is a clear indication that a major portion of the market share of the domestic industry has been taken away by imports.
- h. The average unit value of imports from the major exporting countries has not raised in tune with the change in international feedstock prices as is evident the petitioners were not able to hold on to their market share without dropping prices.
- i. The profitability of the domestic industry has declined substantially during the POI

as compared to the base year i.e., 2004-2005 due to current severe undercutting and underselling by the exporting country despite suppressed prices of domestic industry.

j. The imports from most of the sources have undersold the domestic industry product during POI. It is becoming very difficult for the petitioners to operate at present and the survival of the domestic industry is equally becoming difficult. The subject imports were able to gain significant relative market share in through an aggressive pricing strategy. Therefore, an immediate action to curb the present surge in imports from the exporting country would be in the interest of domestic industry.

k. Most of the companies suffered lower capacity utilization due to pressure from increased imports coupled with drastic fall in profits and a meagre return on capital employed.

l. A comprehensive evaluation of parameters such as production capacity, production, capacity utilization, employment, productivity, cash flow, return on capital employed, captive use, stocks, consumption, sales, market share, price, and profitability of the period from 2004 up to the end of the financial Year 2007-2008 will demonstrate serious injury or significant impairment of the Indian producers of LAB. It is further submitted that there is a direct correlation between the increase in imports at lower prices and serious injury suffered by the domestic industry and the increase in imports has had injurious effects in terms of pressure on prices and a reduction in volume sold by the domestic industry.

m. Imposition of safeguard duties of at least 20% for a period of one year from the date of imposition followed by 15% in the second year and 10% in the third year has been requested. The levels of duties requested shall allow the domestic industry to reduce its costs with the several measures it has already undertaken or proposes to undertake in the corresponding time. There is an immediate need to protect the domestic industry by way of provisional duties to enable them improve their profitability and ROCE.

n. The constituent elements of the domestic industry have taken measures to fully utilize the capacities by a series of decisions including (i) de-bottlenecking, (ii) ensuring feedstock supply for such de-bottlenecked capacities, etc. The increases in capacities pursuant to the above steps are likely to result in optimization of operating costs. Since these are de-bottlenecking operations, there would be little increase in the Fixed Costs. Each member of the domestic industry is following different approaches to restructuring. The domestic industry is preparing for shifting from liquid fuel to natural gas for this purpose. At the completion of this switch over process, it is estimated that saving in energy cost could increase the competitiveness of LAB manufacture.

**II. Views of the interested parties:** In their submissions dated 16.01.2009, M/s Hindustan Unilever Ltd brought out the following points:

- a. Petitioners have not provided a non-confidential summary of the information claimed to be confidential. This seriously impairs the right of the interested parties to make meaningful submissions.
- b. 'Public interest' considerations play an important role in the administration of trade remedial measures such as safeguard duties and quoted the case of United Phosphorous vs Director General safeguard, 2000 (118) ELT 326 (Del).
- c. LAB is an intermediary product and is an important input in the manufacture of detergent bars and powder and constitutes around 50 to 60% percent of the final product cost. Any increase in the prices of the input (LAB) will most certainly increase the costs of final products. The demand for detergents in India is very elastic and in the absence of viable alternatives, the consumers will be forced to purchase them even at increased prices.
- d. The price of LAB has increased and such increase in prices has resulted in a proportionate increase in the prices of detergents and has impacted nearly 20 crore Indian households since detergent powders and bars are consumed in every Indian house. Further, the detergent industry in India comprises of thousands of tiny units, small scale industries and a few medium and large scale manufacturers. The detergent industry is highly labour intensive as compared to the LAB industry. It employs over five lakh workers, which is significantly high as compared to the LAB industry which employs only around 500 workers. In the event that safeguard duties are levied on imports of LAB into India, it may adversely affect the viability of the downstream detergents industry and thereby affect the very livelihood of the lakhs of workers employed in this industry.
- e. The four constituents of the domestic industry are multi-product, large manufacturing companies. Manufacture and production of LAB constitutes only a small percentage of the overall business of these companies. Given the large size of the Petitioners and the relatively small presence of LAB in their product portfolio, it is unlikely that they may suffer 'significant overall impairment' due to increase in imports of LAB alone.
- f. The total production of LAB by the domestic industry has increased but parallel to the decrease in the share of the domestic industry in total domestic consumption there has been a corresponding increase in domestic industry's export production. This implies that there has been a significant shift in the sales pattern of the domestic industry which is veering more towards exports. The share of exports in the total installed production capacity is significantly high, which goes on to show that LAB produced in India is increasingly being diverted to the export market. The loss in domestic market share by the domestic industry if any, is self inflicted and does not show any degree of injury to the domestic industry.
- g. Petitioners have been operating at significantly high level of capacity utilization.
- h. It has been a consistent practice with the Hon'ble Designated Authority to determine the existence or threat of serious injury to the domestic industry on the

basis of the most recent data on imports.

i. The Petitioners have failed to establish the existence of a causal link between increased imports of LAB and the alleged serious injury being suffered by them.

j. The claims by the Petitioners on their plants being shut down are misleading. Both Tamilnadu Petroproducts Ltd. as well as Reliance Industries Limited are large petro-chemical manufacturers and the information on plant shut downs relates to temporary shut downs possibly for general maintenance and up-gradation purposes or unavailability of feedstock. Contrary to the claims made by the Petitioners, their plants were shut not because of the increase in imports of LAB into India and their inability to sell LAB, but for temporary reasons such as maintenance for general wear and tear. Instead the Petitioners continue to produce and sell LAB both in the domestic market and the export market.

k. The consumers of LAB have been facing several constraints in procuring LAB from domestic sources. This forced the users of LAB to make alternate arrangements and explore the option of meeting their demand through imports. The difficulty in procuring LAB domestically has been further aggravated by the increasing trend amongst the domestic producers to substitute domestic sales by exports.

l. A review of the details provided by the domestic industry in its petition shows that their efforts to adjust to the increased imports are grossly inadequate and further highlights the incongruity of their claims that they are suffering injury due to increased imports.

m. In light of the above, there exists no serious injury or threat of serious injury to the domestic industry for LAB due to increased imports of LAB into India.

**III.** M/s Fena (P) Ltd, New Delhi, Advance Surfactants India Ltd, New Delhi, A.R.Stanchem Pvt.Ltd, Kolkata, New India Detergents Ltd, New Delhi, Rohit Surfactants (P) Ltd, Kanpur, Sai Sulphonates Pvt Ltd, Kolkata, Shantinath Detergents (P) Ltd, Kolkata, Small Scale Detergents & Soap manufacturers Association, Kolkata and Standard Surfactants Ltd, Kanpur filed submissions before Director General Safeguards through their authorized representative on 14.1.2009. The main arguments put forth are:

a. Import statistics is outdated and may not represent the current state of affairs. The investigation was initiated in December 2008. However, the petition presents import statistics only upto Financial Year 2007-08. Normally, when the investigation is initiated, import statistics as close to the date of initiation as possible shall be given. The domestic producers may be asked to provide a revised and updated petition giving information relating to imports as well as their own production costs, sales revenues, etc for the completed three quarters of the current year 2008-09.

b. The plants of domestic producers are running and hence the claim of closure of plants is false.

c. There is no fall in production.

- d. The end-users of LAB are medium and small sized enterprises as compared to the large industrial groups that manufacture LAB. The LAB producers have been acting as a cartel and are maintaining their domestic prices at artificially higher levels. Domestic selling prices charged by all the four domestic producers have always been in tandem. Domestic selling prices have been significantly higher than the prices at which they export to other countries; Import prices are somewhere in between their domestic prices and export prices.
- e. Indian end users of LAB have been paying very high prices charged by the domestic producers of LAB and the present petition seeking imposition of safeguards duty is only to preserve superlative profits.
- f. LAB is already subject to basic customs duty at the rate of 7.5%. On the finished consumer detergent products, there is a peak import duty of 10%. Therefore, imposition of safeguards duty on LAB will lead to an inverse duty structure where the custom duty on a basic raw material will be higher than the duty applicable on the finished products.
- g. Any increase in the cost of LAB will directly affect the prices of detergents and will eventually lead to lower production and sale of detergents. As against 4 manufacturers of LAB, there are over 4000 manufacturers of detergents in India. They employ over 500,000 persons as against 500 persons employed by LAB producers. Thus, levy of safeguard duty will jeopardize the employment opportunities of a large number of employees than non-levy of safeguard duty.
- h. 'Critical Circumstances' do not exist in the present case warranting imposition of provisional safeguard measures.
- i. It has further been contended that it is important and mandatory to consider 'all relevant factors' under Art. 4.2(a) to arrive at Serious Injury.
- j. Further import prices of LAB are mostly higher than export price of Indian LAB manufacturers. It may be observed that at least 30% of the total domestic production is being exported by the domestic industry. It is unrealistic to assume that if the domestic industry is suffering a loss in domestic market, they will export such high quantities at lower prices.
- k. As per the market intelligence available with the importers, the average net sales realization and margin of domestic industry range between -5% to 23%.
- l. No case of critical circumstances has been made out.
- m. They have also contended that the imposition of provisional or final measures would be against 'public Interest' and Article 3.1 of the AoS obligates the investigating authorities to hold public hearings or provide other appropriate means for interested parties (importer, exporters, producers, etc.) to present their views.
- n. Further, the Initiation Notice dated 19th December 2008 does not contain any reference to unforeseen developments that had occurred as a result of obligations undertaken by India before WTO.
- o. Capacity addition in the four exporting countries from Middle East is just 15,000

Tons or a meagre 4.6% and therefore, does not present a threat of material injury to domestic industry in absence of which preliminary safeguards duty should not be levied. Such insignificant capacity additions are common in business and at best, the above changes can be termed as “developments” but can never be termed as “unforeseen developments as a result of obligations undertaken by India”.

p. As submitted above (and admitted by Domestic Industry) the comparative advantage in raw material is reflected in the prices and volumes for which no safeguard duty can be imposed. The oil production in Middle East is a widely known factor since several decades. The objective of trade remedy measures including safeguards is not to allow companies to earn ‘super normal profits’ by seeking protection from their national governments.

q. It has been contended that no credible Restructuring plan has been presented by the domestic Industry.

**IV.** The representatives of M/s Fena (P) Ltd, New Delhi, Advance Surfactants India Ltd, New Delhi, A.R.Stanchem Pvt.Ltd, Kolkata, New India Detergents Ltd, New Delhi, Rohit Surfactants (P) Ltd, Kanpur, Sai Sulphonates Pvt Ltd, Kolkata, Shantinath Detergents (P) Ltd, Kolkata, Small Scale Detergents & Soap manufacturers Association, Kolkata and Standard Surfactants Ltd, Kanpur filed additional submission on 23.01.2009. The main submissions are as follows:

a. It has been contended that ‘Critical Circumstances’ do not exist in the present case warranting imposition of provisional safeguard measures. In supports of their contention, they have referred Argentina-Footwear case in WTO, Textile Monitoring Body (TMB) meeting held in January, 2000 and Agreement on Safeguard to emphasize the need of existence of Critical Circumstances. It has further been contended that it is important and mandatory to consider ‘all relevant factors’ under Art. 4.2(a) to arrive at Serious Injury. In support of the contention, they have referred the US-Wheat Gluten case in the Appellate Body and Panel Report on Korea – Dairy case.

b. Regarding their contention of absence of serious injury and absence of critical circumstances warranting imposition of provisional duty, they have contested that the outdated data is not relevant to determine the critical circumstances. It is undisputed that cost of production of LAB is completely based on crude prices, but the domestic prices do not reflect the falling crude prices.

c. Further import prices of LAB are mostly higher than export price of Indian LAB manufacturers. It may be observed that atleast 30% of the total domestic production is being exported by the domestic industry. It is unrealistic to assume that if the domestic industry is suffering a loss in domestic market, they will export such high quantities at lower prices.

d. As per the market intelligence available with the importers, the average net sales realization and margin of domestic industry has varied from -5% to 55%.

e. In domestic industry admits that employment may not indicate the real pressure on

domestic industry. On the other hand levy of provisional measures directly affects the detergent industry comprising of thousand of tiny units, KVIC units, Small Scale Industries and few Medium and Large Manufacturers. It employs over five lacs workers and caters to the daily hygiene needs of washing clothes of over 120 crores population comprising of 200 million households in India.

f. They have also contended that the imposition of provisional or final measures would be against 'public Interest' and Article 3.1 of the AoS obligates the investigating authorities to hold public hearings or provide other appropriate means for interested parties (importer, exporters, producers, etc.) to present their views and to respond to the views of others with respect to the matters being investigated. One such issue on which parties' views are required to be sought is whether or not a safeguard measure would be in the public interest.

g. In the present case, detergent industry comprises of thousand of tiny units, KVIC units, Small Scale Industries and few Medium and Large Manufacturers and employs over five lakh workers whereas the LAB industry consists of four large industrial units and employs merely 500 workers. Further, LAB alone constitutes over 50 to 60% of the raw material cost of detergent products. Some LAB is also used in the manufacture of other products like Pesticides and Emulsifiers used in agriculture by poor farmers and other chemicals like textile auxiliaries used in textile industry etc. On the other hand out of the four domestic manufacturers of LAB two are Fortune 500 Companies for whom LAB business is very insignificant i.e. less than 1% of their total business. Therefore, it is submitted that the imposition of provisional/final safeguard measure in the present case would be against public interest and violative of Article 3.1 of AoS.

h. The domestic industry contends that Initiation is in violation of Article XIX of GATT 1994 as no unforeseen developments appear to have occurred Further, in terms Article XIX of GATT 1994, a safeguard measure can only be imposed when there is a sudden surge in imports as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under GATT, which causes or threatens to cause serious injury to domestic producers of like or directly competitive products in the territory of that contracting party..

i. The capacity addition in the four exporting countries from Middle East i.e Iran, Qatar, Saudi Arabia & UAE is just 15,000 Tons or 4.6% .

j. Further, the petition itself acknowledges that Indian manufacturers are saddled with high energy and power costs unlike in the Middle East. It may be noted that this is the comparative advantage enjoyed by Middle East for global trade because of ample availability of raw material. Also, this comparative advantage will be enjoyed for years to come and was foreseeable at the time of Uruguay Round Negotiations. Imposing safeguards duty against the comparative advantage will amount to penalizing an exporter for the natural resources it possesses which goes against the

basic tenets of WTO Agreement in general & AoS in particular.

k. It is contended that the Parameters mentioned in the petition do not support 'serious injury' or 'threat of serious injury' as:

- The capacity utilization reached to the level of 95% in POI
- Inventories have declined in the period of investigation as compared to previous year as well as base year.
- There is no fall in the production quantities during 2007-08. On the contrary, production has increased from 4.65 lac MT during 2006-07 to 4.71 lac MT during 2007-08.
- It is contended that The Parameters mentioned in the petition do not support 'serious injury' or 'threat of serious injury'.

l. As submitted above the comparative advantage in raw material is reflected in the prices and volumes for which no safeguard duty can be imposed. The oil production in Middle East is a widely known factor since several decades. The objective of trade remedy measures including safeguards is to facilitate structural adjustment that would enhance rather than limit international competition. It has been contended that no credible Restructuring plan has been presented by the domestic Industry. Thus the measures may not be imposed unless they are limited to the extent necessary to prevent or remedy serious injury; and they facilitate adjustment.

m. Further there appears to be no co-relation between the proposed reduction in cost and the level of duties in force or the level of duties sought by them.

**V. Further submissions by Domestic Industry:** The applicants filed additional submissions on January 22, 2009. The main points put forth by them are:

a. In response to M/s Hindustan Unilever Ltd., the domestic industry submitted that it has given all the non-confidential data regarding serious injury in the non-confidential version of the application submitted. It was submitted that they have provided all the indexed figures on the various injury factors which clearly show the trend of the various individual injury factors such as production, sales, capacity utilization, profitability, return on investment etc. The data regarding costs, profitability, ROI etc are highly business sensitive information, the disclosure of which would be of significant competitive advantage to the competitors and would adversely affect their business. The domestic industry, has, therefore claimed confidentiality in terms of Rule 7(1) of the Safeguard Rules and the indexed figures have been provided.

b. As regards the reference to the decision of the Hon'ble Supreme Court in the Reliance case, it is submitted that the same is not at all relevant and has been quoted completely out of context. In that case, the Designated Authority had claimed confidentiality and it was held by the Hon'ble Supreme Court that the right to claim confidentiality in terms of the provisions of Rule 7 of the Anti-dumping Rules is not

available to the Designated Authority. Therefore, the said judgment is of no relevance.

c. The detailed restructuring plans of the domestic industry have indeed been attached to the confidential version of the application. Since these plans are company-specific and contain commercially sensitive information, the Domestic Industry had sought protection under Rule 7(1) of the Safeguard Rules. Therefore, the details of the restructuring plans cannot possibly be shared with the other interested parties.

d. As regards Public Interest, it has been submitted the argument advanced by HUL is without any merit whatsoever as the safeguard laws are meant to protect the legitimate interests of the Domestic Industry of the country from increased imports. If the argument of HUL is accepted, it would render the entire safeguard law meaningless as the purpose and object sought to be achieved by safeguard duties is to protect the Domestic Industry against increased imports. Further, imposition of safeguard duty does not encourage monopolistic practices but protects the interests of the domestic producers, if increased imports cause or threaten to cause serious injury to them so as to allow them sufficient time to meet the competition offered by increased imports.

e. The scope of the term “Public Interest” is not restricted to cover consumer interest alone. “Public Interest” is a much wider term covering in its ambit the general social welfare of the larger community interest which includes the interest of the manufacturers as well. While the imposition of safeguard duty may result in the increased cost of imported LAB into India, it is important to keep the prime objective of safeguard laws in mind. The purpose of its imposition is to provide sufficient time to the domestic industry to make positive adjustments to meet the situation of increased imports. The imposition of safeguard duty would allow the users/buyers a wider choice to source their material requirements, that too at a competitive price.

f. HUL has relied upon the decision of the Hon’ble Delhi High Court in the case of United Phosphorus Vs. Director General (Safeguards) in support of its arguments for public interest. Without prejudice to our contention that public interest in the context of safeguard laws would be served if the domestic manufacturers are protected against increased imports, it is submitted that the said decision has been cited wholly out of context. In that case, the DG decided that since the Domestic Industry had stopped production, it would be difficult to appreciate that even after three years indigenous product can be made available to the domestic users/consumers at competitive prices. The DG had therefore reached a conclusion of not recommending safeguard duties after considering such relevant factors as the likelihood of the success of the restructuring plan. Thus, it is apparent that the decision of the DG was based on the inability of the Domestic Industry to improve over a period of time. The decision of the Hon’ble Delhi High Court was in this

context only wherein it was held that the DG has to consider other aspects as well under the Rules. There is not even a whisper that the decision of the Hon'ble Delhi High Court empowered the DG to look into the aspects of public interest at large so as to include the interests of the user industry as well. It is therefore reiterated that the public interest, as envisaged under the Safeguard Rules and elaborated by the Hon'ble Delhi High Court, will be met with if the state of the domestic producers of the product under consideration is examined on the basis of the parameters provided under the Rules.

g. HUL and the importers/end-users may be asked to give detailed information as to how the employment situation in the detergent industry was impacted when the prices of LAB had gone up due to the overall increase in the crude prices. It would become apparent that HUL and the importers merely are raising the bogey of employment and larger public interest to protect their profit margins at the cost of the beleaguered LAB industry.

h. The domestic industry also provides employment to a number of people in the country, thereby making a valuable contribution to the economy of India. Imposition of safeguard duty will only allow the domestic producers to survive the new face of competition through increased imports, which will benefit the buyers of LAB as well as the final end users/consumers in the long run.

i. HUL has argued that there is a lack of serious injury to the domestic industry. This argument is again baseless, as the domestic industry has given ample evidence of serious injury caused by increased imports of LAB.

j. Serious Injury: HUL has claimed that there is no serious injury to the domestic industry on account of increased imports of LAB. In this context, it may be relevant to quote the provisions of Clause 6 (c) of Section 8B of the Customs Tariff Act, 1975, which defines "Serious Injury to mean an injury causing significant overall impairment in the position of domestic industry". Further in determining whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Annex to the Safeguard Duty Rules requires the Director General to 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 increase in imports of the article concerned in absolute and relative terms, the share of domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses and employment.

k. An analysis of the various parameters clearly indicates that the domestic industry has suffered serious injury due to increased imports. The imports have increased in absolute terms as well as relative to the apparent consumption in the country indicating that a major slice of the domestic market share has been taken over by cheap imports.

l. It may be observed from the data submitted by the domestic industry that the domestic industry is suffering serious injury on all the major economic and financial

parameters. It may be seen from the submissions made by the domestic industry that the market share of the domestic industry has fallen drastically in 2007-08 as compared to the year 2005-06. Most of the companies suffered lower capacity utilization due to pressure from increased imports coupled with a situation of losses from erstwhile profits and a meager return on capital employed. There is a direct correlation between the increase in imports at lower prices and serious injury suffered by the domestic industry. The increase in imports has had injurious effects in terms of pressure on prices and a reduction in volume sold by the domestic industry.

m. As regards the high Capacity Utilization by the Domestic Industry, it is submitted the capacity utilization of the Domestic Industry has seen a fall over the injury investigation period. But for the increased imports, the Domestic Industry would have been able to cater to the additional demand without any difficulty keeping in view its achievable capacity.

n. HUL has stated that since LAB constitutes only a small percentage of the overall business of the petitioners, it is unlikely that they may suffer significant overall impairment due to increase in the imports of LAB alone. It may be appreciated that safeguard duty is product specific. The injury suffered by the domestic industry due to increased imports is for the product concerned i.e., LAB and not for the other products. Most of the petitioner companies are multi-product companies. It is important to note that the injury analysis is done for the specific product under question and not for the whole company when such separate identification of that product based on production process, producers, sales and profits is possible. This position has also been affirmed by the Hon'ble Supreme Court in the case of Reliance Industries Ltd. Vs. Designated Authority [2006 (202) ELT 23 (SC)]. The same ratio has to apply for safeguard duties as well. It is very clear from the submissions made by the domestic industry that they are suffering serious injury in LAB due to increased imports of LAB and the reference to their other operations is legally and logically of no consequence.

o. HUL has claimed that the domestic sales are being substituted by exports. In this connection, it is submitted that a significant decline in ROI and a situation of loss coupled with significant price undercutting and underselling despite suppressed domestic prices caused by the cheap and increased imports have forced the domestic industry to increase its share in the export markets. If the Domestic Industry decides not to export, it would directly affect their total production thereby increasing the overall costs and losses. In fact, if the Domestic Industry is able to increase its sales to the domestic market, it would certainly like to do so as the realization in the domestic market is better. In fact, the whole objective of this application is to increase the market share in the domestic market. The argument of HUL is therefore devoid of any merit.

p. As regards the claim that the cause of injury to the domestic industry is not

increased imports as these imports were necessitated to meet the gap between domestic supply and domestic demand, it is submitted that it would be more profitable for the Domestic Industry to sell in the domestic market as compared to exports but it is precisely because of the increased imports that the Domestic Industry is unable to sell in the domestic market. Further the domestic industry has only requested for imposition of safeguard duty on imports of LAB in accordance with the law so as to enable them to adjust to the situation of increased imports.

q. HUL has also argued that the injury to the domestic industry is self-inflicted and due to intrinsic inefficiency and insufficient restructuring plans. The domestic industry has already identified the various restructuring and adjustment plans so as to meet the increased competition from imports. The desirability and need for imposition of safeguard duty needs to be assessed and determined in the context of whether there is a reasonable possibility of the domestic industry making positive adjustments and becoming competitive. The domestic industry, in the present case, has already identified its adjustment plans and have requested for imposition of safeguard duty so as to enable them to take necessary steps to protect them from the serious injury caused by increased imports. Besides, the domestic industry is well aware of the fact that safeguard measures are of temporary and short-term nature provided only to protect the domestic producers to make readjustments and face the competition from increased imports.

**VI.** In response to submissions of M/s Fena (P) Ltd, New Delhi, Advance Surfactants India Ltd, New Delhi, A.R.Stanchem Pvt.Ltd, Kolkata, New India Detergents Ltd, New Delhi, Rohit Surfactants (P) Ltd, Kanpur, Sai Sulphonates Pvt Ltd, Kolkata, Shantinath Detergents (P) Ltd, Kolkata, Small Scale Detergents & Soap manufacturers Association, Kolkata and Standard Surfactants Ltd, Kanpur the applicants stated as follows:

- a. These importers have not filed the importer's questionnaire before the DG. Therefore, it would be appropriate if the present submissions of the importers are ignored as the Domestic Industry cannot be called upon to comment upon the submissions in a piecemeal manner. This approach certainly impedes the investigation process and acts prejudicial to the interests of the Domestic Industry.
- b. As regards the alleged outdated Import Statistics, it has been stated that the argument though theoretically attractive has no legal or logical support.
- c. There is no legal provision which suggests that the period immediately preceding the initiation must be taken into account by the DG. On the contrary, in the case US Line Pipe case (following Appellate Body decision in the Argentina Footwear (EC) case), the WTO Panel held that "the word 'recent' implies some form of retrospective analysis. It does not imply an analysis of the conditions immediately preceding the Authority's decision."
- d. If the POI is constantly revised after initiation, it would lead to a situation where

the investigation would become a never-ending exercise.

e. The importers have not indicated as to how the circumstances have significantly changed after the proposed POI. A mere statement that the prices have changed is not sufficient to question the POI taken for the purpose of enquiry. This is without prejudice to our contention that the DG can take into account only the information relating to the POI except for examining the issue of critical circumstances for the purpose of provisional duties.

f. The Domestic Industry had filed the application as early as in July 2008 with the most recent data reasonably available to the domestic Industry and hence the submission is without any substance.

g. The apprehension regarding a high NIP (due to the proposed POI) is ill-founded as the comparison for the purpose of price underselling is always made with the imports of the corresponding period. It is therefore clear that the importers are merely attempting to delay or block the imposition of provisional duties by raising frivolous issues.

h. The Designated Authority in the Ministry of Commerce has recently initiated several investigations where the import data is more than nine months old. In this context, the decision of the Hon'ble Rajasthan High Court in the case of RTMA Vs. Designated Authority [2002 (149) ELT 45 (Raj.)] may be referred to. Though that decision is rendered in the context of anti-dumping investigations, the ratio is squarely applicable to the safeguards investigations also as the relevant provisions are identical.

i. If the contention of the importers is accepted that the Domestic Industry should give the information for the three quarters of the financial year 2008-2009, it would amount to a diktat by the importers as to how the POI should be determined without any legal, factual or logical support.

j. Any revision of the POI, which is legally not necessitated, would be detrimental to the interests of the Domestic Industry which is already suffering on account of increased imports.

k. An analysis of the various parameters clearly indicates that the domestic industry has suffered serious injury due to increased imports. The imports have increased in absolute terms as well as relative to the apparent consumption in the country indicating that a major slice of the domestic market share has been taken over by cheap imports.

l. It may be seen from the submissions made by the domestic industry that the market share of the domestic industry has fallen drastically in 2007-08 as compared to the year 2005-06. Most of the companies suffered lower capacity utilization due to pressure from increased imports coupled with a situation of losses from erstwhile profits and an inadequate return on capital employed. There is a direct correlation between the increase in imports at lower prices and serious injury suffered by the domestic industry. The increase in imports has had injurious effects in terms of

pressure on prices and a reduction in volume sold by the domestic industry

### **11. Findings of the DG:**

I have carefully gone through the case records and the replies filed by the interested parties and the domestic producers. Submissions made by various parties and the issues arising there from are dealt with at appropriate places in the finding below:

#### **I. Issuance of Preliminary Findings and Observance of Natural Justice:**

The issue to impose immediate safeguard measures was examined. It has been found that a total of 168 Safeguard Initiations have been reported to the WTO during the period between 29.03.1995 and 12.11.2008. It has been observed that in 15 of these cases provisional safeguard measures have been recommended/imposed within 30 days of initiation of the safeguard investigation. In some cases the provisional safeguard measures have been recommended on the same day as the date of initiation of the investigation. The Rule 9 of Customs Tariff (Identification And Assessment of Safeguard Duty) Rules, 1997 notified vide Notification No. 35/97-NT-Customs dated 29.07.1997 prescribes that the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary finding regarding serious injury or threat of serious injury. The principles governing investigations have been provided in the Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, which is independent to Rule 9. The Rule 15 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules provide for refund of differential Safeguard duty in case safeguard duty imposed after conclusions of the investigations is lower than the provisional duty already imposed and collected. The harmonious reading of Rules 6, 9 and 15 of the said Rules leads to a conclusion that the Rules provide for expeditious recommendation of provisional Safeguard duty based on preliminary findings and refund of the differential duty in case it is ascertained that the duty imposed after conclusion of investigation following natural justice as enshrined in the Rule 6 is lower than the provisional Safeguard Duty. However, in critical circumstances any delay in imposition of Provisional Safeguard duty may cause damage which would be difficult to repair. Accordingly, it is my considered view that the issuance of preliminary findings and imposition of provisional duty is in complete conformity with the tenets of Natural Justice.

#### **II. Confidentiality of Certain Information:**

The representatives of HUL contended that undue and excessive confidentiality claimed by the Petitioners seriously impaired the right of the interested parties to make meaningful submissions. They also requested that the Designated Authority to direct the Petitioners to disclose all pertinent information especially all details of restructuring plans to the interested parties, including the Importer. I went through the restructuring plan submitted by the applicant as confidential documents, and I found

that the restructuring plan is detailed, specific and based on technical and economic parameters. It is the restructuring plan which is supposed to make the Industry competitive enough to face competition from imports once the term of safeguard measures are over. A restructuring plan is intended to bring efficiency and it is the relative efficiency which brings competitiveness. A restructuring plan is an intellectual property and the secrecy of the plan helps managing change on account of restructuring. Further, the confidentiality helps maintain a lead over competitors. However, I also appreciate a need of disclosure of certain information for effective rebuttal by the other interested parties and also to maintain transparency in decision making. In order to maintain harmonious balance between the two competing interests, I have disclosed in the preliminary findings all relevant information except those which have been claimed to be confidential and at the same time I am of the view that disclosure of which would seriously injure interest of the party claiming confidentiality.

**III. Product:** The product under investigation is “All Linear Alkyl Benzene, Mixed Alkyl Benzene. It falls under sub-heading No. 38170011 of Schedule I of the Customs Tariff Act 1975 , sub-heading No. 38170011 of ITC and sub-heading No. 38170011 of HSN. The subject matter of investigation is only Mixed Alkyl Benzenes and Linear Alkyl Benzenes and not Mixed Alkyl Naphthalenes. The above product is generally known as ‘Linear Alkyl Benzene’ (for short “LAB”) in commercial market parlance.

The domestic industries use Kerosene, (Extracted - C10-C13 Paraffins) and Benzene as raw materials for the production of Linear Alkyl Benzene. C10-C13 Paraffins are extracted from the Hydrobon Molex Process, from Feedstock Kerosene. These Paraffins are converted to their Olefins, by selective dehydrogenation, at high temperature. The C10-C13 Olefins are then alkylated to Benzene, to form Linear Alkyl Benzene. The linear alkylbenzenes produced from C10C13 linear olefins are useful detergent intermediates and can be readily sulfonated to yield linear alkylbenzene sulfonates. These compounds constitute the “active” ingredients of household detergents. They are surface active compounds (surfactants) which are combined with various builders (often inorganic salts) to make up a detergent. In short, LAB is used as an important input by the detergent industries.

**IV. Domestic Industry:** The present investigation arises on an application made by M/s. Reliance Industries Ltd., Mumbai, Tamilnadu Petroproducts Ltd., Chennai, Nirma Ltd., Ahmedabad and supported by Indian Oil Corporation Ltd., New Delhi. The shares of these companies are as mentioned below:

	2004-05	2005-06	2006-07	2007 –08
Company	Share	Share	Share	Share
Indian Oil	11%	24%	26%	28%

Nirma	26%	21%	19%	19%
Reliance	40%	38%	36%	37%
TPL	23%	18%	19%	17%
Total	100%	100%	100%	100%

The share of the applicants excluding Indian Oil, who is supporting, is 72% during 2007-08 and 100% when Indian Oil is also considered with the applicants. Accordingly, the applicants constitute domestic industry in terms of clause (b) of subsection (6) of Section 8B of the Customs Tariff Act, 1975.

#### **V. Unforeseen Developments:**

a) The Article XIX of GATT 1994 which reads as:

“ 1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement,.....” uses the term ‘unforeseen developments’. The use of plural term ‘developments’ implies that there could be more than one development whose combined effect may be considered. Further, in practice all developments may not be independent and in fact such developments may influence each other. It is the effect of resonance of all such developments which impact the business dynamics and tilt the odds from one to another. Therefore, in order to consider unforeseen developments and the result thereof, it is necessary to take holistic view.

b) Preliminary investigations indicate that the majority of LAB imports are coming from Middle East (Qatar, Iran and Saudi Arabia) where additional capacities have come up. Around 70% of the capacities in these countries are used for export market. It is observed that India has shown robust growth in 2007-08 and the same is continuing in 2008-09. The strength of growth can be deduced from the fact that even when many developed countries have declared the arrival of recession, India is continuing with the growth. The stagnation in demand of developed countries having large per capita consumption, naturally, makes the trade look towards the area where there is a demand and growth of demand. The combined effect of change in outlook of trade , changes in world order coupled with other developments like creation of extra capacities abroad are the developments, which was difficult to be foreseen and has led to increased imports and consequent injury.

#### **VI. Increased Imports:**

- It is apparent from the Table below that there has been increase in import volume in 2007-08 over the period 2006-07. Further, the imports in 2006-07 were significantly higher than 2005-06. This increasing trend continues up to September 2008.
- The relative increase in imports compared to domestic production as well as domestic sales have been studied and found that there has been significant increase

in share of imports compared to domestic production from 7.25% in the year 2006-07 to 14.27% in the year 2007-08. The similar trend continues in the later months. The share of imports in total sales in India has gone up from 7.22% to 13.91% in 2007-08, with continuing trend in later months, as given in the following tables.

### Imports of LAB in India

	Quantity (MT)	Value (Rs. in lacs)	Price (Rs. PMT)
2004-05	9854	3913	39710
2005-06	4871	2314	47506
2006-07	21470	11491	53521
2007-08	45505	25474	55981
April 2007-Sep 2008 (18 Months)	70506	47652	67586
April 2007-Sep 2008 (Annld)	47004	31768	67586

### Increasing Import Vis-a-Vis Domestic Industry

	2005-06	2006-07	2007-08	Apr07-Sep08 (18 Months)	Apr07-Sep08 (Annld)
Share of imports vis-à-vis domestic production	1.69%	7.25%	14.27%	14.55%	14.55%
Share of domestic production (total)	98.31%	92.75%	85.73%	85.45%	85.45%
Market share of Imports vis-à-vis total domestic sales	1.73%	7.22%	13.91%	14.40%	14.40%
Share of domestic sales	98.27%	92.78%	86.09%	85.60%	85.60%

Further, the comparison of cost of sale taking reasonable ROCE and the import prices, it is observed that the imports are at lower prices. Accordingly, I find that there is increase in imports in absolute as well as relative term and the increase in imports during recent period is significant.

**VII. Serious Injury:** In order to determine whether there is serious injury to the domestic industry, I have examined the various factors including those envisaged under paragraph 1 of Annex to the Safeguard Rules in the following paragraphs:

**a) Sales and Market Share of domestic industry:** The sales volume of the domestic industry has gone down during the period under consideration as compared to the immediately preceding year. The market share of the total domestic industry

(including IOCL) has fallen from 98% in the base year to about 86% in the POI, a fall of about 12%. It is also important to note that the market has shown a growth of over 16% during the period 2007-08. sales volume of the domestic industry fell by 9083 MT during April 07 to September 2008 (Annualized) as compared to 2005-2006 i.e., a fall of about 5%. Further, the sales volume of the Domestic Industry has come down despite the fact that the total demand and the size of the Indian market has gone up by as much as 45569 MT, an increase of about 16%.

	2005-06	2006-07	2007-08	Apr07-Sep08 (18 Months)	Apr07-Sep08 (Annlzd)
Imports	4871	21470	45505	70506	47004
Share of imports vis-à-vis domestic production	1.69%	7.25%	14.27%	14.55%	14.55%
Share of domestic production (total)	98.31%	92.75%	85.73%	85.45%	85.45%
Market share of Imports vis-à-vis total domestic sales	1.73%	7.22%	13.91%	14.40%	14.40%
Share of domestic sales	98.27%	92.78%	86.09%	85.60%	85.60%

**b). Capacity Utilization & Production:** While the production of the domestic industry has declined during the period 2007-08 as compared to the year 2005-06, there is an increase of a negligible (0.027%) as compared to the immediately preceding year. It is important to note that the capacity utilization has fallen from 104% in the base year to 96% during the period April 2007- September 2008. This is despite the fact that the market size has increased by about 16%. It is therefore clear that the domestic producers have not been able to take a fair share of the growing market.

	Unit	2005-06	2006-07	2007-08	Apr07-Sep08 (18 Months)	Apr07-Sep08 (Annlzd)
Installed capacity	MT	448500	448500	497338	746007	497338
Actual Production	MT	467765	459192	470331	716613	477742
Capacity Utilization	%	104%	102%	95%	96%	96%

**c). Productivity:** There is no indication to suggest that the injury is on account of loss of productivity.

**d). Profitability:** The profitability of the domestic industry has declined

substantially during the period of 2007-08 as compared 2005-2006. As compared to the profit of the Domestic Industry of Rs. 100 (Indexed) in 2005-2006, there is a loss of Rs. 41 (Indexed) in 2007-08. There is a loss of Rs. 42 (Indexed) per MT in the 2007-08 against a profit of Rs. 100 (Indexed) per MT in 2005-2006.

**e). Employment:** There has been no significant impact on employment. The reason being all the Indian producers are multi-product companies and the existing labour laws. However, the Domestic Industry submits that if the present situation does not improve, the adverse impact on employment is imminent.

**f). Price Analysis:** An analysis of the landed value and the current net sales realization clearly shows the existence of price undercutting to the extent of about 6%. It is also observed that the domestic industry is suffering on account of price underselling..

A comprehensive evaluation of all relevant parameters indicates that there is overall impairment of the domestic industry of LAB. It has been argued by some of the interested parties that the applicants are making profits as per their annual reports. In this connection, it is important to note that the Safeguard Rules requires an assessment of various injury parameters in the context of the product under consideration and not for the company as a whole. Therefore, there is no merit in the argument advanced in this respect.

**VIII. Causal Link:** A comprehensive evaluation of parameters as above for the period from 2004-05 up to the end of the financial year 2007-2008 demonstrates serious injury or significant impairment of the Indian producers of LAB. The market share of the domestic industry has substantially declined during 2007-08, as discussed above. During the same period there has been substantial increase in imports both in absolute as well as relative term, due to the commissioning of export-oriented capacities in various countries and the growing Indian market. The declining profitability during the period 2006-07 and 2007-08 compared to the period 2005-06 coincide with the same period when import increased. The fall in capacity utilization is also found to be there when import increased. This clearly depicts a direct correlation between the increase in imports at lower prices and serious injury suffered by the domestic industry and the increase in imports has had injurious effects in terms of pressure on prices and a reduction in volume sold by the domestic industry.

**IX. Adjustment Plan:** The domestic producers have submitted a detailed adjustment plan with estimated impact on cost. Through these measures constituents of the domestic industries have taken measures to fully utilize the capacities by a series of decisions including (i) de-bottlenecking, (ii) ensuring feedstock supply for such de-bottlenecked capacities, etc. The increases in capacities pursuant to the above steps are likely to result in optimization of operating costs. Since these are de-bottlenecking operations, there would be little increase in the Fixed Costs. Each

member of the domestic industry is following different approaches to restructuring. The preliminary analysis of the restructuring plans shows that these are viable restructuring plans.

**X. Other Issues:** It has been contended by the user industries that the detergent industry comprises of thousands of tiny units, KVIC units, Small Scale Industries and few Medium and Large Manufacturers and employs over five lakh workers whereas the LAB industry consists of four large industrial units and employs merely 500 workers. Further, LAB alone constitutes over 50 to 60% of the raw material cost of detergent products. Some LAB is also used in the manufacture of other products like Pesticides and Emulsifiers used in agriculture by poor farmers and other chemicals like textile auxiliaries used in textile industry etc. On the other hand out of the four domestic manufacturers of LAB two are Fortune 500 Companies for whom LAB business is very insignificant i.e. less than 1% of their total business. While the imposition of safeguard duty may result in the increased cost of imported LAB into India, it is important to keep the prime objective of safeguard laws in mind which is to provide sufficient time to the domestic industry to make positive adjustments to meet the situation of increased imports. It is important to note that the imposition of safeguard duty would allow the domestic industry to remain competitive and, at the same time, users/buyers will have a wider choice to source their material requirements, that too at competitive prices.

**XI. Critical Circumstances:** The increasing share of domestic market taken by imports at injurious prices, unutilized production capacity and idling of capacities to minimize inventory losses are the critical circumstances for issue of preliminary findings as the damage caused by delay will be difficult to repair.

**XII. Developing Countries:** The table below contains the percentage of imports from the exporting nations. There have been imports from Iran (24%), Malaysia (4%), Qatar (37%), Saudi Arabia (16%), which are more than 3%. Exports of the product from all other developing countries taken together do not contribute more than 9% of exports to India. Accordingly, imports of LAB from all developing nations as notified vide Notification No. 103/98-Cus dated 14.12.1998 (as amended) except Iran, Malaysia, Qatar and Saudi Arabia, may not attract safeguard duty.

**Table**

**Year 2007-08 Source IBIS**

	Qty (MT)	Value	% share in
		(Rs in Lac)	total imports
			(Volume)
Thailand	14	14	0%

IRAN	10696	5937	24%
Netherlands	1007	527	2%
KOREA RP	14	14	0%
MALAYSIA	1805	1054	4%
QATAR	16661	9676	37%
SAUDI ARAB	7122	3877	16%
U ARAB EMTS	103	51	0%
Switzerland	8083	4325	18%
<b>Total</b>	<b>45505</b>	<b>25474</b>	

### **11 Conclusion and Recommendation:**

On the basis of the above preliminary findings it is seen that increased imports of LAB have caused serious injury to domestic producers of LAB. Critical circumstances, where any delay in application for safeguard measures would cause damage which it would be difficult to repair, exist necessitating immediate application of provisional safeguard duty for a period of 200 days, pending a final determination of serious injury and threat of serious injury. Considering the average cost of production of LAB by the domestic producers (confidential), a reasonable return on capital employed, the present level of import duties and the average import prices of LAB, safeguard duty at the rate of 20% ad-valorem, which is considered to be the minimum required to protect the interest of domestic industry, is recommended to be imposed on imports of Linear Alkyl Benzene falling under 38170011 of the First Schedule of the Customs Tariff Act, 1975.

### **12 Further Process:**

(i) A public hearing will be held in due course before making a final determination, for which the date will be informed separately.

sd/

**(S. S. RANA)**  
**Director General (Safeguards)**