DIRECTOR GENERAL (SAFEGUARDS)

NOTIFICATION

New Delhi,23rd September, 2011

Subject:-Safeguard investigation concerning imports of Phthalic Anhydride (PAN) – Preliminary findings

G S R D- 22011/8/2011 dated 23rd September, 2011 having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 thereof;

1. Procedure

i) An application was filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as "Safeguard Rules"] by (1) M/s. Thirumalai Chemicals Ltd, Ranipet Tamilnadu, (2) M/s. IG Petrochemicals Ltd Raigad Maharashtra, and (3) M/s. Mysore Petrochemicals Ltd, Raichur Karnataka, seeking imposition of Safeguard Duty on imports of Phthalic Anhydride into India alleging that increased imports of Phthalic Anhydride was causing and/or threatening to cause serious injury to the domestic producers of Phthalic Anhydride in India. The Notice of Initiation of Safeguard investigation concerning imports of Phthalic Anhydride into India was issued on 10th August 2011 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:

Domestic Producers

a. M/s Thirumal Chemicals Ltd, Ranipet Tamilnadu

b. M/s. IG Petrochemicals Ltd, Raigad Maharashtra

c. M/s. Mysore Petrochemicals Ltd, Raichur Karnataka

Importers

A. Klj Plasticizers Ltd,Klj House,63 Rama Marg,Najafgarh Road, New Delhi.

B. Pcl Oil & Solvents Ltd. M-105 2nd Floor, Connaught Place, New Delhi.

C. Silvassa Plast, Klj House, 63 Rama Marg, Najafgarh Road, New Delhi.

D. Mechemco Industries, 170/6 Shiv Smruti, 27th Road Sion West, Mumbai, Maharasthra..

E. Micro Inks Ltd. 512/513, Midas, 5th Floor, Saharplaza Complex, J.B. Nagar, M.V.R.D., Andheri (E), Mumbai, Maharasthra..

F. Heubach Colour Pvt. Ltd. Plot No 9002-9010, Gidc Estate, Ankleshwar.

G. Sanman Trade Impex Pvt. Ltd. 1410, Maker Chamber V, Nariman Point, Mumbai, Maharasthra.

H. A-One Chem Trade Pvt. Ltd. 302, Shanti House, Nr. Madhushudanhouse, Opp: Navranpura Telephone Exchange, Off C.G. Road, Ahmedabad.

I. Sanjay Chemicals (India) Pvt. Ltd. 507, Matru Chhaya, 378/380, Narshinatha Street,Mumbai, Maharasthra.

J. Mazda Colours Limited, Nkm Intermnational, 178, Backbay Reclamation, Maharasthra.

K. Lona Industries Limited, Alta Bhavan, 532 Senapati Bapat Marg, Dadar, Mumbai, Maharasthra.

L. Aarti Industries Limited, Udyog Kshetra, 2nd Floor, Mulund Goregaon Link Road, Mulund (W), Mumbai, Maharasthra.

M. Rachna Plsticizers, Plot No. 116&117, Piparia Indl. Estate, U.T. Of D & Nh, Silvassa.

N. Phthalo Colours & Chemicals (I) Ltd. Nanavati Mahalya, 18, Homi Mody Street Fort Mumbai, Maharasthra.

O. Ramniklal S. Gosala & Co. National House, 608, B.J. Marg, Jacob Circle, Mumbai, Maharasthra.

P. Petrochem Middle East (India) Pvt Ltd, 201, Business Square, B. Wing, Andheri Kurla Road, Mumbai, Maharasthra.

Q. Amjey Chemicals, 5-A, Old Nagardas Road, 101, Adinath Tower, Andheri (E), Mumbai, Maharasthra.

R. Hazel Mercantile Limited, 181, Ashoka Shopping Centre, 2nd Floor, G.T. Hospital Complex, Mumbai, Maharasthra.

Exporters

A. Aekyung Petrochemical 106-3, Guro-Dong, Guro-Ku, Seoul, South Korea

B. Lg Petrochemical, 23-4, Youido-Dong, Yongdungpo-Gu, Seoul 150-010, South Korea

C. Union Petrochemical (Upc Group), Linyuan Plant: 3, Kung-Yeh 2nd Rd, Lin- Yuan, Kaohsiung Country 832, Taiwan, R.O.C.

D. Oci Company Limited, 50 Sogong-Dong Jung-Gu Seoul 100-718 South Korea.

E. Nan Ya Plastics, No.201, Tung Hwa North Rd.Taipei, Taiwan.

F. Gadiv Petrochemical Industries Ltd. Hahistadrut St, P.O.B 32 Haifa, Israel 31000.

Exporting Nations:

a. The Republic of Korea, through their Embassy in New Delhi

b. Taiwan, through their Embassy in New Delhi.
c. Iran, through their Embassy in New Delhi.
d. Israel, through their Embassy in New Delhi.

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

Requests to consider them as *interested parties* were received from the following parties and all the requests were accepted:

Domestic Industry:

1. Indian Chemical Council.

Exporting Nations:

1. Director of Trade Defense, Indonesia.

Exporters

1. LG Chem Ltd, Korea

Importers

1. Indian Plasticizers Manufactures association.
2. Polyester Resin Manufactures association.
3. Indian Paint association.

Requests for an extension of time to submit their replies were made by the following parties:

1. Weiss Porat & Co. on behalf of Gadiv Petrochemicals, Israel (30 days from August 21,2011).
2. Indian Plasticizers Manufactures association-4weeks.
3. Polyester Resin Manufactures association-4 weeks.
4. Luthra & Luthra on behalf of Indian Paint association-2 weeks till 23 Sep 2011.
5. WTC for Aekyung Petrochemical Co Ltd, Korea- till 30 Sep 2011.

After taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time to submit reply as per Rule 6(4) of Safeguard Rules were allowed, as prayed for, and the said requests are being processed.

The information presented by the applicant was verified by onsite visits to the plants of the domestic producers. The applicants have submitted cost data verified and duly certified by practicing chartered accountants. The non confidential version of verification report is kept in the public file.

All the views expressed by the interested parties have been taken into account in making appropriate determination. The non confidential information received or acquired has been kept in the public file.

2. Brief history: An investigation was initiated by the DG (safeguards) earlier on the application filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as "Safeguard Rules"] by (1) M/s. Thirumalai Chemicals Ltd, Ranipet Tamilnadu, (2) M/s. IG Petrochemicals Ltd Raigad Maharashtra, (3) M/s. Mysore Petrochemicals Ltd, Raichur Karnataka, and (4) M/s SI Group India Ltd., Navi Mumbai Maharashtra, seeking imposition of Safeguard Duty on imports of Phthalic Anhydride into India alleging that increased imports of Phthalic Anhydride was causing and/or threatening to cause serious injury to the domestic producers of Phthalic Anhydride in India. Having satisfied that the requirements of Rule 5, safeguard investigation against imports of Phthalic Anhydride was initiated vide notice of initiation dated 28th November 2008 published in the Gazette of India, Extraordinary on the same day. After expeditious conduct of investigation preliminary findings were issued on 1st January 2009. Central Government levied provisional safeguard duty at the rate of 25% with effect from 29th January 2009 vide customs notification No.9/2009-Cus dated 29th January 2009 based on the recommendation of DG Safeguard. Director General (Safeguard) issued Final Findings G.S.R. 366(E), dated the 28th May, 2009, recommending definitive Safeguard duty for a period of three years, i.e. from 29-01-2009 to 28-01-2012. The Central Government however imposed definitive Safeguard duty for one year only, @ 25% from 29.01.2009 to 30.06.2009 and @15% from 01.07.2009 to 31.12.2009.

3. <u>View of the Domestic Industry</u>

1. The applicants are represented by three domestic producers viz., M/s Thirumalai Chemicals Ltd., M/s IG Petrochemicals Ltd., and M/s Mysore Petrochemicals Ltd. There are two more producers of the goods but the applicants, account for more than 87% of production and hence are major producers.

The domestic industry have made following major points:-

(i) The product Phthalic Anhydride is an anhydride of Phthalic Acid, and is commercially produced by catalytic oxidation of Ortho- xylene or Naphthalene. It is a colourless solid, variously referred as Phthalic Anhydride flakes, Phthalic Anhydride (98% min.), Phthalic Acid Anhydrous, Phthalic Anhydride (99.8% min), etc. The product is produced only in one grade, though, it may be consumed as a solid or liquid in processes it is used. As regards different applications, it does not have distinguishable different types or forms. Further, it is used in production process of various chemicals, which use the same characteristic properties of Phthalic Anhydride. Phthalic Anhydride is used to produce Phthalate esters, which function as plasticizers. It is an important chemical intermediate in plastic industry.

(ii) Phthalic Anhydride is classified under Customs sub-heading No. 29173500 under the Customs Tariff Act, 1975.

(iii) For the entire period of study, the basic custom duty on this item has remained static at 7.5% ad valorem.

(iv) It has been stated that there is tremendous increase in imports in absolute terms, which is shown below:

SN	Year	Volume in MT	Value in Rs.Lacs	Average price (Rs/Kg)	Imports in relation	
					Production	Consumption
1	2007-08	31,203	16312	52.28	15%	17%
2	2008-09	37,465	19365	51.69	21%	23%
3	2009-10	28,098	13684	48.70	14%	13%
4	Jan-dec10	44,342	20165	52.58	18%	16%
5	Q 4 (2010-11)	46628	27136	58.20	23%	18%
6	Apr-May, 2011	55128	32,922	59.72	27%	23%

(v) Imports of the product concerned have increased at an increasing rate over the injury period. There is a recent, steep and significant surge in imports of the product concern in India. There is a decline in imports in the year 2009-10, due to imposition of provisional safeguard duty in January 2009. But again the imports started increasing at a tremendous rate once the effective period of safeguard duty came to an end. The imports have increased by almost 50% from 28098 MT in 2009-10 to 55128 MT during Apr-May 2011(Annualized). Imports in relation to production and consumption has also increased over the injury period.

(vi) Increased imports have led to increase in 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. This is shown below:

SN	Year	Share of %			
		Petitioners	Other Indian producers	Indian producers	Imports
1	2007-08	64%	19%	83%	17%
2	2008-09	65%	12%	77%	23%
3	2009-10	75%	11%	87%	13%
4	Jan-Dec 2010	69%	13%	82%	18%
5	Q 4 (2010-11)	69%	13%	82%	18%
6	Q 1 (Apr-May 2011)	64%	13%	77%	23%

It would be seen that the market share of the domestic industry has declined during the injury period whereas that of the imports have increased. The market share of domestic industry increased in the year 2009-10 due to imposition of safeguard duty but the same declined after the effective date of safeguard duty came to an end clearly showing the vulnerability of the domestic industry and the need of protection.

Domestic industry is being forced to exports its production, despite significant domestic demand. Such exports are not a matter of choice, but a compulsion for the domestic industry, driven out of continuous increased imports of the product in the Country.

(vii) It would be seen that capacity utilized by the domestic industry for production of the product under consideration for sale in the domestic market has significantly declined. The capacity utilization of the domestic industry declined over the injury period.

SN	Year	Capacity in MT	Production in MT	Utilization %
1	2007-08	232000	211557	91%
2	2008-09	232000	179,016	77%
3	2009-10	268110	199,597	74%
4	Jan-Dec 2010	268110	218,843	82%
5	Q 4 (2010-11)	268110	205,084	76%
6	Q 1 (Apr-May 2011)	268110	200,499	75%

(viii) As the market share of the domestic industry is decreasing and that of imports are increasing, the domestic industry was unable to increase its sales volume and had to face the problems of accumulated inventories. The levels of inventories have increased significantly throughout the injury period.

Unforeseen development which has led to increase in imports are-
(a) Setting up of new plants by Chinese producers and sluggish demand in China for product under consideration. Producers in China are setting up new plants for manufacturing Phthalic Anhydride thereby enhancing their capacities. Such enhancement in capacity has led to increase in supply of the product in China thereby reducing the market opportunity to the third countries foreign producers to export in China.
(b) Slowdown in the end markets of Europe and America which has resulted in surplus production worldwide in comparison to available capacity.
(c) Anti-dumping investigations against imports from Korea and Taiwan in Pakistan and China.
(d) Growing demand of the product under consideration in India. Due to the above listed factors, increased imports resulted in India.

(ix) The domestic industry has sought <u>interim measures</u>, which are imperative in view of the steep deterioration in performance of the domestic industry as a result of increased imports of the product under consideration. Following are relevant in this regard:

a. Phthalic Anhydride (PAN) is primarily produced from oxidation of Ortho-xylene. Due to increase in prices of para-xylene, the producers shifted to the production from ortho-xylene to para-xylene which led to limited supply of ortho-xylene. Due to which the prices of ortho-xylene increased. Plant shutdowns have also led to limited supply of Orthoxylene in international markets which resulted in increase in prices of the same.

b. The prices of PAN remained same or at times declined inspite of increase in raw material cost. This is due to the market pressure faced by the domestic industry from the increase in imports. At times the domestic industry has to reduce its prices at raw material cost suffering huge financial losses.

c. The exporters are selling the product under consideration at lower prices. In India, the landed price of imports is lower than the (a) selling price of the domestic industry and (b) cost of production of the domestic industry. The imports are significantly undercutting the domestic prices. The price undercutting is resulting in price suppression and depression. It would be seen that the selling price of the domestic industry is far lower than the cost of sales. In order to sustain in the market, the domestic industry has to reduce its prices far lower than the cost of sales thereby suffering huge losses. At times the domestic industry is forced to reduce its prices to the raw material levels. Therefore the producers are not in a position to reduce its prices any further. In view of the ever increasing imports that too coming in low prices, non levy of safeguard duty as early as possible would lead to irreparable damage being suffered by the domestic industry.

d. It is pertinent to note that with the imposition of safeguard duty in 2009, the domestic industry recovered, and the importers, due to levy of safeguard duty, started buying material from domestic industry. But with the expiry of safeguard duty imposition period, these importers started importing the material. Also the petitioners are already suffering huge losses and are not in the position to further reduce its prices. Due to increased imports of Phthalic Anhydride that too coming at low prices, the consumers are shifting from domestic industry to imports.

e Demand of the product concerned has declined, this is due to the fact that producers of the downstream product Dioctyl Phthalate has started importing as its prices were coming down and found it more economical to imports than producing in India. This has led to decline in demand of the PAN. The domestic industry is already faced with the problems of decline in demand, and then the increase in imports aggravated the injury already suffered.

f Profitability of the domestic industry has steeply declined in the most recent period. The profitability improved after imposition of safeguard duty. Resultantly, cash profit and return on investment also improved. However, the profitability of the domestic industry and consequently cash profits and return on investment started declining thereafter and suffered losses in the most recent period.

g The <u>injury caused and threat of serious injury</u> is established by the following factors –

i. The price difference between domestic and imported product is quite significant.

ii. The foreign producers are holding significant unutilized capacities. Information contained in this petition elsewhere is referred to and relied upon. Resultantly, the foreign producers are looking for additional markets to the extent possible;

iii. The major Chinese market for Phthalic Anhydride has clogged for the export oriented producers of Korea and Taiwan, whereas the Indian market is quite strong.

iv. Anti-dumping duty on imports from Korea and Taiwan has been imposed by China and Pakistan in their respective countries for a period of 5 years. This has led to restriction on imports of Phthalic Anhydride from Korea and Taiwan to China and Pakistan. Due to such restriction, the producers/ exporters started looking for new markets for their products and India with its growing demand offered a better opportunity for them to export which has led to increase in imports from such countries and also pose a threat of further increase in imports.

(X) In the light of the above critical circumstances, the petitioner submits that any delay in the application of safeguard measures would cause grave damage to the domestic industry. It is requested to the Authority to take immediate necessary actions in the form of provisional safeguard duty to prevent the domestic industry from suffering irreparable damage. In any case, 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.

4. Views of Interested Parties:

A). Gadiv Petrochemicals Industries Ltd.

1. Anti-dumping investigation and safeguard investigation cannot be conducted simultaneously because of the following reasons:
a. Safeguard request assume that there is no dumping therefore Anti-dumping petition should be withdrawn.
b. For a foreign exporter it would be a unfair harassment to defend two complains in two different investigation under two different authorities. This would not bode with the common interest of promoting international trade and also seriously harm the Indian customers of Gadiv.
c. It will lead to double protection.
2. The safeguard investigation should be suspended as long as Anti-dumping investigation is pending.
3. Application was submitted only after 1.5 years after expiration of the previous safeguard duty. This shows that the applicant has not adjusted to imports and now again seeking protection. Therefore this safeguard investigation should be suspended until at least two years have passed.
4. The increase in imports during 2010 is the artificial increase following the expiry of the safeguard measure. The DGS should focus regarding increase in imports on market share and not on absolute volumes.
5. The market share of the imports is significantly lower than what it was prior to imposition of safeguard measure.

6. Increased imports analysis should not be isolated to most recent period.
7. DGS should ignore the data of Apr-May 2011 as imports for two years cannot establish trend of increased imports.
8. There is no serious injury
    a. Sales have increased by 47% from 2007-2008.
    b. Decline in sales in Apr-May 2011 is due to decline in demand of PAN due to decline in production of Octyl Phthalate.
    c. Changes in production and capacity utilization should be fully related to decline in exports and not imports.
    d. Sales price have increased therefore no suppression and depression. Decline in sales price in Apr-May 2011 is due to decline in demand.
    e. Exports price is higher or identical to the exports price of the Southeast Asia. Therefore no price undercutting.
    f. Profits of Thirumalai have increased significantly. Income of IG petrochemicals and Mysore also increased tremendously. Any decline in profitability is due to increase in production expenditure i.e. increasing orthoxylene prices and not due to imports.
    g. Number of employees increased.

9. There is no causal link between imports from Israel and the allege injury to the domestic industry. Israel share is only 1.5% of the total consumption in India which cannot cause injury to the domestic industry and therefore should be excluded from the investigation.
10. Decline in sales volume is caused due to decline in domestic demand of Phthalic Anhydride as a result of decline in production of Octyl phthalate.
11. The alleged injury claimed by the applicant should be connected also to increase in price of ortho-xylene in the recent months.
12. The applicant failed to prove that the increased imports were caused by developments that were not foreseen at the time when India incurred obligation under GATT.
13. The applicant failed to provide any adjustment plan to the import, as required.

B. <u>Ministry of Industry, Trade and Labor, Israel:</u>

1. There are no increased imports or injury to the domestic industry. Decline in sale is due to decline in consumption. There is no causal link.
2. The factors mentioned in the notice of initiation concerning serious injury seem to be lacking in the light of WTO Agreement on Safeguards.
3. There is no adjustment plan provided.
4. The notice does not set period of investigation.
5. Israel share is only 1.5% of the total consumption in India which cannot cause injury to the domestic industry.
6. Imports from Israel have declined over the injury period.
7. Major cause of difficulty encountered by Indian industry is global recession and the decline in demand and not due of increased imports. double remedy in the form of safeguard duty and Anti-dumping duty cannot be applied.
8. Any safeguard measure cannot be applied till expiry of two years from date of termination of previous safeguard measure.

C. <u>Government of Korea.</u>

1. Excessive burden on Korean exporters resulting from simultaneous investigation for imposition of Anti-dumping and safeguard duties because the injury effects referred to in the investigation overlap to a material extent.
2. The two month period is too short to show the trend of a whole year.
3. The petition failed to conclude any reasoned conclusion that there have been any unexpected and unforeseen development that led to the alleged imports increase.
4. Petitioners have not only maintained the utilization level although there was an increase in capacity but also made a breakthrough to reach higher capacity utilization level demonstrating no injury.
5. The Indian government was led to decide the initiation of this safeguard investigation based on overestimated import statistics of two months only.
6. Injury effect from other factors should be separated and distinguished. Allegation on injury based on decrease in production and capacity utilization should naturally be attributed to poor export performance.
7. One of the significant other factors is global economic crises.
8. The authority should expand the period of months in 2011 and statistics based on two months should not be the basis of initiation of investigation.

5. Findings of the DG:

I have carefully gone through the case records, the replies filed by the domestic producers, exporters and exporting nations. Submissions made by the various parties and the issues arising there-from are dealt with at appropriate places in the findings below. The issue to impose immediate safeguard measures has also been examined.

a) **The product under investigation**: The product under investigation is Phthalic Anhydride (PAN) falling under heading 29173500 of the First Schedule to the Customs Tariff Act, 1975 (CTA). Phthalic Anhydride (PAN) is a principle commercial form of Phthalic acid. It is white crystalline solid, used to manufacture synthetic resins, which act as binders in paint products. The primary use of PAN is a chemical intermediate in the productions of plastics from vinyl chloride. Phthalate esters, which function as plasticizers are derived from PAN. PAN has another major use in the production of polyester resins and other minor uses in the production of alkyd resins used in paints and lacquers; certain dyes, insect repellents and polyester polyols for polyurethanes. The chemical formula of PAN is $C8H4O3$. It is produced by the catalytic oxidation of Ortho-xylene (OX) with air or by the catalytic oxidation of naphthalene. Domestic producers use the OX route. The process entails passing OX through a reactor, which is an arrangement of tubes of clay or porcelain rings coated with a catalyst. The oxidation process of OX coupled with post reactor polishing and flaking yields PAN in the form of white or pale yellow crystals.

b) **Domestic Industry**: There are five domestic producers in India who manufacture PAN. Three domestic producers namely - 1) Thirumalai chemicals Limited, Ranipet, Tamilnadu 2) IG Petrochemicals Ltd, Taloja, Maharashtra, 3) Mysore Petrochemicals Ltd, Raichur, Karnataka have joined the petition. The two producers namely, M/s Asian Paints Ltd and M/s S I Group India Ltd, have not joined the petition. Share of the three applicants varied from 86% to 87% during the period Q4 of 2008-09 to Q1 of 2011-12.

c) **Period of Investigation (POI):** The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard and the relevant Article XIX of GATT do not specifically define what the Period of Investigation should be. From several case laws on safeguard measures, it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguard and Art. XIX of GATT provides specific guidelines on the period of investigation except the fact that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury. The POI in this case has been taken from Q4 of 2008-09 onwards because of the fact that period upto Dec,2008 (Q3 of 2008-09) has already been considered as POI in the earlier case on this product mentioned above. The final findings in the earlier case were issued taking into account POI upto Dec,2008. Since this is a fresh case based on the recent serious injury or threat of serious injury being faced by the domestic industry, the POI has been taken from Q4 of 2008-09 onwards.

d) **Source of data**: The import data up to Dec,2010 has been taken from DGCIS. The data on various economic parameters submitted by the domestic industry in their petition till Q1 of 2011-12 has been verified by this directorate and the verified data has been taken into consideration for injury analysis. The domestic industry has submitted cost data duly verified and certified by independent chartered accountant.

e) Increased Imports: Phthalic Anhydride is imported into India from a number of countries, and primarily from Republic of Korea, Israel, Iran and Taiwan. The imports of Phthalic Anhydride have shown an increasing trend in absolute terms as well as compared to the domestic production causing injury and serious threat of injury. The quantum of imports and price per MT of Phthalic Anhydride during Q4 of 2008-09 to April-May,2011 remained as under:

Financial Year	Quarter	Total Imports (MT)	Domestic Production (MT)
2008-09	Q4	6103	49607
2009-10	Q1	7240	47985
	Q2	5163	58259
	Q3	8526	40437
	Q4	7169	52853
2010-11	Q1	23615	55503
	Q2	8611	58168
	Q3	18082	52319
	Q4	11657	51271
2011-12	April-May	9188	35716

There is a sudden and steep surge in import both in absolute and relative terms. Imports have increased from 28098 MT in 2009-10 to 61965 MT in 2010-11 showing an increase of 121% in absolute terms, which is phenomenal. Further, the import with respect to domestic production has also increased tremendously i.e. from 14.08 % in 2009-10 it increased to 28.52 % in 2010-11.

In the previous safeguard investigation against increased imports, the volume of 40817 MT was considered significant and sharp to conclude there is an increase in imports[1]. In the present period, the imports have increased to much higher levels since 2010 with a significant increase in recent quarters. Further, imports in relation to domestic production were earlier found at 23%, which is now at 28%. It is thus seen that the volume of imports has surged even beyond the previous levels both in absolute terms as also in relation to production. It is held that imports of Phthalic Anhydride have increased in absolute and relative terms and that the increase in imports is recent enough, sudden enough, sharp enough and significant enough to constitute "increased imports" within the meaning of Section 8B of the Act.

f) **Unforeseen Developments:** Slowdown in the end markets of Europe and America from 2009 onwards, and worsening in the last 5 months due to the crises in Spain, Italy, Portugal, Greece, and Ireland has resulted in surplus production worldwide in comparison to available capacity because of the reason that plants have to operate at sufficient run rates in order to achieve economies of -scale for effective production, hence, firms find it a difficult choice to cut rates. This has resulted in heavy surpluses for the industry which are being channeled into India – noticing India's growth prospects amidst a looming global recession. Anti-dumping duty on imports from Korea and Taiwan has been imposed by China and Pakistan in their respective countries for a period of 5 years. This has led to restriction on imports of Phthalic Anhydride from Korea and Taiwan to China and Pakistan. Due to such restriction, the export oriented producers and exporters mainly of Korea and Taiwan have started looking for new and existing market. The growing demand of Phthalic Anhydride in India and good market opportunity attracted the producers cum exporters of Korea and Taiwan to export in India which led to tremendous increase in Imports.

Export from Korea:

	2008-09	2009-10	2010-11 (Upto Dec,10)	Jan,11 to March,11	2010-11
Exports to India from Korea (MT)	14274	11167	26152	4154	30306
Total PA Exports (MT)	37465	28098	50308	11657	61965
As a % of Total PA Exports	38%	40%	52%	36%	49%

Export from Taiwan:

	2008-09	2009-10	2010-11(Upto Dec,10)	Jan,11 to March,11	2010-11
Exports to India from Taiwan (MT)	4555	2099	7559	5166	12725
Total PA Exports (MT)	37465	28098	50308	11657	61965
As a % of Total PA Exports	12%	7%	15%	44%	21%

(Source: DGCIS Data up to Dec,2010 & rest taken from Petition)

[1] Safeguard investigation concerning imports of Phthalic Anhydride into India-Final Findings dated 28th May, 2009.

As a result, it is seen that export of PAN from Korea to India increased from 14274 MTS in 2008-09 to 30306 MTS in 2010-11. This constituted about 49% of the total export of PAN to India in 2010-11 . Similarly from Taiwan, export of PAN increased from 4555 MTs in 2008-09 to 12725 MTS in 2010-11. This constitutes about 21% of the total export of PAN to India in 2010-11 . This shows a rising trend of export of PAN from Korea and Taiwan to India in the wake of coagulation of demand in China and Pakistan, an unforeseen development resulting in increase in imports causing serious injury and threat of serious injury to the domestic industry.

g) **Serious Injury and Threat of Serious Injury:** : "Serious injury" means an injury causing overall impairment in the position of a domestic industry; and "threat of serious injury"[2] means a clear and imminent danger of serious injury.

(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.[3]

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.

h) Injury: It is held that the increased imports of Phthalic Anhydride have caused and are threatening to cause serious injury to the domestic producers of Phthalic Anhydride as indicated by the following factors:

a) **Market Share**: The share of imports in the domestic market has gone up from 11% in Q4 0f 2008-09 to 20% in Q1(April-May) 0f 2011-12. It is also noticed that the market share of domestic producers in domestic consumption has fallen significantly. Applicants had an average market share of 85% in 2009-10 which fell to 74% during 2010-11,

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[2] Section 8B(6)(d) of the Customs Tariff Act, 1975.

[3] Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

i.e. a decline of about 11%. The detailed chart showing increase in import's market share vis-à-vis production and consumption of the domestic industry is given below:

	2008-09	2009-10				2010-11				2011-12
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	April-May
Imports (MT)	6103	7240	5163	8526	7169	23615	8611	18082	11657	9188
Domestic Production (MT)	49607	47985	58259	40437	52853	55503	58168	52319	51271	35716
Total Qty. Available (MT)	55710	55225	63422	48963	60022	79118	66779	70401	62928	44904
Share of Imports (%)	11	13	8	17	12	30	13	26	19	20
Share ofDomestic Production (%)	89	87	92	83	88	70	87	74	81	80
Domestic Sales by Industry (MT)	32613	35530	41289	39427	40696	39817	51007	38941	44553	26646
Consumption in India (MT)	38716	42770	46452	47953	47865	63432	59618	57023	56210	35834
Market Share of Imports (%)	16	17	11	18	15	37	14	32	21	26
Market Share of Domestic Industry (%)	84	83	89	82	85	63	86	68	79	74

b) **Production:** The statistics relating to production pertaining to the domestic industry is shown above. The <u>domestic production</u> has been falling steadily from 58259 MT in Quarter 2 (2009-10), then 52319 MT in Quarter 3 (2010-11) & further to 51271MT in Q4(2010-11) and finally to 35716 MT in the months of Apr-May of Q1(2011-12) [50124 MTS in Q1 of 2011-12, as shown in the chart below].

c) Capacity Utilisation : Capacity utilization of the domestic industry has declined significantly in the most recent period, from 87% in Q2 of 2010-11 to 75% in Q1 of 2011-12. The plant of Mysore Petrochemicals is at present under shutdown for an indefinite period w.e.f 20.06.2011 due to accumulation of high stocks. The statistics relating to capacity utilization pertaining to the domestic industry is shown below.

YEAR	QUARTER	PRODUCTION (MT)	INSTALLED CAPACITY(MT)	CAPACITY UTILISATION(%)	Inventory (MT)
2008-09	Q4	49607	59528	83	5365
2009-10	Q1	47985	67028	72	1604
	Q2	58259	67028	87	6101
	Q3	40437	67028	60	487
	Q4	52853	67028	79	4530
2010-11	Q1	55503	67028	83	4468
	Q2	58168	67028	87	2484
	Q3	52319	67028	78	9232
	Q4	51271	67028	76	5718
2011-12	Q1	50124	67028	75	8131

d) **<u>Inventories</u>:** As the market share of the domestic industry is decreasing and that of imports are increasing, the domestic industry was unable to increase its sales volume and had to face the problems of accumulated inventories. The levels of inventories have increased significantly throughout the injury period. The table [at (c) above] depicts the inventory build up from 4530 MT in 2009-10 to 5718 MT in 2010-11 and further to 8131 MT in Q1 (2011-12), almost doubling in 2011-12 from the 2009-10 level, reflecting the plight of the domestic industry. Further, the increase in inventories is despite suspension of production by one of domestic producers.

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

Year	Quarter	Domestic Sale (MT)	Export (MT)
2008-09	Q4	32613	14183
2009-10	Q1	35530	16216
	Q2	41289	12471
	Q3	39427	6625
	Q4	40696	8114
2010-11	Q1	39817	15749
	Q2	51007	9146
	Q3	38941	6630
	Q4	44553	10231
2011-12	Q1	38149	9563

(i) Sales of the domestic industry increased till Quarter 4(2010-11) but declined during Q1 (2011-12). The reason of increase in sales volume till Q4, 2010-11 has been explained in the fact that one of the Indian producers who is also the petitioner has shifted from EOU to DTA and started selling in the Indian market which has led to increase in sales. The domestic industry claimed that since its EOU unit has become a DTA unit, it is natural that it is selling in the domestic market.

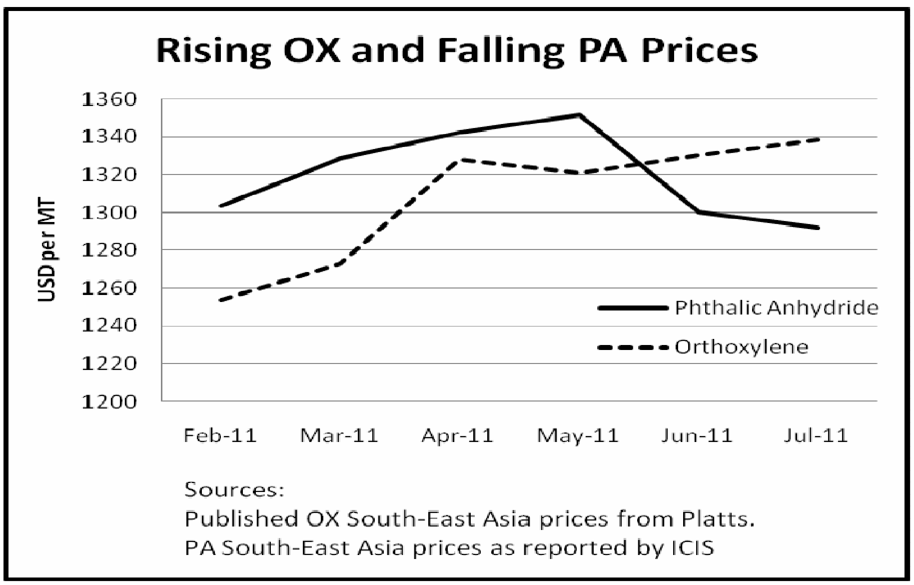
(ii) It is seen that to some extent demand of the product concerned has declined. Domestic industry claimed that this is due to the fact that producers of the downstream product Dioctyl Phthalate has started importing the downstream as its prices were coming down and found it more economical to import than producing in India. This has led to decline in demand of the PAN. The domestic industry is already faced with the problems of decline in demand, and then the increase in imports aggravated the injury already suffered. Domestic industry is being forced to export its production, despite significant domestic demand. Such exports are not a matter of choice, but a compulsion for the domestic industry, driven out of continuous increased imports of the product in the Country.

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

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

	Rs. In Lakhs
Financial Year	Profitability
2009-10	2583
2010-11 (Annualized)	-1513
2011-12 (Q1)	-384
2011-12 (Annualized)	-1536

It is held that sharp increase in the price of raw materials squeezed the profit margin of the domestic industry resulting in huge losses. Phthalic Anhydride (PAN) is primarily produced from oxidation of Ortho-xylene. Due to increase in prices of para-xylene, the producers shifted to the production from ortho-xylene to para-xylene which led to limited supply of ortho-xylene. Due to which the prices of ortho-xylene increased. The international prices of Ortho-Xylene have shown a steep rise between Feb,2011 to April,2011 and thereafter have been steadily rising whereas the price of PAN remained same or at times, from May,2011 onwards, declined in spite of increase in raw material cost. These circumstances have resulted in huge financial losses suffered by the domestic industry as they are not able to recover even the raw material cost. This is evident from the graph below:



h) **<u>Other Factors of Injury:</u>**

Followings are relevant in this regard –

1. <u>Possible decline in demand of the product</u>: There is no contraction in demand of Phthalic Anhydride in India. Possible decline in the demand has not caused material injury to the domestic industry. Demand of the product in India has shown significant increase over the years.

2. <u>Changes in the patterns of consumption</u>: The pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have contributed to the injury to the domestic industry.

3. <u>Trade restrictive practices of and competition between the foreign and domestic producers</u>: There is no trade restrictive practice which could have contributed to the injury to the domestic industry.

4. <u>Export performance</u>: Petitioners have exported the product under consideration. In fact, one of the petitioner companies, M/s. I.G. Petrochemcials was an EOU and has got itself converted into DTA unit within the current injury period. Volumes have declined in exports as well. However, the claimed injury to the domestic industry is on account of domestic operations. Petitioners have provided costing and injury information for domestic operation. Claimed injury to domestic industry cannot be attributed to exports.

5. <u>Developments in technology</u>: Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.

i) **Public Interest**: In the instant case, the raw material cost constitutes significant part of cost and the raw material prices are changing depending on international pricing. The difference between the selling price of PAN and the main raw material (OX) [called as Delta for reference] has been studied. It has been observed that the prices of PAN remained same or at times declined inspite of increase in raw material cost. This is due to the market pressure faced by the domestic industry from the increase in imports. At times the domestic industry has to reduce its prices at raw material cost suffering huge financial losses. Previously also, the domestic industry has been maintaining the prices in line with changes in prices of raw material even after imposition of Safeguard Duty. There is no reason to believe that the domestic industry will change their pricing pattern. Further, the safeguard duty will be only to the extent to neutralize the injurious impact and thus the competition from import remains alive. Moreover, if the injury to the domestic industry continued, it may lead to the closure of the domestic industry. As a result of which, 'PAN' an important chemical would not be manufactured in India and thereby making the users of the 'PAN' wholly dependent on the imports. In view of the foregoing, it is held that the imposition of safeguard will be in public interest and especially the interests of end users are well protected.

j) **Critical Circumstances:** The Domestic Industry has requested for imposition of provisional safeguard duty citing that interim safeguard measures are imperative in view of the steep deterioration in performance of domestic industry. The prices of ortho-xylene, the principal raw material in the production of phthalic anhydride, have increased in the recent period due to its limited supply. Study of the table below shows that the domestic price of ortho-xylene has increased from Rs.100 (indexed) per kg in 2010-11(Q1) to Rs 121 (indexed) per kg in 2011-12(Q1). This shows an increase of 21%. On the other hand, the domestic selling price of PAN has increased from Rs 100 (indexed) per kg in Q1 of 2010-11 to Rs 111 (indexed) per kg in Q1 of 2011-12, an increase of 11% only. This indicates that the higher percentage of increase in the price of raw material is eating into the profit margin of the domestic industry and resulting in consequential losses and serious injury to them. Plant shut downs in international markets have also led to limited supply of ortho-xylene. A few instances have been Huizhou refinery aromatics plant in China in July 2011 and other in Aug 2011 at Taiwan in Mailiao refinery after a fire hit a propylene recovery unit. To add significantly to the critical circumstances leading to serious injury, the import prices/landed prices of PAN are considerably lower than the selling prices of the domestic industry (Confidential). This is inevitable due to the fact that the Domestic Industry is under constraint to further reduce the domestic price of PAN for the reason that the prices of principal raw material orth-oxylene are at a very high level leading to the domestic industry under heavy strain to effect any reduction in the selling price of PAN. Consequentially, capacity utilization of the domestic producers had been 75% between April to June,2011 as compared to 87% during the period July to Sept,2010 as the production of PAN is not viable due to lack of profit margin in the product. Moreover, the loss of production, inventory built up also indicate critical circumstances.

Domestic prices (Rs. Per Kg)of PAN & O-Xylene (Indexed)			Import Price Rs.Per Kg	landed price Rs. per kg
	PAN	O-Xylene	PAN	PAN
2010-11-Q1	100	100	50.24	54.55
2010-11-Q2	85	87	49.18	53.40
2010-11-Q3	94	97	50.86	55.22
2010-11-Q4	104	113	58.2	63.19
2011-12-Q1	111	121	59.72	64.84

In view of the above, critical circumstances exist justifying imposition of provisional safeguard duties immediately in order to save the domestic producers from damage which it would be difficult to repair if the application of safeguard measure is delayed.

k) **Adjustment Plan:** The petition is for imposition of safeguard duty only for one year. Therefore the details on efforts being taken and planned to be taken or both to make a positive adjustment to import competition with details of progressive liberalization adequate to facilitate positive adjustment of the industry is not mandatory under the rules.

l). **Causal Link between Increased Import and Serious Injury or Threat of Serious Injury:** The product is largely sold in comparison/competition with imports. The landed price of imports is significantly lower than the selling prices of the domestic industry. The domestic industry is loosing sales opportunities. Consequently, production, capacity utilization, profits, return on investment and cash flow is declining due to continued presence of low price imports. Given the low prices offered by the foreign producers and clogging of the Chinese market, the imports are surging further despite low prices offered by the domestic industry. At times the domestic industry was forced to reduce its prices at raw material levels. Increased imports have led to increase in 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.

m) **Developing Nations**: The percentage of imports from developing nations has also been examined. The import of the product under consideration is originating from more than one developing nation whose aggregate percentage of import into India is more than 9% .Therefore, in terms of Ntfn.103/98 cus dated 14-12-98 as amended, the import of product under consideration originating from developing nations also attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

6. <u>Comments on views of Interested Parties:</u>

The apprehensions raised by the interested parties in view of the initiation of instant safeguard investigation is dealt with in brief, partywise for the sake of brevity.

A. <u>Gadiv Petrochemicals Industries Ltd.</u>

i). The issue whether Safeguard Duty can be imposed when Anti dumping duty is already in place was examined. Section 9A of the Customs Tariff Act, 1975 deals with imposition of Anti dumping Duty not exceeding the margin of dumping. Section 8B deals with imposition of Safeguard duty in certain circumstances. The circumstances under which the two duties can be imposed are different. Further, the sub section (3) of Section 8B envisages imposition of a number of duties at the same time under the Customs Tariff Act, 1975 or under any other law for the time being in force. The sub section 3 reads as

> "the duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force."

Accordingly, there is no bar imposed by law on imposition of Safeguard Duty when Anti dumping duty is already in place. Further, there is no legal bar in conducting simultaneous anti-dumping investigations and safeguard investigations or levy.

ii) However, there have been various submissions from interested parties, who have submitted against the desirability of imposition of both duties simultaneously. They have also submitted that imposition of both duties at the same time is not in the public interest. The issue has been analyzed. It is a fact that anti-dumping duty is also a trade remedy measure to counter and neutralize the ill effects of dumped imports through raising tariff barrier. Safeguard duty is a measure to protect the domestic industry from injurious effects of increased imports by raising tariff barrier. Both the duties have one function in common i.e. neutralizing injurious effects of imports, besides other functions. The domestic industry is legally justified for filing the present application. WTO laws also permits the same. No violation of either domestic or international law has been pointed out by the interested parties. The reply of European Union to the issues raised by China on dual remedy <u>*(G/SG/Q2/EEC/4)*</u> refers to this point.

iii) The contention that the safeguard duty cannot be imposed again before expiry of two years has no legal basis.

> Article 7 (6) WTO Agreement on Safeguards provides as follows:
> *"6. Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:*
> *(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and*

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure."

iv) It would thus be seen that while ordinarily safeguard duty cannot be imposed again before expiry of two years. However, a safeguard measure for duration of 180 days or less can be applied again in certain situations. The conditions specified under article 7.6 of the WTO agreement are fully met in the present case as one year has elapsed since the date of introduction of a safeguard measure on the import of the product and the safeguard measure has not been applied on the product more than twice in the five-year period immediately preceding the date of introduction of the measure.

v) In the present case, it is seen that the imports have increased not only in absolute terms but also in relation to production and consumption in India. The rate of increase in imports has also increased throughout the injury period. Further, the increased imports and serious injury is being considered for the same period and not that the increased imports of one period and serious injury of another period is considered for comparison.

vi) The analysis of increased imports and injury thereof has not been isolated on the basis of Apr-May 2011 data [US — Line Pipe case]. That the Agreement on safeguards 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.

vii) So far as decline in demand and injury is concerned (i) the loss suffered by the domestic industry is more than the decline in demand, (ii) the domestic industry is already faced with the problems of decline in demand, and then the increased imports have aggravated the injury already suffered. The decline in demand should have impacted both the domestic industry and imports equally. It is however found that whereas the domestic industry is facing the brunt of decline in demand, the imports are surging further. It is natural that the domestic sales would increase, if one of the major company shifts to DTA from EOU.

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

ix) Israel share in total imports is 13% which is a significant share. As it is general safeguard measure, individual country's share in the total consumption is irrelevant in the total injury analysis. The provisions of Rule 13 of the General Safeguard Rules is relied upon in this regard.

x) The normal tendency of the business is when the raw material prices increase; the selling price of the product should also increase proportionately. But in the instant case, the petitioners were unable to increase their prices with the increase in prices of Orthoxylene because of the presence of huge imports.

xi) The argument that unforeseen development can only be in the form of obligation incurred by India under GATT is without legal basis.

B. **<u>Government of Israel</u>**

i) The notice of initiation read with petition filed by the domestic industry makes the period of investigation evident. If the interested parties consider that some other period would be appropriate they could have proposed so to the Director General with adequate reasons.Recession in global market, in any case, cannot be a ground for increasing exports to India and causing injury to Indian Industry.

ii) It is also relevant to point out that there is no evidence provided to establish that the product is suffering because of global recession. Thus, the claim is a mere statement unsupported by any evidence.

C. Republic of Korea:

i) The Indian Industry has a right to survive and the global industry cannot force the Indian Industry to face plant closures.

ii) In fact, it is already stated above that the market share of domestic industry declined significantly in 2010-11 and its profitability also steeply deteriorated. One of the constituents of the petitioner (Mysore Petro) has been forced to close down because of surge in import. As India is not affected by the current economic crises therefore the imports have surged in 2010-11 and the trend continued in the current year.

iii) Safeguard investigations are meant to provide protection to the domestic industry in critical circumstances. The domestic industry is in fact faced with such critical circumstances in the present case and therefore the interim measure may be recommended without further delay.

(iv) There are instances where in some cases provisional safeguard measures have been recommend/imposed within 30 days of initiation of the safeguard investigation. In some other cases the provisional safeguard measures have been recommended on the same day as the date of initiation of the investigation. There are a number of cases wherein Director General (Safeguards) has recommended provisional safeguard duty imposition without receipt of information from interested parties. The Ministry of Finance has imposed safeguard duty on the basis of respective recommendations. Some of them are as follows;

a) Phthalic Anhydride, GSR D22011/32/08 dated 1st Jan 2009
b) Aluminium FRP & Foil, F.No.22011/46/08 dated 2nd Feb, 2009
c) Dimethoate technical, F.NO. D-22011/07/2009 dated 2nd February 2009
d) Soda Ash, G S R D- 22011/02/09 dated 30th January, 2009.

As already stated, other WTO members have also, looking to the critical circumstances which existed imposed provisional safeguard measures without the receipt of information from interested parties. Infact in some cases, the Authorities have even imposed provisional safeguard measures on the date of initiation of investigations. One of the examples is as follows:

- COMMISSION REGULATION (EC) No 560/2002 of 27 March 2002 imposing provisional safeguard measures against imports of certain steel products: in this case the European Commission imposed provisional safeguard duty on the same day of initiation of investigation.

In view of the findings on the concerns raised by the aforementioned interested parties herein above, it is held that the concerns of the interested parties have been adequately dealt with.

7. Conclusion: On the basis of analysis of the submissions made by the domestic industry and the injury parameters it is observed that the domestic industry has prayed for immediate imposition of interim safeguard measures. In view of the critical circumstances, they have sought imposition of provisional safeguard measures for one year. 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/she 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'97, which is independent to Rule 9. The Rule 15 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules'97 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.

(ii) Accordingly, it was considered prudent to analyze circumstances to assess whether the same falls in the category of critical circumstances. It has been observed that critical circumstances exist and therefore interim measures are imperative in view of the steep deterioration in performance of the domestic industry as a result of sudden and steep increase imports of the product under consideration. On the basis of the above preliminary findings it is seen that increased imports of PAN have caused and threatened to cause further serious injury to domestic producers of PAN. 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 pending final determination of serious injury and threat of serious injury.

Rule 10 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules'97 provides for imposition of provisional safeguard duty for a period of not more than 200 days.

Article 7.5 of the WTO Agreement on Safeguards stipulates that no safeguard measures shall be applied again to the import of a product which has been subject to such a measure inter alia if the period of non application is at least two years.

Article 7.6 of the WTO Agreement on Safeguards provides for imposition of safeguard measures with a duration of 180 days or less on a product inter alia if (a) one year has elapsed since the date of introduction of a safeguard measure on that product, and (b) safeguard measure has not been applied on the same product more than twice in the five year period immediately preceding the date of introduction of the measures.

It is held that definitive safeguard measures on PAN has been levied only once in the past, which lapsed on 31-12-2009. A period of more than one year has elapsed since then and therefore imposition of immediate provisional safeguard measures for a period of 180 days has been considered.

8. Recommendation: In view of the findings above, it is concluded that increased imports of PAN into India have caused grave injuries and are threatening to cause serious injuries to the domestic producers of PAN and it will be in the public interest to impose safeguard duty on imports of PAN into India in terms of Rule 10 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules'97 read with Article 7(6) of Agreement on Safeguards. Considering the average cost of production of PAN by the domestic producers, after allowing a reasonable return on capital employed, safeguard duty at the rate of 10% ad-valorem, which is considered to be the minimum required to protect the interest of domestic industry, is hereby recommended to be imposed on imports of Phthalic Anhydride falling under 29173500 of the First Schedule of the Customs Tariff Act, 1975.

9. Further Process:

I. The information provided by various parties may be subjected to verification where necessary, for which they will be informed separately.

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

Sd/-
(Indrani Dutt Majumder)
Director General.