

DIRECTOR GENERAL (SAFEGUARDS)

NOTIFICATION

New Delhi, 29 March 2012

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

G S R D- 22011/8/2011 dated 29 March, 2012 having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 thereof;

1. Procedure

- 1 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, Maharashtra..
- E. Micro Inks Ltd. 512/513, Midas, 5th Floor, Saharplaza Complex, J.B. Nagar, M.V.R.D., Andheri (E), Mumbai, Maharashtra..
- F. Heubach Colour Pvt. Ltd. Plot No 9002-9010, Gide Estate, Ankleshwar.
- G. Sanman Trade Impex Pvt. Ltd. 1410, Maker Chamber V, Nariman Point, Mumbai, Maharashtra.
- H. A-One Chem Trade Pvt. Ltd. 302, Shanti House, Nr. Madhushudanhouse, Opp: Navranpura Telephone Exchange, Off C.G. Road, Ahmedabad.

- I. Sanjay Chemicals (India) Pvt. Ltd. 507, Matru Chhaya, 378/380, Narshinatha Street, Mumbai, Maharashtra.
- J. Mazda Colours Limited, Nkm International, 178, Backbay Reclamation, Maharashtra.
- K. Lona Industries Limited, Alta Bhavan, 532 Senapati Bapat Marg, Dadar, Mumbai, Maharashtra.
- L. Aarti Industries Limited, Udyog Kshetra, 2nd Floor, Mulund Goregaon Link Road, Mulund (W), Mumbai, Maharashtra.
- M. Rachna Plsticizers, Plot No. 116&117, Piparia Indl. Estate, U.T. Of D & Nh, Silvassa.
- N. Phthalo Colours & Chemicals (I) Ltd. Nanavati Mahalya, 18, Homi Mody Street Fort Mumbai, Maharashtra.
- O. Ramniklal S. Gosala & Co. National House, 608, B.J. Marg, Jacob Circle, Mumbai, Maharashtra.
- P. Petrochem Middle East (India) Pvt Ltd, 201, Business Square, B. Wing, Andheri Kurla Road, Mumbai, Maharashtra.
- Q. Amjey Chemicals, 5-A, Old Nagardas Road, 101, Adinath Tower, Andheri (E), Mumbai, Maharashtra.
- R. Hazel Mercantile Limited, 181, Ashoka Shopping Centre, 2nd Floor, G.T. Hospital Complex, Mumbai, Maharashtra.

Exporters

- A. Aekyung Petrochemical 106-3, Guro-Dong, Guro-Ku, Seoul, 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.
2. 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.
3. Requests to consider them as *interested parties* were received from the following parties and all the requests were accepted:

Domestic Industry:

- i. Indian Chemical Council.

Exporting Nations:

- i. Director of Trade Defense, Indonesia.

Exporters

- i. LG Chem Ltd, Korea

Importers

- i Indian Plasticizers Manufactures association.
- ii Polyester Resin Manufactures association.
- iii Indian Paint association.

4. Requests for an extension of time to submit their replies were made by the following parties:
 - i. Weiss Porat & Co. on behalf of Gadiv Petrochemicals, Israel (30 days from August 21,2011).
 - ii. Indian Plasticizers Manufactures association-4weeks.
 - iii. Polyester Resin Manufactures association-4 weeks.
 - iv. Luthra & Luthra on behalf of Indian Paint association-2 weeks till 23 Sep 2011.
 - v. WTC for Aekyung Petrochemical Co Ltd, Korea- till 30 Sep 2011.
- 5 After taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time to submit reply as per Rule 6(4) of Safeguard Rules were allowed, as prayed for.
- 6 The information presented by the applicant was verified by onsite visits to the plants of the domestic producers to the extent considered necessary. The non confidential version of verification report is kept in the public file.
- 7 All the views expressed by the interested parties have been taken into account in making appropriate determination. The non confidential information received or acquired has been kept in the public file.
- 8 After expeditious conduct of investigation, preliminary findings were issued on 23 September, 2011 recommending imposition of provisional safeguard duty @ 10% advaleram. The provisional duty was levied @ 10 % with effect from 17 January 2012 for a period of 180 days, vide Notification no 1/2012-Customs(SG) dated 17 January 2012.

9 A public hearing was held on 18th October, 2011, notice for which was sent on 5th October, 2011. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Copy of written submissions filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.

10. All the views expressed by the interested parties and other domestic producers either in the written submissions or in the rejoinders and response to the domestic industry submissions were examined and have been taken into account in making appropriate determination. As there are large number of interested parties who have filed their submissions, their contentions and the issues arising there-from are dealt with at appropriate places without referring to specific name of the interested party for the sake of brevity.

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. Views of Domestic industry

a There is a previous history of dumping leading to recommendation for the imposition of definite anti dumping duty which was subsequently imposed vide Notification No.148/2000 on import of PAN.

b. Further, on the recommendation of D G safeguards provisional and final safeguard duty was imposed vide notification No.9/2009 and ntn. no. 75/2009 respectively.

- c. D G Anti Dumping has initiated anti dumping investigation vide notification dated 29th April 2011 against dumping of subject goods.
- d. In various past cases D G safeguards have proceeded with the safeguard investigation when a parallel anti Dumping investigation has been initiated or anti Dumping duty has been levied on the said product e.g. NTCF and Caustic Soda.
- e. Reply of European Union to the issues raised by China on dual remedy said that in all the three cases of Safeguards, Anti Dumping and Anti subsidy the requisite conditions for initiation are met.
- f. The recent period chosen by the D G Anti Dumping & D G safeguards are Jan –Dec 2010 & Jan-June 2011 respectively which are different from each other.
- g. They are not seeking dual remedy but only relief against the additional injury caused.
- h. There is no bar in the Indian law with regard to imposition of safeguard at this stage. Rather, the WTO Agreement on Safeguards is considered, whereby the Agreement permits imposition of duty for 180 days before the expiry of two years.
- i. April-May 2011 data does not isolate the analysis of increased imports and injury and the demarcation of the period of investigation is on discretion of the Investigation Authority (US-Line Pipe Case).
- j. The petitioners constitute domestic industry as per Customs Tariff Act'75 as they constitute the major proportion in the total Indian production of PAN as per the table below.

S.No.	Year	Petitioner	Other Indian producers	All Indian producers
1	2007-08	86.05%	13.95%	100%
2	2008-09	89.98%	10.02%	100%
3	2009-10	89.37%	10.63%	100%
4	Jan-Dec 2010	87.24%	12.76%	100%
5	Q 4 (2010-11)	86.49%	13.51%	100%
6	Q 1 (Apr-June2011)	86.23%	13.77%	100%

- k. The production by Asian paints is mainly for the captive consumption and domestic sales forms only a miniscule part of its business.
- l. Chemical Manufacturing Company, a division of Thirumalai Chemicals Ltd. imported a small quantity for PAN(less than 0.1% its production and Sale less than 0.2% of the Indian Import of PAN) for export and not for domestic trade.
- m. The imports do not disentitle a domestic producer from being domestic industry under the safeguards law.
- n. The imports of PAN have increased within the meaning of safeguard rules and the decisions of Argentina footwear case and Wheat Gluten case.

- o. There is a sudden, sharp and significant increase in imports throughout the injury period with a decline in the year 2009-10 due to imposition of safeguards duty in that period.
- p. However, when the effective date of safeguard duty came to an end, the imports are surging at a significant rate.
- q. Also the imports in relation to the production and consumption have increase throughout the period as well as in the recent period.
 - a. Setting up of new plants by Chinese producers
 - b. Sluggish demand in China for product under consideration.
 - c. Slowdown in the end markets of Europe and America
 - d. Anti-dumping investigations against imports from Korea and Taiwan in Pakistan and China.
 - e. Growing demand of the product under consideration in India.
 - f. Due to the above listed factors, the exporters from Korea and Taiwan were compelled to search for the growing market for their product and India being the most viable choice were targeted, leading to increased imports in India.
- r. Increased imports have led to reduction of market share of the domestic industry which has adversely impacted their production and capacity utilization.
- s. The sales of the domestic industry increased till Q 4 but declined during the recent period whereas the imports have surged. Domestic industry is being forced to exports its production despite significant domestic demand on account of continuous increased imports of the product in the country.
- t. As the market share of domestic industry is decreasing vis a vis imports it is facing the problem of accumulated inventories.
- u. In order to sustain in the market, the domestic industry has to reduce its prices far lower than the cost of sales thereby suffering significant losses. At the same time the profitability and consequently cash profits and return on investment have started declining in the most recent period which had actually improved previously after imposition of safeguard duty.
- v. Threat of serious injury is being established by 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 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 lead 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 lead to increase in imports from such countries and also pose a threat of further increase in imports.

- w. The prices of PAN remained same or at times declined inspite of increase in raw material cost which indicates that the end user has been supplied PAN at competitive prices. Previously also the domestic industry has been maintaining the prices in line with changes on prices of raw material even after imposition of safeguard duty.
- x. Further, safeguard duty will be only to the extent to neutralize the injurious impact.
- y. Since there is negligible impact on the eventual end product and considering that the survival of the domestic industry is must, the imposition of safeguard shall be in public interest.
- z. The petitioners contend that during many safeguard investigations, duty was recommended without elaborate adjustment plan.

4 Views of Exporting Nations

Republic of Korea:

a. There is simultaneous investigation in this case viz Antidumping and Safeguards. Same economic factors from the overlapping period may lead to overlapping remedies resulting in excessive protection.

b. The petition annualized the period of two months (April to May 2011) for the whole year of 2011 which exaggerated the trends of import volume. The two months period is too short to show a trend for the whole year. Indian Govt should have updated its import data to include June to August 2011.

c. There is no unforeseen development in this case. Injury in this case was foreseen and predicted when the DI expanded its capacity during the previous safeguarded period, exceeding the domestic demand. The petitioners should have enlarged their focus on export performance during 2009 instead of concentrating more on domestic market with the support of safeguard measures.

d. There is relatively stable capacity utilization. Petitioners not only maintained the utilization level despite increase in capacity, but also made a breakthrough to reach higher utilization level. There is no injury.

e. As per injury statement, the export volume of the petitioners was 75382 MT in 2007-08 which decreased sharply to 15757 MT in 2010. The statistics provided by the petitioners show that the allegation of injury based on the decrease in production and capacity utilization should be attributed to the other factors such as poor export performance and not to the imports of PAN.

f. Capacity expansion is the main cause of injury. Even though, Mysore Petro closed the plant, over 160000 MT of capacity of IG Petrochemical and the other petitioners' capacity in total already satisfy the demand of the entire domestic market without any imports.

This indicates that the injury cause exists already among petitioners who are equipped with overcapacity and who have limited their ability to export by converting themselves to DTA.

g. In the graph on page 16 of the preliminary finding, the authority wanted to explain the recent reversion of orthoxylene costs and phthalic anhydride prices; however, the same curves in the graph provide evidence that a profitable and favourable spread had existed before June 2011. Apparently, the graph shows more profitable period than that at loss.

h. Preliminary Findings fail to provide explanation ensuring that injury caused was due to increase in imports and not due to the effects of other factors.

Govt of Israel

a. The data in the preliminary findings does not seem to demonstrate a significant increase of imports nor a dramatic decrease in domestic production. There was indeed a decrease in sales in Q1 2011 but this was not due to the imports but rather to a general decline in the consumption of the product.

b. The factors mentioned in the preliminary findings concerning "serious injury" caused to the domestic producers seem to be lacking in light of the requirements of the WTO Agreement on Safeguards. Furthermore, the application does not mention any adjustment plan.

c. The preliminary findings do not determine a period of investigation to necessitate and justify a safeguard measure.

d. The application of the safeguard duty affected the market behavior in 2009 and the immediate period following that date and therefore cannot form a basis for the reapplication of a safeguard measure.

e. Israel has been mentioned in the initiation notice as one of the main sources of imports of PAN to India. However, a closer look at the import figures demonstrates that the total import from Israel represents roughly 1.5% of the total consumption in India. Moreover, it is difficult to claim for injuries caused by import in cases where the local Indian producers hold about 80% of the market share.

f. We should note that the imports from Israel have constantly decreased during the last years.

g. One of the major causes for the difficulties encountered by the Indian domestic producers of PAN is the global recession and the decline in demand and not the competing imports. The domestic industry seems to be seeking any possible trade remedy to overcome the worldwide competition by imposing protective measures.

h. Indian PAN industry has recently requested the imposition of an anti-dumping measure and on April 29th 2011 an investigation was initiated. A double remedy for the same "injury" cannot be applied.

i. The injury caused by the alleged dumping cannot be separated from the injuries allegedly caused by the increase in the imports. Directorate General of Safeguards has not considered the impact of the alleged dumped imports investigated in the parallel Anti-dumping Investigation.

j. According to Article 7.5 of the Agreement on Safeguards, a temporary as well as a final safeguard duty, shall not be applied again to the import of PAN for a period of two years from December 31, 2009 (date of termination of previous safeguard duty).

k. In light of the circumstances described above we believe that this investigation should be terminated immediately and no duty shall be applied.

5, Views of Exporters

Gadiv Petrochemicals:

- i. Simultaneous anti-dumping and safeguard investigations may not be conducted in this case for the same product with respect to same countries.
- ii. That the Applicants in the Safeguard Application, together with one additional company, have filed an anti- dumping application seeking the imposition of an anti-dumping duty on Phthalic Anhydride.
- iii. In view of admission that "the dumping and the low priced imports" are causing injury by the Applicants , Honorable DGS should suspend the present investigation, as long as the anti-dumping investigation is being conducted.
- iv. Further, the injury caused by the alleged dumping cannot be separated and singled out from the injuries allegedly caused by the increase in the imports.
- v. The Domestic Industry filed a Writ petition seeking a declaration that the safeguard duty imposed on PAN should be made valid for 4 years. However, the Hon'ble High Court refused to grant interim relief.
- vi. Immediately after the filing of this Application the Domestic Industry withdrew the aforementioned Writ Petition. Having approached the Hon'ble High Court for the same relief they should not have filed a fresh application for the same relief which is barred by res- judicata.
- vii. The increase in the import after the expiry of the Safeguard duty on December 31, 2009 proves that the domestic industry did not adjust itself to the import as required by Article 7, section 2 of Agreement on Safeguards.
- viii. The DGS erroneously decided the period of investigation from Q4, 2008- 2009, ignoring the period before the imposition of the previous safeguard measure which was mandated to neutralize any artificial increase attributed to the influence of the safeguard duty imposed during the year 2009.
- ix. The market share of the import (16-18%) during the most recent period (2010 + Q 4 2010- 2011) is significantly lower than the market share during 2008- 2009, before the imposition of the safeguard measure which lead to the imposition of the safeguard measure.
- x. WTO Panel in *Argentina - Footwear* case cautions against manipulations of the investigation period in order to achieve the "desired" outcome.
- xi. Moreover, such increase after the expiration of the safeguard measure cannot be regarded as being a result of "unforeseen developments" as required by Article XIX GATT.
- xii. Conduct by the applicants clearly demonstrates that they were aware of the fact that following the expiry of the duty, the imports of PAN were expected to

- increase and therefore, the alleged increase in the imports cannot be regarded as "sudden" and "unforeseen".
- xiii. In this case the import volumes do not show a clear upward trend. Rather we see many intervening trends of decline in the imports.
 - xiv. The DGS erroneously based her findings, inter alia, on the trends of the import in relation to the domestic production instead of to the domestic consumption. The decline in the export increased the percentage of the import in relation to the production.
 - xv. Preliminary findings allegedly show that there has been an increase in imports from Korea and Taiwan from the year 2008-2009 to 2010-2011 but figures relating to the third country implicated in this investigation - namely, Israel are absent. Actually there is a decline in export volumes over the period of investigation.
 - xvi. The fact that such producer was able to shift from EOU to DTA and to increase its sales in the domestic market, contradicts any conclusion of serious damage due to import.
 - xvii. DGS ignores the significant increase of 11% during the period 2009-2010 & 2010-11 in the sales of the domestic industry during the period of investigation. Even the domestic sales of the first quarter of 2011-2012 (38,149 MT) are higher by 7% than the corresponding quarter of 2009-2010 (35,530 MT).
 - xviii. The changes in the domestic production and the capacity utilization presented by the Applicants should be fully related to the ongoing decline in the export of the domestic industry, and not to the import.
 - xix. The findings in this case, which show growth in sales, increase in production, increase in sales prices, growth in employment and growth in productivity of the Indian PAN industry certainly do not pair with a finding of "significant overall impairment in the position of a domestic industry",
 - xx. The DGS ignored the fact that the sale prices of the Applicants, increased during the last two years, and especially during the most recent period (Q 4 2010- 2011, Q 1 2011- 2012).
 - xxi. The DGS ignored the fact that Gadiv's export prices to the Indian market, as well as the average prices of the whole export of PAN to India, were higher than the domestic prices in South-East Asia (including India), and therefore the import prices did not undercut the prices of the domestic industry.
 - xxii. The DGS totally ignored the Applicant's financial statements attached to the Application that their financial status in the recent period is good, and they did not suffer any injury that may be related to the alleged growth in import.
 - xxiii. The increase of the production costs (increase in the costs of Ortho-xylene) of the Applicants and its influences on the profitability of the Applicants cannot be related to the import.
 - xxiv. The decrease of delta during the months May- July 2011, is only a temporary phenomenon, should be related to the increase in the prices of Ortho-xylene and the decline in the domestic prices of PAN due to the decline in the domestic consumption during Apr- May 2011.
 - xxv. The import did not prevent the domestic producers from increasing their prices.
 - xxvi. The DGS's assumption that the domestic industry might be closed if a Safeguard duty will not be imposed is totally absurd as Applicants are holding 75%- 80% of the domestic market and they have high profits.

- xxvii. The DGS seems to assume that the previous safeguard measure had duration of 180 days or less and that therefore the time interval of 2 years does not need to be respected. DGS states that the definite safeguard duty was imposed for one year, from 29.1.09 to 31.12.09 which is more than 180 days. Therefore, India cannot impose another safeguard measure on this product before 31.12.11.
- xxviii. Safeguard measure is an emergency measure that can be used only in extraordinary circumstances of emergency and not as a reaction to "unfair trade" by any of India's trade partners. Here this emergency measure has already been tried once in 2009, and the current position of the Indian PAN industry clearly does not justify doing so again.

6. Views of Importers/User Industry

Indian Paints Association:

- i. The preliminary findings are against the principle of natural justice. PF were finalized on the basis of submissions made by only three interested parties and five interested parties including us were left out. Exercise of such power by any quasi-judicial body which includes DG Safeguards has to be consistent with principles of natural justice.
- ii. The import data provided by DG safeguards in the PF is at variance with the data furnished by the petitioner in the petition. Further the interested parties/respondents have not been provided with the import data for April-Jun 2011 in Annexure 2 of the petition. Moreover, the imports made under advance license scheme should be excluded from the overall imports.
- iii. As per initiation notification issued by DGAD in the antidumping investigation against import of PAN, two out of the three petitioners have imported PAN from Korea RP during Jan-Dec 10. Therefore, these two companies namely M/s IG Petochemicals and M/s Thirumalai Petrochemicals, being importer of PAN cannot be part of domestic industry. Further, when the domestic industry is itself importing such goods during POI for consumption in the domestic market, any claim of injury to the domestic Industry cannot be sustained as the injury to domestic industry is self inflicted, they being contributor in imports.
- iv. DG Safeguards has concluded in PF that production has been falling. However, production has increased in 2010-11 as compared to 2007-08.
- v. DG, Safeguards, vide page 13 of the preliminary findings has concluded that capacity utilization has declined significantly as Applicants had an average market share of 85% in 2009-10 which fell to 74% during 2010-11. This conclusion is at variance with its own data on market share as provided on page 5 of the preliminary findings.
- vi. The development in the market of USA and China were foreseeable. DG Safeguards has cited the same unforeseen development as mentioned in the earlier safeguard investigation on PAN. Therefore, in respect of this investigation these developments were no longer unforeseen because these had already occurred three years ago.

- vii. There is no injury to the domestic industry as there is positive surge in all the vital economic parameters viz production, installed capacity, domestic sales, profitability, market expansion etc.
- viii. Market share of domestic industry has increased while the market share of imports is at the same level where it was in 2007-08.
- ix. Domestic Industry is seeking double protection in the form of simultaneous Antidumping and Safeguard Investigations. Import volumes from the subject countries in the Antidumping investigation is similar to the import volumes in the Safeguard Investigation which implies that the same import volumes are being investigated twice for causing two different types of injury to the same DI at the same time.
- x. There is absence of any causal link in the case.

Indian Plasticizers Manufacturers Association (IPMA) and Polyester Resin Manufacturers' Association (PRMA) :

- i. DG Safeguards has erred by not providing Interested Parties the opportunity to comment, thereby violating the principles of natural justice and principles governing investigations. We had requested, vide letter dated 27 Aug 11 to consider us an interested party and sought four week time to submit reply which was granted. However, despite this the PF were issued on 23 Sep 11.
- ii. POI in this case is out dated and not recent. POI in this case begins from Jan 2009 and ends in May 2011. Hence POI comprises of data which is upto 28 months old and does not qualify to be recent. Period of over two years does not justify or establish the essential requirement of a sudden, sharp and significant rise in imports.
- iii. Data provided by the petitioners does not provide an accurate assessment of the injury claimed on account of increase in imports. It is unfair and improper to annualize imports made in specific quarters to analyse the injury and threat of injury and annualizing the imports for merely 2 months leads to a mere conjecture and not sufficient evidence to initiate the case.
- iv. Import and other data like production etc. submitted by the petitioners is highly unreliable and is in fact inconsistent with the data provided with the petition filed in the parallel antidumping petition. In the absence of an adequate and justified explanation, the data be dismissed as unreliable.
- v. Domestic sales of petitioners have consistently increased whereas the market share of imports has in fact declined to 26% in April-May 2011 as compared to 37% in Q1 of 2010-11.
- vi. Capacity utilization does not show a substantial decline and the average capacity utilization has been 77% whereas other factors have affected the production and capacity utilization of the petitioners.

- vii. Production of the petitioners has increased by 8% in Q4 of 11-12 as compared to Q4 08-09 whereas the sales of the petitioners have increased by 23% in corresponding period.
- viii. Perusal of the Balance sheet of M/s IG Petrochemicals and M/s Thirumalai Petrochemicals shows significant profits during financial year 2009-10 & 2010-11. In fact, even in the first quarter of financial year 2011-12, the operating profits of IG Petro are 9.30 crores and in the case of Thirumalai, it is 9.76 crores. M/s Thirumalai have suffered losses only in 2008-09 in the last 10 years due to the global economic meltdown.
- ix. A majority of the imports made by the user-industry are made duty free under advance license scheme, in order to meet their export obligations. Such imports are not to be counted for safeguard purpose.
- x. Domestic industry enjoyed much higher levels of protection earlier, as the customs duty was much higher @ 30%. The same has been reduced to 7.5% currently. Hence, the DI has resorted to seeking undue trade remedial protection.
- xi. The petitioners have not provided any information as to whether the commitments made by them in the form of adjustment plan submitted with the earlier petition on this product, have been complied with/adopted or whether the same factors are causing injury to the petitioners.
- xii. Designated authority is mandated to require the petitioners to submit a detailed adjustment plan in order to impose a safeguard duty and the failure of the same is violative of the obligations under the WTO Agreement on Safeguards.
- xiii. There is absence of critical circumstances in this case. Rise in the import prices is greater than the rise in domestic prices of the subject goods. Clearly, the injury suffered by the petitioners is self-inflicted and the serious injury claimed by the petitioners cannot be attributed to imports.
- xiv. POI under the parallel Anti-dumping investigation is Jan 2010 to Dec 2010 whereas POI for the present safeguard investigation is Q4 08-09 to May 2011. Hence, POI under parallel anti-dumping investigation is subsumed within the POI for the safeguard investigation which is unfair.
- xv. In this case, the injury to the petitioners is clearly attributable to other factors and not to an increase in imports. Hence, causal link does not exist between increased imports and serious injury.
- xvi. Imposition of safeguard duty shall be contrary to public interest in this case. Imposition of safeguard duty would gravely escalate the price of the subject goods and have a direct adverse effect on the costs of the plasticizer manufacturers and other dependant downstream industries. It would make the end user industry completely unviable and would suffer immense injury that may even lead to their closure.

KLJ Plasticizers Ltd. :

- i. The petitioners namely M/s IG Petrochemicals and M/s Thirumalai Petrochemicals Ltd have most modern plants and there is no further improvement in the technology anywhere in the world for which the domestic industries are claiming injury.
- ii. Raw material is available in plenty in the country and it does not require any power to run the plant because of its exothermic reaction. Moreover the DI generate extra steam out of which they produce power not only for their plant but for sale outside also. This is advantageous to them.
- iii. The domestic industry is having sufficient exports and it shows that they are capable of world class competition.
- iv. The domestic industry have always made good profits as per their balance sheet for the last ten years except for the year 2008-09 which was a global meltdown year.
- v. Higher imports are engineered by domestic industry. They have been offering unrealistic prices which are higher than prevailing international prices forcing local consumers to import material so that they can show spurt in imports.
- vi. Most of the imports during this period have been done by duty free licence holders, which should be excluded from the import figures.
- vii. The IG Petrochemical is going for expansion after which they will become single largest plant in the world and Thirumalai Petrochemical is putting up another plant in Gujrat. If there is injury then what is the necessity of these expansions.
- viii. Plasticizer industry, the largest consumer of PAN, is likely to suffer if safeguard duty is imposed on PAN because there is no margin in this industry even in good times. Further, the Plasticizer Industry is to compete with the world class integrated plants which have own oxo-alcohol or Phthalic Anhydride or both. If any safeguard duty is imposed on PAN, it will be boon for the foreign producers because they will find market for plasticizers instead of PAN. This will lead to large scale import of plasticizers and not in the interests of the domestic manufacturers of plasticizers.
- ix. Phthalate Plasticizers industry is also subject to many FTAs which allows import of DOP at the concessional rate of duty from Malaysia, Singapore and Thailand.

7. Rejoinder by Domestic industry

I. Government of Taiwan

- i. The Imports increased at significant rate capturing the market share of the domestic industry once the period of imposition of safeguard duty expired.
- ii. The domestic industry in India has enough capacity to meet the entire demand in India.

II. Government of Korea

- i. The DGCIS data 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.
- ii. Competition inter se domestic producers is not the cause of injury as the domestic producers have been competing during the entire period and therefore deterioration in the current period could not have been due to internal competition.
- iii. The capacity of the domestic industry remained constant since Jan-Dec 2010 whereas the production of the domestic industry declined in Jan, 11 to March, 11 and thereafter in Q1 of 2011-12.
- iv. Landed price of imports were much lower than selling price of the domestic industry. It was the imports that forced the domestic industry to keep unremunerative prices.

III. Government of Israel

- i. The pattern of import from individual countries is of no relevance in a safeguard case.
- ii. The domestic industry cannot withhold inventories for a long period or reduce the production off and on. It had to respond to low priced imports by reducing the prices thus leading to significant injury.
- iii. While global recession is one of the causes of increased imports, admittedly Indian market is not suffering from recession. Therefore, Indian producers need not suffer due to global recession.
- iv. The imports not only increased at a significant rate in 2010 but also in the next 6 months. The effect of expiry cannot be for such long period.
- v. Neither the WTO Agreement nor Indian law mandates adjustment plan. The petitioners refer and rely on Korea — Dairy case, wherein the panel rejected the view that Article 5.1 imposes an obligation to consider adjustment plans.
- vi. The domestic industry is working on an adjustment plan and the same shall be provided in due course.

IV. Gadiv Petrochemicals Industries Ltd

- i. The Applicants chose to withdraw the Petition before the Hon'ble High Court, and to refrain from requesting the extension of the Safeguard duty. Instead, they submitted a new Application for Safeguard duty in addition to the pending Anti dumping petition.

- ii. While analyzing the imports, the DG is required to evaluate whether any downturn in imports is simply temporary, or instead reflects a longer-term change as per findings in Argentina — Footwear (EC) case.
- iii. Shifting of EOU to DTA has no relevance in the present investigation. Such shifting is a long term process and has not caused injury to the domestic industry.
- iv. The petitioners were unable to increase their prices with the increase in prices of Orthoxylene(raw material) because of the presence of cheap imports.
- v. The financial data in the annual report is the consolidated data of all the products produced by the particular petitioner and not for Phthalic Anhydride alone.
- vi. In most recent period, demand of PAN in DOP segment declined because of significant increase in DOP itself.

V.Indian Paint Association

- i. Out of 168 safeguard initiations reported to WTO during 29.03.1995 and 12.11.2008 in 15 cases provisional safeguard measures have been recommended/ imposed within 30 days of initiation of the safeguard investigation.
- ii. In critical circumstances any delay in imposition of Provisional Safeguard duty may cause irreparable damage. The interim safeguard duty was imposed without receipt of responses in the cases of Phthalic Anhydride, Aluminium FRP & Foil, Dimethoate technical, Soda Ash etc.
- iii. In past, third countries imposed safeguard duty without receipt of information from interested parties.
- iv. In the petition the domestic industry has considered data from IBIS whereas the Director General (Safeguards) in the Preliminary Findings has considered data from DGCI&S and Directorate of Valuation and the entire source shows an increasing trend.
- v. Missing data by the petitioners is mere clerical error and no prejudice has been established on this account.
- vi. The definition of the ‘domestic industry’ in Anti-Dumping law and Safeguard law is different. When safeguard law provides for the specific definition of “domestic industry”, there is no need to borrow the definition from other law.
- vii. The imports in advance license are impacting the domestic industry and therefore cannot be excluded.
- viii. The opposing parties have very conveniently selected a period for comparison as per their requirement. The period of investigation in the present investigation is till May 2011 and therefore any trend has to be analyzed till the end of period of investigation.

- ix. Applicants had an average market share of 85% in 2009-10 which fell to 74% during 2010-11, i.e. a decline of about 11%.
- x. Producers in China are setting up new plants for manufacturing Phthalic Anhydride which 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.
- xi. Consideration of same factor at the time of previous investigations does not imply that the factor cannot exist now or cannot be relevant now and nothing prevents the authorities in imposing safeguard duty again based on same factor.
- xii. The petitioners have annualized the 3 months figures to facilitate fair comparison with the previous year's imports and other injury parameters which are on annualized basis.
- xiii. Domestic industry never claimed to have 85% of market share. Indian producers as a whole had a market share of 87%, which declined to 77% in recent period.
- xiv. The very purpose of analyzing the longer period data is to examine intervening trends and not just end to end point comparison.
- xv. The opposing party has itself stated the reason for closure of Mysore plant in its submissions at page 10 which is an extract from the annual report.
- xvi. Any change in catalyst would not amount to shut down of the plant for indefinite period rather it was due to accumulation of stocks
- xvii. No back up information or IBIS data has been provided by the opposing party to substantiate the argument. Information presented to the DG clearly show surge in imports.
- xviii. The SI Group which is not included in the safeguard investigation accounts for mere 4% of the total domestic production which would not materially change the overall state of domestic industry.
- xix. While the DG is required to consider most recent data, clearly, the DG is not required to include the data post initiation of investigations.
- xx. The period of investigation is and the applicants are not same therefore the data provided in the two investigations ought to differ. However, data in respect of individual companies does not have any variations.
- xxi. The profits in annual reports are wholly irrelevant. Only profits in the product concerned alone is relevant.
- xxii. Throughout current period, the custom duty was 7.5%. Therefore it is irrelevant and baseless to state that reduction in customs duty has caused injury to the domestic industry.

VI. M/s.KLJ Plasticizers

- i. In spite of world class plant, easy access to raw materials availability and energy cost, conversion cost being most optimum, the domestic industry is unable to recover its costs.
- ii. It is not established that all the imports were duty free. If all the imports were duty free, its volumes would not have declined after imposition of safeguard duty.
- iii. Non imposition of safeguard duty would jeopardize the expansion plan as it assumes no surge in imports.

8. Rejoinder by EXPORTERS

Gadiv Petrochemical:

- i. In their current submission, the Applicants fail to mention the important fact that they filed a Writ Petition before the Hon'ble High Court of Bombay.
- ii. The Applicant's silence on the petition and withdrawal of the petition immediately after the filing of the current petition amount to forum shopping and should be considered seriously by DGSG.
- iii. DGSG held in the decisions e.g. Caustic Soda, that the imposition of additional Safeguard duty, after the imposition of a Dumping duty, may be considered only if and when the influences of such Dumping duty on the import and the domestic industry had been clearly tested.
- iv. Period of Safeguard investigation overlaps with Anti-Dumping investigation which is 2007- 2008, 2008- 2009, 2009- 2010, Jan- Dec 2010 (regarding the injury) and Jan- Dec 2010 (regarding the dumping).
- v. The injuries argued in the Safeguard Application and the Dumping Petition, are identical, i.e, price-undercutting, decline in profitability, decline in market- share, deterioration of capacity utilization.
- vi. The periods and injuries analyzed in both investigations are identical, and may lead to the imposition of double duties.
- vii. The WTO's Panels and Appellate Body have held in cases e.g. Argentina- Definitive Safeguard Measures on Imports of Preserved Peaches & United States- Definitive Safeguards measures on imports of certain steel products, that to establish increase in imports, a comprehensive analysis throughout several years must be performed, and such analysis should not be limited to the most recent past.
- viii. Even if the import volumes in a specific quarter (or month) are relatively high, it cannot be said that the imports throughout the entire year will necessarily be as high.
- ix. The actual annual volumes of the imports, in relation to the production and the consumption, reflect a decrease of the imports compared with the years before the imposition of the safeguard duty following the previous application of the DI

- x. To dodge submission of Adjustment Plan, the Applicant's argued that they requested safeguard duty only for one year. However, as per their Written Submissions they are demanding a Safeguard duty "for the longest possible period".
- xi. Regardless of the duration of the Safeguard duty period Applicants should have submitted an Adjustment plan according to the decisions in cases of Korea-Definitive Safeguard On Imports Of Certain Dairy Products and Chile-Price Band System and Safeguard Measures Relating to Certain Agriculture Products.
- xii. Adjustment Plan filed by the Applicants with their previous Safeguard Application was found to be totally fictitious.No provisional duty may be imposed as long as such Adjustment Plan is not submitted.
- xiii. The period of investigation according to the Hon'ble DGS's decision is "Q 4 2008- 2009 onwards, and not up to September 2009 as erroneously argued by the Applicants in section 27 to their submissions.
- xiv. The data regarding the domestic sales reflects that the sales in the first quarter of each year are relatively higher than the rest of the quarters and cannot establish a conclusion of decrease in the domestic sales.
- xv. The Applicants admitted that the domestic demand for PAN decreased during Q 1 2011-2012, due to the decrease in the production of the downstream product Dioctyl Phthalate in India and decreased demand caused them injury.
- xvi. Preliminary Findings, reflects a clear trend of decrease in the domestic demand from Q 1 2010- 2011. The domestic consumption in Q 2 2010- 2011 decreased to 59,618 MT (from 63,432 MT in Q1), and then decreased to 57,023 MT during Q 3, and then decreased to 56,210 MT during Q4. The trend of decrease worsened in Q 1 2011-2012 (April- May), as the consumption dropped to 26,646 MT.
- xvii. The Applicants claimed additional injuries such as decrease in profitability, and domestic sales, "in the most recent period"(April- May 2011) i.e exactly the same period of the alleged increase of the prices of Ortho-xylene and the severe decline in the demand
- xviii. The Applicant IGI Petrochemicals Ltd admitted in its Annual Report -2009-2010, states that production during Q 3 2009- 2010, was lower due to "stoppage of one of the plants on account of Catalyst change" and a fire. This decrease, despite the Safeguard measure being in place when imports were lower, proves that there is no connection between the decrease in the domestic production and the imports.
- xix. According to the Appellate Body's decision concerning US-Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, the injurious effects of the import should be separated and distinguished from all the other factors which affected the local industry.
- xx. In view of the above, the honorable DGS should reject the Application to impose a safeguard measure, or, at least refrain from imposing it on imports from Gadiv, should suspend the present investigation and recommend revocation of the Provisional Duty.

9. Rejoinder by IMPORTERS/USER INDUSTRY

Indian Paints Association:

- i. Arguments of DI that there is surplus production worldwide as there is a slowdown in the end markets of Europe and America and demand sluggish in China leading to diversion of their products to India are incorrect as per their financial report for Q1 2011-12.
- ii. The injury period in the Safeguard and the Anti dumping investigation overlap contravening the Safeguard Agreement and Rules as non segregation of injury would result in breaking of the causal link and “double protection”. Neither the DI nor DG Safeguards has provided an explanation ha provided any explanation for that.
- iii. In NTCF & Caustic Soda case cited by DI , POI both investigation period was different enabling the Authority to identify and attribute the injury suffered by DI to “low priced imports” in the anti dumping investigation and “surge” in imports in the Safeguard investigation.
- iv. Moreover, in both the cases cited by DI, either an anti dumping or a Safeguard duty was already in existence when the other investigation was initiated.
- v. DI argued that POI in the current Safeguard investigation is Jan-June 2011. However DG Safeguards vide para (c) of page 11 of the Preliminary findings has concluded that the POI in the present Safeguard investigation is from Jan 2009 onwards.
- vi. In preliminary findings, DG Safeguards concluded that import figure for 2010-11 is 61,965 MT whereas import figure for 2011-12 (annualized) stands at 55,128 MT, a decline of 13%.
- vii. Non availability of import data for June 2011 to the respondents violates the principle of natural justice.
- viii. When Petitioner companies are themselves attributing injury on ‘dumping’ in their annual reports while before DG Safeguards they claim due to “surge in imports”, DG Safeguards may refer it to DGAD.
- ix. The communication between EU and China being relied on by DI and DG Safeguards provide for no bar on a simultaneous initiation of a Safeguard investigation however it does not provide for levy of simultaneous duties without segregation of injury.
- x. As per initiation notification of the anti dumping investigation Thirumalai Chemicals and IG Petrochemicals being importers of Phthalic Anhydride, should not be included in the category of domestic industry in view of the recent judgment by the Hon’ble High Court of Calcutta in the matter of *Century Plyboards (I) Ltd. & Anr. v. The Additional Secretary & Designated Authority & Ors.* which has clearly held that a company who has imported the PUC cannot be part of the domestic industry.

- xi. There has been a 1% increase in imports in relation to consumption in 2010-11 as compared to 2007-08. Given the stable level of imports, it has not displaced sales of the domestic industry in overall demand.
- xii. Market for Phthalic Anhydride in India has expanded as there is an increase of 38% in total demand in 2010-11 as compared to 2007-08 and so is the installed capacity from 2,32,000 MT in 2007-08 to 2,68,000 MT in 2010-11.
- xiii. The overall increase in domestic sales is 50% in 2010-11 as compared to 2007-08 which is more than the demand and the increase in imports for the same period.
- xiv. The domestic sale price has increased from INR 61/Kg in 2007-08 to INR 66/Kg in 2010-11, an increase of 8% in 2010-11 as compared to 2007-08 and thus claim on price suppression or depression cannot be sustained.
- xv. Petitioner argues that the price of ortho-xylene has increased with no corresponding increase in the price of Phthalic Anhydride leading to injury to the DI while Q1 FY 2012 Financial Results Highlights shows that volatility in raw material prices has had no effect on selling price of DI and that DI is not constrained to export. Further, DI has been able to increase its domestic selling price.
- xvi. Thirumalai Chemicals has suffered huge losses on their operations subsidiary companies based in Malaysia and Singapore as stated into the Annual report of the company and not on account of increase in import of Phthalic Anhydride.
- xvii. Further, the market share of DI has increased from 64% in 2007-08 to 70% in 2010-11.
- xviii. Neither the DI nor DG Safeguards has provided any explanation vis-à-vis discrepancy in import data as highlighted by IPA in its previous submissions.
- xix. In view of the gross violation of PNJ, loopholes in the conduct of the investigation and deficiency in the petition of the domestic industry, the current investigation should be terminated.

10 Indian Plasticizers Manufacturers Association (IPMA) and Polyester Resin Manufacturers' Association (PRMA):

- i. Prior to the present investigation, the domestic industry has not even made any allegations or statements of regarding dumping.
- ii. Further, the safeguard duty has been levied on sudden surge in imports into India as a whole, and not from any specific countries.
- iii. The Period of Investigation under the parallel Anti-dumping Investigation is subsumed within the Period of Investigation for the present.
- iv. The same Petitioners have themselves claimed dumping from the majority sources, i.e Korea, Taiwan and Israel to be causing injury.
- v. The Hon'ble Director General of Safeguards ought to recuse from proceeding further with the matter and refer the case to the Hon'ble Designated Authority.

- vi. There is no additional injury as claimed by the Petitioners as the imports have significantly declined in the period subsequent to the December-2010.
- vii. The Petitioners concealed the fact of approaching High Court of Bombay seeking the interim relief for extending safeguard duty for a period of 3 years as recommended.
- viii. The Period of Investigation comprises of data which is up to 28 months old distorting the injury analysis and are not the recent trends.
- ix. Petitioners selectively included and excluded producers to mislead (M/s S I Group has been excluded) which unduly benefits their claim of injury
- x. The Petitioners excluded M/s Asian Paints Ltd which manufactured 10,496 MT i.e. 44 % of the subject goods for non-captive purposes. Notwithstanding, the fact that Asian Paints is primarily consuming captively, their market view is independent.
- xi. The quantities imported by M/s IG Petrochemicals and Thirumalai Chemicals Ltd is significant and without justification, the injury claimed is self-inflicted.
- xii. The Domestic Sales of present Petitioners have consistently increased, whereas the Market share of imports has in fact declined in April-May 2011 to 26% as compared to 37% in Q1 of 2010-11.
- xiii. Average capacity utilization since the expansion in Q1-09-10, has been 77% whereas other factors have affected the production and capacity utilization of the Petitioners.
- xiv. Production of the Petitioners has increased by 8% as in Q4 – 11-12 as compared to Q4 – 08-09 whereas the sales of the Petitioners have increased by 23%. Further, as Domestic Sales to Production ratio of the Petitioners has significantly increased from 66% in Q4-08-09 to 75% in Q4 of 2011-12. Hence, the injury, if any is attributable to losses in the export markets and not otherwise.
- xv. The Balance Sheet of M/s IG Petrochemicals and M/s Thirumalai Chemicals shows significant profits during Financial Year 2009-10 & 2010-11. In fact, even in the first quarter of Financial Year 2011-12, the operating profits of IG Petro are 9.30 crores and in the case of Thirumalai it is 9.76 crores.
- xvi. The export of PAN from India to China attracts anti dumping duty. Hence, the decline in profits is clearly attributable to other factors and cannot be attributed to imports into India.
- xvii. The Annual Reports of the Petitioners amply clarify that the Petitioners rely upon domestic raw material which is abundantly available and ensures profitable sales.
- xviii. As imports made under advance license are utilised by the industrial end-users for export purposes, the said imports cannot cause any injury to the domestic industry.

- xix. It is the change in the policy of the Government that has affected the industry and not the surge in imports.
- xx. Post the reduction of customs duty from @ 30% to @ 7.5%, the Domestic Industry has resorted to seeking undue trade remedial protection.
- xxi. DGSG has not considered the impact of the alleged dumped imports investigated in the parallel Anti-dumping Investigation concerning imports of Phthalic Anhydride from Korea, Israel and Taiwan.
- xxii. The imposition of safeguard duty would escalate the price of PAN and adversely affect the plasticizer manufacturers and other dependant downstream industries making them unviable leading even to closure of the plants.
- xxiii. Tariff protection of @ 2.5% in customs duty and abundant domestic supply of Ortho-xylene make Domestic Industry is clearly well placed in terms of supply and costs of raw materials.
- xxiv. Petitioners have subsequent to the initiation of the present investigation already increased the prices and continue doing so to the disadvantage of the End-users.
- xxv. The provision of an Adjustment Plan is a mandatory requirement under Rule 5(2) of Safeguard Rules to draw a rational connection between the measure and the objective of preventing or remedying serious injury and facilitating a d j u s t m e n t .
- xxvi. As per the judgment in case of Assistant Commissioner, Commercial Tax Department v Shukla and Brothers the DGSG was liable to accept the submissions of the Association, prior to issue of the notification and expiry of extended time.
- xxvii. The Import data submitted by Petitioners is inconsistent with the data filed in the anti-dumping petition, the findings in the earlier Safeguard Investigation as well as the said Preliminary Findings issued by the DG SG in the present case. In absence of an adequate and justified explanation, the data should be dismissed as unreliable.
- xxviii. The DGSG has failed to disclose as to how the imports from developing countries has been worked out. The alleged injury, if any, to the Petitioners is from Korea RP, Taiwan and Israel for which a separate anti-dumping petition has been filed. Import analysis also focuses on these countries i.e. Korea RP and Taiwan.

11. Findings of the DG:

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

a) The product under investigation: The product under investigation is Phthalic Anhydride (PAN) falling under heading 29173500 of the First Schedule to the Customs Tariff Act, 1975 (CTA). Phthalic Anhydride (PAN) is a principle commercial form of Phthalic acid. It is 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 $C_8H_4O_3$. It is produced by the catalytic oxidation of Ortho-xylene (OX) with air or by the catalytic oxidation of naphthalene. Domestic producers use the OX route. The process entails passing OX through a reactor, which is an arrangement of tubes of clay or porcelain rings coated with a catalyst. The oxidation process of OX coupled with post reactor polishing and flaking yields PAN in the form of white or pale yellow crystals. No interested party raised any issue with regard to the product under investigation. Therefore, it is confirmed that the product under investigation is “Phthalic Anhydride” falling under heading No 2917.3500 of schedule I of the Customs Tariff Act, 1975. Further, no differences in the production process, characteristics or end-uses between imported PAN and domestically produced PAN were raised by any of the interested parties during the course of this investigation. Therefore, it is also held that domestically produced PAN falls under the ambit of like or directly competitive in all respects to the imported product under investigation and that the domestically produced PAN is a like article to the imported PAN within the meaning of Rule 2(e) of Safeguard Duty Rules, 1997.

b) Domestic Industry: There are five domestic producers in India who manufacture PAN. Three domestic producers namely - 1) Thirumalai chemicals Limited, Ranipet, Tamilnadu 2) IG Petrochemicals Ltd, Talaja, Maharashtra, 3) Mysore Petrochemicals Ltd, Raichur, Karnataka have joined the petition. The two producers namely, M/s Asian Paints Ltd and M/s S I Group India Ltd, have not joined the petition. Share of the three applicants varied from 86% to 87% during the period Q4 of 2008-09 to Q2 of 2011-12. Thus, the collective output of the applicant producers constituted a major share of the total production of PAN in India. Further no claim has been made by the interested parties against the applicants being the domestic industry. Therefore, it is held that the three applicant domestic producers constitute and represent the domestic industry(DI) within the meaning of required and defined under Sec 8B(6)(b)(iii) of the Safeguard Duty Rules 1997.

c) Period of Investigation (POI): The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard and the relevant Article XIX of GATT do not specifically define what the Period of Investigation should be. From several case laws on safeguard measures, it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguard and Art. XIX of GATT provides specific guidelines on the period of investigation except the fact that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury. In the notice of initiation and preliminary findings, import data upto May 2011 had been considered. Now, the import data has been updated till Sep 2011. The period of investigation has been limited to the month of Sep 2011, as preliminary findings were issued on 23 September 2011. Further, a reasonably longer period has been considered to even out the effect of temporary fluctuations and seasonal effects, if any.

d) Source of data: The import data up to June, 2011 has been taken from DGCIS. Import data from July 2011 to Sep 2011 has been taken from IBIS. 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 to the extent possible and the verified data has been taken into consideration for injury analysis. Only the data for Q2 of 2011-12 in respect of various economic parameters has been taken as furnished by the applicant.

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 of Phthalic Anhydride during Q4 of 2008-09 to Q2 of 2011-12 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	10933	51271
2011-12	Q1	9752	50124
	Q2	10436	51220

There is a surge in import both in absolute and relative terms. Imports have increased from 12403 MT in Q1 & Q2 of 2009-10 to 20188 MT in Q1 & Q2 of 2011-12 showing an increase of 63% in absolute terms. Further, in the most recent period, the imports in Q2 of 2011-12 have increased to 10436 MT from 9752 MT in Q1 of 2011-12 i.e. an increase of 7%. In relative terms also, though the share of import with respect to domestic production has shown decline in Q1-Q2 of 2011-12 from Q1-Q2 of 2010-11, but in the recent period it increased i.e. from 19.45 % in Q1 of 2011-12 to 20.37 % in Q2 of 2011-12.

It is thus seen that the volume of imports has surged 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 has a rising trend which is 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 scenario in the recent past 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	2011-12(first quarter)	2011-12(second Quarter)
Exports to India from Korea (MT)	14274	11167	30306	2763	5,749
Total PA Exports (MT)	37465	28098	61241	9752	10436
As a % of Total PA Exports	38%	40%	49%	28%	55%

Export from Taiwan:

	2008-09	2009-10	2010-11	2011-12(first quarter)	2011-12(second quarter)
Exports to India from Taiwan (MT)	4555	2099	12725	2581	1,813
Total PA Exports (MT)	37465	28098	61241	9752	10436
As a % of Total PA Exports	12%	7%	21%	26%	17%

(Source: DGCIS Data up to Jun, 2011& rest taken from Petition)

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 which has slightly come down to 28% in Q1 2011-12 but has again sharply increased to 55% in Q2 of 2011-12. 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 which has risen further to 26% in Q1 2011-12 and thereafter has slightly come down to 17% in Q2 of 2011-12. This shows that rise in import of PAN from Korea and Taiwan is 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”¹ 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

¹ Section 8B(6)(d) of the Customs Tariff Act, 1975.

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.²

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:

i) Market Share: The share of imports in the domestic market with relation to production has gone up from **11%** in Q4 Of 2008-09 to **17%** in Q2 Of 2011-12. Similarly, the share of imports in the domestic market with relation to consumption has also risen from **16%** in Q4 Of 2008-09 to **19%** in Q2 Of 2011-12. It is also noticed that the market share of domestic producers in domestic consumption & production has fallen significantly. Applicants had an average market share of 86% in Q1-Q2 of 2009-10 which fell to 80% during Q1-Q2 of 2011-12, i.e. a decline of about 6%. 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	Q1	Q2
Imports (MT)	6103	7240	5163	8526	7169	23615	8611	18082	10933	9752	10436
Domestic Production (MT)	49607	47985	58259	40437	52853	55503	58168	52319	51271	50124	51220
Total Qty. Available (MT)	55710	55225	63422	48963	60022	79118	66779	70401	62204	59876	61656
Share of Imports (%)	11	13	8	17	12	30	13	26	18	16	17
Share of Domestic Production (%)	89	87	92	83	88	70	87	74	82	84	83
Domestic Sales by Industry (MT)	32613	35530	41289	39427	40696	39817	51007	38941	44553	38149	44670
Consumption in India (MT)	38716	42770	46452	47953	47865	63432	59618	57023	55486	47901	55106
Market Share of Imports (%)	16	17	11	18	15	37	14	32	20	20	19
Market Share of Domestic Industry (%)	84	83	89	82	85	63	86	68	80	80	81

ii) Production: The statistics relating to production pertaining to the domestic industry is shown above. The domestic production has been falling steadily from 58259 MT in Quarter 2 (2009-10), then 58168 MT in Quarter 2 (2010-11) and finally to 51220 MT in Q2 (2011-12). On annualized basis, production has declined in 2011-12 from 2010-11 level.

iii) Capacity Utilisation: Capacity utilization of the domestic industry has declined significantly in the most recent period, from 87% in Q2 of 2010-11 to 76% in Q2 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.

² Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

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
	Q2	51220	67028	76	8405

iv) **Inventories:** 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 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) and to 8405 MT in Q2 (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.

v) **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
	Q2	44670	8312

(i) The Domestic sale grew from 41289 MT in Quarter 2 (2009-10) to 51007 MT in Quarter 2 (2010-11) but declined thereafter to 44670 MT in Q2 (2011-12). On annualized basis, production has declined in 2011-12 from 2010-11 level. 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) However, exports steadily declined from 12471 MT in Quarter 2 (2009-10), then to 9146 MT in Quarter 2 (2010-11) and finally to 8312 MT in Q2 (2011-12). Further, the export sales of

the DI have also shown continuously declining trend since Q4 of 2010-11 to Q2 of 2011-12 by about 19% which has accentuated the injury more.

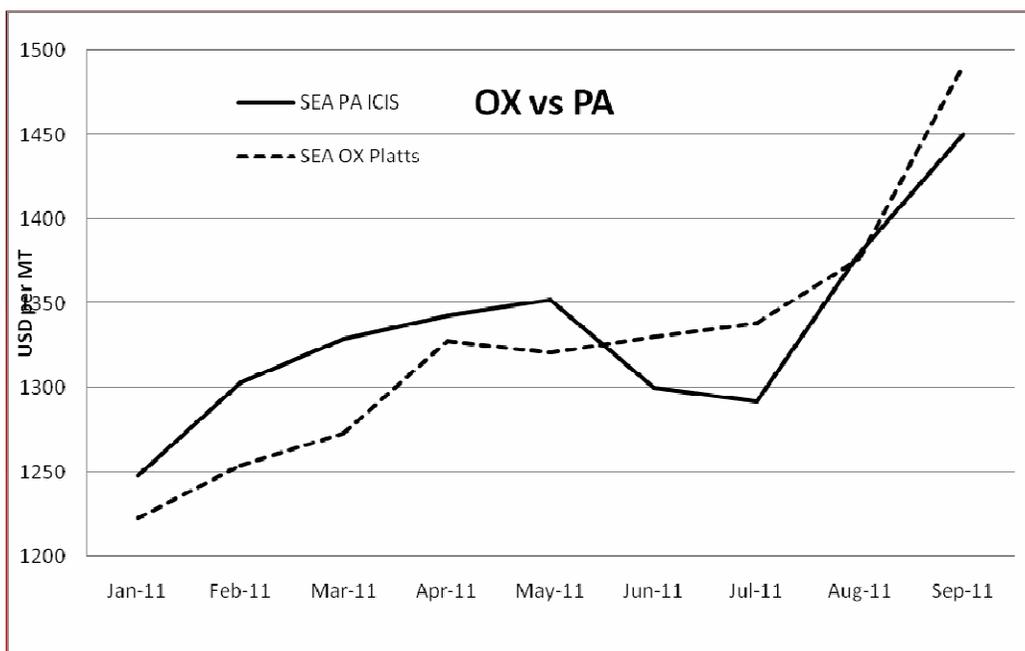
(iii) It is seen that to some extent demand of the product concerned has declined. Domestic industry claimed that this is due to the fact that producers of the downstream product Dioctyl Phthalate has started importing the downstream as its prices were coming down and found it more economical to import 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. Moreover, as is evident from the table above, even the exports have started declining in recent period aggravating the injury further.

vi) 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.

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

	Rs. In Lakhs
Financial Year	Profitability
2009-10	2583
2010-11 (Q4)	-378
2011-12 (Q1)	-384
2011-12 (Q2)	-2111

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 and the trend of rising price gap continues in the recent period. 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:



It has also been found that the import prices/landed prices of PAN are considerably lower than the selling prices of the domestic industry (confidential) which is evident from the table below:

	Domestic Price Rs. Per Kg of PAN & O-Xylene(Indexed)		Import price Rs Per Kg	Landed Price Rs per kg
	PAN	O-Xylene	PAN	PAN
2010-11Q1	100	100	50.24	54.55
2010-11Q2	85	87	49.18	53.40
2010-11Q3	94	97	50.86	55.22
2010-11Q4	104	113	58.20	63.19
2011-12Q1	111	121	59.72	64.84
2011-12Q2	110	128	61.41	66.63

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 ortho-xylene 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 76% in Q2 of 2011-12 as compared to 87% during Q2 of 2010-11 as the production of PAN is not viable due to lack of profit margin in the product. Loss of production and inventory built-up has aggravated the injury.

viii) Other Factors of Injury:

Followings are relevant in this regard –

1. Possible decline in demand of the product: 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. Changes in the patterns of consumption: 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. Trade restrictive practices of and competition between the foreign and domestic producers: There is no trade restrictive practice which could have contributed to the injury to the domestic industry.

4. Export performance: Petitioners have exported the product under consideration. In fact, one of the petitioner companies, M/s. I.G. Petrochemicals 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. Developments in technology: Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.

i) Public Interest: The constituents of the domestic industry have already been forced to suspend the production. The law does not require plant shutdowns as a condition for imposition of safeguard duty. 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. With the rate of decline in profits and return on investments, with non levy of safeguard duty, the domestic industry would be left with no option but to close down its business.

The imposition of safeguard duty would be in public interest as it will not only prevent injury to the domestic industry but also would help in checking further decline of the domestic industry. As regards the impact of safeguard duty on consumers/users, it is observed that PAN is primarily consumed in three segments, namely

In production of Plasticizers – about 60-70%.

In paints – about 20-30%

In pigments – 5-10%.

In most recent period, demand of PAN in DOP segment declined because of significant increase in DOP itself. Decline in demand for DOP led to overall decline in demand for PAN in the most recent period. Despite this decline in demand, imports of PAN have increased significantly.

The domestic industry has quantified the impact of 10% safeguard duty on eventual downstream products. It is found that the 10% increase on account of safeguard duty, if fully passed onto the eventual end product (assuming that the domestic industry increases the prices by 10%) would be as follows –

pipes 1.2%,
pigments 0.33% and
on paints 0.46%.

The above claim of domestic industry has not been disputed by the consumer associations present at the time of oral hearing. Nor the written submissions filed by any interested party contain any other quantified claim to the contrary. It should therefore be concluded that even if the prices increase by 10%, the impact of the same on the domestic industry would not be significantly adverse. The imposition will not result in significant increase in the prices of eventual end products.

Therefore the imposition of safeguard duty would be in public interest and especially the interests of end users are well protected.

j) 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.

k). 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.

l) Developing Nations: The percentages of imports from developing nations have also been examined. Except Pakistan, China and Thailand who constitute 3.34%, 3.43% and 11.83% respectively of total imports in India during FY 2010-11 and FY 2011-12 (Q1 and Q2), other developing nations individually and collectively have less than 3% and 9% share respectively of total imports in India. Therefore, the import of product under consideration originating from developing nations except Pakistan, China and Thailand may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975. One of the interested party namely Indian Plasticizers Manufacturers Association through their consultant M/s ELP Advocates, have sought to know as to how the imports from developing countries have been worked out. It is clarified in this regard that the share of imports of PAN from developing countries taken together except Pakistan, China and Thailand comes to only 4.63% of total imports in India during FY 2010-11 and FY 2011-12(Q1 and Q2) (Source-DGCIS import data and IBIS data).

12. Comments on views of Interested Parties:

The apprehensions raised by the interested parties through their written submissions post public hearing in the case, are dealt with in brief, party wise, for the sake of brevity.

A. Gadiv Petrochemicals Industries Ltd.

i) As regards the allegation that the import volumes do not show a clear upward trend, but rather a mixed trend of increases and declines, this is emphasized that the imports clearly

show a surge. While analyzing the imports, the DG(S) is required to evaluate whether any downturn in imports is simply temporary, or instead reflects a longer term change. In Argentina-Footwear(EC) case, wherein the Panel, in a finding, considered, in this connection, that an analysis of intervening trends of imports was indispensable:

“The question of whether any decline in imports is ‘temporary’ is relevant in assessing whether the ‘increased imports’ requirement of Article 2.1 has been met. In this context, we recall Article 4.2(a) ‘s requirement that the rate and amount of the increase in imports be evaluated.(39) In our view this constitutes a requirement that the intervening trends of imports over the period of investigation be analysed. We note that the term ‘rate’ connotes both speed and direction, and thus intervening trends (up or down) must be fully taken into consideration. Where these trends are mixed over a period of investigation, this may be decisive in determining whether an increase in imports in the sense of Article 2.1 has occurred. In practical terms, we consider that the best way to assess the significance of any such mixed trends in imports is by evaluating whether any downturn in imports is simply temporary, or instead reflects a longer term change.’

In the instant case, the imports have not only increased at a significant rate in 2010 but also in the most recent period.

ii) As regards analyzing trends of imports in relation to the domestic production instead of the domestic consumption, it is clarified that the trends of imports have been examined both in relation to domestic production and consumption. Further, the legal provisions require analysis of imports in relation to domestic production only. The relevant provisions are as follows:

Rule 2(c) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 - “Increased quantity” includes increase in imports whether in absolute terms or relative to domestic production;

Further, as regards contention that the imports from Israel have not increased, it is pointed that the pattern of imports from individual countries is of no relevance in a safeguard investigation.

iii) As regards allegation of upward trend in sales of DI, it is stressed that the sales of DI increased till Q4 but have declined during the recent period. The reason for increase is increase in demand, whereas the reason for decline in the sales volumes in subsequent period is surge in imports. There is no reason why domestic sales of the domestic industry should have declined so significantly after increasing upto a certain period except increased imports.

iv) When the raw material prices increase; the selling price of the product should also increase proportionately. But in this case, the DI were unable to increase their prices with the increase in prices of Orthoxylene i.e. raw material because of the presence of cheap imports. Despite demand of the product under consideration, domestic sales declined. The domestic industry has to also face the problem of decline in demand due to shift in down the line users of the product who resorted to importing DOP instead of PAN. However, the limited market is disproportionately being taken over by imports, by offering low prices thereby capturing the Indian market and causing injury to the DI.

v) As regards profitability of the DI, it is mentioned that Landed price of imports is lower than the selling price of the DI and even cost of production of DI. The imports are significantly undercutting the domestic prices. In order to sustain in the market, the DI has to reduce its prices

far lower than the cost of sales there- by suffering huge losses. At times, the DI is forced to reduce its prices to the raw materials level. This poses an imminent danger of their closure in near future in case preventive measures are not taken.

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. Government of Israel

i) As regards allegation that DI holds more than 80% market share, it is observed that the market share of the domestic industry has declined and given the nature of the product, production process and market, any drop in the market share can lead to significant injury. The DI cannot withhold inventories for a long period, nor can reduce the production off and on. Thus the only option to the DI to respond to low priced imports is to reduce the prices. Given low level of margins on which the domestic industry performs, any price reduction leads to significant injury to them.

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.

iii) As regards adjustment plan, it is observed that neither the WTO Agreement nor Indian Law mandates adjustment plan. Korea-Dairy case is cited wherein the panel rejected the view that Article 5.1 imposes an obligation to consider adjustment plans. The relevant extract is as follows:

“We wish to make it clear that we do not interpret Article 5.1 as requiring the consideration of an adjustment plan by the authorities ... The Panel finds no specific requirement that an adjustment plan as such must be requested and considered in the text of the Agreement on Safeguards. Although there are references to industry adjustment in two of its provisions, nothing in the text of the Agreement on Safeguards suggests that consideration of a specific adjustment plan is required before a measure can be adopted. Rather, we believe that the question of adjustment, along with the question of preventing or remedying serious injury, must be a part of the authorities’ reasoned explanation of the measure it has chosen to apply. Nonetheless, we note that examination of an adjustment plan, within the context of the application of a safeguard measure, would be strong evidence that the authorities considered whether the measure was commensurate with the objective of preventing or remedying serious injury and facilitating adjustment.”

C. Republic of Korea:

i) Increased competition between domestic producers is not the cause of injury as alleged; the reason being the domestic producers have been competing during the entire period and therefore deterioration in the current period could not have been due to internal competition. Further, landed price of imports were lower than the selling price of the domestic industry. Thus imports being the lowest priced product, it is the imports that have led to adverse selling price of the domestic producers. It is the settled principle in a commodity product like the present that it is the lowest priced source that forces the other producers to reduce their price.

ii) The argument that production of DI increased in proportion to capacity is factually incorrect. The capacity of the DI remained constant since Jan-Dec 2010 whereas the production of the domestic Industry declined in Jan 11 to March 11 and thereafter in Q1 of 2011-12.

iii) As regards the argument that overcapacity in India is causing injury to the Industry, it is stated that some opposing party has argued that the DI does not have sufficient capacity and some interested party has argued that the DI has excess capacity. The DI has in fact enough capacity to meet the demand in India. In spite of the enough capacity in India, the DI is unable to produce or sell in the Indian market due to availability of cheap imports. This has resulted in decline in market share of domestic industry and increase in market share of imports. The DI is not saddled with such excessive capacity that the same could have caused injury to the DI.

D. Government of Taiwan

(i) As regards argument that market share of domestic industry has increased and demand of PAN is higher than capacity, it is observed that market share of the DI increased till 2009-10 as a result of imposition of the safeguard duty. The imports declined significantly with the expiry of period of imposition of safeguard duty in Dec 2009. However, once the period of imposition of safeguard duty expired the imports started entering the Indian market at a significant rate capturing the market share of the domestic industry. Further, the DI in India has enough capacity to meet the entire demand in India.

E. Indian Paint Association

(i) As regards the argument that there is variance in the import figures for 2010-11, it is clarified that Director General Safeguards has relied upon the figures provided by DGCIS for the major part of this year and only for last quarter the figures provided by the petitioners have been

taken. However, the imports are showing an increasing trend no matter what source is considered. Further, the data relied upon in the Preliminary Findings shows higher degree of surge than what the domestic industry had established. No prejudice has been caused by such difference in the data.

(ii) As regards the allegation that production has increased in 2010-11 as compared to 2008-09, it is clarified that the period of investigation is till May 2011 and therefore any trend has to be analyzed till the end of POI. The production of the DI has declined in April-May of Q1(2011-12) as compared to 2008-09 as has been stated in Preliminary Findings.

(iii) As regards the allegation that capacity utilization has declined significantly as Applicants had an average market share of 85% in 2009-10 which fell to 74% during 2010-11, which is at variance with the data on market share provided on page 5 of the PF, this is clarified that share of imports in the domestic market has gone up from 11% in Q4 of 2008-09 to 20% in Q1 (April-May) of 2011-12. 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 i.e. a decline of about 11%. Figures mentioned in the page 5 of PF is the argument raised by the DI which is analysis of different economic parameter.

F. M/s KLJ Plasticizers

(i) As regards the argument that the producers are offering unrealistic prices which are higher than the prevailing international prices forcing local consumers to import material, it is clarified that due to the reason that international prices are lower than the domestic price, the imports have surged and the DI has requested for protection. The DI is suffering huge losses and are unable to recover even their cost at current prices. This clearly demonstrates the impact of low priced imports. If the DI were to further reduce the prices, the DI would suffer further financial losses.

(ii) Regarding allegation that majority of the imports are duty free and there is big demand for duty free imports and they should be excluded from the import figures, it is clarified that the DI is also catering to the duty free market. It is not established that all the imports were duty free. If this would have been the case, its volumes would not have declined after imposition of safeguard duty earlier. Since duty free imports are exempted from safeguard duty as well, the volume of imports should not have declined after imposition of safeguard duty. Clearly, there are other reasons and not all the imports are duty free.

(iii) Regarding allegation that DG Safeguards has levied duty against developing nations also which is against WTO Agreement, this is stated that the provisions of law in this regard have duly been followed and consequently duty on developing nations has been rightly imposed.

G. Indian Plasticizers Manufacturers Association

(i) As regards the allegation that the petitioners are not portraying the true state of affairs of the DI and conveniently excluding or including domestic producer that unduly befits their claim of injury, this is stated that SI group which is not included in the safeguard investigation accounts for mere 4% of the total domestic production and inclusion or exclusion of the said domestic producer would not materially change the overall picture of the state of DI.

(ii) As regards the argument that the rise in the import prices is greater than the rise in domestic prices of PAN, it is clarified that the rise in import price is less than rise in domestic industry prices. Rise in cost of sales is greater than rise in import prices clearly showing that the import prices were preventing the domestic industry from increasing the prices of the product under consideration in proportion to increase in cost of sales thus causing price suppression.

(iii) As regards the allegation that imports post period of investigation show decline, it is to clarify that decline in imports is direct consequence of the initiation of safeguard investigation and further price drop undertaken by DI. The competent authority is not bound to include the data post initiation of investigation. In any case, post initiation of investigation data will be influenced by the investigation itself and may not be reflective of the true market situation.

13. Provisional Measures: In the Preliminary Findings, it was held that increased imports of PAN have caused and threatened to cause further serious injury to domestic producers of PAN. It was also observed that critical circumstances existed, where any delay in application for safeguard measures would cause irreparable damage to the industry. Considering the serious injury suffered by domestic industry during the year 2010-11 and first two quarters of 2011-12 in a number of critical injury parameters as explained in the paragraphs above, it is held that the provisional measures were rightly recommended in this case in order to thwart the possibility of irreparable damage.

14. Conclusion and recommendation:

(i) In view of the findings above, it is concluded that increased imports of PAN into India have caused and threatened to cause serious injury 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 12 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997, for a period of one year. 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, for one year w.e.f. the date of imposition of provisional safeguard duty (i.e. 17 January 2012), 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 CTH 29173500 of the First Schedule of the Customs Tariff Act, 1975.

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

Sd/-
(Indrani Dutt Majumder)
Director General.