

**DIRECTORATE GENERAL OF SAFEGUARDS
CUSTOMS AND CENTRAL EXCISE
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NOTIFICATION

Dated:26thMay,2014

**F.No. D-22011/
26/2013**

Subject:-Safeguard investigation concerning imports of “ Saturated Fatty Alcohols with carbon chain length of C8,C10,C12,C14,C16, and C18 including single, blends and unblended (Not including branched isomers) which includes blends a combination of carbon chain lengths, C12-C14, C12-C16, C12-C18,C-16-18 and C14-C16 (commonly categorized as C12-C14) ” hereinafter referred to as ‘PUC’ (Product under consideration) into India – Preliminary findings.

G S R D- 22011/26/2013 having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 thereof;

(A) Procedure

1. An application has been filed before me under Rule 5 of the Custom (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as “Safeguard Rules”] by M/s. VVF (India) Limited, Mumbai, 100% Export Oriented Unit seeking imposition of Safeguard Duty on imports of “ Saturated Fatty Alcohols with carbon chain length of C8,C10,C12,C14,C16, and C18 including single, blends and unblended (Not including branched isomers) which includes blends a combination of carbon chain lengths, C12-C14, C12-C16, C12-C18,C16-18 and C14-C16 (commonly categorized as C12-C14) ” hereinafter referred to as ‘PUC’ (Product under consideration) into India, as shown in the petition alleging that increased imports of "PUC" was causing and/or threatening to cause serious injury to the domestic producer and to protect the domestic producer against market disruption and threat of market disruption caused by the increased imports of "PUC" into India.

2. Having satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of "PUC" was initiated vide notice of initiation dated 13th February, 2014 and published in the Gazette of India, Extraordinary on the same day.

3. A Copy of the Notice of Initiation dated 13th February, 2014 along with copy of non-confidential version of the application filed by the domestic industry were forwarded to the Central Government in the Ministry dealing with Commerce and other Ministries concerned, related embassies in New Delhi and known interested parties listed below :

3.1 EXPORTERS

- 1) Emery Oleochemicals**, Level 5, Building E, Peremba Square, Saujana Resort, Section U2 40150 Shah Alam, Selangor, Malaysia.
- 2) Wilmar International Limited**, 56 Neil Road Singapore 08883.
- 3) P&G Chemicals**. Procter & Gamble Internationa Operations SA Singapore Branch, 238A Thomson Road #20-01/10, Novena Square Tower A,Singapore 307684.
- 4) Sasol Limited**. Sasol Germany GmbH Anckelmannsplatz 120537 Hamburg.
- 5) KLK Oleo**. Level 8, Menara KLK, No.1, Jalan PJU 7/6 MutiaraDamansara, 47810 Petaling Jaya, Selangor DarulEhsan, Malaysia

- 6) **Musim Mas.** PT Musim Mas Jl KL YosSudarso KM 7,8TanjungMulia - Medan 20241 North Sumatra – Indonesia.
- 7) **EcogreenOleochemicals (Singapore) Pte Ltd.** 99 Bukit Timah Road # 03-01 Alfa Centre, Singapore – 229835
- 8) **FPG OleochemicalsSdnBhd,** FPG OleochemicalsSdn. Bhd.(184896-U) Lot 3831 Kuantan Port Industrial Area, TanjungGelang, PO Box 26, PejabatPosBalok, 26080 *Kuantan, Pahang DarulMakmur, MALAYSIA.*
- 9) **Kao Corporation,** Pilipinas Kao, Inc. A Kao Group Company 7th Floor Tower One & Exchange Plaza Ayala Triangle, Ayala Avenue, 1226 Makati City, Philippines.
- 10) **Thai Oleochemicals Co. Ltd.** 123 Suntowers Building A,14th, Vibhavadi - Rangsit Road, Chomphon Chatuchak Bangkok 10900 Thailand.
- 11) **Teck Guan.** Teck Guan (China) Ltd. No. 1 Teef Guan Road, Rugao Port Economic Development Zone Rugao, Jinagsu Province,China, 226532.
- 12) **Oxiteno.** AvenidaBrigadeiroLuís Antonio, 1343 - Bela Vista – CEP 01317-910, São Paulo – SP, Brazil.
- 13) **BASF/Cognis.** Henkelstrasse 6740551 Düsseldorf, Nordrhein-Westfalen, Germany.

3.2 MAJOR IMPORTERS / INDUSTRIAL USERS IN INDIA

- 1) **Galaxy Surfactants Limited.** C-49/2, TTC Industrial Area,Pawne, Navi Mumbai, Maharashtra, 400703.
- 2) **Viswaat Chemicals Limited.** “Viswaat”, 7 Satsang Complex, Upper Govind Nagar,L.S. RahejaMarg, Malad (East),Mumbai – 400 097.
- 3) **RhodiaSpeciality Chemicals India Ltd.** Phoenix House “A/B” Wing,462, SenapatiBapatMarg, Lower Parel (W), Mumbai, 400013.
- 4) **Indian Glycols Limited.** 2B, Sector-126, Noida, Gautam Budh Nagar, Uttar Pradesh, 201304.
- 5) **Sterling Auxiliaries Pvt. Ltd.** 30/31, Marol Co-op. Ind. Est., M.V.Road, Andheri (E), Mumbai - 400 059.
- 6) **Matangi Industries.** Plot No. 28, Phase -1, Behind Nilsin Industries, GIDC, Vatva, Ahmedabad - 382 445, Gujarat.
- 7) **Venus Ethoxylates Pvt. Ltd.** Plot Nos. 109-111, Bicholim Industrial Estate, Bicholim, Goa – 403529.
- 8) **Gujarat Chemicals.** 111, Jalnidhi Complex, Opp. Bahumali Bldg., Nanpura, Surat -1.
- 9) **Aarti Industries Limited.** 71, UdyogKshetra, 2nd Floor, MulundGoregaon Link road, Mulund (W), Mumbai 400080.
- 10) **Kusa Chemicals Pvt Ltd.** 101, Varun Apartment, Dattatraya Road, Santacruz (West) Mumbai- 400054
- 11) **Krishna Antioxidants Pvt. Ltd.** 1 Lopes Manor, Mumbai 400103.

3.3 Domestic Producers

- 1) **VVF (INDIA) Limited, (Domestic Industry), 109, Sion (East),** Mumbai-400022.
- 2) **Godrej Industries Ltd.** Piroshanagar, Eastern Express Highway, Vikhroli, Mumbai- 400079.

3.4 NAME OF EMBASSY AND ADDRESS

- 1) **Philippines Embassy,** H.E. (Mr.) Benito B. Valeriano Ambassador, 50-N, Nyaya Marg, Chanakyapuri New Delhi: 110021.
- 2) **Belgium Embassy,** TCG Financial Centre, 7th floor, C-53, G-Block, BandraKurla Complex, Bandra (E) - Mumbai 400051. / 50-N, Shanti Path, Chanakyapuri, New Delhi-110021.
- 3) **USA Embassy,** U.S. Embassy, Shantipath, Chanakyapuri, New Delhi – 110021.
- 4) **UK Embassy,** Niti Marg, Shantipath, Chanakyapuri, New Delhi- 110021.
- 5) **UAE Embassy,** 12, Chandragupta Marg, Chanakyapuri, New Delhi - 110 021 (INDIA)
- 6) **Switzerland Embassy,** Nyaya Marg, Chanakyapuri, New Delhi – 110021
- 7) **Poland Embassy,** 50-M, Shantipath, Chanakyapuri, New Delhi - 110 021.
- 8) **Singapore Embassy,** E-6, Chandragupta Marg, Chanakyapuri, New Delhi 110021.

- 9) **Netherlands Embassy**, "Forbes Building" 1st floor, Charanjit Rai Marg, Mumbai 400001. / 6/50 F, Shanti Path, Kwame Nkrumah Marg, Chanakyapuri, New Delhi-110021.
- 10) **Italy Embassy**, 50 E, Chandragupta Marg, New Delhi – 110021 (India)
- 11) **Finland Embassy**, E-3, Nyaya Marg, Chanakyapuri, New Delhi 110021.
- 12) **France Embassy**, 2/50-E, Shantipath, Chanakyapuri, New Delhi 110 021
- 13) **Embassy of the Federal Republic of Germany**, P.O. Box 613, New Delhi 110001
- 14) **China Embassy**, 50-D, Shantipath, Chanakyapuri, New Delhi-110021, India
- 15) **Indonesia Embassy**, 9, Altamount Road, Cumballa Hill, Mumbai – 400 026, / 50-A, Kautilya Marg, Chanakyapuri, New Delhi-110021.
- 16) **Thailand Embassy**, D-1/3 VasantVihar, New Delhi 110057.
- 17) **Malaysia Embassy**, 50-M, Satya Marg Chanakyapuri, New Delhi 110 021.

4. Questionnaires were sent to the known exporters of other countries, known importers/users in India and other interested parties as per the information available with request to make their views known in writing within 30 days of the initiation notice.

5. Request to consider as interested parties was received and accepted as under:

5.1 New interested Parties after issue of notice of initiation within prescribed period

1. Mr. Mohd Radhi Abdul Razak (Director), Trade Practices Section, Ministry of International Trade and Industry, Level-14, Block-8, Government offices complex, Jalan Duta, 50622 Kuala Lumpur, Malaysia. E-mail- alltps@miti.gov.my
2. M/s Majorhub Oleochemicals P Ltd., 10th, Siddhivinayak Appt, 4th floor, Society Road, Jogeshwari East, Mumbai-400060. E-mail- majorhubindia@vsnl.net
3. M/s Hindustan Unilever Limited (HUL) , Unilever House, BD Sawant Marg, Chakala, Andheri East, Mumbai-400099
4. Ms Chan Pek Wan, Secretariat, Chemical Industries Council of Malaysia, Malaysian Oleochemical Manufacturers group (MOMG) Wisma FMM, No. 13, Persiasan Dagang, PJU 9, Bandar Shri Damamsara, 52200 Kuala Lumpur, Malaysia. E-mail- pek_wan@FMM.ORG.MY
5. M/s Pan Oleo Enterprise Pvt. Ltd, 309, 10, 11, Aditya Banarasi Heritage, Mind space off Link road, Malad West, Mumbai-400064. E-mail- panoleo@panoleo.com
6. Mr Manoj Jha, M/s Unidus, E-mail- manoj@unidusonline.com
7. The Trade Representation of the Russian Federation in the Republic of India, Block-50E, Nyaya Marg, Chanakyapuri, New Delhi-110021. E-mail- rusintrade@mail.ru
8. M/s PT Ecogreen Oleochemicals, Indonesia, Po Box-1010 Nagoya Plaza, Batam Island 29432, Indonesia. E-mail- info.batam@ecogreenoleo.com
9. Trade & Economic Section, Delegation of the European Union of India, 65, Golf links, New Delhi-110003. E-mail- chaitanya.kaushal@eeas.europa.eu
10. M/s Cavinkare Private Limited, 12, Cenotaph road, Teynampet, Chennai-600018.
11. Directorate General of Foreign Trade, Jalan, M.I. Ridwan Rais No.5, Jakarta 10110.
12. M/s Ratnasagar Herbals Pvt. Ltd.
13. M/s Emami Limited, 687, Anandapur e.m. bypass Kolkata-700107. E-mail- sapan.barik@emamigroup.com
14. M/s Thai Fatty Alcohols Co. Ltd. 555/1, Energy Complex, Building A, 15th floor, Vibhavadi-Rangsit road, Chatuchak, Bangkok 10900, Thailand.

5.2. Request for an extension of time to submit their reply was made by M/s PT Musim Mas, Indonesia.

5.3 After taking into account the time limits for completing the investigation within the prescribed period, request for extension of time to submit reply as per Rule 6(4) of Safeguard Rules' 1997' were allowed.

5.4 The information presented by the applicant was verified by on-site visit to the plant of the domestic producer. The non-confidential version of verification report is kept in the public file.

5.5 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.

(B) Views of Domestic Producer (Applicant)

6. **Domestic Industry:** M/S VVF (India) Limited, Mumbai, 100% Export Oriented Unit, claimed that his production account for 63% of the total production of 'PUC' in the country & represent a major proportion of the Indian production of 'PUC' in the country and thus have the standing to file the present petition. Apart from the applicant, the subject goods are being produced by M/s Godrej Industries Ltd. Mumbai in this case, who is supporting this safeguard application.

7. **Product Involved:** Fatty Alcohols are an aliphatic alcohols and occur in saturated and unsaturated forms. The alcohols can be grouped and most common lengths are C12, C14 and blends thereof. The 'PUC' are produced by the reduction of methyl ester or wax ester, through the conversion of natural fats and oils, mostly coconut and palm kernel oil. The process starts with splitting of vegetable oils, such as Crude Palm Kernel Oil, at high temperature and pressure, as a continuous process. The vegetable oils/fats (non-edible) are basically triglycerides of fatty acids which get converted to fatty acids and glycerol by the hydrolysis reaction commonly known as fat splitting. The crude fatty acids are then subjected to plain/ fractional distillation, at a high temperature and vacuum, followed by esterification resulting from a reaction between fatty acid and fatty alcohol in an inert atmosphere to make wax- ester. Pure wax- ester is then subjected for hydrogenation which takes place in the presence of fixed bed copper catalyst, resulting in crude fatty alcohol. This is then distilled and purified. 'PUC' are sold in the form of flakes, pastilles and liquids.

8. The import and injury related data for 4 year period has been filed by the applicant. The petitioner has provided the quarter wise information for the year 2010-11 to 2013-14 (till Dec.'13) based on which the Notice of Initiation was issued. However, the DI has filed their additional information vide letter dated 21-04-2014 and dated 15-05-2014 containing information about imports and other economic parameters for the period Jan' 14 till Apr'14, emphasizing their critical situation and with a prayer to impose immediate provisional safeguard duty on the PUC, failing which they would suffer in wake of rising imports so much so that, it would be difficult to repair.

9. Petitioner requested imposition of provisional safeguard duty in their safeguard application. The interim measures are imperative in view of the steep deterioration in performance of the domestic industry and the threat of market disruption as a result of increased imports of the product under consideration. The domestic industry has been forced to undertake production cuts. Domestic sales of the domestic industry have declined significantly. The capacity utilization of the domestic industry has steeply declined in the most recent period in view of decline in sales caused by surge in imports. Inventories with the domestic industry are rising significantly. Further, the domestic industry is facing financial losses from "PUC" operations.

10. In the light of the critical circumstances, the applicant submitted that any delay in the application of safeguard measures would cause grave damage to the domestic industry. It is requested to the Authority to take immediate necessary actions in the form of provisional safeguard duty to prevent the domestic industry from suffering irreparable damage. In order to support their contention of existence of critical circumstances for provisional levy of safeguard duty, the domestic Industry has submitted data till Apr'14, i.e., annually (for the period 2010-11 till 2013-14) as well as quarterly for Q4 2013-14 and Q1 2014-15 (annualized on April'14 data) to justify accentuation of their already worse situation, in wake of rising imports. Details are as under:

A. Legal Provisions

A1. Article 6 of the Agreement on Safeguards under, GATT 1994, provides that in critical circumstances where delay would cause damage, which it would be difficult to repair, a member may take a provisional safeguard measures pursuant to a preliminary determination that there is a clear evidence that increase in imports have caused or are threatening to cause serious injury. The basic requirements for provisional levy under Article 6 are as under:

Evidence of increased imports, Such imports have caused or are threatening to cause serious injury and Existence of critical circumstances, where delay would cause damage which it would be difficult to repair.

B. Increased Imports

B1. The imports of fatty alcohols are at a high level, and continue to increase. The details of the imports are as under:

Particulars	2010-11	2011-12	2012-13	2013-14
Imports (MT)	19843	34142	51055	57616
Trend	100	172	257	290

B2. **Imports relative to domestic production:** The imports relative to domestic production have also increased significantly. The imports relative to domestic production (i.e. production less exports) of the petitioner have increased sharply, from 60% in 2010-11 to 247% in 2013-14. Over the entire period, there has been a consistent increase in Imports relative to Domestic Production.

	2010-11	2011-12	2012-13	2013-14
Imports relative to domestic production	60%	118%	226%	247%
Trend	100	195	375	412

B2.1 Imports relative to Production (Including export)

	2010-11	2011-12	2012-13	2013-14
Imports relative to domestic production	29%	69%	75%	62%
Trend	100	237	260	213

B2.2 The imports relative to total Indian production have also increased:

Financial Year	Total Imports	All India Production	All India Production less exports	% imports w.r.t .total Indian production	% imports w.r.t total Indian domestic production
2010-11	19843	118582	43338	17	46
2011-12	34142	96344	57145	35	60
2012-13	51055	112613	31046	45	164
2013-14	57616	142350	35951	40	160

C. SERIOUS INJURY CAUSED TO DOMESTIC INDUSTRY

C1. Share of imports in Domestic Market

The share of imports in the consumption or demand has increased from 44% in 2010-11 to 72% in 2013-14. The market share of imports was as under:

C2. In the year 2010-11, the market was almost evenly distributed between the domestic industry and the imports, and the Indian industry commanded more than 50% of the market share. In 2011-12, there was a surge in imports, and the imports captured more than 61% of the market. As is evident from the table as under the imports are continuously on a rise since 2011-12, and are now holding more than 72% of the market share.

Financial Year	Total Imports	Sales of DI	Sales of Other Indian Producer	Total Demand	Market Share	
					DI	Imports
2010-11	19843	17080	8242	45165	38%	44%
2011-12	34142	15285	6677	56104	27%	61%
2012-13	51055	12891	7573	71519	18%	71%
2013-14	57616	14776	8088	80480	18%	72%

C3. The Market Share of the Domestic Industry, on the other hand, has drastically decreased from 38% in 2010-11 to 18% in 2013-14.

C4. **Change in the levels of Sales**

The trend of Domestic sales of the petitioner is as under:

	2010-11	2011-12	2012-13	2013-14
Domestic sales of DI	17080	15285	12891	14776
Trend	100	89	75	86

C5. **Domestic Production**

C5.1 The Domestic production, (Production less exports), of the petitioner is as under:

	2010-11	2011-12	2012-13	2013-14
Domestic Production	33319	28974	22560	23303
TREND	100	87	68	70

C5.2 Production, (Production including exports)

	2010-11	2011-12	2012-13	2013-14
Production (Including Export)	68605	49585	67837	93297
TREND	100	72	99	136

C5.3 In a growing market, the bulk of the incremental demand has been met by the imports. The domestic industry has not gained from the growth in domestic demand.

C6. Productivity

The injury is not attributable to this factor. The increase in employees is relatable to the expansions in the splitting plant, fatty acid fractionation plant, Glycerine plant and installation of captive power plant, the benefits of which have now started accruing. This is seen in the improved productivity levels, which have increased from 186 to 205.

C7. Capacity Utilization

The capacity utilization has also declined considerably.

Year	2010-11	2011-12	2012-13	2013-14
Capacity Utilization %	28	24	19	19
Trend	100	87	68	68

C8. Profit & Loss

The profitability of domestic industry has got fully eroded in 2011-12 and 2012-13. The profitability is reflected in the table below:

Years	2010-11	2011-12	2012-13	2013-14*
Profit/loss	745	-1982	-20829	-14151
Trend	100	-266	-2796	-1900

*YTD feb. 14

Since 2011-12, the domestic industry's position has been worsening rapidly, and it has not been able to recover its costs, in spite of an increase in market size. The production of the like article has become totally unviable, as the domestic industry continues to incur heavy losses.

C9. Employment

The employment in the unit has increased from 100 in 2010-11 to 124 (Indexed) during the last financial year. This increase is largely on account of the expansions in the splitting plant, fatty acid fractionation plant, Glycerine plant and installation of captive power plant., the benefits of which have now started accruing. This is seen in the improved productivity levels

Year	2010-11	2011-12	2012-13	2013-14
Employment Indexed	100	109	119	124
Productivity (MT/Emp)	100	66	83	110

D. Threat of injury is imminent

D1. All the relevant parameters show a decline in the financial position of the domestic industry. In view of the above, unless duties are imposed forthwith, irreparable damage would be caused. Serious injury has been caused, as is evident from the above analysis. Threat of serious injury is imminent, as there is a significant overall impairment in the condition of the petitioner.

D2. The fatty alcohols continue to be imported in large volumes, since 2011-12. The domestic industry has a declining market share, and faces huge losses. The very survival of the petitioner is at stake, as threat of further serious injury is imminent.

E. Causal link between the imports and the serious injury suffered by the domestic industry

E1. There is a direct nexus between the imports and serious injury caused to domestic industry. The imports were at their highest in 2012-13, and 2013-2014. The market share, profitability, return on investment, domestic production of domestic industry declined significantly during this period. The condition of the petitioner has worsened considerably during the period, when the imports were at high levels.

E2. The duties on imports of fatty alcohols from certain sources have been removed with effect from 01.01.2014. Anticipating this reduction, imports declined in the third Quarter. The petitioner was able to retain its customers during this period. In Q4, 2013-2014, after removal of duties of customs, the imports have increased drastically and the condition of domestic industry has further worsened. A comparison of Q3 Vs Q4 of 2013 reveals the following:

2013-14	Q1	Q2	Q3	Q4
Imports (MT)	12408	13872	13162	18176
Trend	100	112	106	146
Imports Relative to Total Domestic Production (%) (Indexed)	100	125	121	192
Landed Value (Rs/MT)	81924	94944	102154	102800
Trend	100	116	124	125
D1 Selling Price (Incl. Duties) (Rs./MT) (Indexed)	100	109	119	131
Price Undercutting	100	-120	-63	306
Cost of Production (Rs/MT) (without duties)	100	99	112	132
Net Profit/Loss (Rs/MT)	-100	-35	-69	-128

E3. From the above, it may be seen that the performance of domestic industry has significantly worsened in the last quarter as compared to the earlier period. The effect of any marginal improvements in Q3 has been totally wiped out in Q4.

E4. This clearly indicates that serious injury has been caused and threat of further injury is imminent. The causal link between the imports and injury is also established.

F. Absence of other factors causing injury

F1. There are no other factors causing injury to the domestic industry. The demand for fatty alcohols has been increasing consistently over the last three years. There is about an 80% increase in demand, yet the domestic industry has not been able to increase its production, sales or profits commensurate to this growth in the market.

F2. The petitioner is a 100% EOU, due to which it enjoys a competitive advantage over DTA Units. The customs duty on the raw materials (PKO), such as palm kernel oil, (which is in the range of 7.5% to 100% ad valorem) is far in excess of the duty applicable to finished goods. Since an EOU can import the raw material (PKO) without payment of duties, and clear its finished products on, payment of duty @7.725% (which has now become 3.86% w.e.f 18th Feb 2014), the net duty applicable to EOU's is much less than that borne by DTA units manufacturing fatty alcohols from imported materials. The DTA units would have to bear customs duty on raw materials which would substantially increase their costs. The net duty incidence of a domestic unit is, therefore, much higher than in the case of an EOU unit.

F3. It is submitted that the DTA and EOU units in India are similarly placed. The PKO constitutes about 2/3 of the total cost of production. As PKO is not available in India, in commercial quantities, the raw material is required to be imported and is available to both types of

units at same or similar import prices. The conversion costs would also not be different. The duty structure is however, advantageous for EOU units, since the duty on raw material is generally 100%. For instance, a DTA unit importing the raw material valued at Rs. 70, would have to pay duty of Rs. 70, whereas the EOU would be able to obtain the raw material without duties under exemption. The like article, cleared from an EOU would be chargeable to duty at 7.725%, which would be in the range of Rs. 8 to Rs. 10. Thus the net duty incidence on the EOU is significantly lower than for DTA units. The duties applicable for DTA clearances by EOU have been further reduced to 3.86%

F4. There are also no changes in the pattern of consumption, to suggest that injury is being caused by such factors. In any case, it is not necessary that the imports should be the sole cause for injury, provided it can be shown that, it is one of the factors causing injury.

F5. In the present case, there are no other circumstances or factors which are causing injury to the domestic industry at the same time and the requirements of causation are fully met.

G. Critical circumstances

G1. It is submitted, that this is a fit case for a preliminary determination, that the increase in imports has caused serious injury and is threatening to cause serious injury in the future.

G2. The imports have increased almost three times, during the period 2010-11 to 2013-14. Even relative to domestic production, the imports have increased more than 4 times. The market share of the imports has increased from 44% in 2010-11 to 72% in 2013-14. The removal of duties on imports from sources covered under the Free Trade Agreement, is resulting in a further surge in the imports. The domestic industry is operating at unviable levels, incurring losses for every additional unit of production.

G3. It is submitted that the surge in imports is taking place at prices below even the cost of production of domestic industry. In the fourth quarter of 2013-14 the landed value of the imported goods was Rs. 102,800/- as against the domestic selling price of VVF of Rs. 110520 /-. The domestic industry is fast losing its market share, and its ability to produce and sell the goods in the Indian market.

G4. Anti dumping duties have also been imposed by the EU on the imports of these items. Consequently, these manufacturers in South East Asia have been shifting their inventories to other markets, including India. The major players in South East Asia have very small domestic demand compared to their respective production capacity. Out of this, the major portion is intended for countries in Asia, especially India.

G5. The fact that the duties on imports from the countries under the FTA has been removed with effect from 01.01.2014 is also resulting in the diversion of goods from other markets to India, and an immediate levy of provisional duty is necessary to offset the effect of the surge in imports. In similar circumstances, European Council has imposed provisional measures, against imports of certain steel products

G6. The position of domestic industry was already weak prior to the removal of customs duties on imports from certain sources. The continued surge requires an immediate intervention failing which the petitioner would suffer irreparable damage.

H. 100% EOU is " domestic industry"

H1. The Designated Authority in the Ministry of Commerce has been considering EOU's as forming part of domestic industry in a number of investigations. There are no restrictions on the sale of domestically manufactured goods in India, as long as a positive NFE is maintained by the EOU unit. The Foreign Trade Policy provides for concessional rate of duty on domestic clearances (upto 50% of the FOB value of exports) of that product. Additionally, entitlement earned on other products can be used for fatty alcohols upto 90% of total FOB value of exports. Beyond the aforesaid limits, sales can be made by the EOU on payment of appropriate duties of excise. There is hence, no restriction on the sale of goods manufactured by an EOU in India as long as there is positive NFE. In this context, paragraph 34 of the findings of the Designated Authority in the case of Vitamin A, is reproduced below wherein Piramal Healthcare (100% EOU) was considered to be a domestic industry:

"With regard to domestic industry being 100% EOU and therefore it is ineligible to be domestic industry, it is noted that EOU facility in itself does not adversely affect the status of the Petitioner as "domestic industry". In fact, it is noted that the clearances made by the Petitioner to the Domestic

Tariff Area are not restricted or contingent on the exports of the Product under Consideration and are treated as excise-paid domestic sales and not as imports. Thus, based on the Information available on records of the Designated Authority, the Petitioner accounts for all the production of the subject goods in India and thus constitutes domestic industry within the meaning of the Rules”.

An export oriented unit, is not a unit located outside India and hence forms part of domestic industry. H2. The petitioner further submit that VVF is a producer of the like article or directly competitive article. The fatty alcohols produced by VVF are in direct competition with the imported products and hence it satisfies the definition of domestic industry.

I. Duty reduction as per Foreign Trade Agreement with the ASEAN Countries(AIFTA)

I 1. India has entered into an Agreement for facilitation of trade ASEAN- India Free Trade Agreement (AIFTA), pursuant to which tariff barriers are to be reduced/removed in a time bound manner. Consequent to the treaty obligations, the duties on the PUC were initially reduced to 10% by Notification No. 46/2011 –Cus dated June 01, 2011 and thereafter eliminated by Notification No. 57/2013 dated December 31, 2013.

I 2. It has been contended by some of the interested parties that the injury to the domestic industry arises on account of AIFTA and such injury should not be attributed to the imports.

I 3. The domestic industry has claimed that non attribution of injury caused by the AIFTA, is not warranted in terms of Para 2 of Annexure -2 to the Rules, for the reason that the AIFTA is not a factor “other than the imports”.

I 4. Para 2 of Annexure 2 to the Rules provides for non attribution of injury caused to the domestic industry by factors other than increased imports. Para 2 reads as under:
“The determination referred to in paragraph (1) shall not be made unless the investigations demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the article concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports”.

I 5. The aforesaid provision requires that factors causing injury to the domestic industry, other than the increased imports should be identified and their injury should not be attributed to the imports. The factors under consideration are of two types:

- A. Factors that contribute to the increase in imports and
- B. Factors that cause injury to the DI, (other than increased imports).

I 6. The reduction in duties consequent to the AIFTA is merely one of the many factors which has resulted in the surge in imports. Other such factors include enhancement of production capacity by foreign producers, non availability of alternate export markets for the PUC, small demand in the country of export of PUC, reduction in duties in India, etc. These are factors which contribute to the increase in imports, for which non attribution is not required to be done.

I 7. The second type of factors include lack of technological upgradation by the domestic industry, changes in pattern of consumption in India, supply side constraints etc. Non attribution analysis is required to be done only for the second category of factors listed above, that is factors other than the imports, causing injury to the domestic industry. Non attribution is, therefore, not required for the reduction in duties.

I 8. It has further been claimed by the interested parties that since AIFTA provides alternate mechanism to address trade imbalances, therefore, the DG safeguards does not have the jurisdiction to initiate safeguard proceedings. This submission is factually incorrect and not acceptable. Under the AIFTA, the rights and obligations of the parties, who are WTO members, have been retained. Article 10 (1) of the AIFTA, provides that notwithstanding the treaty, the WTO Members (including India) shall retain their rights and obligations under the Agreement on Safeguards. An extract from the Agreement is given below:

“ARTICLE 10

Safeguard Measures

Each Party, which is a WTO Member, retains its rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO Agreement (Agreement on Safeguards) and Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement

(Agreement on Agriculture). Any action taken pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture shall not be subject to the Agreement on Dispute Settlement Mechanism under the Framework Agreement (ASEAN-India DSM Agreement).”

J1. The fact that the duties on imports from the countries under the FTA has been removed with effect from 01.01.2014 is also resulting in the diversion of goods from other markets to India, and an immediate levy of provisional duty is necessary to offset the effect of the surge in imports. In similar circumstances, European Council has imposed provisional measures, against imports of certain steel products. In this context, paragraphs 51 to 57 of the determination are reproduced below:

“(51) The Commission has made a preliminary assessment of the possible destination of the huge volume of goods diverted from the US market. It notes that, given the weakness of other markets (notably Japan, South East Asia and South America), it is very unlikely that a significant quantity has been, or will be, diverted to such markets. Furthermore, producers in third countries suffer a difficult situation in their domestic markets, which are unable to absorb goods previously destined for the US market. Given the openness of the Community market, it may constitute the only opportunity for foreign producers to find an outlet for goods excluded from the US market. In these circumstances, the Commission concludes that a substantial proportion of the exports excluded from the US market have been, and will be, diverted to the Community.

(52) Therefore, it can be anticipated that the application of import restrictions to the US market will result in a significant further increase in imports of the products concerned into the Community. Analysis indicates that around 15 million tonnes of steel products (worth around \$4,1 billion), equivalent to total Community imports of the products concerned in 2000, are covered by the US measures and risk being diverted to the Community market.

(53) The situation of the Community producers has been significantly worsened by the US measures announced on 5 March 2002 because these measures have forced the Community producers to revise their projections downwards to reflect further reductions in earnings (from both domestic sales and exports), and further damage to profitability. This is compromising current reorganisation within the Community industry. It is also undermining earlier restructuring and modernization within the industry.

(54) Because the Community producers' projections have been revised downwards, in order to cut costs, temporary or permanent closure of production facilities will be difficult to avoid. These closures may affect production not only of the like products, but also of other products produced using the same facilities. The social impact, according to industry estimates, could be the disappearance of a further 20000 jobs in the next few years. The negative impact could also extend to those activities which are dependent on the Community producers affected by the measure.

(55) Bearing in mind that domestic consumption of the 15 products concerned is stagnant or declining and the rate at which imports were growing prior to the announcement of US measures, the situation of the Community producers was weak.

(56) The considerable increase in the growth of imports which the US measures promise has forced the Community producers to revise sales and profits projections downwards. These revised projections demand immediate measures by Community producers to reduce costs and stem anticipated losses, including closing production facilities and laying off employees. The damage caused to the Community producers by taking such action would be difficult to repair. If such action is to be avoided, provisional safeguard measures must quickly be taken.

(57) Therefore, the Commission considers that there exists a critical situation in which any delay in the adoption of provisional safeguard measures would cause damage which would be difficult to repair. It therefore concludes that provisional safeguard measures should be adopted without delay”.

J2. The position of domestic industry was already weak prior to the removal of customs duties on imports from certain sources. The continued surge requires an immediate intervention failing which the petitioner would suffer irreparable damage.

11. Post-Initiation submission by the interested parties:

A. Russian Federation

As imports of goods falling under sub-heading 38237010, 38237020, 38237040, 38237090 and 29051700 from Russian Federation into India do not exceed 3 percent as per Section 8B of Customs

Tariff Act, 1975 and Article 9 of WTO Safeguards Agreement Russian Federation should be excluded from the list of countries under investigation.

B. Pilipinas Kao, Inc.

As per Section 8B of Customs Tariff Act,1975 and Article 9 of WTO Safeguards Agreement, Philippines be excluded from any Safeguard duty as its import share is less than 3 % during the POI while top three exporters(Indonesia, Malaysia and Thailand) has more than 98% share in imports.

C. India Glycols limited

1. In India only M/s VVF and Godrej manufactures Lauryl Alcohol with former having 63% share and is a 100% EOU unit. Imposed with export obligation they are left with limited domestic sales compared to demand and uncompetitive prices coupled with long delivery period .They are trying to leverage their monopolistic situation.

2. As per the FTAs signed with the ASEAN countries import duty reduction is emphasized.

3. Production and demand increased in 2013-14 along with improvement in profitability. No Safeguard duty should be imposed until investigation completed and injury ascertained.

D. Emery Oleochemicals Malaysia

1. One applicant has manufacturing unit in Indonesia with export duty advantage and uses intermediate feedstock for PUC production in India. Malaysian producers don't enjoy such benefit.

E. Aarthi Industries Limited.

1. Indonesia & Malaysia have inherent cost advantage and are competitive locations for PUC while the Applicants have EOUs primarily for export market as their manufacturing cost make them in competitive in domestic market.

2. Downstream industry would be killed if duty imposed as SLS and SLES are imported at zero duty under the ASEAN FTA. Any duty will harm the larger interests of Indian industry as downstream products will become non-competitive and value addition shift to other countries.

F. Viswaat Chemicals Limited.

1. Local procurement are non dependable and high priced as compared to the imports while applicants priority is exports.

G. Cavin Care Private Limited

1. We manufacture shampoos using SLES & SLS which in turn need Fatty Alcohols predominantly imported from Indonesia & Malaysia which enjoy natural and comparative advantage. Both SLES/SLS and PUC enjoy NIL duty under India-ASEAN FTA.

2. Owing to peculiar market conditions of Palm Kernel Oil and its downstream products Safeguard duty on PUC will make SLES costlier and affect the supply chains of low cost shampoo sachets leading to denial of hygiene hair wash to masses and harm Indian Cosmetic industry.

H. Majorhub Oleochemicals P. Ltd.

1. Applicants are hiding that they also sell C8, C10,C12, C14,C16,C18 fatty acids and C18.1(Oleic Acid) and misrepresenting it is not commercially viable to produce and sell C8 and C10 alcohols.

2. Applicants statement of financial injury is misrepresented as there is considerable decline in the applicants share sales of Fatty Acids-C16, C18, C1618 (their core business as against Fatty alcohols) and themselves dumping the goods in Europe and when ADD was imposed, they turned to the Indian customers.

3. They omitted the fact that Godrej Industries is importer of C1214 alcohol.

4. Applicant's reason for decreased imports in 2013-14 as plant shut down in Malaysia and Indonesia is a misinformation as shut down in oleo industry is regular for change of catalyst.

5. Most of the Malaysian and Indonesian producers have their own oil plantation for raw material CPKO and CPO which both VVF & Godrej don't have.

6. Recruitment jumped by 20% from F.Y 10-11 to 13-14 and thus their claim of loss of employment is baseless.

7. Applicants share increased in C16, C1618 and C18 Alcohols in both domestic and export markets.

I. M/s P.T.Musim Mas

1. Applicant has claimed excessive and unwarranted confidentiality which prevented the party to reasonably understand Applicant's claims and the material relied.

2. Domestic producers do not produce SFA with carbon lengths C8 and C10 and blends thereof and the import of such goods cannot cause injury to the applicants. PUC should be correctly defined to exclude the types of SFA
3. The Applicant's claims of a sudden surge in imports is not established as imports show a declining trend over the period 2011-12, to 2013-14 (annualized) especially in 2013-14;
4. The Applicant ignored the data for 2013-14 and resorted to analyzing each quarter against the same quarter in the previous year.
5. The Applicant's claim that plant shutdowns in Malaysia and Indonesia slowed imports for the Q1 and Q2 of 2013-14 is not credible as there was no subsequent surge in Q3 of 2013-14 on resumption of production;
6. The POI was chosen deliberately to paint imports of SFA in a poor light as the import trends with base year 2010-11 (as proposed by the Applicant) paints a very different picture from the trends shown if the base year was 2011-12; and
7. The Applicant's injury claim not established as its production and capacity utilization improved significantly in 2013-14.
8. Decline in the Applicant's market share could be due to the restrictions imposed by virtue of its EOU status and the export orientation.
9. Safeguard duty will not assist Applicant due to inherent disadvantages compared to Indonesian and Malaysian SFA producers as the main raw material is produced there.

J. Thai Fatty Alcohols Co.Ltd, Thailand,Wilmar Trading Pte Ltd, Singapore,KL-Kepong Oleomas SDN BHD & Galaxy Surfactants.

1. Petitioner admitted that it has only manufactured and sold C12, C14, C16, C18 and blends thereof and not C8 and C10 carbon. Further, certain Carbon Chain lengths and combinations, which are not being imported into India at all or have been very sporadic during the POI, namely C810 and C14. Thus, it will be incorrect to include such grades in the product definition.
2. In present legal and commercial situation, VVF is not competitive in domestic market and is suffering injury. VVF is dependent on import for its raw material which is subject to export tax in Indonesia & Malaysia while when VVF sells Fatty Alcohol in the domestic market; the users have to pay excise duty equal to the customs duty which is not applicable in case of import of fatty alcohol from these countries under India-ASEAN Agreement.
3. Compared to previous year, there is no increase in imports, let alone surge in imports and while considering the product under consideration, the Authority has to examine all the product grades/Carbon Chain Lengths separately.
4. Imports of most of the grades have in fact fallen significantly during the injury period and were at their lowest during the Period of Investigation (2013-14-upto December).
5. Both Petitioner as well as the other producer – Godrej Industries Ltd is (EOU), whose primary objective is to export the subject goods out of India.
6. A biggest reason for rise in imports is due to India's initiative to boost trade with ASEAN countries and according them concessional rates of duties.
7. Petitioner can make DTA clearance only at a higher rate and not the preferential rate of customs duty in terms of India ASEAN FTA. Imposition of safeguard duty cannot correct this difference since it's a policy decision taken by Government of India and Petitioner has no control over this.

K. PT. Ecogreen

1. NOI and the Complaint do not properly explain whether such increased import occurred is recent, sudden, sharp and significant situation.

2. Complainant is operating under the Export Oriented Unit Scheme and domestic sales volume to the Indian market is limited to one-third of the total volume of production and cannot cover the demand in the domestic market of India sufficiently.

3. There are two producers of fatty alcohol existing in India namely the Complainant and Godrej who also holds significant portion of the domestic production in India and thus should lead to the fierce competition between the two.

4. Godrej is not part of the complainant and its overall performance presented in the Complaint show a positive trend.

L. Rhodia Specialty Chemicals India Limited(Solvay Group)

India is currently ethoxylation hub due to fair pricing of Ethylene oxide and availability of Lauryl alcohol and Safeguard duty on PUC will drive away all value addition from India leading to loss of employment and revenue.

M. Hindustan Unilever Ltd.

1. The volume of imports is concentrated from Indonesia, Malaysia and Thailand and does not warrant a Global Safeguard measure. The Applicant ought to look for remedy available under Article 10 of Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

2. There is clearly no reason as to why some of the carbons chains not being produced should be excluded from the product scope as It is clearly stated in the application that the applicant does not produce Fatty Alcohol of Length C8 and C10 along with blends thereof.

3. The aspect of unforeseen developments has been completely ignored and absent in the Application.

4. The operations of Applicant might be affected because of poor export performance and lower realisations in the export market and high finance costs and in the injury, if any is self inflicted and is not attributable to increased imports.

5. The subject goods are importable tariff-free in India from countries like Indonesia, Malaysia and Thailand under the ASEAN CECA. Therefore the cause of injury is basically inverted duty structure and cannot be attributed to increased imports of subject goods.

6. Applicant has clearly taken undue advantage of claiming excessive confidentiality on disclosing the adjustment plan.

7. Any imposition of safeguard duty would be contrary to public interest, as the interests of the consuming industry clear impact the tax revenues earned by the Government.

12. The DI responded to the Post-Initiation submissions of the aforementioned Interested Parties on all the issues, re-iterating their initial submissions as below:

12.1. It has been contended by the interested parties, that the definition of domestic industry under Section 8B of the Customs Tariff Act, 1975 ("Act") is inconsistent with the Agreement on Safeguards. This contention is not correct, as the term *domestic production* implies production in India, and not production destined for *consumption in India*. The request that the standing requirement, be examined with reference to the domestic production alone is misplaced. At the stage of production, it is not known whether an article would be consumed in India, or elsewhere. The interpretation suggested by the parties is therefore untenable. In any case, the total production of Indian producers, less their exports, also reflects that the petitioner has standing for the purposes of investigation.

12.2 *"With regard to domestic industry being 100% EOU and therefore it is ineligible to be domestic industry, it is noted that EOU facility in itself does not adversely affect the status of the Petitioner as "domestic industry". In fact, it is noted that the clearances made by the Petitioner to the Domestic Tariff Area are not restricted or contingent on the exports of the Product under Consideration and are treated as excise-paid domestic sales and not as imports. Thus, based on the Information available on records of the Designated Authority, the Petitioner accounts for all the production of the subject goods in India and thus constitutes domestic industry within the meaning of the Rules"*.

12.3 An export oriented unit, is not a unit located outside India and hence forms part of domestic industry.

12.4 In the case of Cosco Blossoms Pvt. Ltd. Vs Commissioner Of Customs reported at 2004 (164) ELT 423 (Tri Del), the Hon'ble Tribunal reiterated that goods cleared by an EOU domestically are treated as domestic goods. The relevant paragraph is excerpted below:

"5. It is well settled 12000 (120) E.L.T. 8001 that goods produced in an EOU cannot be treated as imported goods and subjected to customs duty. The duty payable in respect of such goods is the duty of excise under Section 3 of the Central Excise Act, 1944. Therefore, the duty demand made in the impugned order under Section 28 of the Customs Act is not sustainable. Accordingly, we set aside the impugned order and allow the present appeal. However, we make it clear that revenue authorities will be at liberty to demand duty on the imported inputs, if any, used in the production of the cut-flowers in question"

12.5 The petitioner's share of domestic production is 60% and therefore, qualifies as "domestic industry".

12.6 The petitioner is a 100% EOU, due to which it enjoys a competitive advantage over DTA Units. The customs duty on the raw materials (PKO), such as palm kernel oil, (which is in the range of 7.5% to 100% ad valorem) is far in excess of the duty applicable to finished goods. Since an EOU can import the raw material (PKO) without payment of duties, and clear its finished products on, payment of duty @7.725% (which has now become 3.86% w.e.f 18th Feb 2014), the net duty applicable to EOU's is much less than that borne by DTA units manufacturing fatty alcohols from imported materials. The DTA units would have to bear customs duty on raw materials which would substantially increase their costs. The net duty incidence of a domestic unit is, therefore, much higher than in the case of an EOU unit.

12.7 The claim that there is no nexus in any excess between the imports and profitability is not correct. The graphical representation is misleading as it is based on indexed numbers. It is further submitted that there is a direct nexus between the imports and serious injury caused to domestic industry. The imports were at their highest in 2012-13, and 2013-2014. The market share, profitability, return on investment, domestic production of domestic industry declined significantly during this period. The condition of the petitioner has worsened considerably during the period, when the imports were at high levels.

12.8 The duties on imports of fatty alcohols from the countries under the FTA have been removed with effect from 01.01.2014. Anticipating this reduction, imports declined in the third Quarter. The petitioner was able to retain its customers during this period. In Q4, 2013-2014, after removal of duties of customs, the imports have increased drastically and the condition of domestic industry has further worsened.

12.9 It may be seen that the performance of domestic industry has significantly worsened in the last quarter as compared to the earlier period. The effect of any marginal improvements in Q3 has been totally wiped out in Q4. In spite of a sharp increase in raw material prices in Q4 of 2013-14, the import prices of subject goods have not increased commensurate with the increase in raw materials costs.

2013-14	Q1	Q2	Q3	Q4
PKO Prices(Indexed)	100	104	127	154
Landed Value of Imports	81924	94944	102155	102800
Trend	100	116	124	125

12.10 This clearly indicates that serious injury has been caused and threat of further injury is imminent. The causal link between the imports and injury is also established.

12.11 Injury must be caused to the "domestic industry" which produces the like or directly competitive products. The fatty alcohols produced by the petitioner are comparable to the imported goods, and are commercially and technically interchangeable with the imported article.

12.12 The product covers grades/types which are same as far as their technical characteristics, chemical composition and other basic features are concerned. The products of all these headings find similar uses. Therefore these products are like and directly competing products. Despite possible minor superficial differences, these products have the similar basic physical characteristics and similar end uses. These are sold via similar or identical sales channel. These products compete mainly on price. Imposition of safeguard duty on one heading at eight digit level or one type, in

isolation, will not serve any purpose as importers will start importing other directly competing products. Thus, it is submitted that in view of the above, for the purposes of safeguard investigation, the product mentioned in the initiation notification has been appropriately considered as the 'product under consideration'.

12.13 A similar issue arose before the EC in the Anti-Dumping Proceedings, EU No. 1138/2011

“COUNCIL IMPLEMENTING REGULATION (EU) No 1138/2011 of 8 November 2011

12.14 The product concerned is, as set out in recitals 10 and 11 of the provisional Regulation, saturated fatty alcohols with a carbon chain length of C8, C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8-C10, C10-C12 (commonly categorised as C8-C10), blends predominantly containing a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 (commonly categorised as C12-C14) and blends predominantly containing a combination of carbon chain lengths C16-C18, originating in India, Indonesia, and Malaysia, currently falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00.

12.15 After the imposition of provisional measures certain parties complained about the ambiguity of the definition of the product concerned. They claimed that according to the NOI, only linear FOH is included in the product scope, thus excluding FOH containing branched isomers, or branched FOH. Other parties claimed that it does not make sense to exclude FOH containing branched isomers produced from the oxo process because they have the same use and compete with linear FOH in the market.

12.16 It has been established that all types of FOH covered by this investigation, as described in recital 8, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it.”

12.17 The product under consideration includes grades/types derived out a single raw material. However, having regard to the fact that no single blend/cut can be taken in isolation, the entire set of carbon chains C8 to C18 needs to be looked at as a single category of product. The applications are broadly common, that is in the detergent and personal care industry. In fact, both C12 C14 and C16 C18 can be converted to ethoxylates and used as surfactants in detergent applications. C12 C18, which is a blend of C12 C14 and C16 C18 can also be used for similar applications. C14 must also be considered as it is a part of the blend C12 C14.

12.18 It may be relevant to consider, that the fatty alcohols constitute less than 10% of the soaps, detergents, personal care products. The different blends have commercial and technical interchangeability. The essential character of end use product, is not acquired from the fatty alcohol, but by use of other materials.

12.19 The petitioner is using the lurgi process at its Taloja unit. By this process, a product commercially known as coconut alcohols which is a blend of C8 to C18 can be produced. By a process of fractional distillation, any of the fractions – C8 to C18 can be taken out.

12.20 The petitioner has sold C10 on payment of duties of excise.

(C) Findings of the Director General (Safeguards) :

13. I have carefully gone through the case records, the replies filed by the domestic producers, exporters and exporting nation. Submissions made by the various parties and the issues arising therefrom are dealt with at appropriate places in the findings below. The request of the DI for imposition of provisional safeguard duty on the import of product under consideration has been examined with reference to the existence of critical circumstances under the domestic law as well as international law. The provisions of Agreement on Safeguards and the decisions of the WTO bodies have been stated/discussed at appropriate places below. The findings have been given accordingly. These are provisional findings, based on the examination of the application/submissions made by the DI, post-Initiation responses of the Interested Parties and other data so far available on record. I am conscious of the fact that detailed submissions from the DI and the interested parties will come on record in the

proceedings hereinafter, which would be taken into consideration at the time of giving Final Findings.

13.1 Section 8B of the Customs Tariff Act, 1975 deals with imposition of Safeguard Duty on imports. Section 8B(1) provides for imposition of Safeguard Duty by the Central Government on an article if the article is being imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the Domestic Industry. Sub Section 2 of Section 8B of the CTA'75 provide that:

The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry: Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected: Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

14. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provide the manner and principles governing investigation. These Rules have been made under section 8B of the Customs Tariff Act, 1975. I have been conferred powers under these Rules to make recommendations for imposition of safeguard duty in terms of law. Rule 9 of the aforesaid Rules provide that "The Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary finding regarding serious injury or threat of serious injury". Rule 10 of the aforesaid Rules provide that the Central Government may in accordance with the provisions of sub-section (2) of section 8B of the Act, impose a provisional duty on the basis of the preliminary findings of the Director General: Provided that such duty shall remain in force only for a period not exceeding two hundred days from the date on which it was imposed.

14.1 Rule 2 (b) of the aforesaid rules provide that "Critical circumstances" means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause serious injury to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry;

14.2 I find that one of the Interested party has raised the issue of jurisdiction of this office in processing the safeguard application in view of the ASEAN bilateral Free Trade Agreements and have held that since majority of the import is originating from ASEAN nations, the Deptt. of Commerce, who is the negotiator of these FTAs, to be the appropriate authority for providing them relief.

14.3 In this regard, I have gone through the provisions of the said bilateral FTA. An extract from the treaty is given below:

ARTICLE 10

Safeguard Measures

1. Each Party, which is a WTO Member, retains its rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards in Annex IA to the WTO Agreement (Agreement on Safeguards) and Article 5 of the Agreement on Agriculture in Annex IA to the WTO Agreement (Agreement on Agriculture). Any action taken pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture shall not be subject to the Agreement on Dispute Settlement Mechanism under the Framework Agreement (ASEAN-India DSM Agreement).

14.4 In view of the above provision, as against the contention of the Interested Parties that safeguard directorate is not an appropriate forum for relief in the instant case, it is found that merely the fact, that various Agreements provide for alternate mechanisms, to address trade imbalances, does not exclude the jurisdiction of DG Safeguards, acting under the aegis of the Customs Tariff Act, 1975. In fact, the ASEAN Free Trade Agreement, itself provides that notwithstanding the treaty, the

WTO Members (including India) shall retain their rights and obligations under the Agreement on Safeguards.

14.5 Further, the general Safeguard measures is imposed on a non-discriminatory manner, against all imports of the product under consideration, irrespective of country of export, save and except the de-minimis provision, provided under the proviso to Section 8B(1) of CTA,75. Moreover, the applicant in the instant case resorted to relief under General Safeguard measures, which is fully justified under the existing legal provisions. Therefore, it is abundantly clear that this office has the jurisdiction and the authority to process safeguard application of the applicant in the instant case and accordingly therefore, I proceed to record this provisional finding.

15.. The product under investigation:

15.1 The product involved is “ Saturated Fatty Alcohols with carbon chain length of C8,C10,C12,C14,C16, and C18 including single, blends and unblended (Not including branched isomers) which includes blends a combination of carbon chain lengths, C12-C14, C12-C16, C12-C18,C-16-18 and C14-C16 (commonly categorized as C12-C14) ” **hereinafter referred to as ‘PUC’ (Product under consideration)**. The ‘PUC’ being imported is falling under sub-heading 38237010, 38237020, 38237040, 38237090 and 29051700 of the Customs Tariff Act 1975. The classification is however indicative only and in no way binding on the scope of the present investigations. The ‘PUC’ are mainly used for the manufacture of surfactants, personal care products, home care products, pharmaceutical and agriculture related end application, processing of articles of leather, textile, fur, pulp, paper, petroleum products, fine chemicals, rubber products, plastic and fabricated metal products, include mining, offshore operations, construction work and as solvent and for degreasing purposes. The product is not sold in retail level and is for industrial users.

15.2) Some of the Interested Parties have contended that the product scope has not been appropriately defined since different branched chain /blended fatty alcohols are different item. I find that the injury must be caused to the “domestic industry” which produces the like or directly competitive products. The fatty alcohols produced by the petitioner are comparable to the imported goods, and are commercially and technically interchangeable with the imported article. Further the product covers grades/types which are same as far as their technical characteristics, chemical composition and other basic features are concerned. The products of all these headings find similar uses. Therefore, these products are like and directly competing products. Despite possible minor superficial differences, these products have the similar basic physical characteristics and similar end uses. These are sold via similar or identical sales channel.

15.3) It has been submitted by the DI that the product under consideration includes grades/types derived out a single raw material and the entire set of carbon chains C8 to C18 needs to be looked at as a single category of product. The applications are broadly common, that is in the detergent and personal care industry. In fact, as stated by the DI, both C12 C14 and C16 C18 can be converted to ethoxylates and used as surfactants in detergent applications. C12 C18, which is a blend of C12 C14 and C16 C18 can also be used for similar applications. C14 must also be considered as it is a part of the blend C12 C14. Moreover, it may be relevant to consider, that the fatty alcohols constitute less than 10% of the soaps, detergents, personal care products. The different blends have commercial and technical interchangeability. The essential character of end-use product, is not acquired from the fatty alcohol, but by use of other materials, which are predominant and/or are present in the end-product in far greater proportions. These products compete mainly on price. It is on record that the petitioner is using the lurgi process at its Talaja unit. By this process, a product commercially known as coconut alcohols which is a blend of C8 to C18 can be produced. By a process of fractional distillation, any of the fractions – C8 to C18 can be taken out.

15.4) As against the contention of the interested party that the DI has not manufactured C8 and C10 fatty alcohol, I find that the DI has provided evidence that they have produced and sold C10 on payment of duties of excise. So far as C8 is concerned, the DI has stated that they have the capability to manufacture C8, but as the said type is not in demand. Moreover, I find that the Interested party has merely stated that the DI has not produced C8 fatty alcohol, but they have not disputed or questioned the capability of the DI to manufacture C8 fatty alcohol.

15.5) Thus, in view of the above, I find that for the purposes of safeguard investigation, the product Fatty Alcohols of single or blend of different carbon chains mentioned in the initiation notification has been appropriately considered as the 'product under consideration'. Therefore, since these items are interchangeable and originate out of identical raw material by an identical manufacturing process, the PUC in this case has been correctly defined.

16. Domestic Industry:

Clause (6) (b) of Section 8B of the Customs Tariff Act .1975 states that “domestic Industry” means the producers-

- (i) as a whole of the like article or a directly competitive article in India; or
- (ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.

16.1) The application has been filed by M/S VVF (India) Limited, Mumbai, 100% Export Oriented Unit, the applicant account 63% of the Indian production and hence are major producer.

1.2) After taking into account the information on record, it is determined that production of the domestic producer filing the petition and who have provided relevant information constitutes a major share of the total production of the said article in India. Accordingly, they are Domestic Producer as per Section 8B of the Customs Tariff Act 1975. The instant application is also supported by M/s Godrej Industries Ltd., who is the only other producer of the PUC in the country.

17. 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. I am of the view that law in India provides discretion to the Competent Authority to decide upon the length of period which may be able to give fair amount of comparison in respect of increased imports and other factors leading to serious injury. Of course, such discretion has to be exercised judiciously.

17.1 The issue of period of investigation has been dealt with extensively in the panel’s report on Argentina Footwear on Argentina Footwear, which is being reproduced below:

ARGENTINA– SAFEGUARD MEASURES ON IMPORTS OF FOOTWEAR; Report of the Panel (WT/DS121/R dated 25.06.1999)

8.216 “Regarding the investigation’s almost exclusive reliance on end-point-to-end-point comparisons in its analysis of the changes in the situation of the industry, we have the same concerns as were noted above with regard to the “increased imports” analysis. Here we note in particular that if intervening trends are not systematically considered and factored into the analysis, the competent authorities are not fulfilling Article 4.2(a)'s requirement to analyse "all relevant factors", and in addition, the situation of the domestic industry is not ascertained in full. For example, the situation of an industry whose production drops drastically in one year, but then recovers steadily thereafter, although to a level still somewhat below the starting level, arguably would be quite different from the situation of an industry whose production drops continuously over an extended period. An end-point-to-end-point analysis might be quite similar in the two cases, whereas consideration of the year-to-year changes and trends might lead to entirely opposite conclusions.”

8.217 “We believe that consideration of changes over the course of the investigation period in the various injury factors is indispensable for determining whether an industry is seriously injured or imminently threatened with serious injury. An end-point-to-end-point comparison, without consideration of intervening trends, is very unlikely to provide a full evaluation of all relevant factors as required.”

17.2 From the above, it is clear that the provisions of Agreement on Safeguard do not provide for specific guidelines on the period of investigation. The Appellate Body Report has given its finding in unequivocal terms that the relevant investigation period should not only end in the very recent past; the investigation period should be the recent past.

17.3 Broadly, the applicant filed the instant application for initiation of safeguard investigation for imposition of safeguard duty to protect the DI from serious injury which has been caused due to

surge in imports. Accordingly, it has submitted all the data from 2010-11 to 2013-14 (till Dec'13) in their safeguard application regarding imports and domestic data showing serious injury and also with a request for interim relief in form of provisional safeguard duty. After examining the data provided by the DI, the Notice of Initiation was issued on 13-02-2014. Thereafter, the DI again approached this office around April'14 reiterating their request for immediate imposition of provisional safeguard duty owing to steep rise in imports further and that the same is causing them far serious injury and threatening to cause more serious injury, leading to a critical circumstance on the strength of import and other domestic data from Jan'14 till April'14, which shows further deterioration of the condition of the domestic, whereby any delay in granting any interim relief to them, would cause irreparable damage, which would be difficult to repair. Therefore, the period of investigation selected is 2010-11 to 2013-14 which is long enough in order to take into consideration the serious injury or threat of serious injury caused to them due to increased imports. However, in order to ascertain the need of imposition of Provisional Safeguard Duty, the existence of critical circumstances or otherwise has been examined on both monthly and quarterly basis, based on data from Jan'14 till Apr'14 and from Q3 2013-14 to Q1 2014-15 (annualized on Apr'14 data) respectively, provided by the DI, over and above the data already considered during the Notice of Initiation.

18. Source of Information:

18.1) The import data for the 'PUC' has been taken from IBIS, Mumbai, (Transaction wise) from 2010-11 to 2013-14 and April month of 2014 with annualized of 1st quarter of 2014-15 and same has been taken into consideration for analysis. The domestic data from 2010-11 to 2013-14 and 1st quarter of 2014-15 has been submitted by the domestic industry.

18.2) The injury data for the relevant POI submitted by the domestic industry in their petition has also been relied upon, which has been duly verified after on-site visit by the department to the extent deemed necessary and the verified data has been taken into consideration for injury analysis. The cost data and calculations of injury margin have been provided by the petitioner duly certified by independent Chartered Accountant.

19. Increased Imports:

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

"(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to Domestic Industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article :"

19.1 Further, Rule 2 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 defines 'increased quantity' as follows:

*"increased quantity" includes increase in imports whether in **absolute terms or relative to domestic production.**"*

19.2 From the above, it is seen that law i.e. Section 8B and the Rules mandate increase in imports as a basic prerequisite for the application of a safeguard measure. Thus, to determine whether imports of the product under consideration have "increased in such quantities" for purposes of applying a safeguard measure, the rules require an analysis of the increase in imports, in absolute terms or in relation to domestic production. It is also seen the expression "increased quantity" has been defined in inclusive terms and the definition includes two parameters i.e. increase of imports in absolute terms and increase of imports in relative terms to domestic production. It is also seen that both these parameters need not exist together. The increased quantity is to be measured either in absolute terms or in relative to domestic production. The satisfaction/existence of one parameter is sufficient to fulfill the legal requirement.

19.3 The WTO Panels and Appellate bodies have further explained the international law on this issue and some of the relevant decisions of these bodies are narrated below:

I. The Panel in *Argentina — Footwear (EC)*(WT/DS/R dated 25.06.1999)further examined whether there is consistency with Articles 2.1 and 4.2(a) in making a finding of increased imports on the basis of a comparison between the volume of imports at the starting-point of an investigation period and the volume of imports at the end of that period (“endpoint- to-end-point-comparison”). The Panel, later upheld in this respect by the Appellate Body, came to the conclusion that:

8.156 “[I]n assessing whether an end-point-to-end-point increase in imports satisfies the increased imports requirement of Article 2.1, the sensitivity of the comparison to the specific years used as the end-points is important as it might confirm or reverse the apparent initial conclusion. If changing the starting-point and/or ending-point of the investigation period by just one year means that the comparison shows a decline in imports rather than an increase, this necessarily signifies an intervening decrease in imports at least equal to the initial increase, thus calling into question the conclusion that there are increased imports.”

8.157 “In other words, if an increase in imports in fact is present, this should be evident both in an end-point-to-end-point comparison and in an analysis of intervening trends over the period. That is, the two analyses should be mutually reinforcing. Whereas here their results diverge, this at least raises doubts as to whether imports have increased in the sense of Article 2.1.”

19.4 It was further examined by the Panel in *Argentina — Footwear (EC)*, in a finding subsequently confirmed by the Appellate Body, considered, in this connection, that an analysis of intervening trends of imports was indispensable:

8.159 “[T]he 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. 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.”

19.5 The Panel in *Argentina — Footwear (EC)* further found that in the case before it the decline in the volume of imports could not be characterized as a temporary reversal of an increase in the volume of imports. It then stated that:

8.161 “[T]he Agreement requires not just an increase (i.e., any increase) in imports, but an increase in ‘such ... quantities’ as to cause or threaten to cause serious injury. ... the increase in imports must be judged in its full context, in particular with regard to its ‘rate and amount’ as required by Article 4.2(a). Thus, considering the changes in import levels over the entire period of investigation, as discussed above, seems unavoidable when making a determination of whether there has been an increase in imports ‘in such quantities’ in the sense of Article 2.1

19.6 The Appellate Body in *Argentina-Footwear (EC)* (WT/DS/121/AB/R dated 14.12.1999) held that the increase in imports must have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. Relevant extract there from is as follows:

“131. [T]he determination of whether the requirement of imports ‘in such increased quantities’ is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year—or five years ago. Again, and it bears repeating, not just any increased quantities of imports will suffice. There must be ‘such increased quantities’ as to cause or threaten to cause serious injury to the Domestic Industry in order to fulfill this requirement for applying a Safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have

been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause ‘serious injury’.”

19.7 The Panel on US-Wheat Gluten(WT/DS/166/R dated 31.07.2000, interpreted the phrase “in such increased quantities” as follows:

8.31 “[A]rticle XIX:1 (a) of the GATT 1994 and Article 2.1 [of the Agreement on Safeguards (“SA”)] do not speak only of an ‘increase’ in imports. Rather, they contain specific requirements with respect to the quantitative and qualitative nature of the ‘increase’ in imports of the product concerned. Both Article XIX:1(a) of the GATT 1994 and **Article 2.1 SA require that a product is being imported into the territory of the Member concerned in such increased quantities (absolute or relative to domestic production) as to cause or threaten serious injury.** Thus, not just any increase in imports will suffice. Rather, we agree with the Appellate Body’s finding in Argentina—Footwear Safeguard that the increase must be sufficiently recent, sudden, sharp and significant, both quantitatively and qualitatively, to cause or threaten to cause serious injury.”

19.8 Keeping in view the above requirements of law with regard to ‘increased imports’, analysis has been done as below on the basis of objective and quantifiable data:

20.. Increase in Import (Absolute Terms):

20.1) Imports of fatty alcohols into India have shown sharp increase in absolute terms as well as in relative terms. On comparison of data on monthly basis during the period from December 2013 to April 2014, import has increased from 4304 MT to 6402 MT which on indexed scale increased from 100 to 149, a huge surge of 49 percentage points, as seen from table below:

Table-1

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
IMPORTS					
Imports (MT)	4304	4,605	5,942	7,629	6,402
Trend	100	107	138	177	149

20. 2) Similarly, if we consider quarter-wise data, imports increased from 13161 MT in Q3 to 18176 in Q4 of '13-'14 and further to 19206 in Q1 of '14-15, which on indexed scale increased from 100 to 146 points, again a huge surge of 46 percentage points, as seen from the table below:

Table-2

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
IMPORTS			
Imports (MT)	13161	18176	19206
Trend	100	138	146

21. Increase in import in relation to production:

21.1) During the period December 2013 to April 2014 the percentage of import in relation to total domestic production has increased more than twice i.e. from 30 % in December 2013 to 77 % in April 2014 on comparison of month-wise data, which on indexed scale increased from 100 to 256, a very significant surge of 156 percentage points, as seen from the table below:

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
Imports (MT)	4304	4,605	5,942	7,629	6,402
Total Indian Production	14279	12080	8892	11484	8311
Imports as a % of total production	30%	38%	67%	66%	77%
Trend	100	126	222	220	256

21.2 If we consider quarter-wise data, the percentage of import in relation to total domestic production increased from 35% in Q3 to 56% in Q4 of '13-'14 and further to 77% in Q1 of '14-15, which on indexed scale increased from 100 to 159 to 218 points during the same period, a rapid surge of 118 percentage points, as seen from the table below:

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
IMPORTS			
Imports (MT)	13161	18176	19206
Total Production	37345	32456	24953
Imports as a % of total production	35%	56%	77%
Trend	100	159	218

22. Determination of Increased Imports:

From the above analysis, It is clear that there is substantial increase in imports of the product under consideration in this case both in absolute terms and also in relation to production during the relevant period. As against the claim of the interested parties that the increased imports is not continuously rising, I find that the import data do not support their contention. I find that imports are rising, both monthly as well as on quarterly basis and in my view is significant, sharp and sudden which satisfies the condition of surge in imports under the law related to Safeguard duty.

23. Serious Injury and Threat of Serious Injury:

23.1 "Serious injury" means an injury causing overall impairment in the position of a domestic industry; and "threat of serious injury"² means a clear and imminent danger of serious injury.

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

overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall *position* of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.

23.3) Accordingly, in analyzing critical circumstances for consideration of imposition of provisional duty, serious injury or threat of serious injury of 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, as discussed hereinbelow.

24. MARKET SHARE:

24.1) During the period December 2013 to April 2014, the Market Share of import increased from 72% in December 2013 to 80 % in April 2014 whereas the market share of Domestic Industry decreased from 15% in December 2013 to 9 % in April 2014, as seen from the table below:

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
IMPORTS					
Imports (MT)	4304	4,605	5,942	7,629	6,402
Domestic sales of DI	903	1,805	315	846	739
Sale of Others (Godrej)	780	980	755	927	844
Total Demand (DI+Others+Imports)	5988	7390	7012	9402	7985
Market Share of DI Sales (%)	15	24	4	9	9
Market Share of Imports (%)	72	62	85	81	80

24.2) During the period Q3 of 2013-14 to Q1 of 2014-15 (Calculated on basis of April 2014 data), the market share of imports increased from 70% in Q3 of 2013-14 to 80% in Q1 (2014-15) whereas the market share of Domestic Industry decreases from 19% to 9% during the same period, as seen from the table below:

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
IMPORTS			
Imports (MT)	13161	18176	19206
Domestic sales of DI	3557	2965	2217
Sale of Others (Godrej)	2132	2662	2532
Total Demand (DI+Others+Imports)	18850	23803	23955
Market Share of DI	19%	12%	9%
Trend	100	63	47
Market Share of Imports	70%	76%	80%
Trend	100	109	114

25. PRODUCTION:

25.1) During the period December 2013 to April 2014, the Production of DI decreased sharply from 10396 MT to 3652 MT, i.e from indexed point 100 to 35. The same trend is also seen in the total domestic production (including supporter), which decreased from 14279 MT in December 2013 to 8311 MT in April 2014, as seen from the table below:

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
Production (DI) MT	10,396	7,483	4,560	7,268	3,652
Trend	100	72	44	70	35
Total Production	14279	12080	8892	11484	8311

25.2) Considering quarter-wise data, production of DI decreased from 25171 MT in Q3 of '13-'14 to 10956 MT in Q1 of '14-'15 i.e from indexed point 100 to 44. During the same period, the total domestic production (including supporter) also declined by about 33 percentage points, from 37345 MT in Q3 2013-14 to 24953 MT in Q1 2014-15(annualized), as per table below:

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
Production (DI) MT	25171	19311	10956
Trend	100	77	44
Total Production	37345	32456	24953
Trend	100	87	67

26. SALES:

26.1) During the period December 2013 to April 2014, domestic sales of DI decreased from 903 MT in December 2013 to 739 MT in April 2014 i.e from indexed point 100 in December 2013 to 82 in April 2014, as reflected from the table below:

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
Domestic sales of DI	903	1,805	315	846	739
Trend	100	200	35	94	82

26.2) Considering quarter-wise data, domestic sales decreased from 3557 MT in Q3 to 2965 MT in Q4 of 2013-14 and further dropped to 2217 MT in Q1 of 2014-15 i.e. indexed point 100 to 83 and finally to 62 during the same period. The trend notice quarterly is more even, as shown in the table below:

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
Domestic sales of DI	3557	2965	2217
Trend	100	83	62

27. CAPACITY UTILISATION:

27.1 The Installed capacity of the DI has been same throughout the POI and also for the monthly/quarterly period under analysis at present. The capacity utilization of DI has decreased from 104% in December 2013 to 37 % in April 2014 i.e. by about 65 % as reflected on indexed scale, as per table below:

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
Installed Capacity DI	10000	10000	10000	10000	10000
Capacity Utilisation DI	104%	75%	46%	73%	37%
Trend	100	72	44	70	35

27.2 On quarterly analysis, it is seen that during the period Q3 of 2013-14 to Q1 of 2014-15 (Calculated on basis of April 2014 data) also, the capacity utilization of DI shows the same trend, i.e., it has decreased from 84% in Q3 of 2013-14 to 37% in Q1 of 2014-15, which on indexed scale is a decline of about 56 percentage points, from 100 in Q3 of 2013-14 to 44 in Q1 of 2014-15, as per table below:

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
Installed Capacity DI	30000	30000	30000
Capacity Utilisation DI	84%	64%	37%
Trend	100	76	44

28. Employment (Indexed):

It is seen that the level of employment has not undergone much change as it shows more or less same figures both on monthly basis (Dec'13 to Apr'14) and quarterly basis (Q3 of 2013-14 to Q1 of 2014-15 (Annualised), as per the tables below:

Monthly basis:

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
Employment	100	102	102	102	101

Quarterly basis

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
Employment	100	101	100

29. Productivity (Indexed):

It appears that the productivity of the DI has suffered significantly, which prima facie arises out of the fact that the level of employment has been maintained despite steep fall in production and domestic sales of the DI, as per the tables below.

Table-1(monthly basis)

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
Productivity (MT per day)	100	70	43	70	33

Table-2 (Quarterly basis)

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
Productivity (MT per Day)	72	55	31

30. PROFIT/LOSS:

The DI had provided the figure for profitability till Dec'13 for 2013-14 at the time of issuing Notice of Initiation. In order to analyse the change in profitability situation of the DI after Dec'13, i.e. for the period from Jan'14 till Apr'14, it is found that month wise Profit / Loss figures are not available with the DI as it is not maintained in that order. However, they have provided annual figure for complete 2013-14(till Mar'14), duly certified from the chartered accountant as they are yet to declare their Financial closing for FY 2013-14. From the data submitted, it is seen that the profitability of the DI has further worsened in the last quarter of 2013-14, which is shown in the table below:

Financial Year	Profit and Loss (in Rs./MTS) indexed.
2010-11	100
2011-12	-266
2012-13	-2796
2013-14 (till Dec'13)	-1696
2013-14	-2232

31. Other Factors:

31.1 Import in relation to Demand:

During the period December 2013 to April 2014, the percentage of import in relation to total demand has increased from 72 % in December 2013 to 80 % in April 2014, which on indexed scale increased from 100 in Dec'13 to 111 in Apr'14 as seen from the table below:

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
Imports (MT)	4304	4,605	5,942	7,629	6,402
Total Demand (DI sale+Other sale+Imports)	5988	7390	7012	9402	7985
Imports as a % of Demand	72	62	85	81	80
Trend	100	86	118	113	111

3

1.2 Considering quarter-wise data, the percentage of import in relation to total demand also shows the same rising trend, i.e., it increased from 70 % in Q3 of 2013-14 to 80 % in Q1 of 2014-15. In terms of indexed points, imports in relation to demand increased from 100 to 109 and then to 114 points during the same period, as per table below:

	2013-14	2014-15

Particulars	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
IMPORTS (MT)	13161	18176	19206
Total Demand (DI sale+Other sale+Imports)	18850	23803	23955
Imports as a % of Demand	70%	76%	80%
Trend	100	109	114

32. Exports:

32.1 It appears from the table below, that during the period Dec'13 to Apr'14, exports of the DI suffered drastically, from 8406 MT in Dec'13 to 2653 MT in Apr'14, which on indexed scale is a decline of 68 percentage points.

Particulars	Dec '13	Jan '14	Feb '14	Mar '14	Apr '14
Export Quantity DI (MT)	8,406	5,018	3,748	5,933	2,653
Trend	100	60	45	71	32

32.2 The same trend is noticed when the comparison is being done on quarterly basis as per the table below, when the export declined from 19445 MT in Q3 of 2013-14 to 7959 MT in Q1 2014-15 (annualized), which is a sharp decline by 59 percentage points on indexed scale.

Particulars	2013-14		2014-15
	Quarter 3	Quarter 4	Quarter 1 (Calculated on basis of April 2014 data)
Export Quantity DI (MT)	19445	14699	7959
Trend	100	76	41

33. Inventory:

There is no inventory during the period Dec'13 to Apr'14. It also appears that the inventory was capitalized in Q2 of 2013-14, after which there is no inventory.

34. Determination of Serious injury and threat thereto:

34.1) On the basis of above analysis, it is noticed that the increased imports of Fatty Alcohols have caused or are threatening to cause serious injury to the domestic producers of Fatty Alcohols as almost all the factors show a significant overall impairment. This significant overall impairment is clearly discernible in the period taken for analysis for examining existence of critical circumstances for considering imposition of immediate provisional duty, i.e. from Dec'13 to Apr'14 (monthly basis) and Q3 2013-14 to Q1 2014-15 (annualized) for (quarterly basis). There is a sharp decline in production and sale, with steep decline in productivity. The DI has also accumulated losses in Q4 of 2013-14 which has witnessed very steep surge in imports, both in absolute and relative terms. In fact, the poor performance of the DI in almost all economic parameters on one hand and steep rise in

imports on the other, immediately after the period of Notice of Initiation, clearly shows the urgent need for a measure which can arrest this surge in imports, failing which, irreparable damage will be caused to the DI which would be difficult to repair.

34.2) It is also seen that due to lowering of tariff barrier from ASEAN countries (AIFTA), sharp surge in imports have taken place which has already caused serious injury to the DI. However, as per the trends noticed above, this condition is likely to continue and pose grave threat of serious injury for the DI in the times to come as well.

35. Causal Link:

35.1) Rule 5(3)(c) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1977 states the requirement of a causal link between increased imports and alleged injury or threat of serious injury.

35.2) For the purpose of determining causation, all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry have been evaluated.

35.3) From the analysis above, it is found that both in the monthly as well as quarterly analysis of import and domestic data, imports have surged both in absolute as well as in relation to production. The market share of imports have increased substantially in April'14 from Dec'13 and from Q3 of 2013-14 to Q1 2014-15 Annualised whereas the market share of the DI has sharply declined during the same period. This clearly established the casual link between the surge in imports and the serious injury caused to the DI in this case.

35.4) Moreover, during the same period, it is noticed that there is a rise in demand for the PUC which should have had resulted into rise in sales for the DI. But the DI has witnessed loss in domestic sales, whereas the imports have surged, a situation which has further aggravated the already precarious economic condition of the DI. The losses have also increased sharply during the same period, i.e. Q4 of 2013-14, which reflects the critical economic condition of the DI. I therefore, find that if this situation is not addressed on immediate basis, it could lead to a situation which could be difficult to redress/rectify/resurrect.

36. Examination on views of Interested Parties:

While dealing with the request of the DI for provisional imposition of safeguard duty, I have also come across several post Initiation submissions of the Interested parties in which some of them have raised certain issues. Accordingly therefore, the issues raised by the interested parties in their post Initiation submissions in the instant safeguard investigation are also being dealt with in brief, as below:

36.1. No Locus Standi of Petitioner to file application & EOU obligations to be considered

36.1.1) It has been argued by some of the Interested Parties that the petitioner is ineligible to seek protection under the safeguard provisions, for the reason that it is a 100% EOU. In this context, reliance has been placed by them on the decision of the Designated Authority in the case of *Ceftriaxone Disodium Hemiheptahydrate-Sterile from China PR* (Final findings dated July 2, 2008). In terms of the definition of 'domestic industry', under the ADD provisions, producers who are importers or related to the importers or exporters, may be excluded from the scope of "domestic industry". However, in the said finding, the EOU had imported substantial quantities of the article under investigation, and since importers of the PUC are specifically barred under ADD law, therefore it was excluded in that case from the scope of domestic industry. Since no such exclusion has been provided for, under the safeguard provisions, the contention of Interested parties is therefore, unfounded.

36.1.2.) It has been further contended by the interested parties, that there are restrictions on the quantum of domestic sales that can be made by an EOU. This has been examined. It appears that subject to achievement of positive NFE, there is no restriction on sale of the subject goods in India, by the EOU unit/petitioner. That is to say that there are no restrictions on the sale of domestically manufactured goods in India, as long as a positive NFE is maintained by the EOU unit. The Foreign Trade Policy provides for concessional rate of duty on domestic clearances (upto 50% of the FOB value of exports) of that product. In the present case therefore, entitlement earned on other products can be used for fatty alcohols upto 90% of total FOB value of exports. Beyond the aforesaid limits, sales can be made by the EOU/petitioner on payment of appropriate duties of excise. There is hence, no restriction on the sale of goods manufactured by an EOU in India as long as there is positive NFE.

In this context, the DI has placed reliance on paragraph 34 of the findings of the Designated Authority (Anti Dumping) in the case of Vitamin A, in which Piramal Healthcare (100% EOU) was considered to be a domestic industry:

“With regard to domestic industry being 100% EOU and therefore it is ineligible to be domestic industry, it is noted that EOU facility in itself does not adversely affect the status of the Petitioner as “domestic industry”. In fact, it is noted that the clearances made by the Petitioner to the Domestic Tariff Area are not restricted or contingent on the exports of the Product under Consideration and are treated as excise-paid domestic sales and not as imports. Thus, based on the Information available on records of the Designated Authority, the Petitioner accounts for all the production of the subject goods in India and thus constitutes domestic industry within the meaning of the Rules”.

36.1.3) It has further been submitted that an export oriented unit is also a domestic unit and its clearances are not to be considered as imports. In the case of Vikram Ispat Vs Commissioner Of Central Excise reported in 2000 (120) ELT 800 Tri Del.(LB), the Hon'ble Tribunal held that domestic sales made by an EOU are not treated as imports and are liable to be treated as domestic goods. The relevant paragraph (para 16) is excerpted below:

“The Revenue wants to restrict the availment of Modvat credit to the components of additional duty of customs paid under Section 3 of the Customs Tariff Act by bringing the fiction that 100% E. O. U. is a place which is not in India and the sale therefrom within India is akin to import into India. We do not find any substance in this view of the Revenue. The clearance of the goods by 100% E.O.U. are not import in 'the terms in which it has been defined under Section 2 (23) of the Customs Act, according to which import, with its grammatical and cogent expression means bringing into India from a place outside India. This is also apparent from the fact that when the goods are cleared from 100% E.O.U. to any place in India, central excise duty under Section 3(1) of the Central Excise Act is levied and not the customs duty under the Customs Act. If it is to be regarded as import, then the duty has to be charged under Section 12 of the Customs Act, read with Section 3 of the Customs Tariff Act. The Revenue, it seems is confusing the measure of the tax with the nature of the tax. The nature of the duty levied on the goods from 100% E.O.U. is excise duty and nothing else, whereas for determining the quantum of duty the measure adopted is duly leviable under Customs Act as held by the Supreme Court in many cases referred to above. The method adopted by the law makers in recovering the tax cannot alter its character. Once it is held that the duty paid by the 100% E.O.U. in respect of goods cleared to any place in India is excise duty, the question of dissecting the said duty into different components of basic customs duty, auxiliary duty, additional duty of Customs or any other customs duty does not arise. The proforma of AR-1A on which the reliance was placed by the learned D.R., cannot change the legal position that the duty levied on 100% E.O.U. is a duty of excise and not customs duty”.

36.1.4) In the case of Cosco Blossoms Pvt. Ltd. Vs Commissioner Of Customs reported at 2004 (164) ELT 423 (Tri Del), the Hon'ble Tribunal reiterated that goods cleared by an EOU domestically are treated as domestic goods. The relevant paragraph is excerpted below:

“5. It is well settled 2000 (120) E.L.T. 800 that goods produced in an EOU cannot be treated as imported goods and subjected to customs duty. The duty payable in respect of such goods is the duty of excise under Section 3 of the Central Excise Act, 1944. Therefore, the duty demand made in the impugned order under Section 28 of the Customs Act is not sustainable. Accordingly, we set aside the impugned order and allow the present appeal. However, we make it clear that revenue authorities will be at liberty to demand duty on the imported inputs, if any, used in the production of the cut-flowers in question”

36.1.5) In view of above therefore, I agree with the contention of the DI that an export oriented unit, is not a unit located outside India and hence forms part of domestic industry, and hence, the contention raised by the interested parties is, therefore, without merit.

37. No surge in imports for some product types:

Most of the interested parties have contended that there is no surge in imports in 2013-14 based on a disaggregated analysis of some product types of the PUC and that the increase in imports is showing

a declining trend. It however appears that the claim of the interested parties of such selective analysis of some types of the PUC is of no relevance, and is not permissible under the law. The law provides for analysis of total imports from all sources without any discrimination and it has been found that the imports of fatty alcohols are at a high level, and continue to increase. Both an end point to end point comparison and an analysis of intervening trends over the monthly and quarterly period, indicate that the imports are increasing in absolute terms and also relative to domestic production. The surge in imports is to be seen for the product under investigation, not grades / types thereof.

38. No injury to other Indian Producer:

The argument of one of the Interested Parties that no injury is caused to the other producer, i.e, M/s Godrej Industries, is totally false. The other producer is also facing losses for this product. Most of the observations referred to from the annual report, relate to oleochemical division, and its position in export markets. They have failed to appreciate the condition of this other Industry for the PUC. The position of the other producer in the domestic market for fatty alcohol has worsened during the injury period, falling from 18% to 11%.

39. Critical Circumstances:

39.1 On the basis of analysis of the submissions made by the domestic industry and the injury parameters it is observed that the domestic industry has prayed for immediate imposition of interim safeguard measures. In view of the critical circumstances, they have sought imposition of provisional safeguard measures.

39.2 Rule 9 of Customs Tariff (Identification And Assessment of Safeguard Duty) Rules, 1997 notified vide Notification No. 35/97-NT-Customs dated 29.07.1997 prescribes that the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he/she may record a preliminary finding regarding serious injury or threat of serious injury. The principles governing investigations have been provided in the Rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules'97, which is independent to Rule 9. The Rule 15 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules'97 provide for refund of differential Safeguard duty in case safeguard duty imposed after conclusions of the investigations is lower than the provisional duty already imposed and collected. The harmonious reading of Rules 6, 9 and 15 of the said Rules leads to a conclusion that the Rules provide for expeditious recommendation of provisional Safeguard duty based on preliminary findings and refund of the differential duty in case it is ascertained that the duty imposed after conclusion of investigation following natural justice as enshrined in the Rule 6 is lower than the provisional Safeguard Duty. However, in critical circumstances any delay in imposition of Provisional Safeguard duty may cause damage which would be difficult to repair.

39.3 Accordingly, it was considered prudent to analyze circumstances to assess whether the same falls in the category of critical circumstances. The sudden surge in imports from January'14 till April'14, as compared to December'13 and the corresponding performance of the domestic industry have been considered in order to determine the existence of critical circumstances, both on monthly (from Dec'13 till Apr'14) as well as quarterly (Q3 2013-14 till Q1 2014-15 based on Apr'14 annualised) basis.

39.4 The imports have increased till 2013-2014 both from the base year as well as previous year. The same trend of increased imports is noticed in the monthly as well as quarterly analysis done above. The market share, profitability, return on investment, domestic production of domestic industry declined significantly during this period. The condition of the petitioner has worsened considerably during the period Jan'14 to Apr'14, when the imports were at high levels.

39.5 The duties on imports of fatty alcohols from certain sources have been removed with effect from 01.01.2014. Anticipating this reduction, imports declined in the third Quarter. The petitioner was able to retain its customers during this period. In Q4, 2013-2014, after removal of duties of customs, the imports have increased drastically and the condition of domestic industry has further worsened.

39.6 It may be seen that the performance of domestic industry has significantly worsened in the last quarter as compared to the earlier period. The effect of any marginal improvements in Q3 has been totally wiped out in Q4. As a consequence, the domestic industry is facing severe price undercutting, price underselling and price suppression from the imports. Profits of domestic industry have also declined drastically in the last quarter. This clearly indicates that serious injury has been caused and

threat of further injury is imminent. The causal link between the imports and injury is also established.

39.7 It is further noticed that with the sharp rise in imports with a corresponding decline in the market share of the DI, coupled with steep decline in productivity and profitability in this case, I am of the view that this situation would lead to irreparable damage to the DI. Therefore, surge in imports and resultant decline in performance of the domestic industry in almost all the parameters, confirm existence of critical circumstances which necessitates imposition of immediate provisional safeguard duty to arrest any further decline. As the situation has gone from bad to worse, it appears that any delay in imposing provisional safeguard duty on the PUC would be detrimental to the health of the DI, because in the trends that have been noticed, the situation may aggravate further, thereby accentuating the crisis.

40. Unforeseen Circumstances:

40.1 It is noted that there is no express obligation/requirement on the Director General (Safeguards) to analyse unforeseen circumstances as there is no specific requirement either in Indian Rules on the methodology that should be followed for analyzing unforeseen developments or the WTO

Agreement on Safeguards which also does not make any prescription with regard to the methodology that should be followed or the parameters that must be met in deciding unforeseen developments.

40.2 The Appellate Body in Argentina-Footwear (EC case) held that the phrase “Unforeseen Developments” means the developments which were unexpected. ‘Unforeseen developments’ requires that the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been ‘unexpected’. The Appellate Body in Korea-Dairy case held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.

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

40.4 I find that the applicant has in this context, urged as under that there has been an unprecedented increase in the import of subject goods to India, causing serious and irreparable injury to the domestic industry. It has been argued by some of the Interested Parties that this situation was clearly foreseen as the provisions of the FTA had in-built guidelines for a time bound lowering and eventually elimination of import tariff barrier. I agree with this contention of the interested parties to the extent that the provision of FTA had already envisaged lowering of tariff as well as the reasonable expectation that due to this, imports may increase. However, the extraordinary pace and un-anticipated accelerated surge in imports in the most recent period till Apr’14 due to this lowering/elimination of import tariff has surpassed all legitimate reasoning for increased imports. This unprecedented surge of the PUC during Dec’13 to Apr’14 and from Q3 2013-14 to Q1 2014-15 by around 46-49 percentage points far outstripped the demand of the PUC in the country (around 33 percentage points), which is clearly an unforeseeable circumstances. Such phenomenal surge in imports, which in any case showed an increasing trend throughout the POI, therefore, appears an unforeseen circumstances

41. Public Interest:

It has been submitted by the DI that the purpose of the safeguard duties is to eliminate injury caused by the surge in imports. As there has been a steep surge in cheap imports into India whereby the rising demand has not led to rising sales by the domestic industry, the domestic industry has suffered. Moreover, steep rise in imports has also led to sharp decline in profitability of the DI to a critical level, so much so that, the losses have almost increased by around 40% in Q4 2013-14 over Q3 2013-14. Therefore, there appears to be reasonable and justifiable grounds for taking immediate steps in checking the unabated imports of the PUC in the country, in order to prevent irreparable damage to the DI. As any safeguard duty will not affect the availability of the product to the consumers and will also prevent the decline of the Domestic industry further and help maintain availability of a wider choice to the consumers of the subject goods, I find that imposition of provisional safeguard duty thereby

, will be in Public Interest.

42. Adjustment Plan:

The DI has given their adjustment plan in their original application which focuses on positive adjustments to be made in view of an annual growth of around 6% in the demand of the product

under consideration. As envisaged therein, in order to counter the cost advantage in procurement of the raw material, i.e. split palm kernel oil, the DI has started the process of setting up of a new green field project for producing oleo-chemicals in Medan, Indonesia, which will become the supply source for intermediate products for Indian operations. As stated, this will support to feed its fatty alcohol plant in Taloja, India, by providing SPKO, which will insulate Indian operation from any frequent changes in export tax on Palm and Palm kernel oil, by one of the exporting countries. I find that the adjustment plan envisaged by the DI for cost saving in the raw material segment to produce the PUC, appears to be a viable adjustment plan.

43. Imports of PUC from other developing countries in year FY 2013-14 (De-Minimis):

From the import data it is seen that the total import of PUC into India from developing nations except Malaysia, Thailand and Indonesia do not exceed 3% individually and 9% collectively. Therefore, the import of product under consideration originating from developing nations except Malaysia, Thailand and Indonesia would not attract safeguards duty in terms of the proviso to Section 8B(1) of the Customs Tariff Act, 1975.

44. Conclusion:

I find in the present case that critical circumstances are in existence and therefore interim measures are imperative in view of the steep deterioration in performance of the domestic industry as a result of sudden and steep increase imports of the product under consideration. Therefore, if there is any delay in imposition of provisional safeguard duty, it would cause irreparable damage to the domestic Industry. Accordingly, immediate imposition of provisional safeguard duty, pending final determination of serious injury and threat of serious injury is warranted in this case.

45. Recommendation:

45.1 In view of the findings above, it is concluded that increased imports of "Saturated Fatty Alcohols with carbon chain length of C8,C10,C12,C14,C16, and C18 including single, blends and unblended (Not including branched isomers) which includes blends a combination of carbon chain lengths, C12-C14, C12-C16, C12-C18,C-16-18 and C14-C16 (commonly categorized as C12-C14)", i.e., "PUC" into India have caused grave injuries and are threatening to cause serious injuries to the domestic producers of "PUC" and it will be in the public interest to impose safeguard duty on imports of "PUC" into India in terms of Rule 10 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules'97 read with Article 6 of Agreement on Safeguards. Considering the average cost of production of "PUC" by the domestic producer, after allowing a reasonable return on capital employed, provisional safeguard duty at the rate of 20% (twenty percent) ad-valorem which is considered to be the minimum required to protect the interest of domestic industry, is hereby recommended for 200 days to be imposed on " Saturated Fatty Alcohols with carbon chain length of C8,C10,C12,C14,C16, and C18 including single, blends and unblended (Not including branched isomers) which includes blends a combination of carbon chain lengths, C12-C14, C12-C16, C12-C18,C-16-18 and C14-C16 (commonly categorized as C12-C14)" being imported falling under sub-heading 38237010, 38237020, 38237040, 38237090 and 29051700 (only indicative in nature) of the First Schedule of the Customs Tariff Act, 1975.

45.2 As the imports from developing nations except Malaysia, Thailand and Indonesia do not exceed 3% individually and 9% collectively, the import of product under consideration originating from developing nations except Malaysia, Thailand and Indonesia, will not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

46. Further Process:

- I. The information provided by various parties may be subjected to verification where necessary, for which they will be informed separately.
- II. A public hearing will be held in due course before making a final determination, for which the date will be informed separately.

(R.K.SINGLA)
Director General.

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