MINISTRY OF FINANCE

(Department of Revenue)

(OFFICE OF THE DIRECTOR GENERAL OF SAFEGUARDS CUSTOMS AND CENTRAL EXCISE)

NOTIFICATION

New Delhi, the 28th May, 2009

Sub: Safeguard investigation concerning imports of Phthalic Anhydride into India-Final Findings

GSR - Having regard to the Custom Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 thereof.

A. PROCEDURE

1. An application was filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as "Safeguard Rules"] by (1) M/s. Thirumalai Chemicals Ltd, Ranipet Tamilnadu, (2) M/s. IG Petrochemicals Ltd Raigad Maharashtra, (3) M/s. Mysore Petrochemicals Ltd, Raichur Karnataka, and (4) M/s SI Group India Ltd., Navi Mumbai Maharashtra, seeking imposition of Safeguard Duty on imports of Phthalic Anhydride into India alleging that increased imports of Phthalic Anhydride was causing and/or threatening to cause serious injury to the domestic producers of Phthalic Anhydride in India. Having satisfied that the requirements of Rule 5, safeguard investigation against imports of Phthalic Anhydride was initiated vide notice of initiation dated 28th November 2008 published in the Gazzete of India, Extraordinary on the same day.

2. A copy of the notice was sent to the governments of major exporting countries through their embassies in New Delhi. A copy of initiation notice was also sent to all known interested parties listed below:

Domestic Producers

a. M/s. Thirumalai Chemicals Ltd., Ranipet Tamilnadu
b. M/s. SI Group India Ltd., Navi Mumbai Maharashtra
c. M/s. IG Petrochemicals Ltd., Raigad Maharashtra
d. M/s. Mysore Petrochemicals Ltd., Raichur Karnataka

Importers

a. Cray Valley Resins India Ltd. Plot No. D-43 Trans Thane Creek, MIDC Indl. Area , Shirvane Navi Mumbai 410833, Maharashtra
b. Goodless Nerolac Paints Ltd Tiruporur Road Perungudi, Chennai 600096 Tamilnadu
c. Gargi Industries (Prop: Gargi Chem. Pvt. Ltd) Unit No. 11, D-161 Ttc Indl. Area (MIDC) off. Thane Belapur Road Dist. Thane Navi Mumbai
d. Hindustan Insecticides Limited (A Government of India Enterprises) P.O. Rasayani, Dist. Raigad, Rasayani Maharashtra

e. Kemrock industries & Exports Ltd., (100% EOU), Survey No. 120/2, Vadodara – Halol, Express Way, Village-Asoj, Vadodara, Gujarat.
f. Shalimar Paints Limited, P.o. Danesh Shaikh Lane, Howrah -711 109
g. U.K. Paints India Pvt. Ltd., Surajpur-Dadri Road, Village: Devia, District : Goutambudh Nagar Uttar Pradesh

Exporters

a. Aekyung Petrochemical Co. Ltd, Ulsan, 106-3, Kuro-dong, Kuro-gu Seoul 152-050 South Korea, Tel : 82/2/851-6100
b. L.G. Petrochemical, Yeochon, LG Twin Towers, 20, Yeouido-dong, Yeongdeungpo-gu, Seoul, 150-721, Korea (REP), Tel: 82-2-3777-1114
c. Petowidada, East Java, Menara BTN 15th Floor, JL. Gajah Mada No. 1, Jakarta 10130, Indonesia. Tel: (62-21) 633 2622, Fax: (42-21) 634 2635
d. Nan Ya Plastics Corporation, Mailiao, No. 201, Tung Hwa North Rd. Taipei, Tiawan , Tel: 886-2-2900-9141, Fax: 886-2-2902-1243
e. UPC Technology Corporation, Linyuan & Tiapei, 5f, 20, Lane 478 Rueiguang Rd, Neihu, Taipei, Tiawn, Tel: 886-2-26575555, Fax: 886-2-26270707

Exporting Nations:

a. The Republic of Korea, through their Embassy in New Delhi
b. Pakistan , through their Embassy in New Delhi
c. Taiwan, through their Embassy in New Delhi.
d. Indonesia, through their Embassy in New Delhi
e. Israel, through their Embassy in New Delhi

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

4. Request to consider them as an interested parties were received from the following parties and all the requests were accepted:

a. M/s Nimir Chemicals, 51-N Industrial Area Gulberg II, Lahore, Pakistan
b. Indian Plasticizers Manufacturers Association, New Delhi
c. Ministry of Foreign Affairs and Trade, Republic of Korea

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

a. M/s Nimir Chmeicals, 51-N Industrial Area Gulberg II, Lahore, Pakistan
b. Indian Plasticizers Manufacturers Association, New Delhi
c. Ministry of Foreign Affairs and Trade, Republic of Korea
d. M/s PT Petowidada, East Java, Indonesia
e. M/s Aekyung Petrochemical Co. Ltd, South Korea

6. After taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time were allowed and the parties concerned were accordingly informed.

7. After expeditious conduct of investigation preliminary findings were issued on 1st January 2009. The provisional duties were levied at the rate of 25% with effect from 29th January 2009vide customs notification No.9/2009-Cus dated 29th January 2009.

8. A public hearing was held on 25th February 2009, notice for which was sent on 16th January 2009. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 . Copy of written submission filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinder, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.

9. The information presented by domestic producers with regard to their production, sales, costs and prices, profits, and other injury parameters were verified by on-site visits to the plants of the domestic producers to the extent considered necessary. Further, the cost data has been also verified and certified by independent cost accountant. The non confidential version of verification report is kept in the public file.

B. VIEWS OF DOMESTIC PRODUCERS OF PAN IN INDIA

10. The domestic producers have stated as follows:

a. Article 2.1 read with Rule 11(1) of the Safeguard Duty Rules provide that a Member State intending to apply a safeguard measure to imports of a product must determine whether (a) there is increase in imports of the product, absolute or relative to domestic production; (b) such increases has caused or threatens to cause serious injury to the domestic industry; and (c) domestic industry produces like or directly competitive products. Under Article XIX:1 of GATT, 1994 a Member must also determine that such increase in imports is the result of unforeseen developments and of the effect of the obligations incurred by India under the GATT.

b. It is not disputed that PAN (product under consideration) produced by the domestic industry is like product to that being imported into India.

c. There was a recent, sudden, significant, and sharp increase in the volume of imports in absolute terms as well as relative terms. Imports were at the level of 24092 MT during 2005-06. It went down to 14133 MT during 2006-07. Thereafter, imports increased to 31,203 MT during 2007-08 recording a growth of 121% in a single year.

It went far beyond the level it was during 2005-06. Compared to 2005-06, increase during 2007-08 was 30%. Thus, in spite of the fall during 2006-07, imports increased quite significantly during 2007-08. Thus, the fall in imports during 2006-07 was only temporary and the volume of imports bounced back to much higher levels thereafter. Over and above such a significant increase in 2007-08, imports increased further during the first nine months of 2008-09. Imports went upto 29670 MT during 2008-09 (first nine months itself) recording an increase of 27%. Imports as a percentage of domestic production increased from 14% in 2005-06 to 22% during 2008-09. Imports as a percentage of production for domestic sale increased from 23% in 2005-06 to 33% during the first nine months of 2008-09.

d. There was a sudden increase in the imports from Korea due to the collapse of the domestic market in Korea and the collapse of traditional markets like China and USA and the consequent desperation to offload the piled up stocks. Moreover, value of Korean Wan dropped significantly by around 41% from 941 Korean Won per USD in January 2008 to 1326 Korean Won per USD in October 2008. Such significant a weakening of Korean Won resulted into higher export earnings for Korean producers and also acted as an incentive to reduce their prices.

e. Production volume of domestic producers increased from 168,578 MT in 2005-06 to 201,108 MT in 2006-07 and further to 220,168 MT in 2007-08. However, inspite of such consistent increase in the past three years, production volume fell down to 134,773 MT during the first nine months of 2008-09. In terms of indexed numbers, production volumes of domestic producers increased from 100 indexed units in 2005-06 to 119 in 2006-07 and further to 131 but fell down to 80 indexed units during the first nine-months of 2008-09. During 2008-09, production during the first half year decreased by 8%. It went down by 40% during quarter III and was expected to go down to 71% during second half year. Such significant fall in the volume of production is unprecedented for the domestic industry indicating serious injury suffered by it during such a short period. Domestic industry had experienced a sharp decline in capacity utilization. In spite of the increase in installed capacity, production would fell by 18% compared to the previous year resulting into a meager capacity utilization of 68%.

f. Domestic sales increased from 104596 MT in 2005-06 to 130895 MT during 2006-07 and further to 140272 MT during 2007-08. However, it fell down to 96181 MT during the first nine months of 2008-09. In terms of indexed numbers, Domestic sales volume increased consistently from the level of 100 indexed units in 2005-06 to 125 in 2006-07 and further to 134 units in 2007-08 but declined significantly to 92 indexed units during the first nine months of 2008-09.

g. Market share of domestic industry was as high as 90% during 2006-07. It fell to 82% during 2007-08 due to increased imports. It further fell down to 76% during the first nine months of 2008-09.

h. Due to loss of sales and market share, the domestic industry was forced to shut down some of their plants. The details of plant shut down were as follows:

i. The plants restarted their operations subsequently. However, they were still not operating at normal capacity utilization levels achieved before the sudden increase in imports began.

j. A large number of employees (approximately 700) have been rendered idle due to closure of the plants.

k. Domestic prices and import prices moved in tandem as the import prices significantly affect the domestic selling prices and the domestic producers had to fix their prices based on 'import parity principle'. From a situation of loss during 2005-06, domestic industry had come out during 2006-07 itself. It made significant profits in 2006-07 and 2007-08. However, due to increased imports, from a profit level of 213.72 indexed units in 2007-08, domestic industry suffered a loss of 235.87 indexed units during the first nine months of 2008-09. For the full year, the losses would be significantly more. On a per unit basis, domestic industry earned a profit of 244.08 indexed units during 2007-08. It turned into a loss of 775.24 indexed units during the first nine months of 2008-09. Thus, domestic industry was suffering serious injury and unless protective measures were given, domestic industry would cease to exist.

l. Adverse impact on the various economic parameters stated above clearly demonstrated the significant overall impairment in the position of the domestic industry.

m. A sharp increase in imports of PAN resulted into loss of market share and sales of the domestic industry. The landed value of imports being significantly low in the current year has resulted into significant price underselling resulting into serious losses for the domestic industry. But for the increase in imports, there were no other factors that caused any injury to the domestic producers.

11. The domestic producers also presented a detailed re-adjustment plan. According to them, considering the limited value addition made to the raw material, scope for drastic reduction in costs did not exist in this industry. Therefore, their re-adjustment plan primarily was aimed at reducing the conversion cost to the extent possible over a three year period, though steps taken to reduce the raw material costs had also been indicated. Domestic industry assured that it would be in a position to meet import competition on its own in three years time, by implementing the re-adjustment plan.

C. VIEWS OF CHEMICAL INDUSTRIES ASSOCIATION

12. Views of Chemical Industries Association are summarized below:

a. Chemical prices have plunged significantly in international market and consequently the prices of these commodities have dropped in Indian market due to the global crisis. PAN prices have decreased from US$ 1,600/ton during July-August'08 to US$ 600/ton during Octoober'08.

b. Indian chemical sector is facing low demand, large scale order cancellations, large inventory and stock losses.

c. Due to the above reason, almost all medium and small companies find it difficult to sustain their operations and consequently are forced to shut down. This sector provides employment to a large number of people contributes substantial to the national economy with a large export base and is backbone of many other sectors as well.

d. They have requested to impose a Safeguard Duty on imports of PAN for a period of four years as the chemical industry is going through one of its worst phases.

D. VIEWS OF EXPORTING COUNTRY GOVERNMENTS AND EXPORTERS

13. The views expressed by various interested parties are summarized below:

D.1. Views of Foreign Trade Administration, State Of Israel

14. The views of Government of Israel are summarized below:

a. Copy of the application was not made available to Israeli authorities or Gadiv – an exporter from Israel causing serious procedural lapse. Only on 20 February 2009, a copy of application was made available to Gadiv upon request by their legal representative. Though India notified the Committee of Safeguards on 16 December 2008, no notification regarding the procedure was made to Israeli authorities until Mid January 2009. Israel received the notice regarding public hearing but Gadiv did not receive the same.

b. Although imports increased in absolute figures in the first half of 2008, it should be considered as a marginal increase. In annual figures, increase was from about 31.5 ktpa to about annualized 45ktpa. This constitutes only 5.5% of the capacity of the Indian manufacturers. Gadiv did not increase its imports to India.

c. There were several fluctuations in import volume over the period beginning from 2004-05 until 2008-09. Taking 2004-05 as the base year, the imports increased to 24,092 MT in 2005-06, then declined to 14,133 MT in 2006-07 and again increased to 31,441 MT in 2007-08 and reached 18,655 MT in the first five months of 2008-09. Due weight has not been given to theses statistics in the investigation and it is impossible to substantiate a claim for the imposition of a safeguard duty as required by Article 2 of the safeguard Agreement and of Article XIX: 1 of GATT and of Article 8B (1) of India's Customs Tariff Act, 1975, that there be ''increases quantities" of imports in order to impose a safeguard duty.

d. There was a sharp decrease i.e. almost 50% in imports of PAN from a quarterly rate of about 11.2kt for the first half of 2008-09 to 5.7kt per quarter in the third quarter of 2008-09. Most relevant and recent figures showed a decrease in import volumes – a fact that contradicts the basic finding of the investigation.

e. A large portion of the injury suffered by manufacturers in this industry, all over the world, was attributable to the devaluation of stocks in October and November 2008. This was due to the dramatic fall in the prices of OX and PAN. The stocks of 20,000 MT of OX represented quantity of less than one month's consumption that was customary operational stocks.

f. There was no dramatic fall in market share of the domestic industry vis-à-vis imports so that it can be concluded that increased imports have caused serious injury. However, the domestic industry has suffered significant loss in the export sales in 2008-09.

g. The real difficulties of the Indian PAN producers were caused by growing competition in their export markets. These difficulties should be attributed to the global economic recession and not to changes in import pattern to India.

h. Article XIX of GATT, Article 2 of the Safeguard Agreement and Article 8B (1) of India's Customs Tariff Act 1975 requires that any product being imported should be "in such increases quantities and <u>under such conditions</u> as to cause or threaten serious injury to domestic producers". This second requirement clearly refers to "conditions" other than the increased quantities, which is mentioned in the first requirement. We were unable to find any such finding in the preliminary findings.

15. Government of Israel requested that full opportunity be afforded to Gadiv and the Israeli Government to defend heir export interests prior to any decision regarding imposition of a safeguard duty.

D.2. <u>Views of M/s. Gadiv Petrochemical Industries Ltd, Israel</u>

16. The views of M/s. Gadiv Petrochemical Industries Ltd., Israel are summarized below:

a. There were no "increased imports", but rather marginal increase in imports as compared to the large domestic production capacity.

b. Temporary closure of plants and cutting of production due to lack of profitability were well known practice in this industry. Especially in a fragile era, PAN producers all over the world were temporarily closing plants and cutting production. Producers of PAN all over the world were undergoing a tough time, since the prices of OX had spiraled vigorously and thus adversely affecting the profitability of the producers. Hence, no serious injury to domestic industry had been caused. Due to the sharp fall in PAN prices in November 2008, other PAN plants all over the world were shut down or had cut their capacity utilization significantly. As per the knowledge of Gadiv, PAN plants had been closed in Turkey, Spain and Romania for a period of two to three months during the third quarter 2008-09.

c. No unforeseen circumstances demonstrated. The developments in the PAN market are commonplace phenomena that are part of the ordinary economic business cycle of fluctuations in prices and periods of macro-economic recession.

d. The investigation has not demonstrated what the conditions of the importation are as to cause or threaten to cause serious injury. An analysis of the prices of the imports and of other pertinent selling conditions does not support the conclusion that it is the imports that are to blame for the troubles of the domestic industry. No causal link exists between alleged increase in imports and injury to the domestic industry.

e. Safeguards Agreement requires that the increase in imports must have recent enough, sudden enough, sharp enough and significant enough. However, increase in imports constituted only 5.5% or 2.15% of the total capacity of the Indian domestic manufacturers depending upon how Gadiv calculates it.

f. Turkey was a large net importer of PAN (consumption is more than twice than local production capacity) and nevertheless they closed PAN manufacturing facilities for the most of the third quarter of 2008-09. However, all the Indian plants started manufacturing even before the imposition of the provisional safeguard duty.

g. India’s industry had been a traditional net exporter of PAN and the real calculation showed that its difficulties arose from decreasing sales in its export market. This together with the global recession and its other effects, such as devaluation of stocks, were the real reasons for the difficulties claimed to have beset the Indian industry. The figure for the first half of 2008-09 showed a decrease of 29% in exports. The fall in export combined with the desire to monopolize the market and to dictate the terms in the market led the domestic industry to intentionally attribute the fact of 70.5% of their capacity lying idle to the mere increase of 5% in the imports.

h. The stocks that were piled as mentioned in the preliminary findings were very usual to this industry. The stocks of the raw material i.e. 20,000 MT of OX represented a quantity of less than one month consumption by local industry. The stocks of the finished product i.e. 9,500 MT of PAN represented a quantity of less than two weeks of sales. These were considered ordinary and customary operational stocks in the petrochemicals industry.

i. Gadiv did not undercut the prices of Indian producers, since most of its PAN exports into India were done under contracts based on the raw material price plus a premium which represented manufacturing costs and reasonable profits.

j. The adjustment plan submitted by the domestic industry was a shallow and very general plan, which did not include real significant measures for increasing efficiency or achieving any other "adjustment" or improved competitiveness.

k. Gadiv's imports should be excluded as there was no causal link between Gadiv's exports to India and any serious injury to the domestic industry. In view of the different conditions of Gadiv's sales to India compared to those possibly found in relation to other exporters of PAN to India, the different treatment of Gadiv's sale is not in violation of Article 2.2 of Safeguard Agreement. This is supported by the WTO Appellate Body's finding in the US – Line Pipe Safeguard case where it was held that if the US had addjuced sufficient evidence to show that imports from countries other than Mexico and Canada had caused a serious injury to the domestic industry, imports from these two countries could have been excluded from the application of safeguards.

l. Other factors that caused injury to the domestic industry were not considered in the preliminary findings.

m. Imposing safeguard duty might help the Indian PAN manufacturers, but will inure other Indian industries, mainly those importing PAN, and would also injure the end users of products. It might also injure Indian exporters, as it might lead to counter measures by other countries.

n. Article 5 of Agreement on Safeguard requires that the measure taken will be such as needed for repairing the serious injury to local industry. Since the profit margin of PAN manufacturers was clearly less than 25%, the safeguard measure of 25% would totally eliminate imports of PAN into India and would be contrary to object of the imposition of safeguard measure.

D.3. <u>Views of the Government of Pakistan</u>

17. The views of the Government of Pakistan are summarized below:

a. The increase in imports was too marginal to cause 'serious injury' to the domestic industry. Besides the increase imports does not qualify the tests of 'recent enough', 'sudden enough' and 'significant enough', as stipulated by the panel in the case of 'US Wheat Gluten Safeguards'.

b. Initiation of the investigation was based on unrealistic assumptions, an important assumption being the stated increase in imports and the assumed closure of the domestic industry. Indian manufacturing units producing PAN had since restarted their production and started feeding the domestic market as well as exporting their produce. Hence, the argument about serious injury being caused to the domestic industry was not tenable.

c. Decreased in demand is more than the increase in the imports. Therefore, the injury cannot be attributed to the increased imports.

d. The imports from Pakistan constitute only 0% to 8% of total imports and 0% to 1% of domestic production and such insignificant quantity of imports from Pakistan cannot cause serious injury to the domestic Indian industry.

e. The product PAN is a down stream product of crude petroleum. The changes in the prices of crude petroleum may affect the prices of related product and it is well known fact that the prices of crude has fallen since July 2008. In such a scenario, Indian industry has to suffer injury even if there are no imports. Therefore, the domestic industry has suffered injury due to the fall in the prices of petroleum products.

f. The injury to the domestic industry is caused due to reduction in duty from 20% to 7.5%, global slow down in demand and reduction in prices of PAN and Orthoxylene.

g. Price undercutting given in the petition is not correct as the indexed value of landed value of imports moves in line with the indexed value of domestic selling prices.

D.4. <u>Government of Korea</u>

18. The Government of Korea has raised its argument with respect to two aspects :-

i. Unforeseen developments
ii. Causation and non-attribution

a. Slow down in economic growth or even a recession, are part of normal economic cycle and therefore do not constitute unforeseen development. However, a prolonged economic depression may, depending on the specific circumstances, constitute an “unforeseen development”.

b. Fluctuations in the prices of traded goods, including commodities, do not constitute unforeseen developments as prices for any traded goods are not fixed for forever. Moreover, the Indian Investigating Authority has not provided an explanation, with reference to historical data, to support its conclusion that variations in the OX or PAN Price constitute “unforeseen developments”.

c. Indian Investigating Authority has not provided data to support that the Korean domestic market and the Chinese export market have collapsed. According to public available information from Chemical Market Research Inc., total domestic demand in Korea was 226,515 MT in 2008 which is almost equal to 226,901 MT in 2007.

d. Korean exports of PAN to China as a percentage of total Korean PAN exports remain constant between 2007 and 2008 at 23-24%.

e. Korean exports to India has increased by only 1,288 MT in 2008 which is less than a tenth of the increase in Indian imports i.e. 13,335 MT on an annualized basis.

f. Movements in currency exchange rates are a commonplace occurrence in international economic relations. Hence, they are foreseeable and do not constitute an "unforeseen development" within the meaning of Article XIX: 1 (a).

g. Indian Investigating Authority did not identify the countries in which recession has taken place and how the recession and its "uneven" nature, has led to increased imports of PAN to India.

h. Indian Investigating Authority has not properly assessed the injurious effects of factors other than increased imports.

i. Loss of export market of the Indian industry and relative inefficiency of the Indian industry vis-a vis the industry in other countries have caused injury to the domestic industry.

D.5. <u>Nimir Chemicals Pakistan Limited, Pakistan</u>

19. Views of Nimir Chemicals Pakistan Ltd are summarized below:

a. Full year estimates of domestic production of PA are based on realistic assumptions. The applicants have assumed 100% increase in the imports of PA and production of non participant producer in the second half of 2008-09 whereas they assumed only 37% increase in the applicants' production.

b. Summer is the peak season for the sale of PAN and import data of first six months 2008-09 (April to Sep) pertains to peak season of PAN. Hence, the assumption that it will be double by the end of the year is unrealistic.

c. The total decrease in imports for FY 2008-09 is 67,470 MT which is more than the increase in imports i.e. 13,335 MT. Hence, the injury suffered by the domestic industry is mainly attributed to the fall in demand rather than increase in imports.

d. They have admitted that the PAN market has crashed vey sharply over few months and the Indian applicants are not the only victims of fall in prices. Everyone around the globe was affected by this factor. They have also lost lot of money due to sharp and sudden fall in the international markets.

D.6. <u>Government of Indonesia</u>

20. Views of Government of Indonesia are summarized below:

a. Collapses of domestic market in Korea and collapse of traditional market like China & USA along with the South Korean Banking industry crisis and devaluation of Korean Wan vis -a vis does not justify the initiation of safeguard investigation concerning imports of PAN.

b. Japan, Germany, Italy, China, Singapore, Thailand, Turkey and USA have been excluded from the initiation of this Safeguard investigation. However, the Para 2 of Article 2 of Agreement on safeguard stipulates that safeguard measures shall be applied to a product, being imported irrespective of its resources.

c. As per Para 1 of Article 2 of Agreement on safeguard, a member may apply for a safeguard duty only if such product is being imported into the territory in such increased quantities, absolute or relative to domestic production. It is not possible to have a drastic increase of PAN either absolute or relative when the anti-dumping duty had been imposed on PAN product during 2000-2005.

d. Percentage of the imported PAN is insignificant as compared to the domestic production.

e. The domestic industry capacity utilization has increased from 77% in 2005-06 to 86% in 2006-07 and 91% in 2007-08. Hence, the domestic industry has not suffered any serious injury.

f. The domestic industry is not suffering any serious injury as its production has increased from 191,636 MT in 2005-06 to 222,959 MT in 2006-07 and continues to increase to 244,429 MT in 2007-08.

g. Shut down of the domestic plants is contradictory as the domestic production is increasing and it is not possible to increase the production while most of the plants were closed down.

h. During the 2005-06, India's anti-dumping authority had imposed Anti-Dumping duty against imported PAN originating from Indonesia. It is well known fact that anti-dumping duty is a measure aim to recover the domestic industry from the injury suffered from the dumping practice. The domestic industry must have recovered from the injury suffered with the imposition of anti-dumping duty. Therefore, the safeguard measures submitted by India's domestic PAN industry are unacceptable.

D.7. <u>PT. Petrowidada, Indonesia</u>

21. Views of PT Petrowidada, Indonesia are summarized below:

a. The PAN price increased to US$ 1,500/Mt in August 2008 and plunged to US$570/MT in November 2008 is actually due to the drastically fall of the crude oil prices. This fall in the prices is a result of the Global economy crisis that started in the US which resulted to the financial crisis. Due to this the business has been effected through out the world.

b. Most of the PAN producers in Asia have suffered hug losses due to the fall in the prices of OX and PAN in the short period. As a result of which, most of the producers have shut down their plants. Therefore, import volumes as claimed by the petitioner are incorrect with respect to the determination of the annualized figures for 2008-09.

c. The domestic demand of PAN has increased in 2007-08. As, the domestic production could not satisfy the domestic demand, the domestic PAN users have to import the PAN. Hence, the imports have increased in 2007-08.

E. VIEWS OF IMPORTERS/USERS INDUSTRIES

E.1. Views of Indian Plasticizers Manufacturers Association(“IPMA”)

22. The views of IPMA are summarized below:

a. Petitioners had not made the manufacturers of unsaturated polyester resin, CPC, phthalate plasticizers and IPMA as interested parties in the application.

b. One tone of OX produced 1.13 tons of PAN leading to a gain of about 13% in the production of PAN. Price of 1 MT of OX should be compared to the price of 1.13 MT of PAN. This factor had not been considered in the application. Excess steam/energy generated during the exothermic reaction of producing PAN which was either marketed or used for other products had been suppressed in the application.

c. After plasticizer was de-reserved recently from SSI Sector, the bigger manufacturers of PAN were eying for this sector.

d. The world over including India, the value addition in converting the raw material into plasticizers is US$50 per tonne. With such a low value addition any increase in the raw material price will be difficult to be absorbed by user industry. Thus any imposition of safeguard duty is against public interest as it will lead to closure of plasticizer industry and consequently PAN industry itself.

e. There was no significant increase in imports as the current imports were at the same level at which it was in 2005-06 and no unforeseen developments leading to increased imports.

f. India’s PAN industry was a traditional net exporter of PAN and the demand of PAN in 2008, had been lower worldwide on account of crash in the prices of crude from

150 Dollars to 40 Dollars as buyers were just waiting for prices to get stabilized. On account of lesser demand overseas, exports sale of petitioners went down causing injury to them. Therefore, any shut down during the third and fourth quarter of 2008 was not specific to the particular product of Petitioner Company.

g. The injury of Indian PAN Industry was basically attributable to global recession and falling crude prices which has affected everybody and no way attributable to increased imports.

h. Further Asian Paints , who had not joined the Safeguard Application accounted for about 15% of the total local production and it sold two third of its production besides captive consumption. They had a capacity utilization of 96% in 2008-09 as compared to 87% in 2006-07.

i. A number of factors showed no injury as described below:

   i. Capacity utilization in 2008-09 was at the same level as that of 2005-06;
   ii. Share of domestic production in 2008-09 was at the same level as that of 2005-06;
   iii. Domestic production in 2008-09 had shown significant growth when compared to 2005-06;
   iv. Petitioners were continuously earning profits;
   v. Employees were not idle for any significant period of time;

j. The applicants in conspiracy with each other in a planned manner have shut down their plant in the month of October 2008 not on account of lack of orders rather to achieve twin objectives of (a) carrying out annual maintenance; and (b) justifying the safeguard application.

k. Production of PAN in 2008 had been lower worldwide on account of crash in the prices of crude as buyers were just waiting for prices to get stabilized.

l. The drop in the international prices of PAN in 2008-09 was not on account of price undercutting rather it was due to the lower prices of Ortho-xylene. The delta between Oxylene and PAN has always remained positive and the same existed during rise and fall of crude prices.

m. As crude prices fell from USD 150 to USD 40, petrochemical based products including PAN also went down by 50% to 66%. The prices of plasticizers had also fallen accordingly. The members of IPMA were also incurring losses. The balance sheets showed that during Sep-Dec 2008, there were huge losses compared to profits of previous months for user industry. This proved that September 2008 onwards was bad not only for petitioners but also for everybody including the members of IPMA as it was on account of falling crude prices and global recession.

n. The claim of the domestic industry with regard to unforeseen developments of collapse of domestic market in Korea and traditional export market of China and USA and the consequent desperate offloading of piled up stocks was not substantiated by evidence. Korean selling prices were higher than the prices of exports from Israel, Taiwan, Indonesia and Pakistan.

o. The domestic industry had claimed that unprecedented uneven recession in various countries led to increased import of PAN into India. Recession could not be an unforeseen development. Recession was a part of market oriented capitalist economy. Recession was not specific to PAN rather it had engulfed every product throughout the world.

p. The increase in imports was not on account of obligations incurred by India. Import duty on PAN came down drastically from 30% in 2002-03 to 7.5% in 2007-08. The reduction came into effect on 1.3.2007 and industry adjusted well and there was no problem up to September 2008. The current problems could not be on account of obligations of India under the treaty and thus there was no case for imposition of safeguard duty.

q. No viable and creditable restructuring plan had been presented. When their expenses were mere 12-13%, they would not be in a position reduce their costs to the extent of safeguard duty and become competitive with imports.

r. Imposition of safeguard duty of 25% was highly disproportionate.

F. EXAMINATION AND FINDINGS

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

F.1. Product Under Investigation and like or directly competitive article:

24. In the preliminary findings, product under investigation was defined as follows:-

> *"The product under investigation is Phthalic Anhydride falling under heading 2917.35.00 of the First Schedule to the Customs Tariff Act 1975.*
> *"*

25. No interested party raised any issue with regard to the product under investigation. Therefore, it is confirmed that the product under investigation is "Pthalic Anhydride" falling under heading No. 2917.35.00 of Schedule I of the Customs Tariff Act, 1975.

26. Phthalic Anhydride (PAN) is the principal commercial form of Phthalic acid. It is a white crystalline solid, used to manufacture synthetic resins, which act as binders in paint products. The chemical formula of PAN is $C_8H_4O_3$. PAN is produced by the catalytic oxidation of OX with air or by the catalytic oxidation of naphthalene. OX is the preferred feedstock. The process entails passing OX through a reactor, which is an arrangement of tubes of clay or porcelain rings coated with a catalyst (Vanadium pentoxide or titanium oxide). The feedstock OX and the oxygen in air react over a fixed bed catalyst to form PAN. The product is polished in a post-reactor to reduce the level of impurities, solidified as sublimate and subsequently molten off in switch condensers. The product is finally flaked and taken out in the form of white or pale yellow crystals. The primary use of PAN is as a chemical intermediate in the production of plastics from vinyl chloride. Phthalate esters, which function as plasticizers, are derived from PAN. Phtalate plasticizers are used for the production of flexible PVC products such as cables, pipes and hoses, leather cloth, shoes, film for packaging etc., PAN has another major use in the production of polyester resins and other minor uses in the production of alkyd resins used in paints and lacquers; certain dyes, insect repellents and polyester polyols for polyurethanes. Besides, it is also utilized as a rubber scorch inhibitor and retarder.

27. No differences in the production process, characteristics or end-uses between imported PAN and domestically produced PAN were raised by any of the interested parties during the course of this investigation. Therefore, it is held that domestically produced PAN falls under the ambit of like or directly competitive in all respects to the imported product under investigation and that the domestically produced PAN is a like article to the imported PAN within the meaning of Rule 2(e) of Safeguard Duty Rules 1997.

F.2. **Domestic Industry**

28. Section 8B(6)(b) of the Customs Tariff Act 1975 defines domestic industry as follows:

(b) "Domestic industry" means the producers –
- *(i) as a whole of the like article or a directly competitive article in India; or*
- *(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.*

29. As per the records of the case, there are five domestic producers of PAN in India namely (1) M/s. Thirumalai Chemicals Ltd., (2) M/s. IG Petrochemicals Ltd., (3) M/s. Mysore Petrochemicals Ltd., (4) M/s. S I Group India Ltd., and (5) M/s. Asian Paints Ltd. The application was made by the four producers named (1) to (4) above. The fifth producer namely, Asian Paints Ltd. Supported the petition. The four applicant producers together accounted for 85 % to 90% of total production of PAN in India during the period 2005-06 to 2008-09. Thus, the collective output of the applicant producers constituted a major share of the total production of PAN in India. Further, no claim has been made by the interested parties against the applicants being the domestic industry. Therefore, it is held that the four applicant domestic producers constitute and represent the domestic industry

within the meaning of required and defined under Sec 8B (6) (b)(iii) of the Safeguard Duty Rules 1997.

F.3. **Increased imports:**

30. In the notice of initiation, reliance was placed on imports data as per DGCIS and IBIS. DGCIS data has been used for the period 2005-06, 2006-07 and April'007-Dec '07. IBIS data has been used from January 2008 to September 2008. The import data has been updated up to December 2008 using DGCIS data up to Oct' 2008 and IBIS data from Nov'2008 to Dec'2008. The period has been limited to the month of December 2008, as preliminary findings were issued on 1st January 2009. Further, a reasonably longer period has been considered to even out the effect of temporary fluctuation and seasonal effects, if any.

31. **Absolute increase in imports**: On the basis of the data compiled, as shown below, it has been found that the imports have increased by 117% from 14133 MT in 2006-07 to 30613 MT during Apr'08-Dec'08.

Year	Source of data	Qty imported in MT
2005-06	DGCIS	24,092
2006-07	DGCIS	14,133
2007-08	DGCIS	31,203
2008-09 (up to Dec 2008)	Up to Oct '08 DGCIS + Nov' 08 -Dec'08 IBIS	30,613
2008-09 Annualized		40,817

32. Year on year comparison showed that imports during the first nine months of 2008-09 increased by 28% over the imports during the corresponding period of the previous year as shown in the table below:

Year	Source of data	Qty imported in MT	Index
Apr'07 - Dec'07	DGCIS	23,993	100
Apr'08 - Dec'08	Upto Oct '08 DGCIS + Nov' 08 - Dec'08 IBIS	30,613	128

33. **Relative increase in imports**: Imports as a % of total domestic production was 14% in 2005-06. It decreased to 7% in 2006-07 but regained back to 14% in 2007-08. From this level, imports during the first nine months of 2008-09 reached 23% of the total domestic production indicating a significant increase in relative terms as shown in the table below:

Year	Qty imported in MT	Index	Total Domestic production (MT)	Imports as a % of Total Domestic production
2005-06	24,092	100	168,578	14%
2006-07	14,133	59	201,108	7%
2007-08	31,203	130	220,168	14%
2008-09 (up to Dec 2008)	30,613	127	134,773	23%

34. **Intervening trends in imports**: Imports were 24,092 MT during 2005-06. They went down to 14,133 MT during 2006-07. However, import volumes bounced back and reached a level of 31,203 MT during 2007-08. Imports during 2007-08 were 30% higher than the imports of even 2005-06. In view of the same, imports during 2006-07 represented a temporary fall. The analysis of increase in imports was compared taking 2005-06 as the base year. The increase in imports during 2008-09 was also compared to the imports during 2007-08 for the purposes of determining whether there was increase in imports.

35. Import during 2007-08 was itself 30% higher than the imports made during 2005-06. Over and above this increase, imports during the first nine months of 2008-09 represented 98% of imports made during the full year 2007-08. On an annualized basis, imports during 2008-09 represented 130% of imports made during 2007-08.

36. In view of the same, it is held that there was increase in imports in absolute and relative terms and that the increase in imports was recent enough, sudden enough, sharp enough and significant enough.

F.4. Reasons for increased imports:

i. Unforeseen developments

37. The reasons for the increase in imports, as gathered from the case records and evidence presented by interested parties are summarized below:

a. All the interested parties have unanimously stated that the current recession in global economy affected almost all the sectors of the industry around the globe. Such a global recession of this magnitude was, in fact, unforeseen.

b. A global financial crisis was triggered by US sub-prime crisis in 2008 which was also unforeseen. With the onset of global financial crisis during the first quarter of 2008, prime producers of PAN lost their traditional markets in USA and China. The situation was further aggravated with deepening financial crisis in South Korea. Overseas investors sold a net 31 trillion Won ($23 Billion) of South Korean stocks during 2008. Korea’s money market was also showing “signs of stress” as funding for banks remains a challenge. The value of Korean Wan dropped around 41% - from

941 Korean Won per USD in January 2008 to 1326 Korean Won per USD in October 2008. Due to such weakening of Korean Won, the export earnings of Korean exporters increased and this gave them an incentive to reduce their prices. These developments were unforeseen.

c. China and USA were the major markets for Korean PAN and most downstream product industries. Korean PAN Industry suffered a collapse between July 08 and Nov 08. The Chinese off take started slowing down from March 2008 onwards. Chinese offtake was expected to pick up after the Beijing Olympics but it did not happen as all the user chemical units were asked to shift out of the Yangtze valley. Restarting of chemical units was also adversely affected by the global economic crisis, especially slowing down of US economy. These developments were also clearly unforeseen. Korean Export statistics also showed that the exports of PAN to china had decreased to 1500-2000 MT during August-September-October 2008 as compared to 4000 to 5000 MT per month during January and February 2008.

d. In addition to Korea, Taiwan which faced the same situation and partly Indonesia, too, were forced to divert their PAN to other markets. This change in the market outlook for Taiwanese producers was also unforeseen.

e. Pakistan started exporting PAN to India in 2007-08. They exported 1673 MT during 2007-08 and during the current year, imports from Pakistan increased to 3341 MT (as per DGCIS data for April-Oct'08 and IBIS data for Nov'08 to Dec'08). Such huge imports from Pakistan were not foreseen.

f. Indian market was significantly large enough for the producers in the affected countries looking for alternate markets.

38. Some of the interested parties had stated that economic recession was not to be treated as 'unforeseen' as recession would be a part of any normal business cycle. Recession may be a part of a capitalist economy but the great depression of 30's brought changes in capitalist philosophy and economic theory to avert recession to a very large extent. There have been various instances of recession affecting certain economies at certain time, but the time and magnitude of recession always remained unpredictable. Further, the recession of this magnitude which engulfed the entire world economy and put the economy in negative growth could not have been predicted and foreseen. Had it been possible to foresee the current crisis, the crisis could have been averted. As far as requirement of meeting WTO obligations are concerned, it requires whether such a recession was foreseen? Considering the timing and severity of the recession cutting across all industries and all countries with varying magnitude, the current recession was clearly unforeseen.

39. Some interested parties argued that PAN manufacturing industry around the globe is facing similar problems. PAN manufacturing plants have been closed down in Turkey, Spain, Romania, etc and the problem is not limited to India alone. Such

arguments underline the fact that the recent developments in the global economy are unforeseen globally and various economies are getting affected, to varying degrees.

40. In view of the above, it is held that the increase in imports of PAN into India was as a result of unforeseen developments stated above.

ii. Obligations incurred under GATT

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41. PAN is one of the products in respect of which India has provided tariff concessions pursuant to Article II of GATT 1994.

42. Some of the interested parties have argued that the reduction in import duties to the current level of 7.5% took place in 2007 and the domestic producers did not face any problem till later part of 2008 and accordingly, the current problems faced by the domestic producers could not be linked to tariff reduction.

43. So long as India has incurred certain obligations under GATT 1994, including tariff concessions on the product under investigation, it may be presumed that the increase in imports was one of the effects of obligations so undertaken. Thus, it is held that imports increased as a result of unforeseen developments and of the effect of obligations incurred by India under GATT 1994.

F.5. Serious Injury or Threat of Serious Injury:

44. **Production:** For the purpose of analysis of economic parameters, same period as that for import has been considered. Domestic production volumes increased from 168578 MT in 2005-06 to 201,108 MT in 2006-07 and further to 220,168 MT in 2007-08. However, during the first nine months of 2008-09, production was only 134,774 MT. On an annualized basis (for the purpose of comparison), it would be 179,697 for 2008-09 as compared to 220,168 during the previous year recording a fall of 18%.

Year	Qty imported in MT	Qty imported (index)	Total Domestic production (MT)	Total Domestic production (Index)	Imports as a % of Total Domestic production
2005-06	24,092	100	168,578	100	14%
2006-07	14,133	59	201,108	119	7%
2007-08	31,203	130	220,168	131	14%
2008-09 (upto Dec 2008)	30,613	127	134,773	80	23%
2008-09 Annualized	40,817	169	179,697	107	23%

45. The production has decreased by 26% from 101,515 MT during Apr'08 – Sept'08 to 8,284 MT during Oct'08 –Dec'08 whereas the imports as a % of total domestic production has increased from 22% during Apr'08 – Sept'08 to 25% during Oct'08 – Dec'08.

Period	Qty imported in MT	Total Domestic production (MT)	Imports as a % of Total Domestic production
Apr'08 - Sept'08	22,329	101,515	22%
Oct'08 - Dec'08	8,284	33,258	25%
Total	30,613	134,773	23%

46. Some interested parties have argued that export production had been included in total production. However, for this investigation, from total production quantity, export sale quantity was deducted to arrive at the 'production for domestic market'. Only the production for domestic market figures so determined has been used in this analysis.

47. **Capacity Utilization**: Capacity utilization increased from 77% in 2005-06 to 86% in 2006-07 and to 91% in 2007-08 but it significantly decreased to 79% during April'2008 – Sept'2008. The capacity utilization further declined to 49% during Oct' 2008 –Dec'2008. The domestic industry has to cut down its production due to the increase in imports:

Year	Installed Capacity (MT)	Production (MT)	Capacity utilization
2005-06	220,000	168,578	77%
2006-07	233,000	201,108	86%
2007-08	243,000	220,168	91%
Apr'08 - Sept'08	129,000	101,515	79%
Oct'08 - Dec'08	68,250	33,258	49%
2008-09 (upto Dec 2008)	197,250	134,773	68%

48. **Productivity:** The domestic producers have state of the art plant and there is no adverse impact on productivity.

49. **Sales:** Domestic industry's sales increased from 104,596 MT units in 2005-06 to 130,895 MT in 2006-07 and further upwards to 140,272 MT during 2007-08. However, during Apr-Sept 2008, domestic sales went down to 71,148 MT and further to 25,033 MT during Oct - Dec 2008, recording a significant fall of 9%. On an annualized basis (for the purpose of comparison), it would be 128,241 MT for 2008-09 as compared to 140272MT during the previous year recording a significant fall of 9%.

Particulars	2005-06	2006-07	2007-08	2008-09 (Apr-Sept)	2008-09 (Oct – Dec)	2008-09 Apr-Dec	2008-09 Annualized
Domestic Sale (MT)	104596	130895	140272	71148	25033	96181	128241
Indexed	100	125	134	68	24	92	123

50. **Demand and Market Share:** Demand in India for PAN was 128,688 MT in 2005-06. It increased to 145028 in 2006-07 and further went up to 171,475 in 2007-08. It came down to 126,794 during the first nine months of 2008-09. On an annualized basis, demand for 2008-09 would be 128,241 MT recording a reduction of about 2%. In such a marginally shrinking market, share of imports increased from 18% in 2007-08 to 24% during 2008-09. Correspondingly, share of domestic industry went down from 82% in 2007-08 to 76% during 2008-09.

Particulars	Unit	2005-06	2006-07	2007-08	2008-09 (Apr-Sept)	2008-09 (Oct – Dec)	2008-09 (April to Dec)	2008-09 Annualized
Imports	MT	24092	14133	31203	22329	8284	30613	40817
Sale of Domestic Industry	MT	104596	130895	140272	71148	25033	96181	128241
Consumption in India	MT	128688	145028	171475	93477	33317	126794	169059
Consumption in India	Indexed	100	113	133	73	26	99	131
Imports	%	19%	10%	18%	24%	25%	24%	24%
Domestic Industry	%	81%	90%	82%	76%	75%	76%	76%

51. **Stocks:** Closing stock quantity decreased from 100 in 2005-06 to 95 in 2006-07 and it went down further to 82 in 2007-08. The decrease in the past three years was attributable to increasing domestic sales. Closing stocks decreased to 67 as at the end of December 2008. This could not be as a result of increase in domestic sales as there was a fall in domestic sales. On examination, it is observed that the fall in stocks was due to a fall in production quantities. It is also observed that closing stock as a percentage of sales quantity increased from 4.43 in 2007-08 to 5.29 as of December 2008.

Particulars	Unit	2005-06	2006-07	2007-08	2008-09 (April to Dec)
Closing stock	MT	****	****	****	****
Closing stock	Indexed	100	95	82	67
Inventory to sales ratio	Ratio	****	****	****	****

52. **Employment:** A large number of employees (approximately 700) have been rendered idle due to closure of the plants for significantly long periods of time during October-December 2008.

53. **Domestic selling Prices:** The domestic industry stated that they were forced to sell PAN at low prices in the domestic market keeping in view the landed price of imported PAN. As the landed value of imported PAN was very low, domestic industry suffered huge losses in effecting domestic sales. It may be seen that the domestic selling prices

increased from 100 during QTR I of 2008-09 to 114 during QTR II. However, the average selling prices plummeted to 81 during QTR III of 2008-09 as shown in the table below:

		QTR I	QTR II	QTR III
Average Domestic Selling Price	Rs. PMT	****	****	****
	Index	100	114	81

54. The monthly selling prices during the first nine months of 2008-09 of all the four applicant producers were examined individually. During April 2008, prices of all the four producers ranged between Rs. ***** PMT to Rs. ***** PMT. When the prices fell, some producers had to drop the prices significantly more than others. During December 2008, while one producer sold at Rs. ***** PMT, another one sold at Rs. ***** PMT. On an overall basis, trends of prices of individual domestic producers were similar in the sense that the prices moved up in QTR II of 2008-09 and went down during QTR III of 2008-09.

Particulars	IGPL	MPCL	TCL	SI Group	Average	Indexed
Apr-08	****	****	****	****	****	100
May-08	****	****	****	****	****	102
Jun-08	****	****	****	****	****	116
Jul-08	****	****	****	****	****	126
Aug-08	****	****	****	****	****	125
Sep-08	****	****	****	****	****	111
Oct-08	****	****	****	****	****	103
Nov-08	****	****	****	****	****	84
Dec-08	****	****	****	****	****	70

55. Domestic selling prices were compared to the landed values of imported PAN. During 2005-06, domestic prices were 100 units lower than the landed value of imports. During 2006-07 and 2007-08, landed value of imports were marginally higher than domestic selling prices. During the first nine months of 2008-09, landed value of imports were lower than the domestic selling prices by 16.07 Units. It is observed that the domestic selling prices were to be brought down to the level of the landed value of imported goods in order to keep sales moving. Otherwise, domestic industry would not have been able to achieve the reported domestic sales.

Particulars	Unit	2005-06	2006-07	2007-08	2008-09 (April to Dec)
Domestic sales realisation	Rs./MT	****	****	****	****

Landed Value of imports	Rs./MT	48312	57563	56531	58157
Difference	Rs./MT	****	****	****	****
Difference (Indexed)		(100.00)	(38.35)	(6.82)	16.07

56. The price trends of PAN were examined in line with the movement in the costs. Since O-Xylene constituted a significant portion of the total cost, prices of O-xylene were examined.

Particulars	**IGPL**	**MPCL**	**TCL**	**SI Group**	**Consolidated**	**Indexed**
Apr-2008	****	****	****	****	****	100
May-2008	****	****	****	****	****	105
Jun-2008	****	****	****	****	****	114
Jul-2008	****	****	****	****	****	136
Aug-2008	****	****	****	****	****	141
Sep-2008	****	****	****	****	****	135
Oct-2008	****	****	****	****	****	122
Nov-2008	****	****	****	****	****	99
Dec-2008	****	****	****	****	****	64
Jan-2009	****	****	****	****	****	77
Feb-2009	****	****	****	****	****	87
Mar-2009	****	****	****	****	****	96

57. It is observed that the prices of PAN fell far more steeply as compared to the fall in the prices of raw materials.

58. In addition, domestic selling prices of PAN were compared to the cost of sales. The cost of sales increased from 140 units during the first six months of FY 2008-09 to 186 units during Quarter III of FY 2008-09. While, during the same time, domestic sales realization decreased from 141 units to a mere 104 units. The prices were highly un-remunerative and suppressed to a significant degree.

Particulars	Unit	2005-06	2006-07	2007-08	2008-09 (Apr to Sept)	2008-09 (Oct to Dec)	2008-09 (April to Dec)
Cost of sales	Rs./MT	*****	*****	*****	*****	*****	*****
Cost of Sales	Indexed	100	119	116	140	186	148
Sales Realisation	Rs./MT	*****	*****	*****	*****	*****	*****
Sales Realisation	Indexed	100	126	126	141	104	131
Profit/Loss	Rs./MT	*****	*****	*****	*****	*****	*****

Profit/Loss	Indexed	(100)	124	244	(112)	(3217)	(775)

59. **Profitability:** Domestic producers incurred a loss of 100 units during 2005-06. They overcame the losses and earned a profit of 124 units in 2006-07. Profits increased to 244 units during 2007-08. As a result of increased imports coming into the country at such significantly lower prices, domestic industry suffered a loss of 112 units during the first six months of FY 2008-09 which further increased to 3217 units as shown in the table above.

60. **Cash profit**: During 2005-06, the domestic industry earned cash profit of 100 units. It increased to 1564 units in 2006-07 and further to 2460 units in 2007-08. However, the domestic industry incurred a cash loss of 271 units during the first six months of 2008-09 and further cash loss of 5369 units during the first nine months of 2008-09.

Particulars	Unit	2005-06	2006-07	2007-08	2008-09 (Apr to Sept)	2008-09 (Oct to Dec)	2008-09 (April to Dec)
Cash profit	Rs./PMT	*****	*****	*****	*****	*****	*****
Cash profit	Indexed	100	1,564	2,460	-271	-23927	-5,369

61. **Return on capital employed**: The domestic industry earned a negative ROCE of 2% during 2005-06. ROCE improved to 12% and 18% during 2006-07 and 2007-08 respectively. However, ROCE fell drastically to a negative 4% during first six months of FY 2008-09 and further to negative 8% during the first nine months of 2008-09.

62. In view of the above, it is held that the domestic industry has suffered serious injury during the first nine months of 2008-09.

F.6. Causes of serious injury:

63. In determination of casual link between imports and injury, the annex to the Safeguard Duty Rules requires that the Director general shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular, the rate and amount of the increase in imports of the article concerned in absolute and relative terms, the share of the domestic market taken by increased imports, change in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

64. Taking into account (a) rate and amount of increase in imports, and (b) the low prices and low landed value of imported PAN, and (c) the fact that the significant deterioration in production, capacity utilization, sales, market share, profit etc of the domestic industry occurred when imports increased, it is held that imports had caused serious injury to the domestic industry.

65. Some interested parties stated that there was no dramatic fall in the market share of the domestic industry vis-à-vis imports to conclude that increased imports have caused serious injury. As discussed above, domestic industry's market share decreased from 81% in 2005-06 to 76% during the first nine months of FY 2008-09 where as during the same period of time market share of imports increased from 19% to 24%. Accordingly, there was causal link between increased imports and the injury suffered by the domestic industry.

66. From the evaluation of all the factors as discussed under para 6, it has been held that there is casual link between increased imports and serious injury suffered by the domestic industry.

67. **Other factors causing injury at the same time:** Factors other than increase in imports that might be operating at the same time and causing injury to the domestic industry were examined. In this regard, particularly the following factors were examined:

a. **Deterioration in export performance of the domestic industry:** It has been contended by some parties that domestic industry has suffered loss on account of lower export sales and not due to increased imports. It is found that export volumes of the domestic industry have come down during the first nine months of 2008-09 as shown in the table below:

Year	Export Volume (MT)	Export Volume (Index)
2005-06	****	100
2006-07	****	112
2007-08	****	127
2008-09 (up to Dec 2008)	****	60
2008-09 Annualized	****	81

68. However, in the injury analysis, right from production onwards, impact of export activities have been excluded. While arriving at actual production, total production minus export sale has been considered as 'production for domestic market'. Other factors such as domestic sales volumes, market share, domestic selling prices, profits, etc do not have any thing to do with export performance. Therefore, while conducting the injury analysis, adequate care has been taken to exclude the impact of export activities and hence, it is held that export performance was not a cause of injury to the domestic producers.

69. **Loss on account of recession**: Some parties have claimed that during the recession and global meltdown of 2008, petrochemical sector was worst affected. Many of the plants worldwide were closed. In this recessionary period, performance of petitioners with their 79% capacity utilization is superb and there is no relative injury to petitioners. In this connection, it is noted that 79% capacity utilization is the average of the year 2008-09. The injury in aggravated form has started after the economic crisis, which engulfed the

world. The capacity utilization for the period October-December, 2008 has been 49%. This sudden loss of capacity utilization has been on account of increased imports, which happened at very low price at which it was not possible for domestic industries to sell without incurring irreparable loss. The international prices of PAN plummeted as evident from the table below:

70. The recession has caused increased imports at significantly lower price, which caused and threatened to cause serious injury.

71. Some interested parties have claimed that the plant shut down was a normal maintenance exercise and that shut down was not triggered by increased imports. Plant production records were examined and it was found that maintenance closure had never been as long as it had been between October2008 to January 2009.

Company	Period of shut down	No of days
Thirumalai Chemicals Ltd.	From 07.10.2008 to 20.12.2008	74
SI Group	From 11th Oct '08 to 17tth Nov'08 and 11th Dec to 28th Dec'08	54
MPCL	From 1st Nov'08 to 18th Jan'09	78
IGPL	One plant of annual capacity of 50000 MT from 25.10.08 to 10.11.08	16

The production restarted after issuance of preliminary determination.

72. IPMA stated that Thirumalai Chemicals Ltd vide their meeting notice dated 28.01.2009 has expressed its intention to adjust an amount of Rs. 18.27 crores from its investment made in one of its joint venture in Malaysia so that it can support the safeguard application in India. In response, Thirumalai Chemicals stated that the investment write off is to be funded from Capital Reserve Account, Amalgamation Reserve Account and Securities premium account as stated in the draft resolution attached to the meeting notice relied on by IPMA. Thirumalai Chemicals Ltd further stated that the adjustment would not have any impact on their profit/loss. I find that writing off investment made in a joint venture in Malaysia has nothing to do with the safeguard application made in India as this application is to redress the problems faced by them in the Indian market.

73. There were no other factors that caused injury to the domestic industry at the same time. Accordingly, it is held that the serious injury suffered by domestic industry has been caused by increased imports.

74. Threat of serious injury: Imports continue to increase till the end of December 2008. Considering the nature and severity of unforeseen developments that have caused the increase in imports and that the impact of those unforeseen developments still continue to be severe on the global as well as Indian market conditions, it is held that

there is a real threat of serious injury to the domestic industry, if no protective measure is put in place.

G. PUBLIC INTEREST

75. Some of the parties have argued that imposition of safeguard duty would severely prejudice the public interest as a number of end user industries may close down. It has been argued that the imposition of safeguard duty on PAN would make it costlier and this would be against consumer interest. However, no evidence to this effect has been presented which could show the adverse effect of imposed safeguard duty. Further, it is observed that the expression ‘public interest’ does not cover consumer interest alone in its ambit. The expression ‘public interest’ is a wider term, which covers in its ambit the general social welfare taking into account the larger community interest. Safeguard duty, being an indirect tax may affect various economic operators differently as there exist conflicting interests of different economic operators in market economy.

76. An analysis of prevailing prices in India, international prices, raw material prices and cost of sale by domestic industries during the period January 2009-March 2009 has been considered. Further, the total production capacity by Indian industries and demand in India has also been analysed. During the period January 2009 – March 2009, there was an excess production capacity of 20,826 MT/month. This available excess capacity in India can keep competition in domestic market alive. This shows the existence of domestic competition, which is preventing the domestic prices to rise to take full advantage of safeguard duty.

77. In the instant case, the raw material cost constitutes significant part of cost and the raw material prices are changing depending on international pricing. The difference between the selling price of PAN and the main raw material (OX) [called as Delta for reference] has been studied. It has been observed that the Delta has been between 67 units to 120 units. During the month of September, 2008 it became negative and has been in the range of 10 units to 15 units during October and November 2008. During the month of January to March 2009, it has been below 67 units but improved from the range of 10 to 15 units to the order of 56 to 64 units. It clearly indicates that the end user has been supplied the PAN at competitive prices.

78. The domestic industry has been maintaining the prices in line with changes in prices of raw material even after imposition of Safeguard Duty. There is no reason to believe that the domestic industry will change their pricing pattern.

79. Further, the safeguard duty of 25% has been only to the extent to neutralize the injurious impact and thus the competition from import remains alive. That the competition from import is continuing which is evident from the import figures during the month of January-April, 2009. Data for post imposition of the provisional safeguard duty is given below, which shows continued imports and fair trade.

PA imports into India as per IBIS reports				
	Jan-09	Feb-09	Mar-09	Apr-09

	in MT	in MT	in MT	in MT
KOREA REP	500	220	140	480
INDONESIA	120	--	--	--
ISRAEL	1793	431	--	835
TAIWAN	306	--	--	--
PAKISTAN	--	--	200	100
SINGAPORE	--	--	--	60
KOREA DEM	--	--	--	--
ITALY	--	--	--	105
CHINA	--	188	--	40
CANADA	--	--	--	400
JAPAN	--	--	--	75
THAILAND	60	--	--	--
IRAN	--	--	1725	2100
Total	2779	839	2065	4195

80. Moreover, if the injury to the domestic industry continued, it may lead to the closure of the domestic industry. As a result of which, 'PAN' an important chemical would not be manufactured in India and thereby making the users of the 'PAN' wholly dependent on the imports.

81. In view of the foregoing, it is held that the imposition of safeguard will be in public interest and especially the interests of end users are well protected.

H. PROVISIONAL MEASURES

82. In the preliminary findings, it was held that increased imports of PAN have caused and threatened to cause further serious injury to domestic producers of PAN. It was also observed that critical circumstances existed, where any delay in application for safeguard measures would cause irreparable damage to the industry. Considering the serious injury suffered by domestic industry during the first nine months of 2008-09 in a number of critical injury parameters as explained in the paragraphs above, it is held that in the absence of provisional measures, injury would have caused irreparable damage.

83. Considering the average cost of production of PAN by the domestic producers (Confidential), a reasonable return on capital employed, the level of import duties and the average import prices of PAN, safeguard duty at the rate of 25% ad valorem was recommended to be imposed on imports of PAN falling under 29173500 of the first Schedule of the Customs Tariff Act, 1975. Pursuant to the preliminary findings, Ministry of Finance, Government of India imposed the Safeguard duty at the rate of 25% ad-valorem on imports of PAN into India vide notification No. 9/2009 dated 29th January 2009.

84. With regard to the rate of duty, some interested parties had argued that production of PAN from OX is an exothermic reaction; excess steam/energy generated during the

production process should be marketed or used for some other products; one tonne of OX produces 1.3 to tonne of PAN and there is 13% gain in the production of PAN which has not been considered while computing the cost of PAN, etc and that these factors had not been taken into account while arriving at the duty rate of 25%. While arriving at cost of production, actual cost has been considered and thus the calculation takes care of the submissions made by domestic industries.

I. ADJUSTMENT PLAN

85. The domestic industry have submitted restructuring plans indicating details of efforts being taken and planned to be taken to make a positive adjustment to improve their competitiveness.

86. The re-adjustment plan of the domestic industry to make adjustment to the import competition is very detailed and workable and not hypothetical. They have indentified the various areas where cost improvement could be achieved. The domestic producers have furnished essential details of cost saving schemes being pursued by them and the cost reduction likely to be achieved thereform in response to the questionnaire in a confidential manner.

87. The domestic industry's readjustment plan primarily aims at reducing the conversion steps to the extent possible over a three year period. The domestic industry has proposed to take measures with respect to raw material cost, conversion cost, administrative, selling, finance etc to bring down their cost of production to improve their competitiveness over a period of 3 years.

88. The domestic industry has also agreed to submit action taken report in half yearly interval on adjustment plan for proper monitoring.

J. MISCELLANEOUS:

89. The government of Israel has contended that they have not been informed about the initiation of investigation. After examining the issue, it was found that the letter enclosing a copy of letter of initiation was sent to the Embassy of Israel through speed post on 6th January, 2009 and the letter has not yet returned undelivered. The representatives of M/s Gadiv Petrochemicals Ltd requested to become interested party on 12th February, 2009, much beyond the time limit of 21days prescribed in the notice of initiation and the request was promptly accepted and all relevant documents were supplied to them in the interest of natural justice.

Further, all relevant points made through representations have been considered in arriving at the recommendation even though at every place the contention mentioned in the representation could not be reproduced for sake of brevity.

K. DEVELOPING NATIONS:

90. The percentages of imports from developing nations have been examined. Except Pakistan, Indonesia and Thailand who constitute 5%, 14% and 4% respectively of total imports in India, other developing nations individually have less than 3% of total imports in India. Therefore, the import of product under consideration originating from developing nations except Pakistan, Indonesia and Thailand may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

L. CONCLUSION AND RECOMMENDATION

91. In view of the findings above, it is concluded that increased imports of PAN into India have caused and threatened to cause serious injury to the domestic producers of PAN and it will be in the public interest to impose safeguard duty for a period of three years on imports of PAN into India. In arriving at the amount of safeguard duty that would be adequate to prevent serious injury to the domestic industry and to facilitate positive adjustment, weighted average cost of production has been taken into account for the period 2005-06 to Apr'08-Dec'08.

92. Considering that the domestic industry need 3 years for them to readjust, it is recommended that safeguard duty be imposed on imports of PAN into India for a period of three years at the rates specified below as under being the minimum necessary for the protection of the domestic industry from the serious injury threatened to be caused by the increased imports of PAN.

Year	Safeguard duty recommended	Period
First Year	25%	29.01.2009 to 28.01.2010
Second Year	20%	29.01.2010 to 28.01.2011
Third Year	15%	29.01.2011 to 28.01.2012

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

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