

**DIRECTORATE GENERAL OF SAFEGUARDS
CUSTOMS AND CENTRAL EXCISE
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NOTIFICATION

New Delhi, 16 November, 2012

**Subject:- Safeguard investigation concerning imports of Dioctyl Phthalate (DOP) –
Final findings under Rule 11 of Customs Tariff (Identification and
Assessment of Safeguard Duty) Rules, 1997**

G S R D-22011/13/2011/Part A dated 16 November, 2012 having regard to the Customs Tariff Act, 1975 and Rule 11 of the Customs Tariff (Identification and Assessment of Safeguards 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 (a) KLJ Plasticizers Limited, (b) Payal Polyplast Pvt Ltd (c) PCL Oil & Solvent Ltd and (d) N.K. Polymers & Additives Mfg .Co, seeking imposition of Safeguard Duty on imports of Dioctyl Phthalate (hereinafter referred to as DOP) into India alleging that increased imports of Dioctyl Phthalate was causing and/or threatening to cause serious injury to the domestic producers of Dioctyl Phthalate in India. The Notice of Initiation of safeguard investigation concerning imports of Dioctyl Phthalate into India was issued on 23rd May, 2012 and was published in the Gazette of India Extraordinary on the same day vide GSR 383(E).
2. A copy of the Notice of Initiation dated 23rd May, 2012 along with copy of non-confidential version of the application filed by the Domestic Industry were forwarded to the Central Government, in the Ministry of Commerce and other ministries concerned, Govts of exporting countries through their Embassies/ High Commission in New Delhi and all known interested parties listed below in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguards Duty) Rules, 1997:

Domestic Producers

- a. KLJ Plasticizers Limited,
- b. Payal Polyplast Pvt Ltd.
- c. PCL Oil & Solvent Ltd.
- d. N.K. Polymers & Additives Mfg.CO

Importers/users

- a. Alpha Polymers, Alpha Nagar, Nagar Mala, Adivaram 1 Alagapuram 636 016
- b. Anukampa Polymers & Technologies Pvt. Ltd., B-21 Industrial Estate, Sanathnagar, HYDERABAD-500018, A.P.
- c. Gloster Cables Limited, 310/E, NH 7, Kallakal Village, Toopran Mandal Medak District A.P.
- d. Prime Polymers, No. 18, Lal Bagh Road, Bangalore 560027, Karnataka
- e. S. Gopal Kamath (Cochin), No. 39/330A, Arangath Road, P. Box No. 2021, Ernakulam, Cochin 682018
- f. Coir Tuft International Pvt. Ltd., Plot No.49 (Site-A), Rubber Park, Irapuram Village, Kannathunadu Taluk, Perumbavoor
- g. Kerafibertex Intl. Pvt. Ltd; Plot No. 53-57, Kinfra (EP1P), Kusumagiri, Kakkanad, Kerala
- h. The Alleppey Company, 14/385 A, Puthanangadi, Muhamma 688525, Kerala
- i. Kerala Balers (P) Ltd., A.S. Road, Alleppey, Alleppey 688007, Kerala.
- j. Tube Products Mahadevapura, White Field Road, Bangalore 560048, Karnataka
- k. Gee Tee (India) Ahmedabad, Bharat Cement Pipe Compound, Narol Circle, Narol, Ahmedabad 382405, Gujarat
- l. Nishan Marketing B-204, Krishna Complex, Opp. Rajpath Club, Off S.G. Road, Ahmedabad 380054, Gujarat
- m. Sigma Organics of Chemicals Pvt. Ltd, Sajjan House, 7 New Agarwal Nagar, Opp. Lotus Navlakha, Indore 452001
- n. Laser Cables Pvt. Ltd PO Biprannapara, Jalan Indl. Complex, Jangapur, Howrah 711411, West Bengal
- o. Plasti Pack, 115, College Street, Unit-3E, 3rd Floor Kolkata, West Bengal
- p. Jain Chemical (Jaipur) F-542, Road No. 1, DVKI Area Jaipur 302004, Rajasthan
- q. Jain Chemical & Plastic (Delhi) 3545/5, Jai Mata Market, Tri Nagar New Delhi – 1100 35
- r. Leo Vinyls, Kapurthala Road Jalandhar Punjab
- s. Jainco Enterprises, Jain Building, Basti Bawa Khel Kapurthala Road, Jalandhar – 144021, Punjab
- t. Arvind Plastic Udyog, A-55, Giriraj Indl. Estate, Mahakali Caves Road, Andheri (E), Mumbai
- u. Radha Plastic Inds. (Daman) 48/2, Daman Indl. Estate, Kadaiya Nani Daman
- v. Varun Organics Pvt. Ltd, 101,Sujata Chember, 1/3, A.B. Gandhi Marg Masjid Bundar, Mumbai 400009

- w. Krishna Enterprises Shop No. 3, Kamal Mohan Hsg. Society, 126 Nana Peth, Pune 411002
- x. A.D. Industries, B-4, Giriraj Estate, Mahakali Caves Road, Andheri (E), Mumbai
- y. Diamond Pipes & Tubes Pvt. Ltd, No. 50, 7th Cross, Wilson Garden, Bangalore 560027, Karnataka
- z. BDS Industries, Survey 70/2 (B), Daman Indl. Est. Kadaiya, Daman
- aa. Poonam International, 195/2, Chikkanahalli Road, Bommanahalli, Bangalore 560068
- bb. Royal Cushion Vinyl Products Ltd, Plot No. 55, Village, Garadhia, Taluka, Sayli, Distt Baroda, Gujarat
- cc. Viny Royal Plasticoats Ltd, Plot No. 319, Baroda, Godhra Road, Baska Village Halol, Panchmahal

Exporters

- a. M/s. BASF Petronas Chemicals, SDN B DC 802, Central Tower, Wisma Cons pant 1, Jalan SS16/4, Subang Jaya, 47500, Malaysia
- b. Chemcross Inc, Aisa, Yongsei Bldg; 4th Floor, Namdaeun Road, 5-KA, Chung-Ku, Seoul, South Korea
- c. Humade Corporation, Room No. 1505, Master Tower B/D 553, Dowha Dong, Mapo Gu, Seoul, 121-748, South Korea
- d. M/s Woori Pand Corporation, Rm. 905, Olympia Bldg. No. 196, Jamsilb On Dorg Sorgpa Gu, Seoul, South Korea
- e. The Normandy Group, S.A., Temple Financial Centre, P.O. Box 228, Leeward Highway, Providenciales, Turks and Cacos Islands, British West Indies, Netherlands
- f. Gulf Resources Development Corporation, P.O. Box 61283, Jebal Ali, Dubai, U.A.E.
- g. Petrochem Middle East FZE, P.O. Box 17028, Jabel Ali, Dubai, U.A.E.
- h. KASB Petroleum FZ Co., P.O. Box 117280, Dubai, U.A.E.
- i. UPC Technology Corporation, 5F, 20, Lane 478, Rueiguang Rd, Neihu Chiu, Taipei, Taiwan
- j. Continental Chemical Corp. PTE Ltd., 2 Seraya Plaza, Jurong Island, Singapore – 6277857
- k. Dinowic PTC Ltd, 5 Shenton Way, 19-08 UIC Building, Singapore – 068808
- l. Nimar Chemicals Pakistan Limited, 51-N Industrial Area, Gulmarg II, Lahore, Pakistan
- m. ICC Chemical Corporation, 460 Park Avenue, New Yor, NY, USA

- n. Vinmar Overseas Ltd, 16800 Imperial Valley Drive, Suite 499, Houston, TX 77060
- o. Everest Polymers Pvt Ltd, P.O. Box No. 47, Makawanpur, Nepal
- p. Farabi Petrochemicals Co., No. 35/2 North Gadi Ave., Sanei Alley, Tehran – Iran

Exporting Nations:

- a. The Republic of Korea, through their Embassy in New Delhi.
 - b. Taiwan, through their Embassy in New Delhi.
 - c. Malaysia through their High Commission 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. Requests to consider them as *interested parties* and extension of time were received from the following parties. After taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time to submit reply as per Rule 6(4) of Safeguard Rules were allowed , as prayed for.

Exporters

- i. M/s LG Chem Ltd., Korea through their lawyer M/s WTC Consultants.
- ii. M/s Nan Ya Plastics Corp, Taiwan.

Users

- i. M/s Leather Cloth and Plastics Manufacturers Association (M/s LCPMA), New Delhi.

5. The Govt. of Mexico through their embassy, M/s Gee Tee India and M/s Nishan Marketing had requested for removing their names from the list of interested parties due to the reason that they were not exporting/importing Dioctyl Phthalate(DOP) at all. Their requests were also acceded to.

6. The information presented by the applicants was verified by onsite visits to the plants of the domestic producers to the extent considered necessary. The non confidential version of verification report is kept in the public file.

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

8. A public hearing was held on 25th September, 2012, notice for which was sent on 20th September, 2012. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 by 1st

October, 2012. Copy of written submissions filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties by 4th October, 2012. 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. The Govt. of Taiwan and the Govt. of Republic of Korea filed post hearing written submissions through emails dated 25/9/12 and 1/10/12 respectively with no hard copies filed. M/s LCPMA also filed hard copy of post hearing written submissions on 5/10/12. M/s LCPMA also filed hard copy of post hearing rejoinder submissions on 5/10/12, i.e. after the due date. However, all these procedural lapse/delay have been considered and are condoned.

9. All the views expressed by the interested parties and other domestic producers either in the written submissions or in the rejoinders and response to the domestic industry submissions were examined and have been taken into account in making appropriate determination.

B. Views of Domestic industry

- a. The petitioners constitute domestic industry as per Customs Tariff Act’ 75 as they constitute the major proportion in the total Indian production of DOP as per the table below.

SN	Year	Petitioner (%)	Other Indian Producers (%)	All Indian Producers (%)
1	2009-10	94	6	100
2	2010-11	91	9	100
3	2011-12	91	9	100

- b. The information for the year 2008-09 has to be ignored in view of recession in this period. Otherwise, while analyzing data from 2008-09, it would be required to be kept in mind that 2008-09 was a period in which domestic industry was suffering due to recession and hence all parameters would show improvement if compared to the subsequent years.
- c. There has been a sudden, sharp and significant increase in imports within the meaning of safeguard rules and the decisions of Argentina footwear case and US Line Pipe case.
- d. The imports in relation to the production and consumption have increased throughout the period as well as in the recent period.
- e. Increase in imports is due to the following reasons:
 - i. Setting up of new Phthalic Anhydride plants by Chinese producers and resultant surplus capacities in Phthalic Anhydride in third countries, leading to diversion of Phthalic Anhydride production to DOP
 - ii. Sluggish demand in China for Phthalic Anhydride, leading to diversion of Phthalic Anhydride production to DOP

- iii. Slowdown in the end markets of Europe and America
- iv. Restriction in usage of DOP in Europe
- v. Growing demand of the product under consideration in India.

Due to the above listed factors, the exporters from Korea and Taiwan were compelled to search for the growing market for their product and India being the most viable choice was targeted, leading to increased imports in India.

- f. Increased imports have adversely impacted the production and capacity utilization of domestic industry.
- g. The sales of the domestic industry increased till 2010-11 but declined during the recent period, whereas the imports have surged.
- h. Domestic industry is facing the problem of accumulated inventories due to decline in market share affecting production and capacity utilization.
- i. In order to sustain in the market, the domestic industry has to reduce its prices far lower than the cost of sales thereby suffering significant losses. At the same time, the profitability and consequently cash profits and return on investment have started declining in the most recent period, which had actually improved previously.
- j. Threat of serious injury is established by following factors.
 - i. The price difference between domestic and imported product is significant;
 - ii. The foreign producers are holding significant unutilized capacities. Resultantly, the foreign producers are looking for additional markets to the extent possible;
 - iii. The major Chinese market has clogged for the export oriented producers of Korea and Taiwan, whereas the Indian market is quite strong;
 - iv. There has been restriction in usage of DOP in Europe worsened by the crisis in Europe. Due to such restriction, the producers/exporters started looking for new markets for their products and India with its growing demand offered a better opportunity for them to export which has led to increase in imports from such countries and also pose a threat of further increase in imports.
- k. Since there is negligible impact on the eventual end product and considering that the survival of the domestic industry is must, the imposition of safeguard shall be in public interest.

C. Views of Exporting Nations

Government of Korea

- a. Data for 2011-12 are described as annualized, leading to high misrepresentation. This can be seen from the fact that in the first quarter of 2012, Korea's exports dropped to 3382 MT from 11924 MT in the same period in 2011.

- b. The volume of imports fell steeply from 2008-09 to 2009-10, rose slightly in 2010-11 and data for 2011-12 is unclear. Hence the petitioners claim that there is sudden, sharp and significant increase in imports is not substantiated by data.
- c. No unforeseen circumstances have been demonstrated, as Korea hardly exported the products to Europe and hence the Europe crisis barely influenced exports to India.
- d. Production, capacity and capacity utilization have all shown increasing trends and hence there is no injury to domestic industry. The trend in domestic industry shows no signs of the “serious injury” as described in Article 4 of the Safeguard Agreement.
- e. Any alleged injury to domestic industry is due to safeguard duty on Phthalic Anhydride and hence no causal link.

Government of Taiwan

- a. One of Taiwan’s exporters got several orders from Indian customers in 2010-11 due to local supply shortage of DOP in India. After this period exports to India dropped.
- b. Domestic demand for DOP in India has exceeded production and thus import of DOP is only to fulfill needs of Indian consumption.

D. Views of Importers/ Users

M/s Leather Cloth and Plastics Manufacturers Association (LCPMA):

- a. Initiation has been made on inaccurate data and hence, the initiation is void ab initio as held in the case of ICI India Ltd. Versus Commissioner of Customs, Calcutta 2003 (151) E.L.T. 336 (Tri. - Del.)
- b. Balance sheet of domestic industry does not show injury. The domestic industry is engaged in trading as well as manufacturing of subject goods. Therefore, the DI itself has been benefited by increased imports.
- c. Increase in imports is due to imports by domestic industry and further the import information of domestic industry has been concealed by the domestic industry.
- d. There has been an increase in production, capacity, capacity utilization and sales of domestic industry. Further, the domestic industry has excess capacity not in concurrence with the demand and hence imports are not causing any losses to domestic industry.
- e. Any loss of domestic industry is due to low capacity utilization of domestic industry which in turn is due to excess built up capacities and imports of domestic industry.
- f. Being the major users of DOP, its members would be the major affected parties in case of safeguard duty imposition, since its members’ product does not get any protection.
- g. Thus safeguard duty should not be imposed if it is against Public interest as held in Supreme Court in Food Corpn. of India v. Kamdhenu Cattle Feed Industries (1992 Indlaw SC 426), National Buildings Construction Corporation v. S. Raghunathan and Others reported in 1998 (7) SCC 66, United Phosphorous in 1999 for imposition of safeguard duty on white/yellow phosphorous, United Phosphorous v. Director General

(Safeguards), 2000 (118) E.L.T. 326 (Del.), Phosphorous Ltd. Versus Director General (Safeguards) 2000 (118) E.L.T. 310 (S.C.),

- h. There is no unforeseen circumstance which necessitates safeguard duty and further, domestic industry has no adjustment plan.

E. Rejoinder by Domestic industry

On submissions made by Leather Cloth and Plastics Manufacturers Association

- a. Safeguard investigations are on altogether different footings and involve a multi-stage proceeding wherein information is required to be called from respective parties. The Director General is required to initiate for investigations and not investigate for initiation.
- b. The petitioner companies are making a number of different types of plasticizers and are also involved in other trading activities. Balance Sheets of petitioner companies are therefore not relevant for the present purpose.
- c. Imports by domestic industry have not been concealed by the Petitioners, it has been provided in the Petition. Further it is the contention of the Petitioners that imports made by domestic industry should be excluded.
- d. Production, sales, capacity utilization show increase if compared from 2008-09 to 2010-11. It has already been submitted that 2008-09 is an abnormal period due to recession and end to end point comparison alone is not a fair comparison.
- e. The claimed deterioration in profits is not on account of low capacity utilization. In fact, the domestic industry has utilized capacities to some extent by production of other types of plasticizers.
- f. It should be noted that whereas majority producers of Dioctyl Phthalate are participating in the present investigations, only one representative of the consumer association has participated in the present safeguard investigations. This alone shows that the possible adverse impact of the proposed safeguard duty shall be minimal. It cannot be ignored that had the impact been significant, a large number of consumers would have raised their concern. The same has however not happened.
- g. It is the confluence of several events which can unite to form the basis of an unforeseen development. The petitioners have provided several events that formed the part of unforeseen development which has led to increase in imports of Dioctyl Phthalate in India. These developments were unexpected and clearly constitute 'unforeseen developments'.
- h. It is not necessary that the adjustment plan proposed or invested upon by the domestic industry should start generating results even before the imposition of safeguard duty. The duty is imposed to facilitate the positive adjustment planned/provided by the domestic industry.

On submissions made by Government of Korea

- a. The actual data provided for the entire period 2011-12, comparison of which with the annualized data provided earlier would show that there is no significant difference between the annualized data and the actual data.
- b. It is reiterated that the imports of Dioctyl Phthalate have increased in absolute terms as also in relation to production and consumption.
- c. Individual country movements in imports are entirely irrelevant under safeguard investigations.
- d. As a result of decline in demand for the eventual end product in Europe and coupled with significant additions to capacities in China (for Phthalic Anhydride and DOP), procurement of DOP by the Chinese manufacturers declined very steeply.
- e. The domestic industry performance is not linked to safeguard duty on Phthalic Anhydride.

F. Rejoinder by importers/user industry

Leather Cloth and Plastics Manufacturers Association

- a. Stake of exporters to Indian market is very small and hence they have not participated. Non participation does not make them supporters of the case.
- b. LCPMA will be highly affected and has been participating from beginning; hence no objection can be raised in this regard.
- c. Data provided by domestic industry has to be verified by Director General as objections have been raised by interested parties and the burden of proof is on the domestic industry.
- d. Domestic industry has not provided transaction wise import data, which would show that imports have been made by domestic industry and interested parties of domestic industry.
- e. There has been no circulation of fresh data as claimed by domestic industry and the plea to ignore 2008-09 data should not be allowed, as it is against the law. Further, as per Carbon black 1998 case, data subsequent to initiation cannot be taken on record.
- f. Surge in imports is due to imports by domestic industry.
- g. Domestic industry has not suffered any injury, in fact domestic industry has profited from imports made by them. Also there is no serious threat of injury to the domestic industry.
- h. Causal link does not exist as imports have been made by domestic industry and are benefiting from the imports.
- i. Duty would be against public interest as there is already an inflationary trend in the market. Calculations shown by domestic industry are without any rational basis.
- j. The domestic industry has no creditable adjustment plan.

Findings by the Director General:

1. I have carefully gone through the case records, the replies filed by the domestic producers, user/importers and exporting nations. Submissions made by the various

parties and the issues arising there-from are dealt with at appropriate places in the findings below.

2. Section 8B of the Customs Tariff Act, 1975 deals with imposition of Safeguard Duty on imports into India on non discriminatory basis. Section 8B(1) provides for imposition of Safeguard Duty on the article if the article is being imported into India, in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to the Domestic Industry.
3. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provide the manner and principles governing investigation.
4. Accordingly, the investigation has been conducted in accordance with the said rules and the final findings are recorded through this notification.

A. The product under investigation:

5. The product under investigation is Dioctyl Phthalate (an organic compound) and abbreviated as 'DOP'. It is also known as Bis (2-ethylhexyl) phthalate, commonly abbreviated DEHP. This product is a colorless viscous liquid, soluble in oil, but not in water. It possesses good plasticizing properties. Being produced on a massive scale by many companies, it has acquired many names and acronyms, including BEHP and di-2-ethyl hexyl phthalate. It is widely used as a plasticizer in manufacturing of articles made of PVC. Plastics may contain 1% to 40% of DEHP. It is also used as a hydraulic fluid and as a dielectric fluid in capacitors. DEHP also finds use as a solvent in glow sticks as it has suitable properties and the low cost. It has been used as a plasticizer in medical devices such as intravenous tubing and bags, catheters, nasogastric tubes, dialysis bags and tubing, and blood bags, transfusion tubing and air tubes.
6. Dioctyl Phthalate (DOP) is classified under Customs sub-heading No. 29173920 under the Customs Tariff Act, 1975.
7. The product under investigation is Dioctyl Phthalate (an organic compound) and abbreviated as 'DOP'. It is also known as Bis (2-ethylhexyl) phthalate (di-2-ethylhexyl phthalate, commonly abbreviated DEHP, also an organic compound with the formula $C_6H_4(C_8H_{17}COO)_2$. The interested parties have not raised any issue with regard to the product under investigation
8. Therefore, domestically produced Dioctyl Phthalate falls under the ambit of like or directly competitive product in all respects to the imported Dioctyl Phthalate and that the domestically produced Dioctyl Phthalate is a like article to the imported Dioctyl Phthalate within the meaning of Rule 2(e) of Safeguard Duty Rules 1997.

B. Domestic Industry:

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

(b) "Domestic industry" mean 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

10. The application has been filed jointly by M/s KLJ Plasticizers Ltd, Silvassa; M/s N K Polymers & Additives Mfg Co., Daman; M/s Payal Polyplast Ltd, Daman and M/s PCL Oil & Solvents Ltd, Daman for imposition of Safeguard Duty on imports of Dioctyl Phthalate (DOP). The applicants have identified two more producers of Dioctyl Phthalate in India, namely M/s Rachna Plasticizers and M/s Lalitha Chem Industries Pvt. Ltd. However, M/s Lalitha Chem Industries Pvt Ltd is closed as informed by the applicants. The applicants claimed to be major producers on the ground that they account for about 98% of the Indian production. The information on record shows following volume of production of like or directly competitive article in the Country-

Description	Unit	2008-09	2009-10	2010-11	2011-12
Applicants	MT	60,242	69,468	77492	74943
Other Indian producers	MT	3515	4753	7218	1878
Total Indian production	MT	63,757	74,221	84,710	76,821
Share of applicants	%	94%	94%	91%	98%

11. 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 (DI) within the meaning of Section 8B(6)(b)(iii) of the Safeguard Duty Rules 1997.

C. Period of Investigation (POI):

12. The Customs Tariff Act, 1975, Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, Agreement on Safeguard and the relevant Article XIX of GATT do not specifically define what the Period of Investigation should be. From several case laws on safeguard measures, it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguard and Article XIX of GATT provides specific guidelines on the period of investigation except the fact that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased imports and serious injury.
13. The applicants in the instant case submitted import and injury data from 2009-10 to 2011-12 (upto Dec 2011) contending that year 2008-09 should be ignored and information should be considered from 2009-10 onwards for the present investigations, as the period 2008-09 was an abnormal period where industries both at domestic and international level, not only in the product under consideration, but in a large number of sectors, suffered due to global recession. The Directorate conducted the verification of data pertaining to injury parameters to the extent possible, starting from 2008-09, and the Notice of Initiation was issued with import and injury data from 2008-09 to 2011-12 (upto Dec 2011).

Subsequently, the applicant submitted figure from January to March 2012. The additional information of 3 months was made available to all concerned and kept in the Public File as required under Rule 6(7) of Safeguard Rules 1997.

14. The interested parties claimed that the plea to ignore 2008-09 data should not be allowed as it is against the law. Further, as per Carbon black 1998 case, data subsequent to initiation cannot be taken on record.
15. Considering that the period selected should be sufficiently long to allow conclusions to be drawn regarding existence of increased imports and to neutralize the effect of seasonal variation, data has been considered from F.Y. 2008-09 to 2011-12. In the notice of initiation, import data upto Dec 2011 had been considered. The import data has since been updated till March, 2012. The period has been taken from 2008-09 till 2011-12 for the purpose of the present investigations. As regards the argument that 2008-09 is the abnormal period due to recession and should not be considered, it is clarified that the effect of recession is well taken into consideration while analyzing performance of the domestic industry. Further as regards the argument that new data after initiation cannot be taken on record, it is noted that it is necessary to update the data, for a period subsequent to the period contained in the petition after initiation of investigations, to analyse on actual/absolute basis rather than annualizing the data. The petition/Notice of Initiation contained data for the period up to Dec., 2011. Even interested parties have argued that it would not be appropriate to annualize April-Dec., 2011 data. I therefore consider appropriate and necessary to use data for the period up to March, 2012.

D. Source of data:

16. The import data from 2008-09 up to 2010-11 has been taken from DGCIS in consonance with data already taken in Notice of Initiation, and for 2011-12, it has been taken from IBIS. The data on various economic parameters submitted by the domestic industry in their petition till Q3 of 2011-12 has been verified by this directorate to the extent possible and the verified data has been taken into consideration for injury analysis. However, the data upto Q3 of 2011-12 has been updated for the entire year 2011-12, in respect of various economic parameters, as per certified cost statements furnished by the applicants. The IBIS import data for the year 2011-12 has been considered keeping in view the following facts-
 - (a) DGCIS data for 2011-12 available with the Directorate is not for the complete financial year, in the absence of which it had to be annualized which would not have been appropriate, keeping in view the objections raised by one of the interested party namely Korean Govt against annualization of import data in their post hearing submissions.
 - (b) IBIS data for 2011-12 is available for the whole year and is also transaction wise, which has also been demanded by one of the interested party namely LCPMA in their post hearing submissions.
 - (c) Even the domestic industry has also questioned the accuracy of DGCIS data for the year 2011-12 on the ground that it does not reflect complete transaction wise import of Dioctyl Phthalate in the country which is crucial for the injury analysis. They have

submitted transaction wise import data from IBIS for the year 2011-12 along with their letter requesting for considering the same.

E. Confidentiality of Information submitted

17. The domestic industry has provided information on confidential basis and sought confidentiality on the information/data submitted. The domestic industry provided non confidential version of all submission including the application for safeguard measure as per the provisions of Safeguard Rules, 1997 and Trade Notice No. SG/TN/1/97 dt. 06.09.1997.
18. Rule 7 of the Safeguards Rules and Article 3.2 of WTO Agreement on Safeguards provide for confidentiality. The applicants is not required to disclose such information which is confidential information of an individual company, disclosure of which can cause serious prejudice to the business interests of the company, which is not in public domain and which the applicants has not disclosed before public at large in the past. Accordingly confidentiality, as prayed for by domestic industry is granted.

F. Increased Imports:

19. 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:”*
20. Further, Rule 2(c) of Customs Tariff ((Identification and Assessment of Safeguard Duty) Rules, 1997 provides as follows
 - “(c) ‘Increased quantity’ includes increase in imports whether in absolute terms or relative to domestic production”*
21. The rules require a determination of whether the product under consideration is imported into India in increased quantities as a basic prerequisite for the application of a safeguard measures. 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 rate and amount of the increase in imports, in absolute terms and in relation to domestic production and consumption, as has been held by the panel and later confirmed by the Appellate Body in Argentina –Footwear case¹ also.
22. In its evaluation of whether the investigation by the Argentine authorities

¹ Appellate Body Reports on Argentina — Footwear (EC) WT/DS121/AB/R dated 14 December 1999

demonstrated the required increase in imports under Articles 2.1 and 4.2(a), the Panel in Argentina-Footwear case² stated the following:

... the 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 Agreement provides no numerical guidance as to how this is to be judged, nor in our view could it do so. But this does not mean that this requirement is meaningless. To the contrary, we believe that it means that 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. (emphasis added)

23. With regard to the nature of the increase in imports, the Appellate Body in Argentina—Footwear (EC)³, in contrast to the Panel, held that the increase in imports must have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. Relevant extracts are 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 fulfil 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’.”

24. The Panel on US — Wheat Gluten⁴, 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

² Panel Report on Argentina — Footwear (EC) WT/DS121/R dated 25 June 1999

³ Appellate Body Reports on Argentina — Footwear (EC) WT/DS121/AB/R dated 14 December 1999

⁴ Panel Report on US — Wheat Gluten WT/DS166/R 31 July 2000

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.”

25. In US — Line Pipe, the Panel found, in a statement not reviewed by the Appellate Body, that the word “recent” implies a “retrospective analysis”; but that it does not imply an analysis of the conditions immediately preceding the authority’s decision nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation. Relevant extracts are as follows:

“7.024 [W]e note that the Appellate Body in Argentina-Footwear Safeguard found that ‘the phrase “is being imported” implies that the increase in imports must have been sudden and recent’. According to Korea, the phrase ‘is being imported ... in such increased quantities’ refers to ‘the period immediately preceding the authority’s decision’. The word ‘recent’ — which was used by the Appellate Body in interpreting the phrase ‘is being imported’ — is defined as ‘not long past; that happened, appeared, began to exist, or existed lately’. In other words, the word ‘recent’ implies some form of retrospective analysis. It does not imply an analysis of the conditions immediately preceding the authority’s decision. Nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation. We consider that an analysis that compares the first semester of 1998 with the first semester of 1999 is not inconsistent with the requirement that the increase in imports be ‘recent’.”

26. The analysis of the increased imports of Dioctyl Phthalate has been conducted in the light of the above mentioned evaluations. Dioctyl Phthalate is imported into India from a number of countries, and primarily from Republic of Korea, Malaysia and Taiwan. It has been argued by Leather Cloth and Plastic Manufacturers Association (LCPMA) that domestic producers of the product have themselves imported significant volume of the subject material. Therefore, any analysis of imports should be done excluding such imports made by the domestic industry. The domestic industry has also said that the majority of imports now are either by the importers or consumers and they have no objection if the imports made by the domestic industry are excluded while analyzing increased imports and injury thereof. It is noted that it would be appropriate to analyze the imports after excluding the imports made by the constituents of the domestic industry due to following reasons:
- a. It has been demanded by the opposing interested parties that increase in imports and injury suffered thereof is due to imports made by the domestic industry and therefore in order to analyze the increased imports as also the impact of the imports on the domestic industry, it would be appropriate to examine the trends in imports and consequent change in various economic parameters of the domestic industry after excluding the imports made by the domestic industry from the total imports of the product in question.

- b. The applicants have also contended that imports made by them should be excluded from the gross imports for the purpose of assessment of imports and its impact on the domestic industry.
- c. The impact of the increased imports is required to be determined on the domestic industry. Thus, the imports made by the domestic industry themselves would not, in any case, have had adverse impact on them.
- d. The Rules require the designated authority to examine not only increased imports but also the conditions under which such imports have been made. Section 8B(1) requires the Director General to examine whether the article is imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. Thus, the conditions, under which the increased imports have been reported, are also relevant. In the present case, the condition is such that the DI has also imported and thus their import is required to be excluded for a proper analysis.
- e. In any case, the imposition of safeguard duty will be made on a non discriminatory basis and therefore any imports made, whether by domestic industry or otherwise, would be liable for payment of safeguard duty.
27. In view of the above, I have determined increased imports by excluding the imports made by the domestic producers themselves from the total imports of Dioctyl Phthalate for the POI.
28. It is determined that Dioctyl Phthalate has been imported into India (after excluding the imports made by domestic producers) in such increased quantities and under such conditions in absolute terms as well as compared to the domestic production and consumption as to cause or threaten to cause serious injury to the domestic industry which is as under:

(a) Imports:

Description	Unit	2008-09	2009-10	2010-11	2011-12
Total Imports	MT	40,608	35,210	35,346	41,632
Imports made by DI	MT	13,312	13,726	12,798	2,665
Imports(excluding DI imports)	MT	27,296	21,484	22,548	38,967

29. There is a surge in import both in absolute and relative terms. Imports declined from 27,296 MT in 2008-09 to 21,484 MT in 2009-10 and thereafter increased to 22,548 MT (2010-11) and 38,967 MT in 2011-12. It is noted that imports were higher in 2008-09 partly due to recessionary effect in this period and therefore declined in 2009-10. The imports however surged thereafter from 21,484 (2009-10) to 38,967 MT (2011-12), i.e. by 81% which is sharp, sudden and recent.

(b) Import in relation to production:

It is seen that during the POI, imports have also increased in relation to total domestic

production, as shown below:

Description	Unit	2008-09	2009-10	2010-11	2011-12
Total Indian Production	MT	63,757	74,221	84,710	76,821
Imports(excluding DI imports)	MT	27,296	21,484	22,548	38,967
Imports in relation to production	%	43%	29%	27%	51%

There is a sharp increase of imports to the total production to 51% in 2011-12 from just 27% in 2010-11, which is almost double.

(c) **Import in relation to consumption/demand:**

Description	Unit	2008-09	2009-10	2010-11	2011-12
Demand/Consumption	MT	89,708	94,202	101,704	106,093
Imports(excluding DI imports)	MT	27,296	21,484	22,548	38,967
Imports in relation to Demand/consumption	%	30%	23%	22%	37%

30. Similarly, imports also increased its share in the total demand at the cost of sales of domestic industry, causing injury. Between 2009-10 and 2011-12, whereas the consumption increased by 13%, the imports increased by 81%.

31. It is thus seen that Dioctyl Phthalate has been imported into India (after excluding the imports made by domestic producers) in such increased quantities in absolute terms as well as compared to the domestic production and consumption as to cause or threatening to cause serious injury to the domestic industry. It is held that the increase in imports shows a rising trend which is significant enough to constitute “increased imports” within the meaning of Section 8B of the Act.

32. As regards the arguments that the Korea’s exports dropped to 3382 MT from 11924 MT in the same period in 2011, it is noted that individual country movements in imports are entirely irrelevant under safeguard investigations because cumulative imports from various sources have been considered for surge in imports.

G. Unforeseen Developments:

33. It is noted that there is no specific requirement either in Indian Rules or in WTO Agreement on Safeguards on the methodology that should be followed for analyzing unforeseen developments. The Agreement on Safeguard 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. However, it is important to examine the circumstances which have led to increased imports.

34. In Argentina — Footwear (EC) and Korea — Dairy, the Appellate Body held that “any Safeguard measure imposed after the entry into force of the WTO Agreement must comply with the provisions of both the Agreement on Safeguards and Article XIX of the GATT 1994. Article XIX of GATT 1994 states as follows

1. (a) *If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.*

35. 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 Body in the same case noted a GATT panel report which held that the development must have been unforeseen at the time of tariff negotiation. The Appellate Body in Korea-Dairy case held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.
36. 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”:
37. The panel on US- Steel Safeguards⁵ concluded that the confluence of several events can unite to form the basis of an unforeseen development:

“..... The United States argues that the robustness of the US dollar was a development which combined with the other developments, namely, the currency crises in Asia and the former USSR and the continued growth in steel demand in the United States’ market as other markets declined, lead to increased imports.”

38. I find that the applicants have given a number of reasons for surge in imports, which are summarized below:
- a) Setting up of new plants for manufacturing Phthalic Anhydride by China thereby enhancing their Phthalic Anhydride capacities. With the increase in production of Phthalic Anhydride, the production of Dioctyl Phthalate has also increased in China thereby reducing the market opportunity to the third countries foreign producers to export Dioctyl Phthalate to China. Resultantly, these producers are looking for other market for exports of DOP. The decline in exports of Dioctyl Phthalate in China from the major exporting countries can be seen from below:

⁵ Para 86 of Korea Dairy case Appellate Body Report Of WTO 36

Korea Exports of Dioctyl Phthalate

Period	World	China
2007	2,38,411	1,40,534
2008	2,11,208	1,08,002
2009	2,07,669	86,883
2010	1,85,132	68,172
2011	1,93,678	32,404

Source: Korea Customs

Malaysia Exports of Dioctyl Phthalate

Period	World	China
2007	75,954	18,262
2008	62,768	9,969
2009	68,026	16,689
2010	62,344	13,959
2011	37,409	3,224

Source: Malaysia Customs

Taiwan Exports of Dioctyl Phthalate

Period	World	China
2007	1,60,843	1,32,649
2008	1,08,075	81,115
2009	1,73,896	1,55,783
2010	84,597	70,212
2011	46,343	19,502

Source: Taiwan Customs

b) Imports from these countries to India is given below:-

Period	Korea RP	Taiwan	Malaysia	Total
2008-09	13,424	4,875	11,971	30,270
2009-10	13,967	1,340	15,657	30,964
2010-11	19,223	1,605	6,174	27,002
2011-12	16,798	17,386	6,698	40,882

It may be seen from the table above that Imports to India from Korea RP, Malaysia and Taiwan remained at significant level and cumulatively increased from 30,270 MT to 40,882 MT over the POI and sharply from 27002 MT in 2010-11 to 40882 MT in 2011-12 i.e. an increase of 34%, which roughly constitutes to about 98 % of the total imports (including that of DI).

c) Moreover, the property bubble-burst in China has impacted most in the current DOP and the downstream PVC market. There has been a reverse trend in the housing,

construction and real estate market in China leading Chinese Government to take strict regulatory measures which is reflected below:

ICIS PRICING (PHTHALIC ANHYDRIDE), 18th November 2011

Producers said that sentiment among Chinese buyers is still cautious because of fears of a property bubble developing in China, as well as rising inflation in the country.

ICIS PRICING (PHTHALIC ANHYDRIDE), 28 October 2011

In China, many polyvinyl chloride (PVC) producers, fearing an upcoming strong correction in the Chinese property market, had stopped stocking up on DOP material. PVC is a commonly used polymer in the construction segment for window panels, door frames, leather sofas and pipes.

ICIS PRICING (PHTHALIC ANHYDRIDE), 23 December, 2011

Regional producers and traders said that buyers were still cautious about committing to bulk purchases, as they were concerned about the health of their domestic real estate market.

Local media in China reported that government-sponsored land auctions in cities nationwide have slowed in recent months, reflecting shrinking consumer.

ICIS PRICING (PHTHALIC ANHYDRIDE), 30th December 2011

Buyers, however, are concerned with the health of China's property market. The country's once red-hot property market cooled off considerably after a tough round of tightening policies was passed by the Chinese government from April.

China will maintain its regulation policies on the property market next year to return housing prices to a reasonable level, according to decisions made at the country's central economic work conference earlier this month.

- d) Whereas initially China, which was a net importer of DOP and Phthalic Anhydride, it started exporting to the Eurozone and other Countries given its excessive capacity and nil demand in domestic market post-Olympics. But in the light of Eurozone debt crisis the demand of DOP in those markets is unstable, leading DOP and upstream Phthalic Anhydride producers to dump their inventories at whatever price available.

ICIS PRICING (PHTHALIC ANHYDRIDE), 16th December 2011

This means that PA producers could be in for a rough ride moving into 2012, as PA is one of the feedstock's used in the production of dioctyl phthalate (DOP). DOP is used heavily in the production of construction materials and consumer goods.

The euro zone is a large importer of these products from both China and southeast.

Regional traders, however, cautioned that the price rally could be short-lived, because of global economic uncertainty and the euro zone financial crisis.

ICIS PRICING (PHTHALIC ANHYDRIDE), 23 December, 2011

Traders and buyers said that they were also concerned about the continuing euro zone sovereign debt crisis. The euro zone is a large importer of construction materials and consumer goods from China.

ICIS PRICING (PHTHALIC ANHYDRIDE), 30th December 2011

Meanwhile, the sovereign debt crisis in the euro zone remains unresolved and buying interest from the construction industry has plummeted as a mood of austerity prevails in the region.

39. Having regard to the information on record and submissions made by the interested parties, it is observed that the imports of product under consideration increased for a number of reasons. Setting up of new plants of phthalic anhydride in China which resulted in increase in production of Phthalic Anhydride, the production of Dioctyl Phthalate has also increased in China thereby reducing the market opportunity to the third countries foreign producers to export Dioctyl Phthalate to China. Exporters from Korea and Taiwan were compelled to search for the growing market for their product and India being the most viable choice was targeted, leading to increased imports in India, All these factors taken together form the unforeseen reasons for the increase in imports of DOP. Therefore, I hold the rise in import of Dioctyl Phthalate from Korea and Taiwan to be an unforeseen development resulting in increase in imports causing serious injury and threat of serious injury to the domestic industry.

H. Serious Injury and Threat of Serious Injury:

40. "Serious injury" means an injury causing overall impairment in the performance of the domestic industry; and "threat of serious injury" means a clear and imminent danger of serious injury.
41. 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 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, "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.

42. In *Argentina — Footwear (EC)*⁶, the Appellate Body discussed the relationship between the definition of “serious injury” in Article 4.1(a) and the requirement of an evaluation of “all relevant factors” in Article 4.2(a):

“[I]t is only when the overall position of the domestic industry is evaluated, in light of all the relevant factors having a bearing on a situation of that industry, that it can be determined whether there is ‘a significant overall impairment’ in the position of that industry. Although Article 4.2(a) technically requires that certain listed factors must be evaluated, and that all other relevant factors must be evaluated, that provision does not specify what such an evaluation must demonstrate. Obviously, 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 declines in sales, employment and productivity that 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 whether the competent authorities in a particular case have evaluated all the listed factors and any other relevant factors, we believe that it is essential for a panel to take the definition of ‘serious injury’ in Article 4.1(a) of the Agreement on Safeguards into account in its review of any determination of ‘serious injury’.”

43. The Panel on *US — Wheat Gluten*⁷, in a finding upheld by the Appellate Body, elaborated on the meaning of the term “serious injury”:

“[A] determination as to the existence of such ‘significant overall impairment’ can be made only on the basis of an evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.

...

[W]e do not consider that a negative trend in every single factor examined is necessary in order for an industry to be in a position of significant overall impairment. Rather, it is the totality of the trends, and their interaction, which must be taken into account in a serious injury determination. Thus, such upturns in a number of factors would not necessarily preclude a determination of serious injury. It

⁶ Appellate Body Reports on *Argentina — Footwear (EC)* WT/DS121/AB/R dated 14 December 1999

⁷ Panel Report on *US — Wheat Gluten* WT/DS166/R 31 July 2000

is for the investigating authorities to assess and weigh the evidence before them, and to give an adequate, reasoned and reasonable explanation of how the facts support the determination made.”

44. Accordingly, in analyzing serious injury or threat of serious injury all factors, which are mentioned in the rules as well as other factors which are relevant for determination of serious injury or threat of serious injury, have been considered. No single factor has been considered as dispositive. All relevant factors within the context of the relevant business cycle and conditions which are relevant to the affected industry have been considered. The determination of serious injury or threat of serious injury is based on evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.
45. It is held that the increased imports of Dioctyl Phthalate have caused and are threatening to cause serious injury to the domestic producers of Dioctyl Phthalate as indicated by the following factors.

a. Demand/consumption:

46. Demand or apparent consumption of the product in India has been determined as the sum of sales of Domestic Industry and imports from all sources (excluding imports made by domestic industry). It is noted that the demand of Dioctyl Phthalate has shown a positive trend throughout the period.

Year	Unit	2008-09	2009-10	2010-11	2011-12
Sales of Domestic Industry	MT	58,880	67,959	72,035	65,221
Sales of other producers	MT	3,532	4,759	7,121	1,905
Imports Volume	MT	27,296	21,484	22,548	38,967
Total Demand/Consumption	MT	89,708	94,202	101,704	106,093

47. It is seen that with the increase in demand, the sales of domestic industry have only increased by 11% in 2011-12 since the base year but the Imports have increased by 43% in 2011-12 since the base year.

b. Market Share:

48. It is seen from the table below that the market share of the domestic industry in the total consumption has declined.

Market share (in Demand)	Unit	2008-09	2009-10	2010-11	2011-12
Domestic Industry	MT	66%	72%	71%	61%
Producers (other than DI)	MT	4%	5%	7%	2%
Import	MT	30%	23%	22%	37%

The market share of the domestic industry increased from 66% (2008-09) to 72% (2009-10) and thereafter declined to 71% (2010-11) and further to 61% (2011-12). It is noted that the market share of imports was high and consequently market share of the domestic industry

was low in 2008-09 due to recessionary effect in this period. Market share of the domestic industry increased in 2009-10. The same however declined, thereafter, significantly.

c. Production:

49. The production has been determined on the basis of production reported by the Domestic Industry in its excise records. The statistics relating to production pertaining to the domestic industry is shown below.

Particulars	Unit	2008-09	2009-10	2010-11	2011-12
Total Capacity	MT	155,750	155,750	155,750	190,750
Production	MT	60,242	69,468	77,492	74,943

50. It is seen that the production of the domestic industry was increasing from 60242 MT (2008-09) to 69468 MT (2009-10) and then to 77492 MT (2010-11). The production however thereafter declined to 74943 MT in 2011-12. Given that the domestic industry further enhanced its capacity in 2011-12, the decline in production despite increase in capacity is quite significant and is clearly adverse situation.

d. Domestic sale:

51. The sale of the domestic industry has been determined on the basis of goods cleared by the Domestic Industry from their factory premises for domestic market, as reported in their excise records. The table below contains sales by domestic industry and total export.

Particulars	Unit	2008-09	2009-10	2010-11	2011-12
Sales Volume - Domestic	MT	58,880	67,959	72,035	65,221
Sales Volume - Exports	MT	1,326	1,892	4,274	10,023
Sales Volume - Total	MT	60,206	69,851	76,309	75,244

52. It is seen that the domestic sales grew from 58,880 MT (2008-09) to 67,959 MT (2009-10) and were 72,035 MT in 2010-11. The domestic sales however, declined thereafter to 65,221 MT in 2011-12. The domestic sales of the domestic industry have declined in the most recent period. Even rise in exports did not improve the condition in 2011-12 when DI incurred losses and inventory kept piling up.

e. Capacity Utilization:

53. Capacity utilization of the domestic industry was as follows –

Particulars	Unit	2008-09	2009-10	2010-11	2011-12
Plant Capacity	MT	155,750	155,750	155,750	190,750
Production of PUC	MT	60,242	69,468	77,492	74,943
Capacity utilization	%	39%	45%	50%	39%

54. It is seen that the capacity utilization of the domestic industry was increasing from 39% (2008-09) to 45% (2009-10) and then to 50% (2010-11). The capacity utilization however thereafter declined to 39% in 2011-12.
55. Given that the domestic industry enhanced its capacity in 2011-12, it was considered whether the decline in capacity utilization was due to increase in capacity. It is noted that had the domestic industry not enhanced capacity, its utilization in 2011-12 would have been 48%. Thus, capacity utilization would have shown decline even if the domestic industry would not have enhanced capacity.
56. It is argued by the interested parties that the domestic industry has excessive capacities. The domestic industry clarified in this regard that it has capacities which are being used for production of other products as well and the domestic industry on its part made efforts to utilize the plants and hence the low utilization given above does not mean inefficiencies of the domestic industry or high fixed costs of the domestic industry.

f. Inventories:

57. As the market share of the domestic industry is decreasing and that of imports is increasing, the domestic industry was unable to increase its sales volume in proportion to increase in demand and had to face the problems of accumulated inventories. The levels of average inventories declined in 2009-10 to 823 MT but thereafter increased to 1,223 MT in 2010-11 and 1744 MT in 2011-12.

Year	Index	Average Inventory(MT)
2008-09	100	1066
2009-10	77	823
2010-11	115	1223
2011-12	163	1744

g. Employment and productivity:

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

h. Price undercutting, suppression/depression:

58. It is seen that the landed price of imports is below the selling price of the domestic industry. The imports are available at prices lower than the selling price of domestic industry making it attractive for consumers to switch over to imports. Due to low priced imports, domestic industry is facing decline in production, capacity utilization,

profits and return on investment.

59. The trend in cost of production and selling price is also examined. It is seen that whereas both the cost of production and selling price increased, the increase in selling price is less than the increase in cost of production.

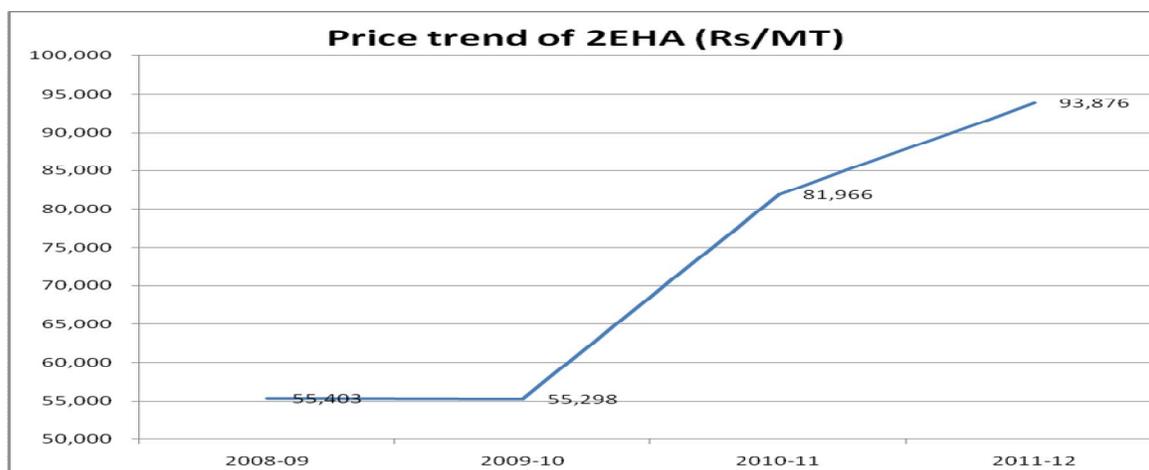
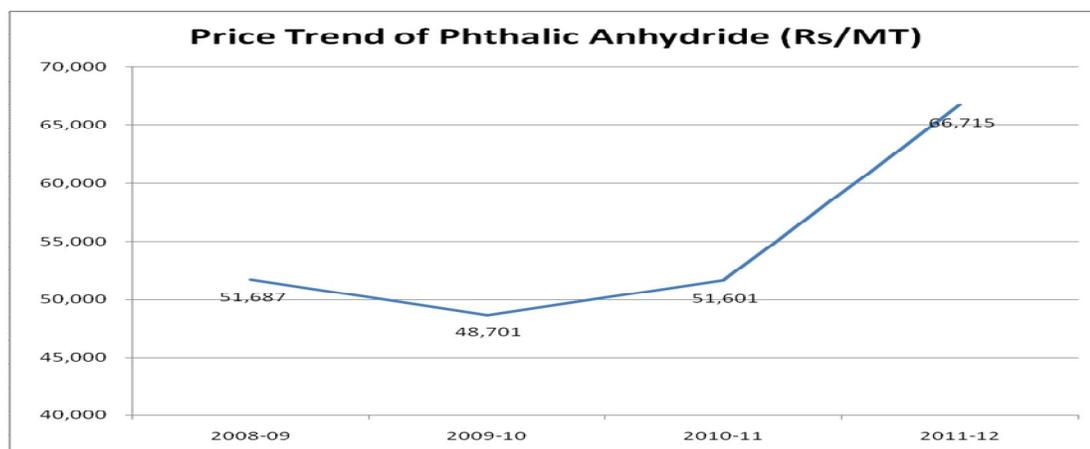
Particulars	Unit	2008-09	2009-10	2010-11	2011-12
Cost of Production	Indexed	100	87	113	127
Selling price	Indexed	100	93	120	126

(Source : Domestic Industry)

60. The reasons for increase in cost of production were also examined. It is noted that the major raw material for manufacture of Dioctyl Phthalate is Phthalic Anhydride(PAN) and 2 EHA. The price movement in Phthalic Anhydride & 2 EHA prices is as follows:

Particulars	Unit	2008-09	2009-10	2010-11	2011-12
Cost of Production	Indexed	100	87	113	127
Price of Phthalic Anhydride	Indexed	100	94	100	129
Prices of 2EHA	Indexed	100	100	148	169
Total Raw Material Cost	Indexed	100	98	131	155

(Source : Domestic Industry)



61. It is seen that the cost of production of the domestic industry has moved in tandem with the price of major raw material throughout the injury period. It is therefore concluded that the increase in cost of production is due to increase in raw material prices.

i. Profit & Loss:

62. The Domestic Industry has reported profit before tax, duly certified by a practicing Chartered Accountant. The profitability of the domestic industry has steeply deteriorated to such a situation that the domestic industry is now suffering financial losses. This is evident from the table below:-

Particulars	Unit	2008-09	2009-10	2010-11	2011-12
Profit/(Loss)	Rs./Lacs	(****)	****	****	(****)
Profit/Loss (Indexed)	%	(100)	404	509	(210)

(Source : Certified cost statements of the four companies constituting domestic industry)

63. It is seen that the domestic industry suffered losses during 2008-09, which the domestic industry contended was due to recession. The domestic industry was however thereafter able to earn profits in 2009-10, extent of which increased till 2010-11. The domestic industry however suffered significant financial losses once again in 2011-12 clearly showing the effect of increased imports.

64. As regards the argument of the interested parties that the balance sheet of the domestic industry does not show injury, it is noted that constituents of domestic industry are making a number of different types of plasticizers and are also involved in other trading activities. The annual report does not provide performance dedicated for Dioctyl Phthalate and therefore annual report cannot be relied upon. Further Dioctyl Phthalate constitutes 50-60% of the total turnover of the domestic industry over the period considered and therefore the balance sheet, which provides for the overall performance of the domestic industry, cannot be relied upon for the Dioctyl Phthalate performance.

65. Conclusion regarding serious injury –The imports of the product under consideration have increased significantly in absolute terms and in relation to production and consumption in India. It is noted that the imports volume was high in 2008-09, which the domestic industry contended, was due to global recessionary effect. The volume of imports both in absolute terms and in relation to production and consumption declined in 2009-10 after the recessionary effect was subsided. However, the imports surged thereafter significantly both in absolute terms and in relation to production and consumption in India. As a result of significant surge in imports, the domestic industry has suffered serious injury. Performance of the domestic industry improved upto 2010-11 in respect of production, capacity utilization, domestic sales and profits. Production, capacity utilization, domestic sales, profits however declined significantly in 2011-12. Market share of the domestic industry improved in 2009-10 and declined thereafter significantly. Inventories with the domestic industry declined in 2009-10 and increased thereafter. Thus, evaluation of the overall position of the domestic industry in light of all the relevant factors having a bearing on the situation of the

domestic industry, shows ‘a significant overall impairment’. It is thus concluded that domestic industry has suffered serious injury as a result of increased imports of the product under consideration.

j. Threat of serious injury

66. Section 8B subsection 6(d) of Customs Tariff Act provides as follows:

“threat of serious injury” means a clear and imminent danger of serious injury.

67. The rules provides as follows –

“In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a demonstrate industry, the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the article concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.”

68. The Panel on US — Lamb considered that a focus on the recent data available pertaining to the end of an investigation period was logical in view of the future-oriented nature of a threat of serious injury analysis. The relevant extracts are as follows:

“In our view, due to the future-oriented nature of a threat analysis, it would seem logical that occurrences at the beginning of an investigation period are less relevant than those at the end of that period. While the SG Agreement does not specify the appropriate duration of the time-period to be considered in an investigation, the Panel and Appellate Body in Argentina — Footwear both considered this issue to some extent. Both concluded that (for an actual serious injury finding) the most recent data were clearly the most relevant. In particular, the Appellate Body stated that ‘the relevant investigation period should not only end in the very recent past, the investigation period should be the recent past’.

Given that a threat of serious injury pertains to imminent significant overall impairment, i.e., an event to take place in the immediate future, the same principle should hold true a fortiori for threat determinations compared with present serious injury determinations. This supports the view that the USITC was correct to focus on the most recent data available from the end of the investigation period. We also consider that data from 1997 and interim-1998 cover an adequate and reasonable time-period if complemented by projections extrapolating existing trends into the imminent future so as to ensure the prospective analysis which a threat determination requires.

Therefore, we consider that, by basing its determination on events at the end of the investigation period (i.e., one year and nine months) rather than over the course of the entire investigation period, the USITC analysed sufficiently recent data for making a valid evaluation of whether significant overall impairment was “imminent” in the near future. By the same token, we also consider that, by basing its determination at all on data about events from the recent past, rather than relying exclusively on projections for the various industry indicators into the future, the USITC made its threat determination on the basis of objective and quantifiable facts, and ‘not merely on allegation, conjecture or remote possibility’

69. The Panel Report on US — Lamb, in a finding subsequently not reviewed by the Appellate Body, which addressed the question whether once imports have increased to already cause some degree of injury, there is no requirement of additional increased imports in order to legitimately determine the existence of a threat of serious injury. The relevant extracts are as follows:

“The complainants further claim that the US reference to projections of future increases in imports in defending its threat analysis amounts to equating a ‘threat of increased imports’ with a ‘threat of serious injury’, which the Argentina — Footwear panel found not to be permissible....

*We agree in general with the complainants’ argument that a threat of increased imports as such cannot be equated with threat of serious injury. However, in our view, this is not what the USITC has done in this case. Moreover, we also deem it possible that imports continuing on an elevated level for a longer period without further increasing at the end of the investigation period may, if unchecked, go on to cause serious injury (i.e., may threaten to cause serious injury). That is, if increased imports at a certain point in time cause less than serious injury, it is not necessarily true that a threat of serious injury can only be caused by a further increase, i.e., additional increased imports. **In our view, in the particular circumstances of a case, a continuation of imports at an already recently increased level may suffice to cause such threat.***

70. There is a threat of serious injury to the DI due to surge in imports & due to excessive capacity creation by China to meet its short-lived demand for DOP and other downstream products like PVC.

Source: ICIS PRICING (PHTHALIC ANHYDRIDE), 28 October 2011

China's Continental Petrochemicals (Zhuhai) has resumed the construction work at its new integrated petrochemicals facility at Zhuhai in China, a source close to the company said on Thursday. The complex will house a 120,000 tonne/year DOP plant and an 80,000 tonne/year PA plant.

Taiwan's UPC Technology Corp is aiming to bring on stream its new petrochemical complex at Liaoyang in China's Liaoning province by mid-July 2013, a company

source said on Thursday. UPC will start building the complex early next year said the source. The complex will comprise a 140,000 tonne/year PA plant and a 240,000 tonne/year DOP plant.

Source: ICIS PRICING (PHTHALIC ANHYDRIDE), 2nd December 2011

Taiwan's Nan Ya Plastics is aiming to bring its total PA operating rate to 100% of capacity by the middle of December, as the company is expecting PA demand from China and southeast Asia to pick up by the end of the year, a company source said on Friday.

The source added that Nan Ya's demand for PA will increase when it restarts its downstream 400,000 tonne/year dioctyl phthalate (DOP) plant at the same site on 5 December.

71. Furthermore, a significant impact on DOP market has been of floods in Thailand which grappled the buying trends in the country at zero level. This resulted in diversion of Chinese inventories to other viable markets. This situation persists in light of already existing capacities with Korean and Taiwanese producers which once were chief exporters of DOP to China. In fact, one Taiwanese producer is in process of starting up its under-construction facility in July 2013, comprising a 140,000 tonne/year Phthalic Anhydride plant and a 240,000 tonne/year DOP plant.

ICIS PRICING (PHTHALIC ANHYDRIDE), 9th December 2011

Buyers in Thailand are buying only on a need-to basis, as most of their plants are not operating at full capacity.

ICIS PRICING (PHTHALIC ANHYDRIDE), 16th December 2011

In Thailand, buying interest remains slow as the country is still grappling with clearing floodwaters from their factories.

72. The imports are entering the Indian market in increased quantities in absolute terms as well as in relation to production and consumption in India. Significant price difference between the domestic and imported product establishes the adverse price effect of increased imports on Domestic Industry. Considering the net selling price of the domestic industry for the subject goods, the price difference between domestic and imports is significantly high and is likely to remain positive making the imports lucrative and threatening injury to the domestic industry.

k. Other Factors of Injury:

73. Para (2) of Annexure to Rule 8 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 lays down that The determination referred to in subparagraph (1) shall not be made unless the investigation 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 import are causing “serious injury” to the Domestic Industry at the same time, such “serious injury” shall not be attributed to increased imports. As such, the possible other factors that may be attributed to the serious injury to Domestic Industry have been examined.

74. Followings are relevant in this regard –

- a) Demand of the product: While overall demand has increased, volume of imports remained significant. In fact, it is noted whereas the market share of the domestic industry and domestic producers as a whole declined, that of imports increased. It is thus clearly seen that the increased imports have taken away higher share of the demand.
- b) Changes in the patterns of consumption: The pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have contributed to the injury to the domestic industry.
- c) Trade restrictive practices of and competition between the foreign and domestic producers: There is no trade restrictive practice which could have contributed to the injury to the domestic industry.
- d) Export performance: Applicants have exported small volumes of the product under consideration. However, the claimed injury to the domestic industry is on account of domestic operations. Applicants have provided costing and injury information for domestic operation. Claimed injury to domestic industry cannot be attributed to exports.
- e) Developments in technology: Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.

75. It is thus noted that possible other factors have not caused injury to the domestic industry.

I. Causal Link between Increased Import and Serious injury or Threat of Serious injury:

76. A comprehensive evaluation of parameters as above demonstrates that serious injury and threat of serious injury is being caused by increased imports. 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. In the instant case, the imports are available at prices lower than the selling price of Domestic Industry. The consumers are increasingly switching over to imports due to which the Domestic Industry is faced with losing sales and rising inventory. The production, capacity utilization, profits, return on investment, all declined due to increased imports. The imports are undercutting the prices of the Domestic Industry. Consequently, the Domestic Industry has suffered decline in profits and return on investment. This is in a situation when the total available capacity of the DI is more than the domestic demand/consumption. It is thus evident that serious injury to the Domestic Industry

has been caused by the increased imports.

J. Public Interest:

77. Article 3 of the Agreement on Safeguards states as follows:

1. A Member may apply a Safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a Safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

78. The imposition of safeguard duty can affect different players differently and the impacts may not always be most suitable for different economic players when they have competing interests. Therefore interests of various economic player groups have been analyzed based on the available information.

79. LCPMA submitted as follows:

- a) Being the major users of DOP, LCPMA members would be the major affected parties in case of imposition of safeguard duty since their product does not get any protection. Thus safeguard duty should not be imposed if it is against public interest.
- b) LCPMA members are also domestic industry and also need a fair play to compete with imports of their finished goods. There is no extra protection for their products. The leading foreign leather cloth producers are keen to export leather cloth to India.
- c) Since all state actions are taken in larger public interest, it is imperative for the government authorities to examine public interest issue.

80. The domestic industry submitted as follows:

- a) The Plastiziers consumer industry is such that it can and does pass over its cost increases to the downstream products. Further the impact of say 20% safeguard duty on its 3 major users is minimal, as the impact of the same on Leather Cloth is 0.29%, on Copper cable is 0.02% and on PVC flexible pipe is 0.43% which is almost negligible.
- b) DOP has nil customs duty protection. Two major raw materials namely Phthalic Anhydride and 2EHA used in the production of the product under consideration have the same level of customs duty. However, these two have 2.5% duty protection respectively.
- c) In the past decade a number of producers have already shut down their operations. Moreover, if the injury to the domestic industry continues, it may lead to the closure of the remaining domestic producers, as a result of which, 'DOP' an important

chemical would not be manufactured in the Country thereby leaving the users of the 'DOP' wholly dependent on the imports.

81. It is seen that the selling price of the domestic industry is significantly lower than the cost of sales. Considering the present profitability of the DOP industry, non levy of safeguard duty can lead to closure of DOP industry. In any case, the producers of Dioctyl Phthalate does not have any duty protection which coupled with the fact that the many producers in the past have closed down their operation and the minimal impact of safeguard duty on consumers, it noted that imposition of safeguard duty would be in public interest.

82. The imposition of safeguard duty would be in public interest as it will not only prevent injury to the domestic industry but also would help in checking further decline of the domestic industry.

83. The domestic industry has quantified the impact of 20% safeguard duty on eventual downstream products. It is found that the 20% increase in price on account of safeguard duty, if fully passed onto the eventual end product (assuming that the domestic industry increases the prices by 20%) would have minimal impact on the eventual end products, as is seen from the following

- a. Leather Cloth 0.29%,
- b. Copper cable 0.02%
- c. PVC flexible pipe is 0.43%.

84. The above claim of domestic industry has not been disputed by the consumer association or other interested parties present at the time of oral hearing. Nor the written submissions filed by any interested party contain any other quantified claim to the contrary. It is concluded that even if the prices are increased by 20%, the impact of the same on the eventual end product would not be significantly adverse. The imposition of safeguard duty will not result in significant increase in the prices of eventual end products.

85. In the light of the facts on record, it is concluded that imposition of safeguard duty would be in public interest and the interests of end users would not be very adversely impacted.

K. Adjustment Plan:

86. It has been argued by opposing interested parties that the domestic industry has not submitted viable adjustment plan to meet the international competition. The applicants submitted adjustment plan with the application and subsequent written submissions.

87. The Rule 5(2) of Safeguard Rules 1997 requires submission of a statement on "*efforts being taken or planned to be taken or both to make positive adjustment to import competition*". The WTO Agreement on Safeguard provides that a member shall apply safeguard measure only to the extent necessary to prevent or remedy serious injury and facilitate adjustment.

88. The purpose of definitive safeguard measure is to provide the domestic producers with a limited period of time in which to restructure so as to more effectively compete with the

imports. Section 8B (4) of Customs Tariff Act 1975 and Rule 16(2) of Safeguard Rules 1997 prohibits any possible extension of measure if there is no evidence that the domestic producers are adjusting.

89. Following are the adjustments plan provided by the domestic industry essentially comprising of the following:

- d. Batch process to continuous process
- e. Automation of plants
- f. Waste Recovery
- g. Reduction in energy cost
- h. Stringent monitoring of the plant using IT
- i. Reduction in administrative expenses
- j. Effective inventory management
- k. Power saving by modernizing electrical equipments
- l. Use of better manufacturing practices
- m. Improvement in management practices

90. The restructuring plan submitted by the domestic industry focuses on cost reduction and optimum utilization of existing production capacity. It is noted that the adjustment plan of domestic industry is reasonable and feasible and viable which is likely to be implemented.

91. It is further noted that Domestic Industry has already started its efforts towards its cost reduction in terms of energy cost, administration overheads and other conversion cost etc, which is evident from the table below:

Particulars	Unit	2009-10	2010-11	2011-12
Cost of Production	Indexed	100	130	146
Total Raw Material Cost	Indexed	100	134	159
Overhead /conversion cost	Indexed	100	111	89

92. It is evident from the table above that Overhead cost of the Domestic Industry has declined in the recent period viz 2011-12 despite increase in raw material cost. This shows that industry has taken efforts to improve efficiency in operating norms in the recent period.

L. Developing Nations:

93. The percentages of imports from developing nations have also been examined. Except Malaysia who constitutes 16.72% of total imports in India during FY 2010-11 and FY 2011-12, other developing nations individually and collectively have less than 3% and 9% share respectively of total imports in India. Therefore, imports of product under consideration originating from developing nations except Malaysia may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

M. Conclusion:

94. In view of the findings above, it is concluded that increased imports of Dioctyl Phthalate into India have caused or threatened to cause serious injury to the domestic producers of Dioctyl Phthalate and it will be in the public interest to impose safeguard duty on imports of Dioctyl Phthalate into India, in terms of Rule 12 of the Customs Tariff

(Identification and Assessment of Safeguard Duty) Rules 1997. The period is considered to be the minimum requirement to protect the interest of domestic industry. Further, the calculated safeguard duty has been moderated downward to allow imports to maintain competition in domestic market in the interest of end users and consumers. The domestic producers have claimed a certain amount of profit on the basis of expected return on capital employed etc. which is considered to be on the higher side and, therefore, a lower amount of profit (confidential) based on the weighted average cost of production has been considered appropriate and allowed. Thus, on the basis of the above findings it is seen that

- a. Imports of the product under consideration have increased over the injury period in absolute terms with a sharp increase in imports in the recent period,
- b. Increased imports of DOP (Diethyl Phthalate) from various countries have caused and threatened to cause serious injury to the domestic industry/producers of DOP; and
- c. It has been established that injury to various economic parameters of the domestic industry like production, sale, inventory etc. has been caused by the increased imports of DOP; and
- d. It will be in the public interest to impose safeguard duty on imports of DOP from all countries, except originating from developing nations except Malaysia in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

N. Recommendation:

95. In terms of Rule 12 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997, after considering the average cost of production of Diethyl Phthalate by the domestic producers, after allowing a reasonable return on capital employed, a Safeguard Duty on all import of Diethyl phthalate, an organic compound and abbreviated as DOP falling under Chapter heading 29173920 under the Custom Tariff Act'75 and also known commonly as Bis (2-ethylhexyl) phthalate(di-2-ethylhexyl) phthalate, commonly abbreviated DEHP, also an organic compound with the formula C₆H₄(C₈H₁₇COO)₂ is hereby recommended for imposition in the following manner:

Period	Rate of Safeguard duty
First year	15%
Second year	10%

Recommendation for levying of the aforementioned safeguard duty is considered to be the minimum required to protect the interest of domestic industry, to be imposed on imports of such goods on a non discriminatory basis. However, as the imports from developing nations except Malaysia do not exceed 3% individually and 9% collectively, the import of product under consideration originating from developing nations except Malaysia may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

(Indrani Dutt Majumder)

Director General