**MINISTRY OF FINANCE**

**(Department of Revenue)**

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

NOTIFICATION

New Delhi, the 18th November, 2009

**Sub: Safeguard investigation concerning imports of Linear Alkyl Benzene 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 (i) M/s. Reliance Industries Ltd., Mumbai, (ii) M/s Tamilnadu Petroproducts Ltd., Chennai, (iii) M/s Nirma Ltd., Ahmedabad (iv) M/s Indian Oil Corporation Ltd., New Delhi (Supporter) seeking imposition of Safeguard Duty on imports of Linear Alkyl Benzene into India alleging that increased imports of Linear Alkyl Benzene is causing and/or threatening to cause serious injury to the domestic producers of Linear Alkyl Benzene in India. Having satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of Linear Alkyl Benzene was initiated vide notice of initiation dated 19th December 2008 published in the Gazette 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**

(i) M/s. Reliance Industries Ltd., Mumbai,
(ii) M/s Tamilnadu Petroproducts Ltd., Chennai,
(iii) M/s Nirma Ltd., Ahmedabad
(iv) M/s Indian Oil Corporation Ltd., New Delhi (Supporter)

**Importers**

(i) Fena Pvt Ltd, A-67&68 Mettupalayam, PIPDIC Industrial Area, Pondicherry, 605009

(ii) Skill Dyechem, Village Panchpara,PO Radhadasi- 711309,Howrah, West Bengal

(iii) Sai Sulphonates P Ltd, 21, Princep Street, Kolkata 700072,West Bengal

(iv) Rohit Surfactants Pvt Ltd. (GHARI),KDC- Chaubepur unit,117/H-2/202, Pandu Nagar,Kanpur- 200005,Uttar Pradesh

**Exporters**

(i) Iran Chemicals Industries Investment Companies, No.91 Saidi St Africa Ave Teheran ( 19679 ) Iran .

(ii) Gulf Farabi Petrochemical Co. Al-Jubail Industrial City 31961, P.O. Box 11763, Kingdom Of Saudi Arabia

(iii) Seef Limited, Qatar, Seef Limited, Post Box: 50077, Mesaieed, State Of Qatar

(iv) Kolmar Group Ag, Laubehof, Metallstrasse 9, 6300 Zug, Switzerland

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:

1. M/s Fashion Suiting (P) Ltd.
3, Chhabra Mansion,
Puri Road
Bhilwara-311001

2. M/s Shree Unicon Organics Pvt. Ltd.
BS, Apjee,
130 Mumbai Samachar Marg
Mumbai-400023

3. A.R Salphonates Pvt. Ltd.
Plot No. N41
Additional Ambernath,
MIDC Anand Nagar,
Dist.Thane -421501
Maharashtra

4. Tamil Nadu Small Scale Soap & Detergents
Chateau 'D Ampa, IV Floor ,
No37, Old No. 110
Nelson Manickam Road,
Chennai-600029

5. Shanati Nath Detergents (P) Limited
P-15, Kalakar Street,
Kolkata-700007

6. Rajaram Group of Industries
14, Azeez Nagar IInd Street
Kodambakkam
Chennai.600024

7. Kishors Sons Detergents Pvt. Ltd.
15-9-469, Mahanoongunj
Hydrerabad – 500012. (A..P.)
India

8. Advance Surfactants India Limited
511/2/1. Rajokri,
New Delhi-110038

9. A.R. Stanchem Pvt. Ltd.
Exporters & Manufacturers
Old Court House Street
2nd Floor, Coke & Kalvay Building
Kolkata 700001

10. New India Detergents Limited
A-2/25 Model Town -1
Delhi-110009

11. M/s Small Scale Detergents
43 European Asyum Lane ,
Kolkata -700016

12. Standards Surfactants Ltd
8/5 Arya Nagar,

Kanpur-208002

13. Gora Mal Hari Ram Ltd.
39, Najafgarh Road, Indl. Area
New Delhi -15

14. Detergents Manufacturers Associations
148 New Okhla, Industrial Complex-I
New Delhi-110020

15. Barkur Surfactants Pvt. Ltd.
Unitop House , East West Estate
Safed Pool, Andheri Kurla Road
Mumbai-400072

16. ISRO Product

Unitop House , East West Estate
Safed Pool, Andhari Kurla Road
Mumbai-400072

17. S. Kumars Detergents Pvt. Ltd
4-D, Local Shopping Centre ,
A Block , Ring Road,
Naraina , New Delhi-110028

18. Saci- Chem
59 & 60 DSIDC, Industrial Complex
Okhla , Phase-I, New Delhi-110020

19. Hipolin Limited ,
Madhuban , 4th Floor , Ellis bridge,
Ahmedabad -380006

20. All India Federation of Detergents Manufacturers,
511/2/1, Rajokari,
New Delhi -38

21. Maharashtra Small Scale Soap Detergents Manufacturers Association,
Shree Veerabai Maa Niwas,

Shastri Nagar Square, Nagpur-8,

Maharashtra

22. Gujrat Small Scale Detergents Manufacturing Association,
C/o Kishore Soap Industries,
Maheshwari Mill Road,
Tavdipura, Shahibaug,
Ahmedabad – 380004

23. Power Soaps Ltd
62-B, North Boag Road, T. Nagar,
Chennai-600017

24. M/s Bhaskar Venkatesh Products Pvt. Ltd.,
Bhawani Complex,
35, Hanumanganj,
Near Jumerati Corner,
Bhopal – 462001 (M.P.)

25. M/s Abdos Consumer Care Limited,
Jalan Compound,
Bombay Highway, NH No. 6,
Biparannapara, Howrah – 711411

26. M/s Prabu Soap Works,
P.Box No. 5115, 3/A1,
Thayir Itteri Road,
Kannappan Nagar,
Rathinapuri (P.O.) Coimbatore – 641 027.

27. M/s Shriram Bharat Chemicals & Detergents (P) Ltd.,
1/56, Sanjay Gandhi Nagar,
Nochipalayam Road,
46, Pundhur Village, Erode – 638002

28. M/s Bharathi Soap Works,
Ist Line,
Nallacheruvu,
Guntur – 522 003 (A.P.)

29. M/s Sabari Detergents,

191, Valparai Road,

Avalchinnampalayam,
Zamin Kottampatti,
Pollachi – 642 123

30. M/s S.S. Enterprises,

No. 43, SIDCO Industrial Estate,
Dindigul – 624 003.

31. M/s Man Chemicals,
20/1, Sivakami Illam,
Lakshmi Sundaram Colony,
Behind M.S.P. School Ground,
Dindigul – 624 005

32. M/s Sakthi Traders,

No. 5/810, Malligai Road,
Kootturavu Nagar,

Dindigul – 624 005

33. M/s Shiva Soap Works,
Nanthavana Patti,

Dindigul – 624005

34. M/s National Soaps Company,
138/1, Semmam Palayam Pirivu,
Nasiyanur Road,
Villarasampatti Nall Road,
Nasiyanur (P.O.)
Erode – 638107, T.N.

35. M/s Sree Manakula Vinayaga Chemicals,
R.S. No. 89/1-F & D, Pannithittu Road,
Kirumampakkam,

Puducherry – 607 402

36. M/s Silver Chemicals,
1/255, Main Road,
Valayankulam,
Madurai – 625 022,
Tamil Nadu

37. M/s Raja Chemical Works,
# 137, Sami Iyer New Street,
Coimbatore – 641 001.

38. M/s Sree Pushpam Indutries,
R.S. No. 121/1 & 63/7,
Madagadipet & Tirubuvani Village,
Tirubuvanai Post,
Pondicherry – 605107.

39. M/s Lingam Chemical Industries,
8/55, Ambai Road,
Alangulam – 627851,
Tirunelveli, Tamilnadu

40. M/s Anand Chemicals,
13/4 Kamarajar Nagar,
Avaniyapuram (P.O.)
Ayanpappakudi
Madurai – 625012 (T.N.)

41. M/s Hi-Tech India,
No. 1, Vengur Road,
Thiruverumbur,
Trichy – 620 013.

42. M/s Flora Chemicals,
2/226, Ammatchi Amman Koil Street,
Uthangudi,
Madurai – 625 107,
Tamilnadu

43. M/s Devi Cropscience Pvt. Ltd.

P.B. No. 274, 29-A,
Workshop Road,
Madurai – 625 001,
Tamilnadu

44. M/s Shunmuga Industries,
139-ABC, Sundakkamuthur Road,
Selvapuram,
Coimbatore – 26.

45. M/s Cymose Products,
4/139. Ayyanarpuram Main Road,
Panaiyur (P.O.),
Madurai – 625009

46. M/s Raceme Products,
2/221., Ayyanar Kovil Street,
Uthangudi,
Madurai – 625 017.

47. M/s Orchid Chemicals,
183, Nedungulam Road,
Pottapalayam,
Sivagana Dt. 630611
Tamilnadu

48. M/s Muthukani Industries,
2/104 (1)- New Colony,
Andipatti – P.O.
Alangulam – 627 851

49. M/s Vardaan Detergent Private Limited,
Plot No. 131, Sector – 24,
Faridabad – 121005

50. M/s Reino Industrial Organics Pvt. Ltd.,
B-93, Mayapuri Phase – I,
New Delhi – 64.

5. Requests for an extension of time to submit their replies were made by some of the interested parties. 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. Besides these various representations were received without any specific request to become interested parties. Many issues raised by them are similar to the submissions raised by other interested parties. These have accordingly been considered.

6. After expeditious conduct of investigation preliminary findings were issued on $30^{th}$ January 2009. However, no provisional safeguard duty has been levied.

7. A public hearing was held on $23^{rd}$ July, notice for which was sent to all interested parties besides posting the notice on the Website. 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 the 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.

8. The information presented by domestic producers with regard to their production, sales, 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.

9. In pursuance of sub-rule (1) of rule 11 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, the Central Government extended the period of investigation upto and inclusive of $18^{th}$ day of November, 2009 for submission of final findings on safeguard investigation concerning imports of Linear Alkyl Benzene into India vide Notification No.123 / 2009-Customs (N.T.) dated $18^{th}$ August, 2009.

10. As there are large numbers of interested parties, individual submissions by these interested parties are being recorded in a consolidated manner. However, submissions made by those who attended the Public Hearing are being recorded in the Final Findings, individually, in brief.

**VIEWS OF DOMESTIC PRODUCERS OF INDIA:**

11. The views of the Applicants in brief are as follows:

a. The product is defined as “All Linear Alkyl Benzene, Mixed Alkyl Benzene falling under the tariff description of Customs Heading 3817 00 11. The above product is generally known as ‘Linear Alkyl Benzene’ (for short “LAB”) in commercial market parlance. The subject goods are used for manufacture of Linear Alkyl Benzene Sulfonic Acid or the Sodium Salt of Linear Alkyl Benzene Sulfonic Acid. All Linear Alkyl Benzene and the subject goods have been classified under chapter heading 38.17 of the Customs Tariff Act, 1975.

b. Rule 2(c) elaborates the concept of “increased quantity” so as to mean increase in imports whether in absolute terms or relative to domestic production. The imports have increased not only in absolute terms but also in relation to the production and demand. Imports which were a meagre 9854MT in the year 2004-05 rose four and a half times in the year 2007-08. Further, the quantities increased by 62% in the latest period of April 2008 – March 2009 increasing the problems of the Domestic Industry. An examination of the trend of imports would clearly indicate that the imports have shown an exponential increase with the quantities doubling every year with the exception of 2005-06. Imports have further gone up in the first quarter of 2009-2010 (April-June) to 17783MT from 11545MT during the corresponding period of the previous financial year i.e., an increase of a whopping 54%. A comparison of the imports between the first half of 2008-09 (25001MT) and the second half (48629MT) also clearly establishes that the situation with regard to imports has worsened in the latter half of the year inasmuch as the increase is 94%.

c. As regards the quantum of imports in relation to production, the imports which were a meagre 2.66% of the total production by the Domestic Industry increased to 6.36% in 2006-07, then to 13.46% in 2007-08 and subsequently to 25.70% in the year 2008-09.

d. Thus, the data establishes beyond any doubt that there is a tremendous surge in imports of the subject goods in absolute terms, rate of increase as well as in relation to the total production of the Domestic Industry. It is pertinent to note that the phenomenal increase in the year 2008-09 has taken place despite the fact that there was global slowdown in the second half of the last financial year.

e. With regard to the issue of “serious injury”, the Domestic Industry drew the attention of the DG to paragraph 8 of the Annexure to the Safeguard Rules, which make it obligatory for the DG to evaluate all relevant factors “of an objective and quantifiable nature” only. The Domestic Industry submitted that they have suffered serious injury on account of the sudden and huge increase in imports. The total sales of the Domestic Industry was to the tune of 211155MT in the year

2004-05 which has been consistently falling despite an increase in total demand. The most significant fall has been witnessed in the year 2008-09 to 168744MT from a level of 184212MT in the preceding year. The applicant Domestic Industry constitutes about 72% of the total domestic production and is the "Domestic Industry" in terms of Section 8B sub-section 6(b)(ii) of the Customs Tariff Act.

f. Imports have increased from 3.82% in 2004-05 to 21.18% in 2008-09 thus, taking away as much as 17.36% of the Domestic Industry's market. The percentage of share taken away by imports will still be higher if the sales of only the applicant Domestic Industry are taken into account. A great majority of LAB imports coming to India are from Qatar, Iran and Saudi Arabia. Roughly 70% of the combined capacities of LAB in these countries and other Middle East countries are earmarked for exports. The geographical proximity of these countries combined with the strong LAB downstream sector in India, provides a huge attraction for these countries to direct their exports to India. The capacity is likely to go up further with another plant in Egypt.

g. The production of the Domestic Industry has also come down drastically from a level of 338010 MT in the year 2007-08 to 286549 MT in 2008-09, clearly indicating that the Domestic Industry has suffered on account of fall in production. The capacity utilization of the Domestic Industry has suffered significantly during the year 2008-09. The Domestic Industry had a very healthy capacity utilization of 113% and 109% in the years 2004-05 and 2005-06 which has fallen to a meagre 76% in 2008-09.

h. It is important to note that in the LAB industry, it is critical for the plants to operate at high levels of capacity utilization in order to reduce its average fixed cost per unit. Any fall in capacity utilization directly affects their profitability and the long-term viability. In the facts of the instant case also, it is clear that the Domestic Industry has suffered on account of the surge in imports which has led to lower levels of capacity utilization and the resultant fall in profitability of the Domestic Industry.

i. Due to the increased imports and consequent lower levels of capacity utilization, the Domestic Industry has suffered enormously on the profitability front. From a positive profit level of *** (indexed at 100), the Domestic Industry has now been reduced to a situation of losses in the year 2006-07 and 2007-08. The Domestic Industry has made a negligible profit in the year 2008-09, therefore, the indexed number shows as zero.

j. The average net sales realization of the domestic industry has increased over the injury investigation period. However, this increase in the average net sales realization of the domestic industry can be attributed as the direct result of increase in the cost.

k. As regards the interests of End-Users of LAB, it was submitted that the decision of the Hon'ble Delhi High Court is not applicable as it does not make it obligatory or empowers the DG to pass an order based on public interest issues. Without prejudice to the fact that the interested parties do not have a legal right to compel the DG to address public interest issues in its findings, it is submitted that the interested parties have not brought forth any evidence or even information to substantiate their case.

l. None of the importers (except HUL) has bothered to respond to the specific information called for by the DG vide its letter dated 7.7.2009. Even HUL has apparently provided the information for selective brands only making it impossible for the DG to carry out any meaningful analysis. Further, there is no basis of making assertions like "20 crore households will be adversely affected if duties on LAB is imposed".

m. The importers/end-users have not provided any information whatsoever as to how the employment situation in the detergent industry was impacted when the prices of LAB had gone up due to the overall increase in the crude prices. It would be apparent that the importers are merely raising the bogey of employment and larger public interest to protect their profit margins at the cost of the beleaguered LAB industry. The fact is that imposition of safeguard duty will not only allow the domestic producers to face increased imports but will benefit the buyers of LAB as well as the final end users/consumers in the long run.

n. Various plants of the domestic industry were shut down due to piling of inventories due to pressure from increased imports coupled with fall in profits and low return on capital employed. The details of closure have been submitted to the DG on a confidential basis. In any case, we submit that the fact, that the plants of the Domestic Industry have been closed for long periods on account of market conditions, has been verified by the DG (Safeguards) officials.

o. It is submitted that the domestic industry has only requested for imposition of safeguard duty on imports of LAB in accordance with the law so as to enable them to adjust to the new situation of competition offered by the increased imports. The purpose of its imposition is to provide sufficient time to the domestic industry to make positive adjustments to meet the situation arising due to increased imports. If the Domestic Industry is permitted to increase its capacity utilization to the levels which it had comfortably achieved in the past, the financial situation of the Domestic Industry would considerably improve. As stated earlier, the high level of capacity utilization for the LAB industry is of critical importance for its long term commercial viability.

p. Imposition of safeguard duties of at least 20% for a period of one year from the date of imposition followed by 15% in the second year and 10% in the third year has been requested. The levels of duties requested shall allow the domestic industry to increase the production and capacity utilization. It will also reduce the cost along with several other measures proposed to be undertaken.

**VIEWS OF EXPORTING COUNTRY GOVERNMENTS AND EXPORTERS**

12. The Government of Saudi Arabia and Gulf Farabi Petrochemical Company Limited attended the Public Hearing through their representatives. The summary of their written submissions, submissions made during Public Hearings and rejoinder are as follows:
13. It is Gulf Farabi's view that, during this public hearing, ample evidence was given to the DGSG that there was no case in this particular instance for the imposition of safeguard measures, in particular in the light of extremely high standards laid out by Indian and WTO rules on safeguards.
14. A large proportion of LAB imported from Saudi Arabia is being imported under an Export Oriented Unit scheme
15. Petitioners have presented additional evidence concerning the evolution of imports, which cannot be relied upon
16. The evolution of imports during the period of investigation is a mechanical consequence of the export-driven strategy of the Indian producers
17. Imports of LAB are not coming at a low price
18. Petitioners have not suffered any serious injury as
    a. level of production is stagnant
    b. market share of petitioners is very high in the globalised world
    c. capacity utilization is very high
    d. Loss in profits, if at all present, is not attributable to increased import.
19. The injury, if any, is not on account of increased imports.
20. The entry of IOC into Indian LAB market has radically altered the market forces in that country.
21. There is no unforeseen development as flow of LAB to India from Middle East Region was foreseeable and predictable.
22. The export performance also resulted from a well thought-out strategy by the Indian producers to deliberately favour exports in the global market at the expense of the Indian market and to the detriment of the Indian users and consumers
23. There is no emergency situation.
24. Based on above there is no justification for imposition of safeguard duty.
25. In the present context, where the global crisis generates considerable protectionist pressures, it is particularly important that national authorities avoid measures which would not be fully justified under the WTO.
26. The Government of Qatar, SEEF Ltd, Mesaieed and others have made the following averments through their written submissions:

a. LAB imports are coming in India at International prices like they come into any other country of the world.
b. Indian LAB producers are exporting about 30% of their production at about the same international price or at times even lower than the price at which LAB is imported into the country.
c. The customs duty of 7.5% is sufficient protection for the domestic industry.
d. The safeguard duty will make detergent industry globally uncompetitive.
e. SEEF Limited Qatar manufactures LAB using the more advanced Detal process of UOP and the product quality from our plant is preferred by detergent industry. In India only IOC and Nirma produces by this process.
f. The Middle East LAB suppliers are supporting the India Detergent Industry directly and indirectly by not only supplying LAB to them but also by supplying raw material for the Indian LAB manufacturers.
g. There has been regular supply of LAB from Middle East and thus there is no element of surprise.
h. There is no significant increased import causing serious injury.
i. There is no serious injury.

27. M/s Hindustan Unilever Ltd submitted the following points through their written averments and submissions during Public Hearing, rejoinders etc:

a. The safeguard proceedings are extraordinary remedies and the standard of ‘serious injury’ is very high. Safeguard Measures should be resorted to only in emergent situations only.
b. The word recent implies some form of retrospective analysis. It does not mean analysis of the conditions immediately preceding the authority’s decision. They referred to decision of WTO panel in US-Line Pipe safeguards. The increase in import is not sudden and significant. It is also not dramatic. The imports meant to manufacture final products destined for export should be excluded. If these imports are excluded the share of import in 2006-07 will become 2.98% and 7.05% in 2007-08.
c. There is no “significant overall impairment” in the position of the domestic industry. The companies seeking safeguard duty protection are financially strong and large conglomerates.
d. Domestic sales are being substituted by Exports, which are more than 40% of the Domestic sales. The claim of fall in market share is misleading as sales were increasing.
e. The Capacity utilisation is very high.
f. The safeguard Petitioners have not provided a non-confidential summary of the information claimed to be confidential. This seriously impairs the right of

the interested parties to make meaningful submissions. The actual data of profit is not available with the interested parties.

g. There is no causal link. Plant shut downs are not on account of exports. The injury is on account of high crude price. The injury is also on account of oversupply in the domestic market. The domestic industries have been flourishing. There is a lack of adequate summary of the restructuring plan and excess confidentiality.

h. 'Public interest' considerations play an important role in the administration of trade remedial measures such as safeguard duties. They also quoted the case of United Phosphorous vs Director General safeguard, 2000 (118) ELT 326 (Del).

i. There is one to one relationship between LAB and detergent price.

**Summary of earlier submissions:**

j. The domestic industries are overcharging the users. LAB is an intermediary product and is an input in the manufacture of detergent bars and powder and constitutes around 50 to 60% percent of the final product cost. Any increase in the prices of the input (LAB) will most certainly increase the costs of final products.

k. The price of LAB has increased and such increase in prices has resulted in a proportionate increase in the prices of detergents and has impacted nearly 20 crore Indian households since detergent powders and bars are consumed in every Indian house. Further, the detergent industry in India comprises of thousands of tiny units, small scale industries and a few medium and large scale manufacturers. The detergent industry is highly labour intensive as compared to the LAB industry. It employs over five lakh workers, which is significantly high as compared to the LAB industry which employs only around 500 workers. In the event that safeguard duties are levied on imports of LAB into India, it may adversely affect the viability of the downstream detergents industry and thereby affect the very livelihood of lakhs of workers employed in this industry.

l. The total production of LAB by the domestic industry has increased. However, parallel to the decrease in the share of the domestic industry in total domestic consumption there has been a corresponding increase in domestic industry's export production. This implies that there has been a significant shift in the sales pattern of the domestic industry which is veering more towards exports. The share of exports in the total installed production capacity is significantly high, which goes on to show that LAB produced in India is increasingly being diverted to the export market. The loss in domestic market share by the domestic industry if any, is self inflicted and does not show any degree of injury to the domestic industry.

m. Petitioners have been operating at significantly high level of capacity utilization.
n. It has been a consistent practice with the Hon'ble Designated Authority to determine the existence or threat of serious injury to the domestic industry on the basis of the most recent data on imports.
o. The Petitioners have failed to establish the existence of a causal link between increased imports of LAB and the alleged serious injury being suffered by them.
p. The claims by the Petitioners on their plants being shut down are misleading. Both Tamilnadu Petroproducts Ltd. as well as Reliance Industries Limited are large petro-chemical manufacturers and the information on plant shut downs relates to temporary shut downs possibly for general maintenance and up-gradation purposes or un availability of feedstock. Contrary to the claims made by the Petitioners, their plants were shut not because of the increase in imports of LAB into India and their inability to sell LAB, but for temporary reasons such as maintenance for general wear and tear. Instead the Petitioners continue to produce and sell LAB both in the domestic market and the export market.
q. The consumers of LAB have been facing several constraints in procuring LAB from domestic sources. This forced the users of LAB to make alternate arrangements and explore the option of meeting their demand through imports. The difficulty in procuring LAB domestically has been further aggravated by the increasing trend amongst the domestic producers to substitute domestic sales by exports.
r. A review of the details provided by the domestic industry in its petition shows that their efforts to adjust to the increased imports are grossly inadequate and further highlights the incongruity of their claims that they are suffering injury due to increased imports.
s. In light of the above, there exists no serious injury or threat of serious injury to the domestic industry for LAB due to increased imports of LAB into India.

28. Advance Home and Personal Care Ltd., New Delhi, Advance Surfactants India Ltd, New Delhi, A.R.Stanchem Pvt.Ltd, Kolkata, New India Detergents Ltd, New Delhi, M/s Fena (P) Ltd,New Delhi, Rohit Surfactants (P) Ltd, Kanpur, Sai Sulphonates Pvt Ltd, Kolkata, Shantinath Detergents (P) Ltd, Kolkata, Small Scale Detergents & Soap manufacturers Association, Kolkata and Standard Surfactants Ltd, Kanpur filed written submissions and attended Public Hearing as well as submitted rejoinders. The summary of their arguments put forth are:

a. Initiation is in violation of Article XIX of GATT 1994 as no unforeseen developments appear to have occurred.
b. This increase cannot be treated 'significant enough, sharp enough and sudden enough'. Though imports increased in 2007-08 over 2006-07, such increase cannot be treated as 'recent enough' especially when the investigation was initiation in December 2008.

c. The data presented by domestic producers during the public hearing is totally different from what has been recorded in the Preliminary Findings by the Director General
d. Even the basic data relating to the case has not been provided. Such data shall never be accepted by DG Safeguards as it would amount to a violation of the principles of natural justice
e. It may be seen that with the entry of IOCL into the industry, other domestic producers are facing a lot of pressure. The shares of other three producers have come down and the share of IOCL has increased.
f. There is no ‘serious injury’ caused to the domestic producers.
g. The prices of LAB fixed by domestic producers have always been same. Even the price revisions are in tandem. Further the domestic producers have been charging exorbitantly higher prices even when the crude prices have fallen.
h. The Public Interest has not been considered especially when Applicants are mega corporations whose turnover individually is far higher than the collective turnover of all the members of the Detergent Manufacturers Association taken together.
i. The import data if taken from INFODRIVE is different from the IBIS and DGCIS figures. If INFODRIVE figures are taken the increase in import is small.
j. If IOC is also considered part of Domestic industry, then total sales would be 307503 MT in 2006-07, 320212 MT in 2007-08 and 290014 MT in 2008-09. Similarly total production including that of IOC would be 459808 MT, 471010 MT and 412549 MT in 2006-07, 2007-08 and 2008-09 respectively. If INFODRIVE figures of import are taken and IOC figures are added in economic parameters, the share of import is 7%, 12% and 14% in 2006-07, 2007-08 and 2008-09 respectively.
k. The profitability has improved in 2008-09 even when imports increased.
l. The onus to prove public interest lies with the domestic industry.
m. The restructuring plan is not elaborate and viable.

**The earlier submissions:**

n. Import statistics is outdated and may not represent the current state of affairs. The investigation was initiated in December 2008. However, the petition presents import statistics only up to Financial Year 2007-08.
o. The plants of domestic producers are running and hence the claim of closure of plants is false.
p. There is no fall in production.
q. The end-users of LAB are medium and small sized enterprises as compared to the large industrial groups who manufacture LAB. The LAB producers have

been acting as a cartel and are maintaining their domestic prices at artificially higher levels. Domestic selling prices charged by all the four domestic producers have always been in tandem. Domestic selling prices have been significantly higher than the prices at which they export to other countries; Import prices are somewhere in between their domestic prices and export prices.

r. Indian end users of LAB have been paying very high prices charged by the domestic producers of LAB and the present petition seeking imposition of safeguards duty is only to preserve superlative profits.

s. LAB is already subject to basic customs duty at the rate of 7.5%. On the finished consumer detergent products, there is a peak import duty of 10%. Therefore, imposition of safeguards duty on LAB will lead to an inverse duty structure where the custom duty on a basic raw material will be higher than the duty applicable on the finished products.

t. Any increase in the cost of LAB will directly affect the prices of detergents and will eventually lead to lower production and sale of detergents. As against 4 manufacturers of LAB, there are over 4000 manufacturers of detergents in India. They employ over 500,000 persons as against 500 persons employed by LAB producers. Thus, levy of safeguard duty will jeopardize the employment opportunities of a large number of employees than non-levy of safeguard duty.

u. ‘Critical Circumstances’ do not exist in the present case warranting imposition of provisional safeguard measures.

v. It has further been contended that it is important and mandatory to consider ‘all relevant factors’ under Art. 4.2(a) to arrive at Serious Injury.

w. Further import prices of LAB are mostly higher than export price of Indian LAB manufacturers. It may be observed that at least 30% of the total domestic production is being exported by the domestic industry. It is unrealistic to assume that if the domestic industry is suffering a loss in domestic market, they will export such high quantities at lower prices.

x. As per the market intelligence available with the importers, the average net sales realization and margin of domestic industry range between -5% to 23%.

y. No case of critical circumstances has been made out.

z. They have also contended that the imposition of provisional or final measures would be against ‘public Interest’ and Article 3.1 of the AoS obligates the investigating authorities to hold public hearings or provide other appropriate means for interested parties (importer, exporters, producers, etc.) to present their views.

aa. Further, the Initiation Notice dated 19th December 2008 does not contain any reference to unforeseen developments, which occurred as a result of obligations undertaken by India before WTO.

bb. Capacity addition in the four exporting countries from Middle East is just 15,000 Tons or a meager 4.6% and therefore, does not present a threat of material injury to domestic industry in the absence of which preliminary safeguards duty should not be levied. Such insignificant capacity additions are common in business and at best, the above changes can be termed as "developments" but can never be termed as "unforeseen developments as a result of obligations undertaken by India".

cc. The comparative advantage in raw material is reflected in the prices and volumes for which no safeguard duty can be imposed. The oil production in Middle East is a widely known factor since several decades. The objective of trade remedy measures including safeguards is not to allow companies to earn 'super normal profits' by seeking protection from their national governments.

dd. There is no credible restructuring plan that has been presented by the domestic Industry.

ee. It is undisputed that cost of production of LAB is completely based on crude prices, but the domestic prices do not reflect the falling crude prices.

ff. The Initiation is in violation of Article XIX of GATT 1994 as no unforeseen developments appear to have occurred Further, in terms Article XIX of GATT 1994, a safeguard measure can only be imposed when there is a sudden surge in imports as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under GATT, which causes or threatens to cause serious injury to domestic producers of like or directly competitive products in the territory of that contracting party..

gg. The capacity addition in the four exporting countries from Middle East i.e Iran, Qatar, Saudi Arabia & UAE is just 15,000 Tons or 4.6% .

hh. The Parameters mentioned in the petition do not support 'serious injury' or 'threat of serious injury".

ii. Further there appears to be no co-relation between the proposed reduction in cost and the level of duties in force or the level of duties sought by them.

**Other Submissions:**

29. The summary of submissions made by those interested parties who have not attended Public Hearings are as follows:

a. The price of LAB has increased and such increase in prices has resulted in a proportionate increase in the prices of detergents and has impacted nearly 20 crore Indian households since detergent powders and bars are consumed in every Indian house. Further, the detergent industry in India comprises of thousands of tiny units, small scale industries and a few medium and large scale manufacturers. The detergent industry is highly labour intensive as compared to the LAB industry. It employs over five lakh workers, which is significantly high as compared to the LAB industry which employs only around 500 workers. In the event that safeguard duties are levied on imports of LAB into India, it may adversely affect the viability of the downstream detergent industry and thereby affect the very livelihood of lakhs of workers employed in this industry.

b. The four constituents of the domestic industry are multi-product, large manufacturing companies. Manufacture and production of LAB constitutes only a small percentage of the overall business of these companies. Given the large size of the Petitioners and the relatively small presence of LAB in their product portfolio, it is unlikely that they may suffer 'significant overall impairment' due to increase in imports of LAB alone.
c. There is no serious injury as Domestic Sales are being substituted by exports and India is net exporter of LAB.
d. Indian Industries are adopting export oriented approach.
e. The petitioners are operating at very high capacity utilization.
f. Plant shut downs are on account of routine maintenance and business decision and not on account of import.
g. Injury is on account of oversupply in the domestic market.
h. Domestic industry has been flourishing as LAB is a very small proportion of their business.
i. The restructuring plan in not sufficient.
j. The public interest is in favour of non-imposition of Safeguard duty as there are large numbers of end users employing large number of people, who manufacture detergent.
k. The Domestic Industry is unable to provide sufficient LAB to the end-user.
l. There is no serious injury and thus no safeguard duty should be imposed.

**EXAMINATION AND FINDINGS** :

30. 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.

**Methodology and Source of Information:**

31. For the purpose of import data reliance has been placed on DGCIS figures up to FY 2006-07 and IBIS for the subsequent period. The transaction wise details of the information have been kept in the public file. The other economic parameters relating to all manufacturers of India have been sourced from the applicants. If any other information is used the source is mentioned with the information.

**Product under Investigation:**

32. The product under investigation is “All Linear Alkyl Benzene, Mixed Alkyl Benzene. It falls under sub-heading No. 38170011 of Schedule I of the Customs Tariff Act 1975, sub-heading No. 38170011 of ITC and sub-heading No. 38170011 of HSN. The subject matter of investigation is only Mixed Alkyl Benzenes and Linear Alkyl Benzenes and not Mixed Alkyl Naphthalenes. The above product is generally known as ‘Linear Alkyl Benzene’ (for short “LAB”) in commercial market parlance.

33. The domestic industries use Kerosene, (Extracted - C10-C13 Paraffins) and Benzene as raw materials for the production of Linear Alkyl Benzene. C10-C13 Paraffins are extracted from the Hydrobon Molex Process, from Feedstock Kerosene. These Paraffins are converted to their Olefins, by selective dehydrogenation, at high temperature. The C10-C13 Olefins are then alkylated to Benzene, to form Linear Alkyl Benzene. The linear alkylbenzenes produced from C10C13 linear olefins are useful detergent intermediates and can be readily sulfonated to yield linear alkylbenzene sulfonates. These compounds constitute the “active” ingredients of household detergents. They are surface active compounds (surfactants) which are combined with various builders (often inorganic salts) to make up a detergent. In short, LAB is used as an important input by the detergent industries.

34. Regarding product under investigation, M/s Gulf Farabi Petrochemical Co. Ltd. contended that the product supplied by them is different from the product sold domestically in India by the Domestic Industry. The Gulf Farabi LAB possesses a different carbon chain distribution pattern when compared to the domestic product and has lower molecular weight than the domestic manufactured product. The imported LAB from Gulf Farabi has better detergency performance. Therefore, these are not like or directly competitive products.

35. The issue has been examined. The production process of Linear Alkyl Benzene as well as design of the manufacturing plant may have slight bearing on the physical or chemical characteristic of the product. As per the information provided by M/s Gulf Farabi, the imported LAB as well as Domestic LAB has identical appearance ( i.e clear colorless liquid ), Bromine Index, Paraffin content, 2-Phenyl Alkanes, Normal LAB content and Moisture. However, the average molecular weight of Indian LAB varies between 235-239 and that of Gulf Farabi varies between 238-242. This contended difference in quality is too small to have any bearing on substitutability and their ability to be competitive. The interested parties themselves have contended that the prices of LAB are comparable and there has been no significant difference. In view of the above, it is found that the imported LAB and Domestically produced LAB have same chemical and physical characteristics except some slight differences in some of the parameters. However, the differences in parameters are not significant enough to have any bearing on competitiveness of the two products. Both the products have the capability to be used interchangeably and are being used as such. Therefore the product imported is “similar or directly competitive” to what is produced by domestic industries. Therefore, the product under investigation is LAB, as described above.

**Domestic Industry:**

36. The present investigation arises on an application made by M/s. Reliance Industries Ltd., Mumbai, Tamilnadu Petroproducts Ltd., Chennai, Nirma Ltd., Ahmedabad . M/s Indian Oil Corporation Ltd., New Delhi has supported the application. The shares of these companies are as mentioned below:

**Table 1**

| | 2004-05 | 2005-06 | 2006-07 | 2007 –08 |
|---|---|---|---|---|
| Company | Share | Share | Share | Share |
| Indian Oil | 11% | 24% | 26% | 28% |
| Nirma | 26% | 21% | 19% | 19% |
| Reliance | 41% | 38% | 36% | 36% |
| TPL | 22% | 17% | 19% | 17% |
| Total | 100% | 100% | 100% | 100% |

37. The share of the applicants excluding Indian Oil, who is supporting, is 72% during 2007-08 and 100% when Indian Oil is also considered along with the applicants. There has been no question raised on applicants (excluding IOC) being treated as Domestic Industry. Accordingly, the LAB businesses of M/s. Reliance Industries Ltd., Mumbai, Tamilnadu Petroproducts Ltd., Chennai, Nirma Ltd., Ahmedabad constitute domestic industry in terms of clause (b) of subsection (6) of Section 8B of the Customs Tariff Act, 1975.

38. The analysis of data has been done primarily in relation to the domestic industry only. At some places the data of IOC has also been analyzed in order to deal with the issues raised by the interested parties and to study the inter unit dynamics in India. However, in order to analyze market share of imports, complete data i.e the data including that of IOC has been used.

**Period of Investigation:**

39. The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard and the relevant Article XIX of GATT do not specifically define what the Period of Investigation should be. However, the issue of period of investigation has been dealt extensively in the panel's report on Argentina Footwear as well as Appellate Body Report on Argentina Footwear, which are being produced below;

***"ARGENTINA– SAFEGUARD MEASURES ON IMPORTS OF FOOTWEAR; Report of the Panel***

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

*to-year changes and trends might lead to entirely opposite conclusions.*

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

**Appellate Body Report**

*Note 130:*

*The Panel, in footnote 530 to para. 8.166 of the Panel Report, recognizes that the present tense is being used, which it states "would seem to indicate that, whatever the starting-point of an investigation period, it has to end no later than the very recent past." (emphasis added) Here, we disagree with the Panel. We believe that the relevant investigation period should not only end in the very recent past, the investigation period should be the recent past.*

40. From the above it is clear that neither the Agreement on Safeguard nor the relevant provision of WTO provide specific guidelines on the period of investigation. The Appellate Body Report has given its finding in unequivocal terms that the relevant investigation period should not only end in the very recent past; the investigation period should be the recent past.

41. In the instant case, the notice of initiation was issued on 19.12.2008, which primarily contains the data up to the year 2007-08. The Preliminary Finding was issued on 30.01.2009 where the data collected for the subsequent period of 2008-09 in the course of investigation was also considered. As the Public Hearing was held on 23rd July, 2009, the information only up to 2007-08 may not be the very recent period. In other words, when the data relating to the financial year 2008-09 is available the same cannot be ignored. Hence, it is in the interest of investigation that such information is used for analysis.

42. Some of the interested parties have contended that adding new information amounts to adducing new evidence at this stage. In this respect it is noted that the Safeguard Investigation proceeding is different from the Judicial proceedings or Appellate proceedings. During the Safeguard Investigation, new facts and evidences are brought up and analyzed. In case, reliance is placed only on the facts mentioned in the application, the investigation, purpose of which is to bring

forth relevant information and analyze the market condition will become meaningless. Hence, it is necessary that all the facts brought in light during investigation are taken into account. However, the requirement of natural justice as envisaged in Rule 6 of the Safeguard Duty Rules, 1997 needs to be taken care of. Thus new facts, if not confidential, are made available to the Interested Parties by keeping the same in the Public File. In this case, all the relevant and non-confidential information has been kept in Public File and all the information, including the recent information, is being considered.

43. In order to neutralize seasonal variation, if any, sufficiently longer sample size i.e annual data has been considered from FY 2005-06 to 2008-09.

**Is there an increase in imports?**

44. **Source of data:** The source of Import data is DGCIS and IBIS. Reliance has been placed on DGCIS data for the annual import figures up to 2006-07. The transaction wise import data for the period 2007-08 and 2008-09 has been provided by the applicants. The same data has also been provided to interested parties by keeping the same in Public File. No question on the correctness of the data has been raised. However, some of the interested parties have contended that some other source is giving different import figures without giving any evidence that the data source which is in Public domain is incorrect. In fact, it is noticed that some of the interested parties have also referred to the IBIS data to present their views. Therefore, the source of data relating to imports cannot be termed unreliable unless it is proved so. Therefore, the IBIS data is being used for the purpose of import analysis.

45. **Statutory framework:** The Section 8B of the Customs Tariff Act, 1975 provides for imposition of safeguard duty when 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[1]. The meaning of the term ‘increased quantities’ has been discussed in the Panel Report and Appellate Body Report in the case of Argentina Foot Wear case. It has been held in these reports that the ‘increased quantities’ cannot be just any increase in imports. It must be recent and

---

[1] 8B Power of Central Government to Impose Safeguard Duty: 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:

sudden[2]. It has also been held 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"[3].

46. **Examination of facts:** The table below shows the import statistics relating to LAB.

**Table: 2**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| IMPORTS (MT) | 4871 | 21470 | 45505 | 73630 |
| MARKET SHARE OF IMPORTS (%) | 1.73 % | 7.22 % | 13.91% | 21.16% |

47. The total import of LAB in 2008-09 has been 73,630 MT showing increase of 28,125 MT over previous year of Import of 45,505 MT in absolute terms and 61.8% in percentage term. Except in 2005-06, there has been continuous increase in import.

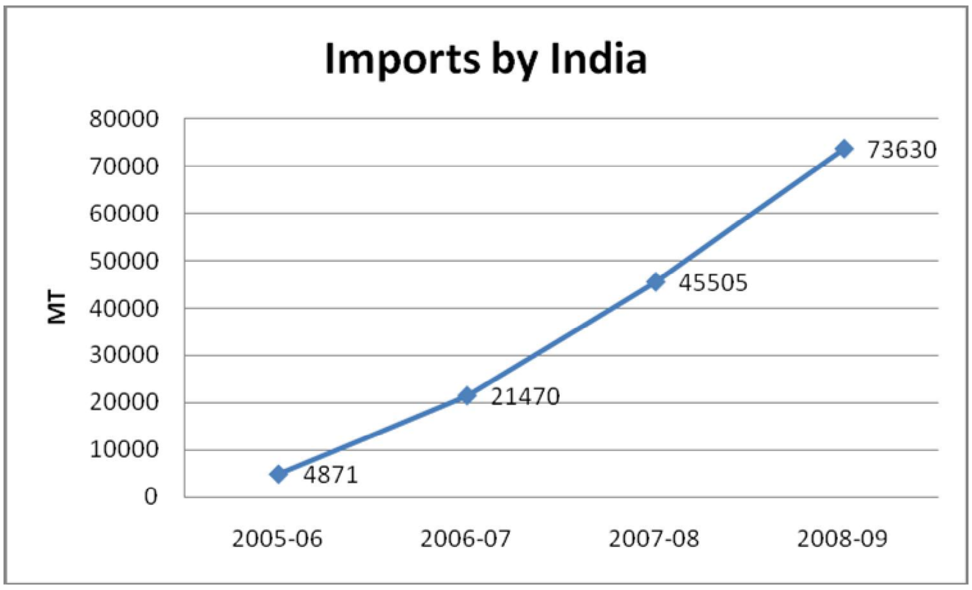
48. The share of imports in the total market size also increased to 21.16% from 1.73% in 2005-06, 7.22% in 2006-07 and 13.91% in 2007-08.

49. The graph 1 below shows the nature of trend of imports. It is seen that the increase in imports is gradual since 2006-07. There is no suddenness in the growth of imports.

[2]**Para 130 of ABR Argentina Footwear case:**
".......... Although we agree with the Panel that the "increased quantities" of imports cannot be just *any* increase, we do not agree with the Panel that it is reasonable to examine the trend in imports over a five-year historical period. In our view, the use of the present tense of the verb phrase "is being imported" in both Article 2.1 of the *Agreement on Safeguards* and Article XIX:1(a) of the GATT 1994 indicates that it is necessary for the competent authorities to examine recent imports, and not simply trends in imports during the past five years – or, for that matter, during any other period of several years.[2] In our view, the phrase "is being imported" implies that the increase in imports must have been sudden and recent"

[3] **Para 131 of ABR Argentina Footwear case:**
'...........In our view, the 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".'

**Graph 1**




50. Therefore, it is seen that there is an increase in imports in mathematical term, but it lacks the characteristics of 'increased quantities', which must be present to qualify the context in which the term 'increased quantities' and "in *such* increased quantities" have been used in the statute.

**Under What conditions imports are taking place?**

51. The table below gives value of imports in terms of Rs/MT. The table below shows the relevant statistics.

**Table 3**

| **Year** | **CIF value of Imports/ MT** |
|---|---|
| **(Unit)** | **Rs** |
| 2005-06 | 47504 |
| 2006-07 | 53523 |
| 2007-08 | 55981 |
| 2008-09 | 70132 |

52. The CIF value increased by 25.28% in 2008-09 and by 4.6% in 2007-08. There is a consistent increasing trend in CIF value of imports over the years. Therefore, the imports are at increased prices.

## Serious Injury and Causes Thereof:

**Statutory framework:**

53. "Serious injury" means as an injury causing overall impairment in the position of a domestic industry;[4]

54. The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 technically requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant decline in sales, employment and productivity which will show "significant overall impairment" in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall *position* of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.[5]

55. Accordingly, in analyzing serious injury all factors, which are mentioned in the rules as well as other factors, which are relevant, have been considered. No single factor has been considered as dispositive. All relevant factors within the context of the relevant business cycle and conditions of competition, which are relevant to the affected industry, have been considered to evaluate the overall position of the domestic industry.

## <u>Examination of factors:</u>

56. **Rate of increase of imports:** The table below gives the information about rate of increase of imports over their previous years. It is seen that the imports increased at the rate of 61.80% in 2008-09 against 111.95% of increase in 2007-08 and 340.77% of increase in 2006-07 (compared to their previous years). The

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

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

Graph 1[6] above shows that the increase in imports is gradual and steady since 2006-07.

**Table 4**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| IMPORTS | 4871 | 21470 | 45505 | 73630 |
| RATE OF INCREASE OF IMPORTS (OVER THE PREVIOUS YEAR) % | - | 340.77% | 111.95% | 61.80% |

57. **Share of the domestic market taken by increased imports:** The table below gives relevant statistics relating to Share of Total Indian LAB industry in the Indian domestic market.

**Table-5**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| MARKET SIZE(MT) | 280859 | 297394 | 327116 | 347959 |
| MARKET SHARE OF INDIAN PRODUCERS (%) | 98.27 | 92.78 | 86.09 | 78.84 |

58. The share of the All Indian industries in the domestic market was 98.27% in 2005-06, which has gone down to 78.84% in 2008-09.

59. The reasons of loss of market share were analyzed. In 2008-09 the unutilized capacity was 81,022 MT and the imports were to the tune of 73,630 MT. It is also seen that the exports by India fell by 31,452MT during 2008-09 compared to 2007-08, which also contributed to fall in unutilized capacity. Therefore, the loss of market share is significantly attributable to factors, other than imports.

60. **Change in level of domestic sales:** The table below gives relevant statistics relating to cumulative domestic sales of the 'domestic industry' as well as of the All Indian producers ( including IOC).

**Table 6**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|

6 Refer para 49

| | | | | |
|---|---|---|---|---|
| SALES BY 'DOMESTIC INDUSTRY' (MT) | 188942 | 185503 | 184212 | 169014 |
| CUMULATIVE SALES BY ALL INDIAN PRODUCERS INCLUDING IOC (MT) | 275988 | 275924 | 281611 | 274329 |

61. The sales of 'domestic industry' have shown a downward trend since 2005-06 to 2008-09.
62. The sales of all Indian producers including IOC went down by 7282 MT in 2008-09 compared to 2007-08, which constitutes 2.58%. The sales figures of past four years indicate that the cumulative sales of all Indian industries were moving in band of (+/-)1.3% of average 276963 MT.
63. **Production:** The table below gives relevant statistics relating to cumulative domestic production of 'domestic industry' and of all Indian Producers including IOC.

**Table 7**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| PRODUCTION BY 'DOMESTIC INDUSTRY' (MT) | 356554 | 337808 | 338010 | 286549 |
| CUMULATIVE PRODUCTION BY ALL INDIAN PRODUCERS INCLUDING IOC (MT) | 467985 | 459082 | 470331 | 416316 |

64. The total production of 'domestic industry' fell by 51461MT in 2008-09 compared to the year 2007-08.
65. In order to analyse the inter unit dynamics of Indian LAB manufacturers and overall scenario of all domestic producers taken together, the production figures of all Indian domestic producers have also been analysed. The analysis of total production by all domestic producers (including IOC) shows that there has been improvement in production in 2007-08 by 2.45% compared to 2006-07. However, the total production fell

by 54015 MT (11.48%) in 2008-09 compared to 2007-08. The total exports fell by 31452 MT in 2008-09[7] compared to 2007-08.This implies that the production fell by 31452 MT on account of fall in exports. The fall in production on account of reduction in export is 58.23% of the total fall in production in India. Thus, fall in exports is a significant cause of fall in production.

66. The domestic industry has accepted that one of the units was closed for a month for replacement of Heli Tower, which was not a routine maintenance. This closure led to non availability of production capacity of around 5000 MT. Therefore, closure of the unit is also one of the factors, which contributed to fall in production.

67. **Capacity Utilization**: The table below gives relevant statistics relating to capacity utilization of the domestic industry.

**Table 8**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| INSTALLED CAPACITY OF 'DOMESTIC INDUSTRY' (MT) | 328500 | 328500 | 377338 | 377338 |
| INSTALLED CAPACITY OF ALL INDIAN PRODUCERS INCLUDING IOC (MT) | 448500 | 448500 | 497338 | 497338 |

**Table 9**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| CAPACITY UTILIZATION OF 'DOMESTIC INDUSTRY' (%) | 108.54 | 102.83 | 89.58 | 75.94 |
| CAPACITY UTILIZATION OF ALL INDIAN PRODUCERS INCLUDING IOC (%) | 104.34 | 102.36 | 94.57 | 83.71 |

[7] Refer Table 14 Para 76

68. The capacity utilization of “domestic industry” has shown continuous declining trend since 2005-06 to 2008-09. It is seen that there is a fall in capacity utilization in 2007-08 compared to 2006-07, despite improvement in production during the same period. The fall in capacity utilization in 2007-08 is primarily on account of increase in installed capacity of domestic industry by 48838 M. The fall in capacity utilization in 2008-09, compared to 2007-08 is primarily on account of fall in production, which is attributable to fall in exports.

69. Similarly, the analysis of capacity utilization of all domestic producers (including IOC) also shows that the decline in capacity utilization in 2007-08 compared to 2006-07 is on account of increase in installed capacity. The decline in capacity utilization in 2008-09 is primarily on account of declining exports.

70. **Profits and Losses**: The table below gives relevant statistics relating to profit and losses of the domestic industry relating to business of LAB

**Table 10**

| Year | Profit/MT | Profit (PBT) |
|---|---|---|
| (Unit) | Indexed | Indexed |
| 2005-06 | 100 | 100 |
| 2006-07 | - 25.05 | - 24.5 |
| 2007-08 | - 40.73 | - 39.71 |
| 2008-09 | + 0.47 | +0.42 |

71. The domestic industries suffered losses during 2006-07 and 2007-08. The loss in 2006-07 was there in spite of more than 100% capacity utilization. Hence the increased import was not the reason of loss. The imports increased during 2007-08 and 2008-09 with maximum imports in 2008-09. However, the profitability improved by 41.20 points in 2008-09, which is very significant.

72. The trend of profitability does not coincide with the trends of import. It means there are factors other than increased imports which have impacted profitability of the industry.

73. **Employment:** The applicants have submitted that the companies are multi-product companies and considering the capital intensive nature of the industry, the employment may not reflect the real extent of serious injury and threat of serious injury. The number of employees also remained stagnant, as is apparent from the table below.

**Table 11**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| NUMBER OF EMPLOYEES IN ‘DOMESTIC INDUSTRY’ (NO.) | 1007 | 1007 | 1010 | 955 |

74. **Productivity:** The productivity of domestic industry in relation to the number of employees shows trend similar to production as it is primarily dependent on production.

**Table 12**

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| PRODUCTIVITY/EMPLOYEE ‘DOMESTIC INDUSTRY’ (MT/EMPLOYEE) | 354 | 335 | 335 | 300 |

**Other factors**

75. **Price Analysis:** The table below gives domestic prices of LAB. There has been continuous improvement in domestic prices since 2005-06. The price of LAB increased by 35% in 2008-09 compared to 2007-08 against 2% increase in price of LAB in 2007-08 compared to 2006-07.

**Table 13**

| Year | Actual selling Price/MT |
|---|---|
| (Unit) | Rs |
| 2005-06 | 62059 |
| 2006-07 | 63418 |
| 2007-08 | 64767 |
| 2008-09 | 87552 |
| | |

76. **Exports:** The table below gives information on exports by all Indian producers as well as by domestic industries.

**Table:14**

Analysis of Export Figures

| **YEAR** | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|
| EXPORTS BY 'DOMESTIC INDUSTRY'(MT) | 101852.32 | 107064.12 | 96855.47 | 82614.46 |
| EXPORTS BY ALL INDIAN PRODUCERS INCLUDING IOC (MT) | 122313.32 | 138368.12 | 135473.47 | 104021.46 |

**Table 15**
**Export Vs Imports**

| Year | Total Quantity of Exports by All Indian Producers (including IOC) | Imports by India | Net Exports by India |
|---|---|---|---|
| (Unit) | (MT) | (MT) | (MT) |
| 2005-06 | 122313.3 | 4871 | 117442.3 |
| 2006-07 | 138368.1 | 21470 | 116898.1 |
| 2007-08 | 135473.5 | 45505 | 89968.47 |
| 2008-09 | 104021.5 | 73630 | 30391.46 |

77. India has always been a net exporter of LAB. However, the exports from India are on the decline since 2006-07. The export from India fell by 23.22% in 2008-09 against 2% fall in 2007-08 compared to the preceding years. This led to lower production[8] and lower capacity utilization.

78. **Inter unit dynamics amongst producers of India:** The table below gives the percentage share of individual LAB producers of India.

[8] The total exports fell down by 31452 MT in 2008-09 compared to 2007-08. The fall in production on account of reduction in export is 58.23% of total fall in production in India.

**Table: 16**

| | 2004-05 | 2005-06 | 2006-07 | 2007 –08 |
|---|---|---|---|---|
| Company | Share | Share | Share | Share |
| Indian Oil | 11% | 24% | 26% | 28% |
| Nirma | 26% | 21% | 19% | 19% |
| Reliance | 41% | 38% | 36% | 36% |
| TPL | 22% | 17% | 19% | 17% |
| Total | 100% | 100% | 100% | 100% |

79. The IOC had a mere 11% of production capacity of India, but from 2005-06 the production share is rising consistently. The Share of IOC in total domestic production reached 28% and 31% in 2007-08 and 2008-09, respectively. This rise is at the cost of other LAB producers, who constitute ‘domestic industry’. This means part of the share of the ‘domestic industry’ has been taken by IOC.

**Overall Position of the Domestic industry**

80. India has been a net exporter of LAB and exported 26%, 30%, 29% and 25% of its production in 2005-06, 2006-07, 2007-08 and 2008-09 respectively. This shows that export of LAB is an important business of Indian Industries of LAB. The installed capacity was expanded in 2007-08 by 48838 MT but the production could increase only by 11,249 MT, which caused fall in capacity utilization to below 100% (94.57%).

81. The year 2008-09, witnessed fall in exports by 31,452 MT, which made surplus capacity available for domestic market. As imports were necessary to meet increasing domestic demands till 2007-08, the trend of import continued to meet the domestic demand, which grew by 20,843 MT. The Indian industries were not able to quickly regain the domestic market, which had been left for imports, as changes in buying patterns are generally gradual. This fact is visible from the graph 1[9], which shows that the growth in imports is linear and there is no sharp or sudden increase in imports since 2005-06. In fact, there is no sudden surge in the

[9] Refer Para 49

rate of increase of imports. As a matter of fact the rate of increase of imports over previous years is less in 08-09 (61.80%) as compared to 07-08(111.95%) and 2006-07 (340.77%).

82. The loss of export market by the Indian Industries could not be compensated by the corresponding gain in domestic market. This is evident from the fact that total domestic sales by all the domestic producers remained range bound. It is also observed that the year 2007-08 witnessed fall in export by 2895 MT and increase in domestic sales by 5687 MT even though installed capacity expanded by 48838 MT . The year 2008-09 witnessed further fall in exports by 31452 MT compared to 2007-08, without corresponding gain in domestic sales during the same period.

83. The Section 8B of the Customs tariff Act, 1975 provides for imposition of safeguard duty in case any article is imported into India in such increased quantities and under such conditions so as to cause serious injury to domestic industry. In other words safeguard duty can be imposed when increased imports is the substantial cause of serious injury. The determination of serious injury is based on evaluation of various economic factors. It is seen from the analysis done above that each of the individual factors, which are analysed to determine existence of serious injury, is significantly attributable to factors other than increased imports.

84 The analysis of trend of import, and other economic factors shows that there are factors, other than increased imports, which have significantly affected the performance of domestic industry. These are

a. entry of IOC in LAB business;
b. fall in exports; and
c. export oriented design of domestic producers;

85 As discussed in the analysis of various economic factors above, contribution of these factors in affecting the domestic market are more significant than the increased imports. Therefore, there is a lack of causal link as required under law. Moreover, the overall evaluation does not show serious injury.

**Conclusion and Recommendation:**

86 Based on the above, no safeguard duty on imports of LAB is recommended.

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