

MINISTRY OF FINANCE
(Department of Revenue)
(OFFICE OF THE DIRECTOR GENERAL OF SAFEGUARDS CUSTOMS AND
CENTRAL EXCISE)
NOTIFICATION

New Delhi, the 27th May, 2009

G.S.R. Having regard to Customs Tariff Act, 1975, as amended, and the Customs 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 Andhra Petrochemicals Limited, seeking imposition of Safeguard Duty on imports of Oxo Alcohols (Acyclic . Alcohols) into India alleging that increased imports of Oxo Alcohols (Acyclic . Alcohols) was causing and/or threatening to cause serious injury to the domestic producers of Oxo Alcohols (Acyclic . Alcohols) in India. Having satisfied that the requirements of Rule 5 were met, safeguard investigation against imports of Oxo Alcohols (Acyclic . Alcohols) was initiated vide notice of initiation dated 16th January 2009 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

The Andhra Petrochemicals Limited,
202-A, My home Sarovar Plaza
Secretariat Road, Saifabad,
Hyderabad, 500 063

Importers

M/s KLJ Plasticizers/ Silvassa Plast KLJ House, 63, Rama Marg Najafgarh Road NEW DELHI - 110 015	M/s PCL Oil & Solvents Ltd. M-105, Cannaught Place NEW DELHI - 110 001
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M/s Payal Polymers 24/E, Netaji Subhash Marg Daryagunj,NEW DELHI - 110 002	M/s API Industrial Corporation Tollstoy Lane, 1st Floor Connaught Place,NEW DELHI-110 001
M/s Rachna Plasticizers Plot No. 143, Shanti Niketan 3rd Floor, S V Road Opp. Khar Police Station Khar (W),MUMBAI - 400 052	M/s Lalitha Chem Inds. Pvt. Ltd. G-42, 'D' Wing, Dewan Apts No.II Co-Op. Housing Society Ltd. Vasai (E),Dist. Thane - 401 210
M/s Kansai Nerolac Paints Ltd. Nerolac House Ganpatrao Kadam Marg, Lower Parel,MUMBAI - 400 013	M/s Aurobindo Pharma Ltd. Plot No.2, Maitri Vihar, Ameerpet HYDERABAD
M/s Lubrizol India Pvt. Ltd. 9/3, Thane-Belapur Road Turbhe,NAVI MUMBAI - 400 705	M/s Alkyl Amines Chemicals Limited 401-407, Nirman Vyapar Kendra Plot No.10, Sector 17, Vashi, Navi Mumbai - 400 703
C J Shah & Co. (Importers & Distributors) 809, 'Hemkoot' Opp. Capital Commercial Centre, Ashram Road AHMEDABAD - 380 009	Ramniklal S. Gosalia & Co. National House 608, B J Marg, Jacob Circle MUMBAI - 400 011

Users

M/s KLJ Plasticizers/ Silvassa PlastKLJ House, 63, Rama Marg Najafgarh Road NEW DELHI - 110 015	M/s PCL Oil & Solvents Ltd. / Ritzy Polymers M-105, Cannaught Place NEW DELHI - 110 001
M/s Payal Polymers 24/E, Netaji Subhash Marg Daryagunj,NEW DELHI - 110 002	M/s N.K. Polymers Tollstoy Lane, 1st Floor Connaught Place NEW DELHI-110 001
M/s Rachna Plasticizers Plot No. 143, Shanti Niketan 3rd Floor, S V Road Opp. Khar Police Station Khar (W),MUMBAI - 400 052	M/s Lalitha Chem Inds. Pvt. Ltd. G-42, 'D' Wing, Dewan Apts No.II Co-Op. Housing Society Ltd. Vasai (E),Dist. Thane - 401 210
M/s Nagarjuna Agrichem Ltd. Plot No.61, Nagarjuna Hills, Panjagutta HYDERABAD - 500 082	M/s Sreepathi Pharmaceuticals Plot No.22 B, H.No.8-2-293/82/A/22/B Road No.2, Jubilee Hills HYDERABAD - 500 033
M/s Sri Krishna Drugs C-4, Industrial Area, Uppal HYDERABAD	M/s Sreenivasa Pharma (P) Limited Plot No. 66/B-2, Phase I IDA, Jeedimetla,

	HYDERABAD - 500 055
Dr. Reddy's Laboratories Ltd. 8-2-76/1/B, 2nd Floor, Ashoka Hitech Ch.Road No.2, Banjara Hills HYDERABAD - 500 034	M/s Dhupar Chemicals Private Ltd. Village - Sandila, Mandhana Bithoor Road, Kanpur (UP)
M/s Berger Becker Coating Private Ltd. RPL House, 19, D D A, Commercial Complex, Kailash Colony Extn. NEW DELHI - 110 048	M/s Matrix Laboratories Ltd. No.1-1-151/1, IV Floor, Sairam Towers Alexander Road, SECUNDERABAD - 500 003
M/s Merck Limited Shiv Sagar Estate 'A' Dr. A B Road, Worli MUMBAI - 400 018	M/s Neelam Aqua & Speciality Chem Pvt H-337 (D), Street # 17, VKI Area JAIPUR - 302013 (RAJ)
M/s Divi's Laboratories Ltd. Divi Towers, 7-1-77/E/1/303 Dharam Karan Road, Ameerpet HYDERABAD - 500 016	M/s. Hyderabad Chemicals Limited A-24/25, APIE, Balanagar HYDERABAD - 500 037
M/s Aurobindo Pharma Ltd. Plot No.2, Maitri Vihar, Ameerpet HYDERABAD - 500 038	M/s Mahidhara Chemicals G-4, Sai Pithambaram Residency East Marredpally, SECUNDERABAD - 500 026
M/s Vivimed Labs. Limited II Floor, Veeranag Towers Habsiguda, HYDERABAD - 500 007	Government of Opium & Alkaloid Works Ministry of Finance, Deptt. Of Revenue Office of The General Manager Govt. of Opium & Alkaloid Works NEEMUCH - 458 441 (MP)
Heavy Water Plant Department of Atomic Energy PO Vikrampur, Dist. Angul ORISSA - 759 106	M/s Kansai Nerolac Paints Ltd. Nerolac House Ganpatrao Kadam Marg, Lower Parel MUMBAI - 400 013
M/s Alkyl Amines Chemicals Limited 401-407, Nirman Vyapar Kendra Plot No.10, Sector 17, Vashi, Navi Mumbai - 400 703	Elantas Beck India Ltd. Beck House, Dample Path Off. Low College Road Pune- 411004
Dai- ichi Karkaria Ltd. Liberty Building, Sir Vithaldas Thakersey Marg, Mumbai- 400020	Galaxy Surfactants Ltd. C-49/2, TTC Industrial Area Pawane, Navi Mumbai-400703
Fine Organic Inds.(Mumbai)P.Ltd. Fine Organics Industries Fine House, Anandji street, Off. M.G. Road, Ghatkoper (E) Mumbai- 400077, India	M/s Atul Limited Atul, 396020, Gujarat,India

Exporters

L G Chemicals Ltd. Specialty Sales TFT, Teachers Pension, Building, 17, F, Yoidodong, Yongdungpu-gu Seol - 150 742. Korea	M/s Arak Petrochemical Company No.767, Enghaleb Ave, Tehran, Iran
M/s Al-Jubail Fertilisers Company Jubail Industrial City PO Box 10046, Al Jubail - 31961 Saudi Arabia	M/s Iran Petrochemicals Commercial Company Add: No.1339 Vanak Sq. Vali Asr Ave. TEHRAN-IRAN , P.O.Box: 19395/4619 , Zipcode : 19697
M/s Saudi Basic Industries Corporation (SABIC) P O Box 69090, Riyadh SAUDI ARABIA	M/s Dow Europe GMBH PO Box 16043 Dubai, UAE
M/s Huls Aktiengesellschaft Weissfrauenstrasse 9, D-60311 Frankfurt am Main, Germany	M/s BASF Petronas Chemicals C-802, Centra Tower Wisma Consplant, Jalan S S 16/4 Subang, Jaya 47500 Selangor, Malaysia
M/s. Sasol Middle East PO Box 61089 (Division of Sasol Chemical Industries Ltd.) Jebel Ali Free zone, Dubai United Arab Emirates (UAE)	M/s Helm Ag. Nordkanalstrasse 28 D-20097 Hamburg, Germany
M/s Eastman Chemical Company P O Box # 431 Kingsport TN 37662 U S A	M/s ICC Chemical Corporation 460, Park Avenue New York, NY 10022 USA
Exxon Mobil Chemical International Services Ltd. 13501, Katy Freeway Houston, TX 77029-1398 USA	

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 as interested parties were received from a number of parties and all the requests were accepted. Requests for an extension of time to submit their

replies were also made by a number of interested parties, and after taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time were allowed in all cases and the parties concerned were accordingly informed.

5. A public hearing was held on 25th March 2009, notice for which was sent on 23rd February, 2009. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997. Copy of written submission filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinder, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.
6. The information presented by domestic producers with regard to their production, sales, costs and prices, profits, and other injury parameters were verified by on-site visits to the plants of the domestic producers to the extent considered necessary. Further, the cost data has been also verified and certified by independent cost accountant. The non confidential version of verification report is kept in the public file.

Views of Domestic Producers In India

7. The domestic producers have stated as follows:
 - (a) The product under consideration in the present case is Acyclic Alcohols produced and sold globally. All types of Acyclic Alcohols within the scope of the present investigations have been imported into India during the relevant period. The domestic industry produces NBA, IBA and 2-EHA.
 - (b) NBA, IBA, 2-EHA produced and sold by the domestic industry is like or directly competitive article to various types of Acyclic Alcohol imported in India. In support of their contention, the domestic industry raised the following arguments:
 - i. Scope of “like or directly competitive article” under safeguard rules is much wider than the scope of “like article” under anti dumping rules. Scope of like article under antidumping rules covers only alike or closely resembling articles; whereas the scope of directly competitive article

includes all those articles which may be alike or directly competitive at present or in future.

- ii. Even potentially competitive article is required to be considered as competitive article. In support of their contentions, the domestic industry has referred to WTO decisions in the matter of **Korea — Alcoholic Beverages, ([WT/DS75/AB/R](#), [WT/DS84/AB/R](#))** and **US-Cotton Yarn, ([WT/DS192/AB/R](#))** concerning scope of directly competitive article and decisions of the Designated Authority on anti dumping with regard to various dumping investigations relating to various Acyclic Alcohols.
 - iii. NBA, IBA, EHA produced by the domestic industry should be held as like or directly competitive to NBA, IBA, EHA on the grounds the two are directly substitutable.
 - iv. EHA being produced by the domestic industry should be held as directly competitive to Iso Nonanol being imported into India. This is established by the final findings of the Designated Authority wherein 2EHA and Iso Nonanol has been held as like article.
 - v. NBA/IBA produced by the domestic industry must be held as directly competitive article to Sabutol being imported into India. This is established by the final findings of the Designated Authority wherein Sabutol and NBA/IBA has been held as like article.
 - vi. As regards other products, given that the scope of directly competitive article includes actual and potential competitive article, the authority should include all types of Acyclic Alcohols within the purview of proposed measures.
- (c) Imports of Acyclic Alcohols have suddenly and significantly increased in absolute terms as also in relation to production and consumption in India.
- (d) Following factors constitute unforeseen circumstances:
- i. Decline in current global demand;
 - ii. Significant decline in the price of various Acyclic Alcohols because of uneven changes in the price of Propylene and Acyclic Alcohols;
 - iii. Significant decline in the difference between Propylene and various Acyclic Alcohols, as established by the difference between Propylene and 2EHA price
- (e) Imports of subject goods have increased under specific conditions. Such conditions are evident by considering (i) situation prevailing in the exporting countries and; (ii) situation prevailing in Indian market.

- (f) Increased imports of Acyclic Alcohols have caused serious injury to the domestic industry. Further, imports are threatening serious injury. The claim of injury is based on improvement in production, sales, capacity utilization upto 2007-08, but significant decline thereafter. The decline in these parameters was more pronounced and very significant in Oct-March 09. The domestic industry had to suspend production for considerable period.
- (g) Profits of the domestic industry improved upto Sept., 08, but declined thereafter significantly in Oct.08-March 09 to such an extent that the domestic industry suffered financial losses in this period.
- (h) Return on capital employed was improving upto Oct. 2008 and declined significantly thereafter. Even though the decline was marginal in April-Sept. 08, the same was very significant in Oct.08-March 09.
- (i) Productivity has moved in tandem with production.
- (j) Employment and wages may not show injury in view of prevailing labour law in the country.
- (k) Serious injury to the domestic industry is being caused by increased imports.
- (l) Imports are further threatening serious injury to the domestic industry. This is established by the declining delta between propylene and Acyclic Alcohols, significant decline in global demand & resultant unutilised capacities with the foreign producers, significant price difference between the imported and domestic product and significant fall in the prices of various Acyclic Alcohols.
- (m) Causal link is established by increase in imports, leading to increase in market share of imports, and consequent decline in production, sales, market share & capacity utilization. Further import prices declined too significantly as a result of which profitability of the domestic industry declined significantly. Thus causal link between increased import and serious injury is clearly established.
- (n) Since the facts of the case clearly establish that increased imports of Acyclic Alcohols have caused serious injury and are threatening further serious injury, safeguard duties may kindly be levied.
- (o) No questionnaire response has been filed by most of the interested parties and therefore these parties should be considered as non-cooperative.

- (p) The interested parties have failed to timely avail opportunity for advancing their arguments and protecting their interests.
- (q) The petitioner has adopted import data from different sources in view of the fact that exhaustive information from one source is not available. However, there is no double accounting of any import and therefore use of different sources is not inappropriate.
- (r) Even though oral submissions were made by a number of parties, only European Commission and Sasol Solvents have filed post hearing written submissions. Oral arguments advanced by a number of parties at the time of hearing which have not been subsequently reproduced in writing should not be taken into account.
- (s) Domestic industry has denied correctness of the various arguments advanced by the EC and Sasol Solvents and has filed detailed rejoinder submissions which has also been considered.

Submissions made by other interested parties

The summary of the submissions made by various interested parties are as follows:

EUROPEAN COMMISSION

- (a) Safeguard instrument is the most restrictive of the trade defense instruments since it is applied equally to imports of all sources and regardless of whether these imports are made at fair or unfair conditions. Therefore, this instrument should only be used in exceptional circumstances and the very strict WTO criteria required for imposing such measures in terms of injury and causality must be adhered to.
- (b) After analysis of the information available, the Commission believes that in this case the conditions required by the WTO are not met and therefore no measures should be imposed.
- (c) The injury situation described in the complaint does not show an industry suffering from injury due to imports. On the contrary, production volume and capacity remained largely stable over the period analyzed and the industry has been working at full capacity in the last years.

- (d) The loss of market share was only due to a significant increase in domestic consumption which the applicant could not take advantage of, since he was already running at more than 100% capacity utilization. Also the applicant was making profits throughout the period and up until Oct.08.
- (e) The only negative effect seems to have been the closure of the plant in November 2008. But even that would not be sufficient to show injury according to WTO standards. Indeed, a WTO panel has already condemned such an approach (Mexico beef and rice) that only takes into account a very short period because it does not allow for an objective examination of all the relevant factors.
- (f) Factory resumed operations in Jan. 2009 just after two months of closure refutes existence of serious injury and imports have caused any problems.
- (g) Increase in imports necessary to satisfy increasing demand. The import data shows gradual increase and not sudden increase as required by Article 2.1. of WTO.
- (h) Shut down in Nov. is due to other factors not related to imports. Applicant did not provide any factors as required under article 4.2 of the Safeguard agreement.
- (i) Increased cost of production is a result of wrong sourcing of raw materials and huge investments.
- (j) In case of imposition of duty, Plastic industry would suffer as Indian industry is not able to produce all types of Oxo Alcohols.

Evonik Oxeno GmbH

- (k) Indian domestic industry does not produce any like article or directly competitive article. Considering the product parameters such as physical characteristics, end use, consumers tastes and channels of distributions, price relationships, it is evident that domestic industry does not produce any like article or directly competitive article to the imported Iso Nonanol.
- (l) Evonik has referred to the decision of WTO in the matter of Japan-Alcoholic Beverages and Korea Alcoholic Beverages.

- (m) Previous attempts in including INA as a like product under Anti dumping investigations in India have not succeeded. The previous decisions on antidumping make it clear that other forms of Oxo Alcohol are different from those, which have produced using Nananol as input. Evonik has referred to the decision of the Designated Authority on anti dumping of two investigations concerning Oxo Alcohols.
- (n) The applicant has no standing before the Hon'ble Director General of Safeguards for the present investigations, as they do not produce Iso Nonanol.
- (o) There are serious deficiencies in the petition. Petition filed suffers from a number of serious deficiencies which include the following:
 - i. no support information for the three products involved
 - ii. lack of any unforeseen development
 - iii. lack of viable adjustments plan to meet international competition.

Lubrizol India Pvt Ltd.

- (p) Indian domestic industry does not produce Iso Octanol and Iso Decanol - Since the domestic industry does not manufacture these products, the same cannot be included in the scope of product under consideration.
- (q) Arguments advanced by Evonik has also been repeated by Lubrizol with regard to scope of product under consideration.
- (r) The applicant has no standing because the domestic industry does not produce Iso Octanol, Iso Decanol.
- (s) Serious deficiencies in the petition - Lubrizol also claims serious deficiencies in the application on the grounds similar to the grounds taken by Evonik.

Indian Plasticizers Manufacturers Association

- (t) Elaborate submissions have been made by Indian Plasticizers Manufacturers Association (IPMA) which are briefly summarized below:
 - i. The present application by the domestic industry praying for imposition of safeguard duty on the import of Oxo Alcohols is self-defeating. The drop in the international prices of Oxo Alcohols in 2008-09 is due to the lower prices of propylene/crude.

- ii. The leading foreign Oxo Alcohols manufacturers are producing Phthalate Plasticizers also and are keen to export Plasticizers, as these bring higher value addition and realization. The levy of Safeguard duty on Acyclic Alcohols will not assist Oxo industry and will open floodgates for imports of Phthalate Plasticizers. The exporters of Oxo Alcohols are producers of plasticizers. If safeguard duty is imposed on Oxo Alcohols, the input cost of Oxo Alcohols will go up to that extent. Plasticizers will be available at cheaper prices. In the event of safeguard duty there will be huge imports of plasticizers in India and the plasticizer mfrs. will have to close down units. If user industry closes down due to cheaper imports of Plasticizers, Oxo Alcohols mfrs will not be able to sell their product.
- iii. Importers of Oxo Alcohols who are the buyers of Oxo Alcohols from the domestic industry are actually Small Scale Industries engaged in the manufacture of Plasticizers. The manufactures of Plasticizers are yet to modernize and yet to increase their capacities to compete with global manufactures.
- iv. Oxo Alcohols manufactures even after imposition of safeguard duty will not be able to sell. Therefore, the prayer is self-defeating and against public interest.
- v. Confidentiality of Information – petitioner has claimed lot of information confidential. Complete balance sheet of company has not been provided. The information submitted in application is vague and does not allow reasonable and meaningful understanding of the magnitude of the injury suffered by the local industry.No product specific import data has been given. The expression used in the application is product and therefore data must refer to a unique product. There is no product called oxo alcohol. It is a generic name for group of product. The transaction in the market is by specific names of each product falling under the umbrella of Oxo Alcohol. A perusal of Annexure 4 shows that no product specific import data has been given.
- vi. No unforeseen development as contemplated in Article XIX of GATT 1994 has been listed by the petitioner. Neither the safeguard application dated 17th Nov.2008 nor the revised application dated 15.1.08 nor the initiation notice dt. 16th Jan.09 contain any reference to unforeseen development that had occurred as a result of obligations undertaken by India before WTO. In Argentina- Footwear, the WTO Appellate Body held that it must be demonstrated that the development 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 are unexpected.
- vii. Additional products have been added in the present petition. There cannot be any injury to domestic industry from the imports of products which are not manufactured by the domestic industry. Therefore, the investigation should

be restricted to the imports of Normal Butanol. Iso Butanol and 2-Ethyl Hexanol only as precisely these are the products manufactured by domestic producer and none other and in respect of which injury can be alleged. To be alike and directly competitive, the products must be interchangeable in all respects, not only technically but also commercially. The domestic industry is producing NBA, IBA and 2-EHA only. There is no substitutability between these various types of alcohols. These alcohols are used to form specific type of esters. Sabutol cannot be equated to IBA or NBA. IBA and NBA are produced following oxo process. Sabutol is obtained by coal carbonization process and it is a by-product. The petitioner appears to treat all plasticisers as a homogenous product presuming that any type of alcohol may be used in the production of every plasticizer. The end use of each plasticizer is different from that of another plasticizer. Plasticizers made from Sabutol does not have the traditional plasticizing efficiency to plasticizers such as DOP, DBP and DIBP which are manufactured from 99% pure 2-EHA, 99% pure NBA and 99% pure IBA. Thus its application is totally different. Substitutability, if any, of finished goods does not mean substitutability of raw material itself. The analysis of like product is a two step analysis as held in Birla Periclase vs. Designated Authority case. To club products of varying chemical composition, physical characteristics and end uses together to form a basket of like article would lead to a subversion of the principle of likeness. In anti dumping case of Andhra Petrochemicals vs. Designated Authority where imposition of anti dumping duties on Oxo alcohols was set aside, the tribunal commented on the issue of like product. In another anti dumping case of Oxo-Alcohols Industries Assn. Vs. Designated Authority reported in 2001(130), different oxo alcohols were not found to be like article even under anti dumping investigation where the definition of like article is much wider. The Tribunal equated "close resemblance" to whether the products were directly substitutable or interchangeable with each other and held that in addition to being interchangeable or substitutable for two products to be alike, their characteristics must closely resemble each other. If Iso decanol had been used in the manufacture of different types of plasticizers they cannot be alike and mere substitutability was not enough to treating two articles as being like. There is no evidence on record to show that Sabutol can be substituted for the good quality products such as IBA or NBA Sabutol is not a like product having regard to the difference in chemical properties. All these products must be taken separately for analysis. These three products among themselves are different products with different heading.

- viii. Their annual capacity is around 30,000-35,000 tonnes against the demand of 1,25,000 tonnes per annum.

- ix. Petitioner has frequently used the route of anti dumping duty. It has been throughout strategy of petitioner to exploit his customers by making late deliveries to charge exorbitant prices without any basis and to stop its customers from buying the goods from other competitive sources of overseas market by filing applications for creating tariff barriers to import even at situations when there was no injury to the petitioner. The Anti dumping duty levied on import of Oxo from various countries in the world have now been abolished/lapsed.
- x. In the public file also there is no credible information. There is no verification report of data.
- xi. The applicant already enjoys a tariff protection on the imports of raw material namely propylene @ 5% against 7.5% on imports of Oxo Alcohol.
- xii. Petition does not support serious injury or threat of serious injury. There is no injury on account of imports and initiation of investigation itself was premature.
- xiii. Once the plant of sole domestic producer is closed, all the users shall be compelled to import. Therefore any import data subsequent to closure of sole domestic producer is necessarily to be discarded while analyzing injury.
- xiv. Production has gone up with improvements in capacity utilization.
- xv. Petitioner has limited capacity and in absolute terms there is no fall. The size of domestic market is much bigger compared to capacity of petitioner and is growing, the import is inevitable.
- xvi. Other indigenous producers had closed because of their financial constraints.
- xvii. The applicant has not provided any data with regard to significant decline in the Oxo Alcohol prices which resulted in the closure of the plant in November 2008. Except the general statements regarding price undercutting no supporting data has been provided.
- xviii. No statement have been furnished about suffering of financial loss from Nov.08 resulting in plant closure. The quarterly report of petitioner ending 30th June 08 had a profit of about 6.9 crores against 11.72 crores for the corresponding period of previous year. The net profit of petitioner for the year ending 31.3.08 has been about Rs.36.22 crs.
- xix. Andhra Petrochemicals Ltd have no jetty and is not in a position to import the raw materials. It is left to the mercy of Hindustran Petroleum Corporation, the only supplier to the unit. The plant of petitioner is located at Vishakhapatnam i.e. on east coast whereas its majority of buyers are located on west coast.
- xx. The petitioner is treating Director General as an insurance company which can insure their business risks.
- xxi. No restructuring plan has been given in the application. The applicant must give a statement on the efforts being taken or planned to be taken or both to

make a positive adjustment to import competition. No such plan has been given under the application. The capacity expansion will be of no use if the product is not competitive with the imported product on all fronts. Safeguard measures are temporary arrangements to facilitate the domestic industry to gear them to face international competition. The application nowhere discloses how domestic industry will achieve increase in productivity, decrease in cost and above all reduction in their selling prices to meet international competition. The capacity of Andhra Petrochemicals Ltd is much lower than the international scales of production.

- xxii. Closure of factory is stage managed. The applicant has shut down their plant from 8th Nov. to 7th Dec.08 not on account of lack of orders rather to achieve their twin objective of annual maintenance and to justify their safeguard application
- xxiii. The revised application has been submitted on 15th Jan.09. It does not mention about the recommencement of production on 8.12.08 and is silent on its viability after recommencement.
- xxiv. There are at present about 25 units of Phthalate Plasticizers manufactures in India, out of which ten are inoperative because of over capacity and uneconomical realization. The operative units have extremely low capacity utilization less than 40% due to heavy imports of DOP and non availability of Oxo Alcohols. Besides all large scale units and several small scale unites have closed down

Alkyl Amines Chemicals Ltd

- xxv. The company is a leading manufacturer of Aliphatic Amines and Amine Derivatives. The range of amines include Butyl Amines for which they need normal Butanol and 2 EHA as raw materials.
- xxvi. Andhra Petro is the only manufactures of Normal Butanol and 2EHA and hence they enjoy monopoly position in India for the said products.
- xxvii. The claim of injury by Andhro Petro due to imports is not justified.
- xxviii. Andhra Petro demands advance payment from the Indian customers. The foreign suppliers offer credit upto 360 days with nominal rate of interest.

The Sasol Solvents

- xxix. The products manufactured by domestic industry are neither like products nor directly competitive to the products manufactured by the foreign producer.
- xxx. They have highlighted lot of discrepancies in the application as well as in the notice of initiation. They have submitted that the application is failing the test

of confidentiality. It is also submitted that there is no clear period of investigation under the application for which injury analysis can be done.

- xxxi. It has been submitted that there are no unforeseen circumstances, no sudden imports, no dramatic fall in sales or market share, no fall in capacity utilisation, no serious injury or threat of serious injury, no critical circumstances. It is submitted that fall in international prices was due to reduction in raw material prices. It is also submitted that there is no casual link between the injuries claimed and increased imports if any. It has also submitted that petitioner has not given any viable adjustment plan.
- xxxii. The imposition of duties will be against public interest.

EXAMINATION AND FINDINGS

8. I have carefully gone through the case records and the replies filed by the domestic producers, users/importers, and exporters and exporting government. Submissions made by the various parties and the issues arising there from are dealt with at appropriate places in the findings below.
9. **The product under investigation:** The product under consideration in the present investigations is Oxo Alcohols (Acyclic Alcohols). Oxo Alcohols are classified as acyclic alcohols, mixtures thereof and their halogenated, sulphonated, nitrated or nitrosated derivatives. There are many types of subject alcohols, some of which are as follows –

(i) Normal butanol (also known as NBA) or n-butyl alcohols, butan –1-ol,(29051300)	(v) Hexanol,(29051390)
(ii) Iso butanol (also known as IBA) or Butan –2-ol(29051490)	(vi) Heptanol,(29125000)
(iii) 2-Ethyl Hexanol (also known as 2-EHA)(29051620)	(vii) Octanol and Iso Octanol,(29051690)
(iv) Sabutol,(29051210)	(viii) Nonanol and Iso nonanol,(29051990)
	(ix) Decanol and Iso Decanol,(29051700)

The product is classified as follows.

Name of the Article	Classified under Customs Tariff Act, 1975
Normal butanol (also known as NBA) or n-butyl alcohols, butan-1-01	29051300
Iso butanol (also known as IBA) or Butan – 2-ol	29051490
Pentylol	29051400
2-Ethyl Hexanol (also known as 2-EHA)	29051620

Sabutol	29051210
Hexanol	29051390
Heptanol	29125000
Octanol and Iso octanol	29051690
Nonanol and Iso Nonanol	29051990
Decanol and Iso Decanol	29051700
And Mixtures Thereof.	

10. The domestic industries have submitted that all these products are ‘like or directly competitive’ to what is manufactured in India on the ground of their substitutability and even importers are importing such articles interchangeably. The parties on the issue of Product under Consideration and Like Article
11. It has argued that the article under investigation will cover only those articles, which are being imported into India during POI and the same being manufactured by the ‘domestic industry’. The petitioner does not offer Iso Nonanol and Sabutol. At the same time, petitioner is unable to fulfill entire Indian demand, if all kinds of acyclic alcohols within the scope of the present investigations are considered. Even after expansion of the project, the petitioner would not be able to meet the gross Indian demand, if all kinds of acyclic alcohols are included. At the same time, each type of acyclic alcohols has its own specific end application. In support of their arguments the interested parties have referred various judgments which have been taken into account.
12. The issue has been analysed. The “domestic industry” has been defined in clause (b) of sub-section 6 of section 8B of Customs Tariff Act, 1975 as;
- (b) “domestic industry” means the producers-
- i. as a whole of a like article or a directly competitive article; or
 - ii. whose collective output of a like article or a directly competitive article to India constitutes a major share of the total produced of the total production of the said article in India.
13. The Report of the Appellate Body in the case of United States- Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan [WT/DS192/AB/R] and Korea- Taxes on Alcoholic Beverages [WT/DS75/AB/R, WT/DS84/AB/R 18 Jan 1999] have dealt the issue of treating an article “like or directly competitive” extensively.

14. In order to analyse the relevance of the referred reports and findings, the relevant parts are reproduced below

United States- Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan [WT/DS192/AB/R]

84. *The United States appeals this finding of the Panel. The United States submits that Article 6.2 permits a definition of the domestic industry on the basis of products that are not only like but also directly competitive with the imported product. According to the United States, yarn sold on the merchant market and yarn produced by vertically integrated fabric producers for their own internal consumption are like, but they are not directly competitive with each other. The United States argues that, by rejecting its definition of the domestic industry, the Panel failed to give full meaning and effect to the term "and/or" in Article 6.2 and reduced the word "and" to inutility. The United States also argues that the Panel should have interpreted the definition of the domestic industry within the four corners of the ATC without having recourse to the wider context of other agreements of the WTO containing a definition of the domestic industry.*

85. *We begin our analysis of this issue with the definition of the domestic industry as stated in the relevant part of Article 6.2 of the ATC, which provides:*

Safeguard action may be taken under this Article when, on the basis of a determination by a Member, it is demonstrated that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. (footnote omitted, emphasis added)

86. *A plain reading of the phrase "domestic industry producing like and/or directly competitive products" shows clearly that the terms "like" and "directly competitive" are characteristics attached to the domestic products that are to be compared with the imported product. We are, therefore, of the view that the definition of the domestic industry must be product-oriented and not producer-oriented, and that the definition must be based on the products^[1] produced by the domestic industry which are to be compared with the imported product in terms of their being like or directly competitive.^[2]*

87. *We also consider that the term "producing" in Article 6.2 means producing for commercial purposes and that it cannot be interpreted, in itself, to be limited to or qualified as producing for sale on the merchant or any other segment of the market. The definition of the domestic industry, in terms of Article 6.2, is determined by what the industry produces, that is, like and/or directly competitive*

products. In our view, the term "producing", in itself, cannot be given a different or a qualified meaning on the basis of what a domestic producer chooses to do with its product.

88. *We now turn to the next two components of the definition of the domestic industry under Article 6.2 of the ATC, namely, like products and directly competitive products.*
89. *We note that there is no disagreement between the participants^[3] that yarn imported from Pakistan and yarn produced by the producers of the United States, regardless of whether they are vertically integrated fabric producers or independent yarn producers, are like products. The United States has made it clear in its arguments^[4] that its exclusion of yarn produced by vertically integrated fabric producers from the definition of the domestic industry was not because they are not producing a like product, but because they are not producing a directly competitive product. It is, therefore, not necessary for us to address the meaning of the term "like products" for the purposes of this appeal.*
90. *Before we examine the term "directly competitive" in the specific context of Article 6.2 and the facts of this particular case, we consider it useful to recall our interpretation of this term on previous occasions.*
91. *We have interpreted the term "directly competitive" in Korea – Alcoholic Beverages^[5] and Japan – Taxes on Alcoholic Beverages.^[6] We are cognizant of the fact that these two reports interpreted this term in the context of the Interpretative Note Ad Article III:2 of the GATT 1994. We will refer to this aspect later. The key elements of the interpretation of the term "directly competitive" in our Report in Korea – Alcoholic Beverages are:*
- (a) The word "competitive" means "characterised by competition". The context of the competitive relationship is necessarily the marketplace, since that is the forum where consumers choose different products that offer alternative ways of satisfying a particular need or taste. As competition in the marketplace is a dynamic and evolving process, the competitive relationship between products is not to be analyzed exclusively by current consumer preferences^[7]; the competitive relationship extends as well to potential competition.^[8]*
 - (b) According to the ordinary meaning of the term "directly competitive", products are competitive or substitutable when they are interchangeable or if they offer alternative ways of satisfying a particular need or taste.^[9]*
 - (c) In the context of Article III:2, second sentence, the qualifying word "directly" in the Ad Article suggests a degree of proximity in the competitive relationship between the domestic and imported products. The word "directly" does not, however, prevent a consideration of both latent and extant demand.^[10]*
 - (d) "Like" products are a subset of directly competitive or substitutable products: all like products are, by definition, directly competitive or*

substitutable products, whereas not all "directly competitive or substitutable" products are "like".^[11]

92. *The United States argues that the Panel's over-reliance on our Report in Korea – Alcoholic Beverages is mistaken for two reasons. First, that dispute involved interpretation of a different phrase ("directly competitive or substitutable"), of a different provision and agreement (Article III:2 of the GATT 1994), and in a different factual setting. In particular, the word "substitutable" is not used in juxtaposition with "directly competitive" in Article 6.2 of the ATC. Second, the Appellate Body emphasized, in that case, the importance of the marketplace in judging the competitive relationship between products because that is the forum where consumers choose between different products. According to the United States, a proper reading of the Appellate Body's reasoning reveals that if a domestic product does not enter the marketplace at all, it cannot be regarded as being "directly competitive" with the imported product, even though the two products may admittedly be "like products".*
93. *We are not persuaded by these arguments of the United States with respect to the relevance and interpretation of our Report in Korea – Alcoholic Beverages.*
94. *With respect to the first argument of the United States, a careful reading of our Report in that case would show that we used the terms "directly competitive" and "directly substitutable" without implying any distinction between them in assessing the competitive relationship between products.^[12] We do not consider that the mere absence of the word "substitutable" in Article 6.2 of the ATC renders our interpretation of the term "directly competitive" under Article III:2 of the GATT 1994 irrelevant in terms of its contextual significance for the interpretation of that term under Article 6.2 of the ATC.*
95. *We now turn to an examination of the term "directly competitive" in the specific context of Article 6.2 of the ATC and the dispute before us. We must bear in mind that Article 6.2 permits a safeguard action to be taken in order to protect a domestic industry from serious damage (or actual threat thereof) caused by a surge in imports, provided the domestic industry is identified as the industry producing "like and/or directly competitive products" in comparison with the imported product. The criteria of "like" and "directly competitive" are characteristics attached to the domestic product in order to ensure that the domestic industry is the appropriate industry in relation to the imported product. The degree of proximity between the imported and domestic products in their competitive relationship is thus critical to underpin the reasonableness of a safeguard action against an imported product.*
96. *According to the ordinary meaning of the term "competitive", two products are in a competitive relationship if they are commercially interchangeable, or if they offer alternative ways of satisfying the same consumer demand in the marketplace. "Competitive" is a characteristic attached to a product and denotes the capacity of a product to compete both in a current or a*

future situation. The word "competitive" must be distinguished from the words "competing" or "being in actual competition". It has a wider connotation than "actually competing" and includes also the notion of a potential to compete. It is not necessary that two products be competing, or that they be in actual competition with each other, in the marketplace at a given moment in order for those products to be regarded as competitive. Indeed, products which are competitive may not be actually competing with each other in the marketplace at a given moment for a variety of reasons, such as regulatory restrictions or producers' decisions. Thus, a static view is incorrect, for it leads to the same products being regarded as competitive at one moment in time, and not so the next, depending upon whether or not they are in the marketplace.

97. *It is significant that the word "competitive" is qualified by the word "directly", which emphasizes the degree of proximity that must obtain in the competitive relationship between the products under comparison. As noted earlier, a safeguard action under the ATC is permitted in order to protect the domestic industry against competition from an imported product. To ensure that such protection is reasonable, it is expressly provided that the domestic industry must be producing "like" and/or "directly competitive products". Like products are, necessarily, in the highest degree of competitive relationship in the marketplace.^[13] In permitting a safeguard action, the first consideration is, therefore, whether the domestic industry is producing a like product as compared with the imported product in question. If this is so, there can be no doubt as to the reasonableness of the safeguard action against the imported product.*

98. *When, however, the product produced by the domestic industry is not a "like product" as compared with the imported product, the question arises how close should be the competitive relationship between the imported product and the "unlike" domestic product. It is common knowledge that unlike or dissimilar products compete or can compete in the marketplace to varying degrees, ranging from direct or close competition to remote or indirect competition. The more unlike or dissimilar two products are, the more remote or indirect their competitive relationship will be in the marketplace. The term "competitive" has, therefore, purposely been qualified and limited by the word "directly" to signify the degree of proximity that must obtain in the competitive relationship when the products in question are unlike. Under this definition of "directly", a safeguard action will not extend to protecting a domestic industry that produces unlike products which have only a remote or tenuous competitive relationship with the imported product.*

15. Korea- Taxes on Alcoholic Beverages [WT/DS75/AB/R, WT/DS84/AB/R 18 Jan 1999]

114. *The term "directly competitive or substitutable" describes a particular type of relationship between two products, one imported and the other domestic. It is evident from the wording of the term that the essence of that relationship is that the products are in competition. This much is clear both from the word "competitive" which means "characterized by competition", and from the word "substitutable" which means "able to be substituted". The context of the competitive relationship is necessarily the marketplace*

since this is the forum where consumers choose between different products. Competition in the market place is a dynamic, evolving process. Accordingly, the wording of the term "directly competitive or substitutable" implies that the competitive relationship between products is not to be analyzed exclusively by reference to current consumer preferences. In our view, the word "substitutable" indicates that the requisite relationship may exist between products that are not, at a given moment, considered by consumers to be substitutes but which are, nonetheless, capable of being substituted for one another.

115. Thus, according to the ordinary meaning of the term, products are competitive or substitutable when they are interchangeable or if they offer, as the panel noted, "alternative ways of satisfying a particular need or taste." Particularly in a market where there are regulatory barriers to trade or to competition, there may well be latent demand.
116. The words "competitive or substitutable" are qualified in the Ad Article by the term "directly". In the context of Article III:2, second sentence, the word "directly" suggests a degree of proximity in the competitive relationship between domestic and the imported products. The word "directly" does not, however, prevent a panel from considering both latent and extant demand.
117. Our reading of the ordinary meaning of the term "directly competitive or substitutable" is supported by its context as well as its object and purpose. As part of the context, we note that the Ad Article provides that the second sentence of Article III:2 is applicable "only in cases where competition was involved" (emphasis added) According to Korea, the use of the past indicative "was" prevents a panel taking account of "potential" competition. However, in our view, the use of the word "was" does not have any necessary significance in defining the temporal scope of the analysis to be carried out. The Ad Article describes the circumstances in which a hypothetical tax "would be considered to be inconsistent with the provisions of the second sentence". (Emphasis added) The first part of the clause is cast in the conditional mood ("would") and the use of the past indicative simply follows from the use of the word "would". It does not place any limitations on the temporal dimension of the word "competition".
118. The first sentence of Article III:2 also forms part of the context of the term. "Like" products are a subset of directly competitive or substitutable products: all like products are, by definition, directly competitive or substitutable products, whereas not all "directly competitive or substitutable" products are "like". The notion of like products must be construed narrowly but the category of directly competitive or substitutable products is broader. While perfectly substitutable products fall within Article III:2, first sentence, imperfectly substitutable products can be assessed under Article III:2, second sentence.
119. The context of Article III:2, second sentence, also includes Article III:1 of the GATT 1994. As we stated in our Report in Japan – Alcoholic Beverages, Article III:1 informs Article III:2 that internal taxes... should not be applied to imported or domestic products so as to afford protection to domestic production." It is in the light of this principle, which embodies the object and purpose of the whole of Article III, that the term "directly competitive and substitutable" must be read. As we said in Japan – Alcoholic Beverages:

The broad and fundamental purpose of Article III is to avoid protectionism in the application of internal tax and regulatory measures. ... Towards this end,

Article III obliges Members of the WTO to provide equality of competitive conditions for imported products in relation to domestic products. Moreover, it is irrelevant that the "trade effects" of the tax differential between imported and domestic products, as reflected in the volumes of imports, are insignificant or even non-existent; Article III protects expectations not of any particular trade volume but rather of the equal competitive relationship between imported and domestic products.

120. *In view of the objectives of avoiding protectionism, requiring equality of competitive conditions and protecting expectations of equal competitive relationships, we decline to take a static view of the term "directly competitive or substitutable". The object and purpose of Article III confirms that the scope of the term "directly competitive or substitutable" cannot be limited to situations where consumers already regard products as alternatives. If reliance could be placed only on current instances of substitution, the object and purpose of Article III:2 could be defeated by the protective taxation that the provision aims to prohibit. Past panels have, in fact, acknowledged that consumer behaviour might be influenced, in particular, by protectionist internal taxation. Citing the panel in *Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages* ("1987 Japan – Alcohol), the panel in *Japan – Alcoholic Beverages* observed that "a tax system that discriminates against imports has the consequence of creating and even freezing preferences for domestic goods". The panel in *Japan – Alcoholic Beverages* also stated that "consumer surveys in a country with .. a [protective] tax system would likely understate the degree of potential competitiveness between substitutable products". (emphasis added) Accordingly, in some cases, it may be highly relevant to examine latent demand.*

16. From the above referred reports, it is apparent that the definition of the *domestic industry* must be product-oriented and not producer-oriented, and that the definition must be based on the products produced by the *domestic industry* which are to be compared with the imported product in terms of their being like or directly competitive. Further, the 'like products' are sub set of 'directly competitive products'. The word 'competitive' broadly means substitutable and it also includes the product which has potential to compete and not only the product which is competing at present. The word 'directly' indicates the degree of proximity that must obtain in the competitive relationship when the products in question are unlike. Under this definition of "directly", a safeguard action will not extend to protecting a domestic industry that produces unlike products.

17. Based on the principles laid down by the Appellate bodies each imported articles were compared with the articles manufactured by the domestic industry. It was found that even though the end products are substitutable, it is undisputed that each type of acyclic alcohols goes for a specific end application. The substitutability of these products is remote and thus the articles

which are imported but not manufactured by domestic industry cannot be termed as 'directly competitive'.

18. Some of the interested parties have contended that as the product identification is improper, the investigation may be terminated and treated improper ab-initio. In this regard it is noted that the principles of severability is a well accepted principle and when the defect is curable in nature, termination of investigation on the ground of inclusion of some of the articles which are not found to be 'like or directly competitive' article may not be justifiable. Accordingly, having regard to the legal requirements and facts of the case, it is considered appropriate to restrict the scope of the present investigations only to the following types of acyclic alcohols, which are manufactured by the domestic industry.

- i. Normal butanol (also known as NBA) or n-butyl alcohols, butan -1-ol,(29051300)
- ii. Iso butanol (also known as IBA) or Butan -2-ol(29051490)
- iii. 2-Ethyl Hexanol (also known as 2-EHA)(29051620)

19. The goods produced by the domestic industry are comparable in respect of all essential characteristics to the goods imported from various countries. There is no known difference the subject goods produced by the Indian industry and goods being imported. Subject goods produced by the Indian industry and imported goods are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. Subject product produced by the domestic industry is being treated as like or directly competitive to the product under consideration.

20. The section 13 of the General Clauses Act, 1897, which is reproduced below;

S.13 Gender and number- In all Central Acts and Regulations, unless there is any thing repugnant in the subject or context –

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.

provides interpretation that the use of singular word 'article' in the Customs Tariff Act 1975 does not preclude 'articles'. Further, in the various safeguard investigations including in the case of provisional safeguard measure against import of certain steel product by European Union through commission

regulation (EC) no.560/2002 of 27/3/02 a number of articles have been grouped together.

21. As the three articles NBA, IBA and 2-EHA are commercially known as acyclic alcohol and manufactured in the same plant; economic parameters have been analyzed as a group of the three.

Domestic Industry

22. As per the records of the case, there is only one domestic producer of Oxo Alcohols in India, namely Andhra Petrochemicals Limited. The same producer has filed the present application. This producer accounts for 100 production of the said product in India during the period 2005-06 to 2008-09. Thus, the output of the applicant producer constituted a major share of the total production of Oxo Alcohols in India. Further, no claim has been made by the interested parties against the applicants being the domestic industry. Therefore, it is held that the applicant domestic producer constitute and represent the domestic industry within the meaning of required and defined under Sec 8B (6) (b) of the Safeguard Duty Rules 1997.

Unforeseen Developments:

23. Current global recession, more pronounced in the developed countries, has led to decline in the demand for the products under consideration. Resultantly, producers are faced with significant unutilized capacities. For instance prices of IBA reached all time high of \$2150/MT during Aug 08 despite weak demand and high stocks before declining to \$730.MT in Dec '08 as demand decreased due to economic turmoil.
24. Propylene is the principal raw material used in production of the said product. Further, various types of oxo alcohols are used in production of various types of plasticizers. The prices of propylene, IBA, NBA, EHA, DOP (DOP is a type of plasticizer) and the difference between propylene and EHA were examined from Jan., 2008 to March, 2009 on the basis of the information published by ICIS, LOR (ICIS LOR is a leading trade journal, which publishes prices of all these products on weekly basis. Petitioner claimed and no party disputed that the prices published in this journal are quite indicative of the prices of these products in the international market).

US \$/MT

Date	Prices					Delta
	Propylene	IBA	NBA	2 EHA	DOP	2 EHA vs.

						Propylene
4-Jan-08	1,280	1,290	1,450	1,620	1,580	340
11-Jan-08	1,300	1,290	1,450	1,630	1,590	330
18-Jan-08	1,300	1,290	1,450	1,650	1,590	350
25-Jan-08	1,350	1,290	1,450	1,660	1,600	310
1-Feb-08	1,320	1,260	1,450	1,670	1,600	350
15-Feb-08	1,260	1,250	1,450	1,680	1,600	420
22-Feb-08	1,240	1,250	1,450	1,690	1,640	450
29-Feb-08	1,230	1,250	1,450	1,700	1,640	470
7-Mar-08	1,260	1,250	1,460	1,740	1,650	480
14-Mar-08	1,260	1,230	1,460	1,750	1,650	490
21-Mar-08	1,280	1,230	1,460	1,750	1,670	470
28-Mar-08	1,260	1,230	1,460	1,790	1,700	530
4-Apr-08	1,260	1,230	1,460	1,820	1,720	560
11-Apr-08	1,320	1,230	1,460	1,820	1,750	500
18-Apr-08	1,320	1,230	1,460	1,850	1,770	530
25-Apr-08	1,400	1,290	1,460	1,880	1,800	480
2-May-08	1,410	1,300	1,500	1,910	1,800	500
9-May-08	1,410	1,300	1,500	1,950	1,810	540
16-May-08	1,410	1,300	1,540	1,950	1,850	540
23-May-08	1,480	1,320	1,540	2,000	1,900	520
30-May-08	1,570	1,400	1,750	2,000	2,040	430
6-Jun-08	1,600	1,500	1,900	2,120	2,050	520

13-Jun-08	1,700	1,550	1,950	2,140	2,050	440
20-Jun-08	1,700	1,550	1,950	2,180	2,050	480
27-Jun-08	1,740	1,550	1,950	2,180	2,050	440
4-Jul-08	1,720	1,550	1,950	2,180	2,050	460
11-Jul-08	1,720	1,550	1,950	2,150	2,050	430
18-Jul-08	1,720	1,550	1,900	2,130	2,070	410
25-Jul-08	1,700	1,550	1,900	2,130	2,070	430
1-Aug-08	1,650	1,550	1,900	2,130	2,070	480
8-Aug-08	1,600	1,600	1,830	2,150	2,070	550
15-Aug-08	1,600	1,590	1,800	2,140	2,030	540
22-Aug-08	1,555	1,560	1,760	2,100	1,990	545
29-Aug-08	1,510	1,500	1,670	2,030	1,940	520
5-Sep-08	1,510	1,430	1,650	1,950	1,920	440
12-Sep-08	1,300	1,430	1,640	1,880	1,850	580
19-Sep-08	1,200	1,380	1,640	1,790	1,710	590
26-Sep-08	1,150	1,360	1,550	1,680	1,640	530
3-Oct-08	1,140	1,360	1,550	1,650	1,640	510
10-Oct-08	1,000	1,340	1,410	1,480	1,500	480
17-Oct-08	830	1,340	1,300	1,150	1,230	320
24-Oct-08	700	1,000	950	930	950	230
31-Oct-08	480	650	710	750	700	270
7-Nov-08	480	650	620	730	740	250
14-Nov-08	450	650	650	780	770	330

21-Nov-08	470	650	650	780	770	310
28-Nov-08	510	650	650	800	880	290
5-Dec-08	520	650	680	820	920	300
12-Dec-08	500	650	680	850	920	350
19-Dec-08	500	620	680	800	880	300
9-Jan-09	500	640	680	795	880	295
16-Jan-09	550	640	680	820	910	270
23-Jan-09	540	640	700	860	920	320
30-Jan-09	570	640	700	860	920	290
6-Feb-09	620	660	740	900	950	280
13-Feb-09	650	690	760	900	970	250
20-Feb-09	690	690	750	900	950	210
27-Feb-09	730	690	750	900	940	170
6-Mar-09	725	690	750	850	970	125
13-Mar-09	700	700	750	890	970	190
20-Mar-09	700	720	760	915	1020	215
27-Mar-09	750	735	800	920	1060	170

25. It is noted that the price difference between propylene and EHA declined very sharply over the period.

The rapid deceleration of the global economy has severely affected key industries especially in the developed economies. The increase in imports is due to surplus capacities with major countries. The Indian market is not only quite large but also very stable, sustained and is offering significant market opportunities to the global suppliers. It is apparent from the fact that the demand of the product has been consistently on rise. The table showing consumption in India is as below;

	Imports volume in MT	Demand/ Consumption MT
2005-06	41,061	83,497
2006-07	41,097	83,905
2007-08	58,981	101,907
2008-09	77602	113,210

Period of Investigation:

26. Para 130 of Argentina footwear Case Appellate Body Of WTO reads as "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 XI X: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. [1] In our view, the

phrase "is being imported" implies that the increase in imports must have been sudden and recent."

[1]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.

27. As the Appellate body has gone into details of the requirements of Safeguard investigation, the principles evolved in the findings and followed in subsequent cases, have been adopted. Accordingly the period of investigation has been considered up to the month of March, 2009, which is the very recent past for which data is available.

Increased imports:

28. In the notice of initiation, reliance was placed on imports data as per IBIS. Oxo Alcohols (Acyclic Alcohols) is imported into India from Republic of Korea, Iran, Saudia Arbia, UAE, Germany, Malaysia, and USA, The imports of Oxo Alcohols (Acyclic Alcohols) have shown an increasing trend in absolute terms as well as compared to the domestic production. As the product scope got changed, the import data relating to the three products have been considered. The source of data for import analysis is DGCIS up to the month of Nov.2008 (as available) and DOV (Directorate of Valuation) for subsequent months.
29. **Absolute increase in imports:** The import figures for the purpose of analysis of annual figures and during the year 2008-09 are as follows;

Annual Import (MT)

	Imports volume In MT	Imports per month in MT
2005-06	41,061	3,422
2006-07	41,097	3,425
2007-08	58,981	4,915
2008-09	72,397	6,033

Imports during 2008-09 (MT)

	Imports volume In MT	Imports per month in MT
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April-Sep08	34019	5670
Oct 08 - March 09	38378	6396
2008-09	72397	6033

30. It is seen that imports of the product have surged in the most recent period. The average volume of imports, which were in the range of 4915 MT/month till 2007-08, rose to 6033 MT/month during 2008-09. The percentage increase is 23%. The increase in imports during October 08-March 09 compared to the imports in 2007-08 is more profound and quantitatively 30.13%. These figures show that there is increase in import as well as the rate of increase in import is also on rise.

31. **Increased imports in relation to Total sale in India**

The table below shows the factual information on imports and market share of imports.

Year	Imports volume (MT)	Sales by Indian Industry (MT)	Total Market (MT)	Imports as percentage of Total market
a	b	c	d = b+c	e = b/d*100 (%)
2005-06	41,061	42437	83498	49
2006-07	41,097	42808	83905	49
2007-08	58,981	42926	101907	58
April-Sept-08	34,019	19001	53020	64
Oct 08 - March 09	38,378	16607	54985	70
2008-09	72,397	35609	108006	67

It is seen that the imports of oxo alcohols have surged significantly in relation to demand of the product in India. The market share of imports have gone up from 49% in 2005-06 to 70% in October 08-March 09 and 67% in FY 2008-09

It is thus seen that

- a) Imports have increased in absolute terms
- b) Imports have increased in relative terms.

It is thus concluded that the imports of Oxo Alcohol increased in India within the meaning of the Rules.

Serious Injury and Threat of Serious Injury

32. It was examined whether increased imports of the said goods are causing serious injury to the domestic industry. It was also examined whether the increased imports of the said goods are threatening serious injury to the domestic industry. The imports of the said goods have shown sudden and significant surge in absolute terms and in relation to production and consumption in India. It is noted that imports volume increased significantly, and at rapidly declining import prices.

33. The Rules provide as under with regard to serious injury to the domestic industry

The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the principles laid down in Annex to these rules.

34. Annexure to 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”.

35. Further, the Appellate Body in the Argentina footwear case held that

Para 139 of Argentina footwear Case Appellate Body Of WTO

In our view, it 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".

The analysis of listed economic parameters as well as other parameters, which may have bearing on arriving at the decision on 'serious injury' has been examined taking the evolved principles and law in force in India.

36. **Production:** Production of the domestic industry over the period was examined. The total production of the three articles taken together by the domestic industry has been as follows

Production in MT annual.

Period	Production for the period	Monthly production	% change
2005-06	42714	3,560	-
2006-07	42408	3,534	-0.72
2007-08	43047	3,587	1.51
2008-09	36747	3,062	(14.64)

Production in MT during 2008-09

Period	Production for the period	Monthly production	% change
April-Sept-08	20546	3,424	(4.54)
Oct08-Mar 09	16201	2,700	(21.15)
2008-09	36747	3,062	(14.64)

Average per month production of the said product was almost at similar levels during the period 2005-06 to 2007-08. However, the production during the year 2008-09 had sharp

decline. The decline during October 08– March 09 has been more profound, as evident from the fact that the monthly production fell to 2,700 MT from 3,424 during April-September 2008 and 3,587 MT during 2007- 08. This decline in production has been on the back drop of increasing domestic demand.

37. **Capacity Utilization:** The capacity utilization of the domestic industry is as shown in table below.

Period	Capacity utilization (%)
2005-06	88.99
2006-07	88.35
2007-08	89.68
2008-09	76.56

Capacity Utilization during 2008-09

Period	Capacity utilization (%)
April-Sept-08	85.61
Oct08 -Mar 09	67.50
2008-09	76.56

It is seen that the capacity utilization of the domestic industry was increasing up to 2007-08. The same has however declined sharply to 67.50% in Oct 08- March, 2009 and as a result the capacity utilization during 2008-09 went down to 76.56% from 89.68% previous year.

38. **Sales:** Sales volumes of the domestic industry over the period were examined. Factual position is as follows –

Annual Sales (MT)

Year	Sales MT	Sales per month MT	Demand MT
2005-06	42,437	3,536	83,498
2006-07	42,808	3,567	83,905
2007-08	42,926	3,577	101,907
2008-09	35,609	2,967	108,006

Sales During 2008-09

Year	Sales MT	Sales per month MT	Demand MT
Apr-Sep 08	19,001	3,167	53,020
Oct-Mar 09	16,607	2,768	54,985
2008-09	35,609	2,967	108,006

It is seen that volumes of sales were almost at similar levels till 2007-08. The same however declined significantly in Oct., 08 – March, 09 period. The fall in sales during the period 2008-09 is 17% compared to 2007-08 sales. The average monthly sales during Oct 08-March 09 is down by 22.6% compared to the monthly sales during 2007-08.

Comparing the sales volume of domestic industry and the demand in the market, it is noted that demand and the imports of the product were increasing, whereas the sales volume of domestic industry declined. Domestic industry was unable to capture the market and instead of expected gain in the growing market, it lost its market to imports.

39. **Productivity:** There is no evidence that the productivity of production machines have gone down.
40. **Decline in domestic selling Price:** In order to analyze the domestic selling prices, average monthly ex-works price is collected.

Ex works Price/Unit (Rs/Kg)

2- EH

	April	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar
2007-08	71.69	84.70	83.61	81.13	77.11	79.22	80.92	87.14	82.47	79.90	80.74	82.42
2008-09	73.58	83.11	87.88	91.35	88.73	84.57	80.10	77.09	45.98	46.25	47.83	53.57

NBA

	April	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar
2007-08	68.52	68.24	65.98	64.15	64.39	64.22	65.46	66.41	66.38	64.40	64.19	67.10
2008-09	69.56	77.20	83.17	86.88	83.83	76.82	71.48	61.56	43.35	43.92	46.99	51.70

IBA

	April	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar

2007-08	65.37	69.62	61.11	62.93	64.10	65.16	65.41	52.53	52.59	50.66	51.74	66.76
2008-09	-	-	69.30	66.21	62.62	61.89	62.20	49.87	56.15	55.23	49.24	44.46

It is seen that the selling price of the product increased till Sept 08 but declined thereafter steeply. While the price of the major raw material, Propylene also declined, the decline in the prices of the oxo alcohols was far more than the decline in the prices of propylene. Resultantly, the contribution margins fell very sharply. Since the domestic industry has to follow the import prices for selling the product, it is evident that the low priced imports forced the domestic industry to reduce their prices to such an extent that the domestic industry is now in financial losses.

	Raw materials cost			Contribution margin		
	NBA	IBA	EHA	NBA	IBA	EHA
2005-06	33.12	33.17	37.96	12.18	5.62	8.86
2006-07	36.81	37.92	42.58	25.00	20.49	20.32
2007-08	44.05	44.19	49.84	18.69	11.29	18.22
Apr-Sep 08	76.59	38.43	57.79	0.99	25.16	26.92
Oct-Mar 09	43.42	39.39	54.45	3.16	11.95	5.68
2008-09	55.32	38.78	56.48	2.39	20.30	18.59

41. Market share

Market share of domestic industry in demand/consumption in India was examined. The annual market share analysis as well as market share analysis during 2008-09 is as follows: –

Period	Share of applicants in Domestic demand (%)
2005-06	51
2006-07	51
2007-08	42
2008-09	33

Period	Share of applicants in Domestic demand (%)
April-Sept-08	36
Oct 08-Mar 09	30
2008-09	33

It is noted that share of domestic industry started declining after 2006-07. This trend continued till Sept., 2008. However, the decline was too significant thereafter, when the market share of the domestic industry declined from 36% (Apr.-Sept., 08) and 42% in 2007-08 to 30% (Oct.08-March, 09). This decline in the market share was at a time when the import increased.

42. **Price effect** – In order to determine whether imports of the product under consideration are undercutting the prices of the domestic industry in the market, the landed price of imports have been compared with the selling price of the domestic industry. It is noted difference between the import price and domestic prices became more profound in the favor of imports making domestic industries less competitive than the imports.

Ex works Price/Unit (Rs/Kg)

2- EH

	April	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar
2007-08	71.69	84.70	83.61	81.13	77.11	79.22	80.92	87.14	82.47	79.90	80.74	82.42
2008-09	73.58	83.11	87.88	91.35	88.73	84.57	80.10	77.09	45.98	46.25	47.83	53.57

NBA

	April	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar
2007-08	68.52	68.24	65.98	64.15	64.39	64.22	65.46	66.41	66.38	64.40	64.19	67.10
2008-09	69.56	77.20	83.17	86.88	83.83	76.82	71.48	61.56	43.35	43.92	46.99	51.70

IBA

	April	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar
2007-08	65.37	69.62	61.11	62.93	64.10	65.16	65.41	52.53	52.59	50.66	51.74	66.76
2008-09	-	-	69.30	66.21	62.62	61.89	62.20	49.87	56.15	55.23	49.24	44.46

Import CIF Price(Rs./KG)

	NBA	IBA	2EH
2005-06	40.24	44.99	44.85
2006-07	55.32	55.58	75.14

2007-08	59.75	60.86	53.44
Up to Sept	75.10	61.73	86.75
Oct to March	53.07	38.58	50.88
2008-09	63.81	47.22	58.72

43. **Profitability in domestic sales**

Profits of the domestic industry on domestic sales of the product were examined. The annual profits as well as profits during the period 2008-09 are as follows;

Period	Profit before tax on total domestic sales	Profit/ (Loss) per MT on domestic sales	Selling price of the domestic industry	Cost of production of the domestic industry
2005-06	986.99	0.93	45.51	44.58
2006-07	6002.47	12.81	62.13	49.32
2007-08	5852.51	12.95	65.57	52.62
2008-09	2802.35	7.02	68.76	61.74

Period	Profit before tax on total domestic sales	Profit/ (Loss) per MT on domestic sales	Selling price of the domestic industry	Cost of production of the domestic industry
April-Sept-08	2792.78	13.75	81.64	67.89
Oct-Mar 09	9.57	(0.69)	54.02	54.71
2008-09	2802.35	7.02	68.76	61.74

It is noted that profitability of the domestic industry has very steeply deteriorated. So significant has been decline in profits of the domestic industry that whereas the domestic industry was earning a profit of Rs.13.75 per MT during April-Sept-08 period, it suffered losses amounting to Rs.0.69 per MT during Oct 08-March, 2009. It is noted that the cost of production of the domestic industry also declined steeply. However, so steep was the decline in prices that the domestic industry ended up with significant financial losses.

44. **Return on Investment**

Return on investment followed the same trend as of profitability as can be seen from the table below. Return on investments has come down to 0.17% in Oct 08- Mar 09.

Period	ROI(%)	Indexed
2005-06	8.21	100
2006-07	37.61	458
2007-08	36.65	446
2008-09	24.55	299

Period	ROI(%)	Indexed
April-Sept-08	35.12	428
Oct 08-Mar 09	0.17	2
2008-09	24.55	299

45. **Loss of Employment:** There was no loss of employment in the domestic industry, as the procedure to lay off employees as per the labor laws of the Country is time consuming. However, the shut downs and lower production has caused indirect unemployment.

Causal Link between Increased Imports and Threat of Serious Injury:

46. A comprehensive evaluation of parameters as above for the period from 2005-06 up to March 2009 demonstrates that serious injury and imminent threat of serious injury is being caused by increased imports. The causal link is established by the following
- (a) The imports of the said products have increased significantly. During the period when imports increased, the economic parameters indicating injury viz. sales, production, capacity utilization, pressure on prices, market share have shown decline.
- (b) In this respect, the findings of Appellate Body in the Argentina foot ware case is referred of WTO
- "We note that Article 4.2(a) requires the competent authorities to evaluate "the rate and amount of the increase in imports", "the share of the domestic market taken by increased imports", as well as the "changes" in the level of factors such as sales, production, productivity, capacity utilization, and others. We see no reason to disagree with the Panel's interpretation that the words "rate and amount" and "changes" in Article 4.2(a) mean that "the trends -- in both the injury factors and the imports -- matter as much as their absolute levels." We also agree with the Panel that, in an analysis of causation, "it is the relationship between the movements in imports (volume and market share) and the movements in injury factors that must be central to a causation analysis

and determination." (emphasis added) Furthermore, with respect to a "coincidence" between an increase in imports and a decline in the relevant injury factors, we note that the Panel simply said that this should "normally" occur if causation is present.] The Panel qualified this statement, however, in the following sentence:

While such a coincidence by itself cannot prove causation (because, inter alia, Article 3 requires an explanation – i.e., "findings and reasoned conclusions"), its absence would create serious doubts as to the existence of a causal link, and would require a very compelling analysis of why causation still is present. Consequently, whereas the market share of the imports has increased, that of domestic industry has declined. Decline in the market share of the domestic industry is because of increased imports. While the decline in the market share upto Sept., 2008 is because of demand in the Country being much higher than domestic supplies; the decline in the market share in subsequent period is clearly because of surge in low priced imports at a time when the domestic industry was faced with unutilized capacities"

- (c) **Demand in Indian Market:** The table below gives the size of domestic market during last three years;

Year	Imports volume (MT)	Sales by Indian Industry (MT)	Total Market (MT)
a	b	c	d = b+c
2005-06	41,061	42437	83498
2006-07	41,097	42808	83905
2007-08	58,981	42926	101907
2008-09	72,397	35609	108006

Market Size during 2008-09

Year	Imports volume (MT)	Sales by Indian Industry (MT)	Total Market (MT)
a	b	c	d = b+c
April-Sept-08	34,019	19001	53020
Oct 08 - March 09	38,378	16607	54985
2008-09	72,397	35609	108006

From the table it is evident that the market size of India grew by 6099 MT during 2008-09, but the sales fell by 7317 MT. The increased imports not only taken the domestic industries market of 7317 MT but also prevented him to take its share in the growing market.

- (d) **Increased imports vis-à-vis loss of sales:** The domestic industry had a loss of 7317 MT of sales during the year 2008-09 and the import grew by 13416 MT during the same period proving direct correlation between the two.
- (e) **Delta vis-à-vis loss of sales and profitability:** The 'Delta' analysis done above shows that the sales fell when the delta also fell. The import prices were also falling during the same period. The substantial decline in profitability during the period during 2008-09 on account of loss of sales, falling production happened during the same period when import was increasing. Had the import been at the previous year level and at the previous year's 'Delta', the situation would have been different.
- (f) It has been argued that domestic industry cannot meet the demand and the imports are inevitable. From the figures shown above, the imports were catering to less than 50% of demand and remaining were catered by the domestic industry. During the year 2008-09 when the market size increased, the imports increased at such prices that it took away the domestic industries share. The domestic industries responded with price cuts to meet the international prices at the cost of profitability, but it is not possible to sustain the price cuts at the level of 'Delta' which makes the operation unviable. Further, such imports at such low prices also make the expansion plan, already underway, unviable.
- (g) **Closure of Units:** On verification of information on closure, it was found that the plant has been shut down between 8.4.2007 to 17.4.2007 and 29.4.2008 to 9.5.2008 for annual maintenance. The shut down during 9.11.2008 to 7.12.2008 has been on account of steep fall in prices making the operation unviable.
- (h) **Other factors:** For the purpose of analysis the figures related to domestic market has been taken and thus export, if any, have no bearing on the analysis. There have been no reported labor or management problems. Thus, no other factors are present which can have significant bearings on the serious injury or threat of serious injury caused to the domestic industry.

It is thus concluded that the increased imports of the said product are causing and threatening to cause serious injury to the domestic industry. The serious injury and threat of serious injury is attributable to increased imports.

- 47. **Adjustment plan:** The applicant is undertaking capacity expansion by increasing the capacity to about 72000 MT. The expansion is likely to be completed by June, 2010. Details of the expansion were called, including technical & commercial feasibility. It was found that the company has already incurred substantial expenditure towards this expansion plan. It is also found that the company has drawn technical & commercial feasibility of the expansion and the same has been approved by the financial institutions as well, who have agreed to invest significant amount. It is noted that the adjustment plan

given by the company is reasonable and feasible. The applicant has also undertaken to take cost cutting exercise. Further, the applicant has also undertaken to submit half yearly action taken report with regards to their adjustment plans. The adjustment plans have been taken into account for gradual liberalization of duty.

Public Interest:

48. Some of the parties have argued that imposition of safeguard duty would severely prejudice the public interest as a number of end user industries may close down. It has been argued that the imposition of safeguard duty on Oxo Alcohols would make it costlier and this would be against consumer interest. However, no evidence to this effect has been presented which could show the adverse effect of safeguard duty. Further, it is observed that the expression 'public interest' does not cover consumer interest alone in its ambit. The expression 'public interest' is a wider term, which covers in its ambit the general social welfare taking into account the larger community interest. Safeguard duty, being an indirect tax may affect various economic operators differently as there exist conflicting interests of different economic operators in market economy.
49. An analysis of prevailing prices in India, international prices, raw material prices and cost of sale by domestic industries during the period January 2009-March 2009 has been considered. Further, the total production capacity by Indian industries and demand in India has also been analyzed. The domestic industry covers around half of the present demand and can meet the entire demand after expansion is complete. It is in the public interest that there exist sustained competition between Indian production and imports so that India end users can have the product at competitive prices.
50. In the instant case, the raw material cost constitutes significant part of cost and the raw material prices are changing depending on international pricing. The 'Delta' in the instant case has fallen below the level which can be sustained. Further, the safeguard duty recommended has been only to the extent to neutralize the injurious impact and thus the competition from import remains alive. Further, the recommended duty has been kept to a level favorable to imports so that the prices of Oxo alcohols are kept competitive in India.
51. Moreover, if the injury to the domestic industry continued, it may lead to the closure of the domestic industry. As a result of which, 'Oxo Alcohol' an important chemical would not be manufactured in India and thereby making the users of the 'Oxo Alcohol' wholly dependent on the imports.
52. In view of the foregoing, it is held that the imposition of safeguard will be in public interest and especially the interests of end users are well protected.

53. **Developing Nations:** The percentages of imports from developing nations have been examined. Except Brazil, Indonesia, Iran, Malaysia, Saudi Arabia and South Africa who constitute 4%, 7%, 7%, 8%, 7% and 13% respectively of total imports in India, other developing nations individually have less than 3% of total imports in India. Therefore, the import of product under consideration originating from developing nations except Brazil, Indonesia, Iran, Malaysia, Saudi Arabia and South Africa may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

Conclusion and Recommendation:

54. In view of the findings above, it is concluded that increased imports of Oxo Alcohol into India have caused and threatened to cause serious injury to the domestic producers of Oxo Alcohol and it will be in the public interest to impose safeguard duty for a period of 3 years on imports of Oxo Alcohol into India. In arriving at the amount of safeguard duty that would be adequate to prevent serious injury to the domestic industry and to facilitate positive adjustment, Cost to sell, reasonable return on capital employed, import prices and need to allow imports to maintain competition in domestic market has been considered.

55. Considering that the domestic industry need three years to readjust, it is recommended that safeguard duty be imposed on imports of Oxo Alcohol into India for a period of 3 (Three) years at the rates specified below, being the minimum necessary for the protection of the domestic industry from the serious injury caused and threatened to be caused by the increased imports of Oxo Alcohol.

Year	Safeguard duty recommended
1 st Year	10% ad-valorem
2 nd Year	7.5% ad-valorem
3 rd Year	5% ad-valorem

56. As the imports from developing nations except Brazil, Indonesia, Iran, Malaysia, Saudi Arabia and South Africa do not exceed 3% individually, the import of product under consideration originating from developing nations except Brazil, Indonesia, Iran, Malaysia, Saudi Arabia and South Africa may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.

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