

To be published in Part-I Section I of the Gazette of India Extraordinary
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Trade Remedies)
4th Floor, Jeewan Tara Building, 5, Parliament Street, New Delhi

NOTIFICATION
(Bilateral Safeguard Investigation)

[Case No: (SG) 04/2019]

Date: the 26th August, 2019

Subject: Preliminary findings of Bilateral Safeguard Investigation concerning imports of “Refined Bleached Deodorised Palmolein and Refined Bleached Deodorised Palm Oil” into India from Malaysia under India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017

F. No. 22/4/2019-DGTR : Having regard to the Article 5 of the Comprehensive Economic Cooperation Agreement between the Government of the Republic of India and the Government of Malaysia (CECA) and India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 thereof.

A. Procedure

Whereas, an application had been filed under India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 (hereinafter also referred to as the “said Rules” or “bilateral safeguard rules”) by the Solvent Extractors’ Association of India on behalf of the Indian domestic producers, through M/s TPM Consultants, New Delhi alleging increased imports of “Refined Bleached Deodorised Palm Oil” and “Refined Bleached Deodorised Palmolein” (hereinafter also referred to as the “product under consideration” or “PUC” or subject goods) from Malaysia (also referred to as subject country) causing serious injury and threat of serious injury to the domestic producers of like or directly competitive product in India.

1. Having satisfied that the requirements of article 4 of Bilateral safeguard rules were met, Bilateral safeguard investigation into increased imports of “Refined Bleached Deodorised Palm Oil” and “Refined Bleached Deodorised Palmolein” from Malaysia was initiated vide

notice of initiation dated 14th August, 2019, published in the Gazette of India, Extraordinary.

2. A copy of the Notice of Initiation dated 14th August, 2019 along with copy of non-confidential version of the application filed by the domestic industry were forwarded to the Central Government in the Ministry of Commerce, Ministry of Finance, other administrative ministries, Government of Malaysia through its High Commission in India, and other interested parties as mentioned in the application, in accordance with Rule 5(2) and 5(3) of the said Rules.
3. Questionnaire was sent to the following foreign producers of the product in Malaysia
 - i. Felda Marketing Services Son Bhd
 - ii. Golden Jomalina Food Industries Son Bhd
 - iii. 101 Edible Oils Son Bhd
 - iv. KI-Kepong Edible Oils Son Bhd
 - v. Mewaholeo Industries Son Bhd
 - vi. Ngo Chew Hong Oils & Fats (M) Son
 - vii. Southern Edible Oil Industries (M) Son
 - viii. Kwantas Oil Son Bhd
 - ix. Sarawak Oil Palm Berhad
 - x. Siam Derby Oils Langat Refinery
 - xi. Golden Agri Resources Ltd
 - xii. Wilmar International
4. Interested parties were requested to make their views known in writing within 30 days of the initiation notice.
5. The petitioners in their application have submitted as follows
 - a. Application for safeguard measures under the Agreement has been filed by Solvent Extractors' Association of India and therefore it should be considered that the application has been filed on behalf the producers of "Refined Bleached Deodorised Palm Oil" and "Refined Bleached Deodorised Palmolein" in India.
 - b. The product under investigation is "Refined Bleached Deodorised Palm Oil" and "Refined Bleached Deodorised Palmolein" (also known as RBD Palm Oil and RBD palmolein, respectively), falling under the HS code 15119010 and 15119020.
 - c. Product under consideration is commonly used to formulate trans-free fats such as margarine, shortening and vegetable ghee.
 - d. There are various producers who are member of the Association and nine of them have supported the petition.
 - e. Present application is by an association of domestic producers, it should be considered that the application has been filed on behalf of the domestic producers.

- f. The association does not maintain individual producer's data such as production, sales, stocks, profits, etc. in view of the fact that this is commercially sensitive data and the association is constrained not to undertake this activity in view of Competition laws in the Country.
- g. Information on domestic production has been derived from two sources (a) domestic crude palm oil (CPO) production (b) from imported crude palm oil.
- h. Petitioner have derived gross Indian production by applying the conversion factor from Crude Palm Oil to subject goods considering that one MT raw material (CPO) produce 0.95 MT Refined palm oil. One MT refined palm oil produces 0.80 MT RBD oil.
- i. Palm oil is semi-solid at room temperature (20°C). The liquid portion could be physically separated from the solid portion of palm oil by fractionation. After fractionation the liquid portion is called "palm olein" which is commonly bottled and sold as cooking oils. The solid fat portion is called "palm stearin" which is not under the scope of the product under consideration.
- j. The standard rate applicable on subject goods is 100%. However, the applied rate are low due to Preferential Custom Duty under Preferential Tariff Agreements (CECA with Malaysia) & (AIFTA), which were notified vide Notification No. 82/2018 & 84/2018 both dated 31.12.2018. The applied rate of custom duty have been much below the level of rates provided for in the AIFTA and CECA Agreement and the difference between the custom duty for CPO and subject goods was 10%. The applied rates increased significantly in March 2018. It was only after this that the custom duty rates applicable under CECA and ASEAN became relevant.
- k. The petitioner has filed this application pursuant to the Comprehensive Economic Cooperation Agreement entered into by Malaysia and Indian Government.
- l. Pursuant to Malaysia CECA Agreement, the duty on imports of Crude Palm Oil (raw material of subject goods) from Malaysia has been reduced to 40% whereas the duty on subject goods has been reduced to 45%, vide Notification No. 82/2018 dated 31.12.2018. Thus, the difference between the duty on Crude Palm Oil and subject goods is a mere 5%.
- m. The difference between duty on Crude Palm Oil and subject goods have always been 10%. Following the reduction of duty difference from 10% to 5% between Crude Palm Oil and subject goods, imports from Malaysia of subject goods has increased significantly.
- n. There is significant increase in the import volumes in the POI. The imports have increased by 516% from 2015-16 to the POI. Imports of product concerned into India increased significantly in absolute terms and in relation to production, consumption and share in imports.
- o. The imports in relation to production and consumption have also increased significantly. Imports constituted 8% of share in Indian production in 2015-16 which increased to 73% in the POI. Similarly, imports constituted 5% of share in Indian consumption in 2015-16 which increased to 32% in the POI.
- p. Imports from Malaysia constituted merely 17% of total Indian imports which in 2015-16 increased to 78% of the total imports in the proposed POI.

- q. Imports into India are largely from Indonesia and Malaysia. But Malaysia has duty advantage for RBD Palmolein under India – Malaysia CECA Agreement, so the country is now flooded with subject goods from Malaysia.
- r. Like product being produced by the domestic industry is the same as the imported product, i.e., “Refined Bleached Deodorised Palm Oil” and “Refined Bleached Deodorised Palmolein”. The domestic product is comparable to the imported product.
- s. The industry is suffering from gross underutilization of production capacities. To compound the difficulties of the domestic producers, the sudden surge in imports is further impacting the capacity utilization of the domestic producers in India.
- t. Petitioner has submitted that that since the product cannot be kept in stock for long, they have considered production as sales.
- u. Production and sales of the Indian industry has declined significantly. Whereas the demand for the product declined from 8,095,565 MT (2015-16) to 7,982,537 MT (POI annualised), production and consequently sales of the domestic industry declined from 5,558,240 MT (2015-16) to 4,833,716 MT (POI). The production of the domestic industry thus declined by 7.25 lacs MT, valued at around Rs. 3,000 crores, whereas demand for the product declined only by 1.13 lacs MT.
- v. Capacity utilization of the industry has declined very significantly. The Indian industry is not utilizing even half of its capacities and then capacity utilization declined to mere 31% in Q1 of 2019-20.
- w. Decline in production and capacity utilization is evident even from the decline in imports of crude palm oil. The imports of CPO declined sharply during this period.
- x. Market share of Indian industry has declined whereas market share of the imports have increased. Whereas the Indian producers were earlier holding 69% market share (2015-16), the same has declined to 61% (Apr.-June, 2019).
- y. The subject imports are significantly undercutting the prices of the domestic industry. Thus, if the Indian producers import the CPO, process the same into RBD oil and sell RBD oil in the market, they will not be able to recover even processing costs and would incur significant financial losses.
- z. The profits of the domestic industry has declined by about Rs. 268 crores in Jan.-June, 2019 as compared to the period April-Dec., 2018, considering loss of sales of about 7.6 lacs MT during this period (actual and potential loss), and a reasonable minimum profit of Rs. 2500 pmt that any refiner earns. The profits of the industry were increasing till Dec., 2018.
- aa. The Indian industry is operating their plant below 1/3rd of their capacities. Whereas the consumption of RBD in the country is in the region of 80 lacs MT, the country has capacities in the region of 130 lac MT. Imports of RBD oil are thus totally unnecessary.
- bb. Number of man-hours deployed in processing of product under consideration has declined in the current period. Considering annual loss of production to the extent of 20 lacs, the employment deployed for the product has declined by about 3,000.
- cc. The productivity of the Indian industry has declined significantly in the POI.
- dd. In addition to the serious injury already caused, imports are threatening serious injury as established by the following
 - i. The volume of imports has increased significantly in a relatively short period.

- ii. Significant share in the domestic market is already held by the imports and such shares are increasing.
- iii. The difference between domestic price and imported product is quite significant, as established by the import price of CPO and RBD Palmolein, after due adjustments for processing costs & expenses.
- iv. Malaysia holds huge production base and exports quite significant volumes. The fact that the imports have increased so rapidly in itself is clearly indicative of the likely damage that can be caused to the domestic processors.
- ee. There are no other factors that may be attributing to the serious injury to the domestic industry other than increased imports.
- ff. The landed price of imports is significantly lower than the selling prices of the domestic industry.
- gg. The domestic industry is losing sales opportunities as well as normal margin. Consequently, sales, profits, return on investment and cash flow is declining due to continued presence of low price imports.
- hh. Increased imports have led to increase in market share of imports and reduction in market share of the domestic industry.
- ii. The petitioner has requested safeguard measure as provided under India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017. The price difference between the target price, considering the import price of crude, processing costs involved and reasonable profit (5%) and landed price of imports is about 18%.
- jj. The purpose of seeking safeguard measure is to enable the domestic industry to improve its capacity utilization so that the domestic industry is able to survive.
- kk. The petitioner has requested safeguard measures for one year. Petitioner has also requested for imposition of provisional safeguard measure. It was submitted that the interim measures are imperative in view of the steep deterioration in performance of the domestic industry as a result of increased imports of the product under consideration.
- ll. It was also submitted that the imports from Malaysia has increased significantly whereas the production, sales and resultantly the capacity utilization of Indian industry has declined significantly.

B. Analysis of submissions made by petitioners for provisional measures

6. The petitioners request for imposition of provisional bilateral safeguard measures has been examined. Rule 8 of India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 issued vide Notification No. 55/2017-NT-Customs dated 21.06.2017 prescribes that Director General may proceed expeditiously with the conduct of the investigation and in critical circumstances, Director General may record a preliminary finding regarding increased imports causing serious injury or threat of serious injury to the domestic industry and where delay in imposition of provisional bilateral safeguard measure would cause damage which would be difficult to repair. The principles governing investigations have been provided in the Rule 5 of the India-Malaysia

Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017, which is independent to Rule 8. Rule 13 provides for refund of differential Safeguard duty in case safeguard duty imposed after conclusions of the investigations is lower than the provisional duty already imposed and collected. The harmonious reading of Rules 5, 8 and 13 of the said Rules leads to a conclusion that the Rules provide for expeditious recommendation of provisional Safeguard duty based on preliminary findings, and refund of the differential duty in case it is ascertained that the duty imposed after conclusion of investigation (final findings) as enshrined in the Rule 5 is lower than the provisional Safeguard Duty. However, in critical circumstances, any delay in imposition of Provisional Safeguard duty may cause damage which would be difficult to repair. Accordingly, it was considered prudent to analyze circumstances to assess whether the same falls in the category of critical circumstances.

7. It is noted that subject imports have increased very significantly from 626,362 Mt in 2016-17 to 1,974,337 MT (on annualised basis) in Jan.-March, 2019 and further to 3,218,112 MT (on annualised basis) in April-June, 2019 period which is 87 % of total imports in India, 112% of Indian production and 40% Indian consumption. The petitioners have claimed that the steep increase in subject imports has led to critically significant adverse impact on the domestic producers and utilisation of their production facilities for the product. They have also claimed in their petition that considering significant surge in subject imports and further threat of increase in imports, serious injury to the domestic producers is imminent in case immediate safeguard measures are not invoked in accordance with the said rules. The Director General therefore has examined the contention of the petitioners if there exists a critical situation warranting imposition of provisional safeguard measures, and whether any delay in the imposition of provisional measures would cause damage, which would be difficult to repair.
8. A careful reading of various provisions of the said rules and the Agreement shows that the rules contemplate recording of interim measures in appropriate cases without waiting for questionnaire response and other information from the interested parties. It would therefore be appropriate to examine request for imposition of bilateral safeguard measures without waiting for the replies to the notice of initiation. However, the Director General shall consider any information/evidence or justification given by any interested party during the process of investigation on all aspects of investigations.

C. Examination of the petition:

9. The application filed by the petitioner has been examined for immediate imposition of safeguard duty. Accordingly, the information made available by the petitioner in their petition and subsequent submissions, have been considered by the Director General for the purpose of the preliminary determination. The Director General shall however record its final determination, after receipt of information and views from all interested parties.

I. The product under Consideration (PUC)

10. The product under consideration in the present investigation is “Refined Bleached Deodorised Palm Oil” and “Refined Bleached Deodorised Palmolein” (also known as RBD Palm Oil and RBD palmolein, respectively), falling under the HS code 15119010 and 15119020 of the Customs Tariff Act. RBD Palmolein is refined, bleached and deodorized form of palm oil which is extracted after crushing palm fruit. Product under consideration is commonly used to formulate trans-free fats such as margarine, shortening and vegetable ghee.

II. Domestic Industry

11. Rule 2 (b) of the India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 provides as follows:

*“domestic industry” means, with respect to an imported good, the producers -
(i) as a whole of the like good or directly competitive good in India; or*

12. Further, Rule 4 provides as follows with regard to filing of application:

The Director General shall, on receipt of a written application by or on behalf of the domestic producer of like good or directly competitive good, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by increased imports of an originating good as result of the reduction or elimination of a customs duty under the Trade Agreement

13. The application has been filed by the Solvent Extractors’ Association of India on behalf the domestic producers of “Refined Bleached Deodorised Palm Oil” and “Refined Bleached Deodorised Palmolein” in India. The petition contains information for the Indian industry as a whole. The following domestic producers have specifically sought imposition of bilateral safeguard measures.

- a. 3F Industries Ltd.,
- b. Adani Wilmar Ltd.,
- c. COFCO International,
- d. Emami Agrotech Ltd,
- e. Gemini Edible Fats & Oils Ltd.
- f. Gokul Agro Resources Ltd,
- g. Liberty Oil Mills Ltd.,
- h. Ozone Procon Pvt. Ltd.,
- i. Ruchi Soya Industries Ltd. (6 Units),

14. It is considered that the petition has been filed on behalf of the “domestic producers as a whole” of the like article in India, and Solvent Extractors’ Association of India has been taken as domestic industry for the purpose of this investigation.

III. Period of Investigation (POI)

15. The period January-June, 2019 has been considered as the investigation period (POI) for the purpose of a determination of whether imports of the RBD have increased in such quantity so as to constitute “increased imports”. The applicable customs duties on Crude Palm Oil and subject goods changed with effect from 1st January, 2019. Neither the domestic laws nor Agreement on Safeguards and Article XIX of GATT nor India and India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 provide any specific guidelines on the period of investigation except the fact that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury or threat of serious injury to the Indian industry. The injury investigation period has been considered as the period 2016-17, 2017-18, Apr.-Dec., 2018 and the POI. The figures in the present findings for the periods Apr.-Dec., 2018 and POI have been mentioned on annualised basis in order to make them comparable to the previous year period.

IV. Source of Information

16. Since the subject goods have dedicated customs code, import data for the period from April 2015 to June 2019 have been considered as per import-export data published by DGCI&S. Information with regard to serious injury has been considered for the domestic producers as a whole as furnished by Solvent Extractors’ Association of India.
17. Information with regard to serious injury has been provided by the petitioners in respect of domestic producers as a whole. After initiation, the Director General issued questionnaire to the Solvent Extractors’ Association of India and also individual producers as per list made available by the association directing them to provide information as per prescribed questionnaire. The said information has been provided by following domestic producers.
- a. Emami Agrotech Ltd
 - b. Liberty Oil Mills Ltd.
 - c. Gemini Edible Fats & Oils Ltd
 - d. Adani Wilmar Ltd.
 - e. Gokul Agro Resources Ltd
 - f. Vimal Oil & Foods Ltd
 - g. Ozone Procon Pvt Ltd
18. The Director General has considered evaluation of injury and serious injury on the following basis.
- a. Parameters such as market share, capacity, production, domestic sale, capacity utilisation, sales have been determined first for domestic producers as a whole and thereafter also for the participating companies.

- b. Parameters such as profit, wages, and employment have been examined in respect of all domestic producers on a consolidated basis. These parameters have also been analysed on individual basis with respect to responding domestic producers.

19. For threat of serious injury, the Director General has considered information as made available by the petitioner in their application, and additional information filed post initiation. A copy of the information filed by the petitioner post initiation of investigation has been placed in public file for perusal of the parties to allow them to offer their comments if any, which shall be considered for final determination.

V. Increased imports from subject country

20. India – Malaysia CECA (Agreement) and India-ASEAN AIFTA (Agreement) provided reduction of customs duty on CPO and RBD as mentioned below.

MICECA Preferential Tariffs			
	Tariff line	CPO	RPO
	Base Rate	80	90
	EIF*	72	82
Not Later than	1.1.2012	68	78
	1.1.2013	64	74
	1.1.2014	60	70
	1.1.2015	56	66
	1.1.2016	52	62
	1.1.2017	48	58
	1.1.2018	44	54
	31.12.2018	40	45

AIFTA Preferential Tariffs			
	Tariff line	CPO	RPO
	Base Rate	80	90
Not Later than	2010	76	86
	2011	72	82
	2012	68	78
	2013	64	74
	2014	60	70
	2015	56	66
	2016	52	62
	2017	48	58
	2018	44	54
	2019	40	50

21. It is noted that the customs duty differential between Crude Palmolein oil (CPO) and subject goods i.e Refined Bleached Deodorised Palm Oil” (RBD Palm oil) and “Refined Bleached Deodorised Palmolein (RBD Palmolein) was 10 % during the period from April, 2015 till Dec., 2018. The customs duty differential however reduced to 5% w.e.f. 01.01.2019. This reduction in customs duty differential has resulted in significant increase in subject imports from Malaysia with consequent decline in imports of crude palm oil.

VI. Increased Imports from Malaysia

22. Rule 2 (d) of India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 provides as follows:

“increased imports” means increase in imports from Malaysia whether in absolute terms or relative to domestic production

23. The said rules require an examination whether imports of the PUC increased in such quantities in absolute and relative terms so as to constitute “increased imports”. The said rules require an analysis of the imports, in both absolute terms and in relation to imports into India, production and consumption in India. Analysis of increased imports of the product under consideration has been conducted having regard to the said rules.

i. Imports from Malaysia in absolute terms:

24. The movement of imports is shown in the table below:

SN	Period	Volume (MT)		
		Malaysia	Other countries	Total imports
1	2016-17	626,362	2,315,292	29,41,654
2	2017-18	376,136	2,308,482	26,84,618
3	2018-19	696,909	1,729,644	24,26,553
4	Apr.-Dec.2018 (Annualised)	271,099	1,986,498	22,57,597
5	POI (Annualised)	2,596,225	725,210	33,21,435
Imports on quarterly basis (MT)				
1	Q1 18-19	97,239	470,534	5,67,773
2	Q2 18-19	78,879	640,816	7,19,695
3	Q3 18-19	27,206	378,524	4,05,730
4	Q4 18-19	493,584	239,771	7,33,355
5	Q1 19-20	804,528	122,834	9,27,362

25. The imports of the product under consideration have increased significantly in the POI in absolute terms. There is a sharp and significant increase in imports of PUC during the POI. Imports from Malaysia increased from 626,362 MT in 2016-17 to 2,596,225 MT in Jan-June, 2019 (on annualized basis) thus showing an increase of 314%. Imports from other

countries declined from 2,315,292 MT in 2016-17 to 7,25,210 MT in Jan-June, 2019 (on annualized basis).

26. Analysis of quarterly movement in imports shows that imports were 27,206 MT in Oct.-Dec., 2018, which surged to 804,528 MT in Apr-June, 2019 thus showing a surge of almost 29 times.

ii. Share of increase in imports of subject goods from Malaysia and other countries

27. The share of imports of subject goods from Malaysia and other countries is shown in the table below:

SN	Period	Share in Imports (%)	
		Malaysia	Other countries
1	2016-17	21%	79%
2	2017-18	14%	86%
3	2018-2019	29%	71%
4	Apr.-Dec.2018	12%	88%
5	POI annualized	78%	22%
Imports on quarterly basis			
1	Q1 18-19	17%	83%
2	Q2 18-19	11%	89%
3	Q3 18-19	7%	93%
4	Q4 18-19	67%	33%
5	Q1 19-20	87%	13%

28. It is noted that imports of the product under consideration from Malaysia in 2016-17 was 21% of total imports into India. The volume of imports did not rise till Dec., 2018 in relation to total imports of the product under consideration in India. However, the share of imports from Malaysia increased significantly during POI. The imports of subject goods from Malaysia increased significantly by 78% during the POI. Overall share of imports of product under consideration from Malaysia have increased to almost 4 times in the POI as compared to the base year.

iii. Increase in imports in relation to production and consumption in India

29. The movement of imports of subject goods in relation to production and consumption in India is shown in the table below:

SN	Period	Imports Malaysia	Indian Production	Indian Consumption	Imports in relation to (%)	
		MT	MT	MT	Production	Consumption
1	2016-17	626,362	4,247,839	7,190,365	15%	9%
2	2017-18	376,136	5,308,775	7,995,216	7%	5%
3	2018-19	696,909	5,070,583	7,510,304	14%	9%
4	Apr.-Dec., 2018 (annualized)	271,099	4,965,180	7,237,288	5%	4%
5	POI (annualized)	2,596,225	4,847,732	8,174,382	54%	32%
6	Q1 18-19	97,239	952,452	1,527,291	10%	6%
7	Q2 18-19	78,879	1,269,789	1,990,599	6%	4%
8	Q3 18-19	27,206	1,501,645	1,910,075	2%	1%
9	Q4 18-19	493,584	1,346,697	2,082,338	37%	24%
10	Q1 19-20	804,528	1,077,169	2,004,852	75%	40%

30. It is noted that imports of subject goods from Malaysia constituted 15% and 9% respectively of the production and consumption in India in 2016-17. The share of Malaysia, however, surged to 54% and 32% respectively during the POI. Thus, imports have shown significant increase in imports in relation to production and consumption. The increase in imports in relation to production and consumption is considered significant in such a short period.

VII. Serious Injury

31. Serious Injury and Threat of serious injury is defined as follows under the Rules:

(c) **serious injury** means a significant overall impairment in the position of a domestic industry; and

(d) **threat of serious injury** means serious injury that is clearly imminent and shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility.

32. Thus, increase in imports should be such which causes a significant overall impairment in the position of a domestic industry

33. Rule 7 of the Rules further provides as follows:

The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the following principles, namely :-

(a) *the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic*

market taken by increased imports of the originating good, changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment;

34. It is noted that evaluation of the listed parameters needs to take into account peculiarities of different industries and situations. The Director General has therefore examined serious injury to the domestic industry, having regard to the facts of the present case and the situation 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 industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry. Accordingly, in analyzing serious injury and threat of serious injury, all factors, which are mentioned in the rules as well as other factors which are relevant for determination of serious injury or threat of serious injury, have been considered. The determination of serious injury or threat of serious injury is based on evaluation of the overall position of the industry, in light of all the relevant factors having a bearing on the situation of that industry.

35. Rule 3 (b) states as follows

the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by increased imports of the originating good, changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment;

36. The serious injury and threat of serious injury to the domestic industry on account of increased imports of subject goods has been examined by evaluating the following factors as listed under the rules:

a. Increase in imports in absolute and relative terms

37. It is noted that the imports of subject goods have increased significantly in absolute as well as in relative terms in the recent period. The increase in imports is both in absolute terms as well as in relation to total imports, Indian production and consumption. Further, the increase in imports is noted when the situation is compared between 2016-17 and Jan.-June, 2019, or with the period immediately preceding the surge period. It is also noted that there was significant increase in imports in April-June, 2019 as compared to preceding quarter.

b. Production and Sales:

38. The Petitioner has submitted that the only source of production is either domestic or imported raw material and the only use of raw material is in production of the product under consideration. They have also claimed that the producers cannot hold either raw material

inventories or finished product inventories for long period due to low shelf life of the product at every stage from the stage of plucking of flower to consumption of oil. It was also the contention of the petitioner that the consumption norms for production of product from the raw material are not only fairly standardized but they can also be considered globally the same. The Petitioner has also submitted relevant material from the Round Table on Sustainable Palm Oil evidencing therein the input output ratio between CPO and RBD oil. The petitioner has also submitted that sales can be considered at the same level as production as the product cannot be kept in stocks for long.

39. In view of the above, gross Indian production and domestic sales have been assessed considering such consumption norms. For the purpose, consumption of raw material (CPO) has been considered on the basis of imports of CPO in India, as publicly reported by the DGCI&S.

40. The domestic production and sales following the above stated methodology is as follows:

SN	Period	Production/Sales	Demand
		MT	MT
1	2016-17	4,247,839	7,190,365
2	2017-18	5,308,775	7,995,216
3	2018-19	5,070,583	7,510,304
4	Apr-Dec'18 annualized.	4,965,180	7,237,288
5	POI annualized	4,847,732	8,174,382

41. It is noted that the demand of the subject goods was declining since the base year and the domestic production and sales have also shown corresponding decline. The demand, however, increased during the POI and has gone back to the level prevailing in the base year, whereas, the Indian production and sales have further declined. In other words, whereas demand increased in POI, production and sales of the domestic producers increased. The decline in production/sales becomes evident on comparison of the period April-Dec 2018 with that of POI (Jan-June 2019). The Indian production/sales was 4,965,180MT in April-Dec 2018 which declined to 4,847,732 MT in the POI, i.e., a decline of more than 2.4%.

c. Capacity utilization

42. The details of capacity and capacity utilisation are as follows:

Period	Capacity (MT)	Capacity utilisation	Production Volume (MT)
2016- 17	1,39,00,000	31%	42,47,839
2017-18	1,39,00,000	38%	53,08,775
2018-19	1,39,00,000	36%	50,70,583
2019-20 (Q1)	1,39,00,000	21%	28,82,534
Q1 17-18	34,75,000	34%	11,80,275
Q2 17-18	34,75,000	40%	13,76,532
Q3 17-18	34,75,000	39%	13,50,830
Q4 17-18	34,75,000	40%	14,01,139
Q1 18-19	34,75,000	27%	9,52,452
Q2 18-19	34,75,000	37%	12,69,789
Q3 18-19	34,75,000	43%	15,01,645
Q4 18-19	34,75,000	39%	13,46,697
Q1 19-20	34,75,000	31%	10,77,169
Apr-Dec'18	1,04,25,000	36%	37,23,885
POI Jan-June'19	69,50,000	35%	24,23,866

43. It is noted that domestic industry has significant underutilised capacity and their capacity utilisation has gone down during the POI.

d. Market share of the domestic industry

44. The movement of market share is as follows:

SN	Period	Market Share (%)	
		Malaysia	Indian industry
2	2016-17	9%	59%
3	2017-18	5%	66%
4	2018-19	9%	68%
5	Apr-Dec'18	4%	69%
6	POI	32%	59%
7	Jan.-March, 2019	24%	65%
8	Apr-June, 2019	40%	54%

45. It is noted that market share of domestic industry has declined whereas market share of imports of subject goods from Malaysia have increased during the POI as compared to earlier years.

e. Employment and Productivity

46. The petitioner has claimed that manhours deployed in processing of product under consideration has declined significantly in the current period and considering annual loss of production/sales to the extent of 11.59 lacs

(considering sales in Oct-Dec 2018 and POI), the employment deployed for the product has declined by about 3,000. Given the fact that there is a decline in production of subject goods, the productivity has declined.

f. Profit/loss

47. The net value of subject goods and the target price including reasonable return from imported crude Palm oil is as follows:

Crude Import	Unit	POI Ann.
Volume (MT)	MT	***
Import value Rs. Laks	Rs.laks	***
CIF Rate Rs./MT	Rs./MT	***
Customs duty %	%	***
Customs duty amount	Rs./MT	***
Cess amount	Rs./MT	***
Landed cost	Rs./MT	***
Consumption factor		***
RM cost		***
Less: By product	Rs./MT	***
Conversion Cost	Rs./MT	***
Net value of Palm Oil	Rs./MT	***
Reasonable return	5%	***
Target price	Rs./MT	***

48. As against the above target price, the landed price of imported RBD Palmolein from Malaysia is as follows:

Volume (MT)	MT	2,596,225
CIF rate	Rs./MT	40,997
Customs duty	%	45%
Customs duty amount	Rs./MT	18,449
Cess amount	Rs./MT	553
Landed price of RBD Palmolein	Rs./MT	60,000

49. It has been claimed that if the domestic producers match the price of the imported subject goods, the producers will not be able to recover even their costs and would suffer significant losses. In fact, it is noted that the domestic producers themselves started importing RBD oil in order to remain in the market. Resultantly, the domestic producers have lost significant production and resultant sales. This has resulted in significant loss of profits to the domestic producers. Considering the reasonable profit of Rs *** PMT, the estimated

profitability of the domestic industry declined significantly over the period, as is noted from the following:

	Sales	Profits
	MT	Rs. Crs
2016- 17	42,47,839	***
2017-18	53,08,775	***
Q1 18-19	9,52,452	***
Q2 18-19	12,69,789	***
Q3 18-19	15,01,645	***
Q4 18-19	13,46,697	***
Q1 19-20	10,77,169	***

50. It is noted that estimated profits of the domestic industry declined significantly during the POI.

g. Price suppression/depression and Price undercutting:

51. Comparison of landed price of subject goods with that of the reasonable price derived for the subject goods is shown in the table below:

Particulars	Unit	Amount
Reasonable price of RBD Palm Oelin	Rs./MT	***
Landed price of RBD Palmolein	Rs./MT	***
Difference	Rs./MT	***

52. It is noted that landed price of RBD Palmolein is significantly below the level of reasonable price of RBD Palm olein required by the domestic producers, should they import CPO and process the same into subject goods. This shows that the imports are suppressing the prices of the domestic producers to such an extent that the domestic producers are not even undertaking production activities to that extent. The difference between landed price of imports and reasonable price is significant indicating significant price undercutting by the imports of Malaysia.

Injury analysis of Domestic producers who have provided data

53. In addition to the analysis of performance of the industry in respect of domestic producers as a whole, the Director General has analysed performance of those companies who provided information post initiation. Following domestic producers have provided information pertaining to capacity, production, sales, employment, wages, productivity and profits.

- a. Emami Agrotech Ltd
- b. Liberty Oil Mills Ltd.
- c. Gemini Edible Fats & Oils Ltd
- d. Adani Wilmar Ltd.
- e. Gokul Agro Resources Ltd
- f. Vimal Oil & Foods Ltd
- g. Ozone Procon Pvt Ltd

54. It is noted from the petition and subsequent submissions that production and sales of these companies were increasing till Dec., 2018. The production and sales however declined by 23% (POI) and 31% (April-June, 2019). The decline in production and sales is considered significant. Consequently, the capacity utilisation and profits of these companies have also declined significantly. Employment and wages have largely remained the same. Productivity however declined significantly.

55. The performance of individual companies was also examined over the same period. It is noted that production, productivity and sales of most of these companies were increasing till Dec., 2018 and declined significantly during the POI

	Production (Quarterly) in MT						
	Gemini	Ozone	Gokul	Emami	Adani	Liberty	Vimal
2016- 17	***	***	***	***	***	***	***
2017-18	***	***	***	***	***	***	***
Q1 18-19	***	***	***	***	***	***	***
Q2 18-19	***	***	***	***	***	***	***
Q3 18-19	***	***	***	***	***	***	***
Q4 18-19	***	***	***	***	***	***	***
Q1 19-20	***	***	***	***	***	***	***

	Capacity Utilisation						
	Gemini	Ozone	Gokul	Emami	Adani	Liberty	Vimal
2016- 17	***	***	***	***	***	***	***
2017-18	***	***	***	***	***	***	***
Q1 18-19	***	***	***	***	***	***	***
Q2 18-19	***	***	***	***	***	***	***
Q3 18-19	***	***	***	***	***	***	***
Q4 18-19	***	***	***	***	***	***	***
Q1 19-20	***	***	***	***	***	***	***

	Productivity Per Day in MT						
	Gemini	Ozone	Gokul	Emami	Adani	Liberty	Vimal
2016- 17	***	***	***	***	***	***	***
2017-18	***	***	***	***	***	***	***
Q1 18-19	***	***	***	***	***	***	***
Q2 18-19	***	***	***	***	***	***	***
Q3 18-19	***	***	***	***	***	***	***
Q4 18-19	***	***	***	***	***	***	***
Q1 19-20	***	***	***	***	***	***	***

	Production (Indexed)						
	Gemini	Ozone	Gokul	Emami	Adani	Liberty	Vimal
2016- 17	100	100	100	100	100	100	100
2017-18	193	1,747	145	124	111	173	40
Q1 18-19	351	1,949	58	86	94	50	-
Q2 18-19	301	2,159	86	117	105	46	-
Q3 18-19	415	2,869	201	149	150	145	-
Q4 18-19	368	2,360	91	131	124	202	-
Q1 19-20	330	762	66	116	87	212	-

	Capacity Utilisation (Indexed)						
	Gemini	Ozone	Gokul	Emami	Adani	Liberty	Vimal
2016- 17	100	100	100	100	100	100	100
2017-18	193	1,747	145	124	111	173	40
Q1 18-19	351	1,949	58	86	94	50	-
Q2 18-19	301	2,159	86	117	105	46	-
Q3 18-19	415	2,869	201	149	150	145	-
Q4 18-19	368	2,360	91	131	124	202	-
Q1 19-20	330	762	66	116	87	212	-
	Productivity Per Day (Indexed)						
	Gemini	Ozone	Gokul	Emami	Adani	Liberty	Vimal
2016- 17	100	100	100	100	100	100	100
2017-18	193	1,747	145	124	111	173	40
Q1 18-19	351	1,949	58	86	94	50	-
Q2 18-19	301	2,159	86	117	105	46	-
Q3 18-19	415	2,869	201	149	150	145	-
Q4 18-19	368	2,360	91	131	124	202	-
Q1 19-20	330	762	66	116	87	212	-

Conclusion

56. From the above analysis, it is thus provisionally concluded that the imports of the product under consideration have increased significantly in absolute terms and in relation to gross

imports in India, Indian production and consumption. As a result of significant surge in imports from Malaysia, the domestic producers have suffered serious injury in terms of significant decline in production, sales, capacity utilization, market share, profits out of refining operations and manpower deployed for processing the product. Considering the performance of the domestic producers in respect of various parameters, it is provisionally concluded, pending further investigations, including verifications, that the domestic industry has suffered serious injury as a result of increased imports of the product under consideration from Malaysia.

VIII. Threat of Serious Injury

57. The Rules provides as follows:

“threat of serious injury” means serious injury that is clearly imminent and shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility;

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

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

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

Therefore, we consider that, by basing its determination on events at the end of the investigation period (i.e., one year and nine months) rather than over the course of the entire investigation period, the USITC analyzed sufficiently recent data for making a valid evaluation of whether significant overall impairment was “imminent” in the near future. By the same token, we also consider that,

by basing its determination at all on data about events from the recent past, rather than relying exclusively on projections for the various industry indicators into the future, the USITC made its threat determination on the basis of objective and quantifiable facts, and ‘not merely on allegation, conjecture or remote possibility’

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

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

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

60. It is noted that imports of subject goods from Malaysia are entering the Indian market in significant increased quantities in absolute terms as well as in relation to production and consumption in India. The domestic industry’s capacity was underutilized and the intensified imports from Malaysia has adversely impacted the situation. Considering the difference between the landed price of imports of subject goods and the reasonable price of subject goods, the huge capacities with Malaysia coupled with the fact of their high export orientation shows that the subject goods from Malaysia is likely to remain lucrative, posing continued threat of injury to the domestic industry. The threat of serious injury is established by the following factors:-

- a. The price difference between the domestic and imported product has led to increase in imports of subject goods from Malaysia.
- b. The producers from Malaysia are holding significant unutilized capacities. Resultantly, producers and exporters from Malaysia are continuously looking for additional markets to the extent possible.
- c. The demand of the product is growing and the Indian market is large and price sensitive.

- d. As there is significant difference between the cost of sales of the domestic producers out of imported CPO and import price of RBD oil, the domestic producers curtailed refining activities and turned to imports of CPO.
61. In view of above it is provisionally concluded that the increased imports of subject goods from Malaysia have caused serious injury to the domestic industry. Further, the domestic industry is faced with continued threat of serious injury from imports from Malaysia.

IX. Causal Link

62. A comprehensive evaluation of parameters enumerated above demonstrates that serious injury and threat of serious injury is being caused by increased imports. For the purpose of determining causation, all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry have been evaluated. In the instant case, the following are relevant in this regard —
- a. The imports of PUC have increased significantly in the POI in absolute as well as relative terms.
 - b. The market share of domestic producers have declined whereas that of imports from Malaysia has increased.
 - c. The landed price of import is significantly lower than the reasonable price of subject goods.
 - d. Domestic producers are forced to import goods in order to maintain its market presence.
 - e. Sales and consequently production, capacity utilisation, manpower deployed and profits of the domestic producers have declined as a result of increased imports.
63. It is thus evident that injury to the domestic industry has been caused by the increased imports and there is a causal link between increased imports of subject goods from Malaysia and serious injury and threat of serious injury to the domestic industry.

X. Critical Circumstance

64. Rule 8 prescribes that, the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, where there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry and where delay in imposition of provisional bilateral safeguard measure would cause damage which would be difficult to repair, may record a preliminary findings regarding serious injury or threat of serious injury to the domestic industry as a result of increased imports of an originating good. Since the petitioner requested immediate imposition of safeguard measures, the request of the petitioner was examined in the light of the legal requirements and facts of the case. It is noted that

- a The import of PUC into India has shown significant increase. Imports of subject goods from Malaysia increased from 626,362 MT in 2016-17 to 2,596,225 MT in Jan-June, 2019 (on annualized basis) thus showing an increase of 314%.
 - b Quarterly movement in imports shows that imports were just 27,206 MT in Oct.-Dec., 2018, which surged to 804528 MT in Apr-June, 2019 thus showing a surge of almost 29 times increase.
 - c This increase in import at low prices has led to idling of significant capacities of the domestic industry during the period of investigation. Though domestic industry has huge installed capacity, it is unable to increase its production of subject goods despite increase in domestic demand of the PUC.
 - d Market share of the domestic industry has declined significantly.
65. It is noted that these are the factors which constitute critical circumstances in the instant case that have affected the overall performance of the Indian industry and have caused serious injury and threat of further serious injury to the domestic producers. It is therefore considered appropriate to arrest the surge in imports in order to prevent further injury to the domestic industry.

XI. Conclusion and recommendation:

66. On the basis of the preliminary findings above, it is provisionally concluded that increased imports of PUC have caused serious injury and are threatening to cause serious injury to domestic producers. As a result, production/sales of the domestic producers declined significantly resulting into decline in capacity utilisation in the POI. The domestic industry has been forced to import subject goods to maintain their presence in the market. Imports at lower prices are adversely affecting the prices of the domestic industry. Thus, it is considered that critical circumstances exist where delay in imposition of safeguard measures would cause irreparable damage to the domestic producers. With regard to imposition of bilateral safeguard measure, Rule 9 of the India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 state as follows:

9. Application of provisional bilateral safeguard measure. - (1)
The Central Government, on the basis of the preliminary findings of the Director General, may -

(a) suspend further reduction of any rate of customs duty on the originating good provided for under the Trade Agreement from the day when the bilateral safeguard measure is taken; or

(b) Increase the rate of customs duty on the originating good to a level not to exceed the lesser of:

(i) the Most Favoured Nation applied rate of custom duty on the originating good in effect on the day when the bilateral safeguard measure is taken; or

(ii) the Most Favoured Nation applied rate of custom duty on the originating good in effect on the day immediately preceding the date of the start of the period of investigation.

(2) The bilateral safeguard measure under sub-rule (1) shall remain in force only for a period not exceeding two hundred days from the date of its imposition.

67. After examining the above, it is considered appropriate to impose Provisional bilateral Safeguard measure in terms of Rule 9 of India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017. Accordingly, the Director General recommends increase in rate of customs duty on imports of subject goods originating in Malaysia by 5%, for a period of 180 days which is considered appropriate to safeguard the interest of domestic industry.

XII. Further Process:

68. The following further procedure would be followed subsequent to notifying the preliminary findings:

- i. The Director General invites comments on preliminary findings from all known interested parties within 21 days from the date of issue of preliminary findings. The comments received from them would be examined in the final findings.
- ii. The Director General would conduct oral hearing to give an opportunity to all interested parties to present their views relevant to the investigation. Issues and concerns raised during oral hearing will be examined in the final findings.
- iii. The date of the oral hearing would be announced on the DGTR website (dgtr.gov.in).
- iv. The Director General would conduct verification to the extent deemed necessary.

(Sunil Kumar)
Additional Secretary and Director General