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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]

Final Findings

Date: 28th February 2020

Subject: Final 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

Having regard to the Article 5 of the Comprehensive Economic Cooperation Agreement (CECA) between the Government of the Republic of India and the Government of Malaysia and India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 thereof.

A. Procedure

1. An application had been filed under India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 (hereinafter also referred to as the "Rules" or "bilateral safeguard rules") by the Solvent Extractors' Association (SEA) of India on behalf of the Indian domestic producers, 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.

2. Having satisfied that the requirements of Article 4 of Bilateral Safeguard Rules were met, a Bilateral safeguard investigation into increased imports of "Refined Bleached Deodorised Palm Oil" (RBD Palm Oil) and "Refined Bleached Deodorised Palmolein"(RBD Palmolein) from Malaysia was initiated vide notice of initiation dated 14th August, 2019,

published in the Gazette of India, Extraordinary. Interested parties were requested to make their views known in writing within 30 days of the initiation notice.

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. Kl-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. Following parties have submitted questionnaire responses:
    i. SOP Edible Oils Sdn. Bhd
    ii. Sime Darby Oils Bintulu Sdn Bhd
    iii. Borneo Edible Oils Sdn Bhd

5. Domestic industry questionnaire was sent to the Applicant association directing them to provide information as per prescribed format. The following domestic producers provided the information related to injury parameters.
    i. Emami Agrotech Ltd
    ii. Liberty Oil Mills Ltd.
    iii. Gemini Edible Fats & Oils Ltd
    iv. Adani Wilmar Ltd.
    v. Gokul Agro Resources Ltd
    vi. Vimal Oil & Foods Ltd
    vii. Ozone Procon Pvt Ltd

6. The following importers have submitted importer questionnaire response/submissions in the investigation:
    i. Budge Budge Refineries Ltd
    ii. RSH Agro Products ltd
    iii. Figorifico Allana Private Ltd

7. The request made by the domestic industry for imposition of provisional safeguard duty was examined and it was provisionally determined that critical circumstances existed which warranted imposition of provisional safeguard duty in order to provide interim relief to the domestic industry from suffering the damage, which could have been difficult to repair. Accordingly, the Preliminary Findings recommending provisional duty was issued under Rule 9 (2) of the Rules vide Notification No. 22/4/2019 dated 26th August, 2019. The

Central Government imposed the provisional duty vide notification No. 29/2019-Customs dated 4th September, 2019.

8. An oral hearing was held on 21st October 2019 in terms of Rule 5(6) of the Rules. The interested parties, namely, the Domestic Industry and the Government of Malaysia, attended the hearing and made oral submissions. Due to change in the incumbency of the Director General, another oral hearing was conducted by the present Director General (DG) on 11th December, 2019 in pursuance of the direction given in the judgment delivered by the Hon'ble Supreme Court in the matter of Automotive Tyre Manufacturers' Association (ATMA) Vs the Designated Authority in Civil Appeal 949 of 2006.

9. Copy of written submissions filed post oral hearing by interested parties were made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.

10. All the views expressed by the interested parties were examined and have been taken into account in making appropriate determination. The non-confidential version of the information received has been kept in the public file.

B. Submissions made by Interested parties during the course of investigation

Views of the Applicant

11. Submissions made by the domestic industry are 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 (PUC) 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. 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.
    f. Information on domestic production has been derived from two sources :
        a. from domestic crude palm oil (CPO) production,
        b. from imported crude palm oil.
    g. The Applicant has derived gross Indian production by applying the conversion factor from Crude Palm Oil to subject goods considering that one MT raw material (CPO)

produces 0.95 MT Refined palm oil and one MT refined palm oil produces 0.80 MT RBD Palmolein.

h. 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.
i. 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.
j. The Applicant has filed this application pursuant to the Comprehensive Economic Cooperation Agreement entered into by Malaysia and Indian Government (CECA).
k. Pursuant to CECA, 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%.
l. 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 have increased significantly.
m. 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.
n. 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.
o. Imports from Malaysia which constituted merely 17% of total Indian imports in 2015-16 increased to 78% of the total Indian imports in the proposed POI.
p. Imports into India are largely from Indonesia and Malaysia. But Malaysia has duty advantage for RBD Palmolein under India – Malaysia CECA, so the country is now flooded with subject goods from Malaysia.
q. 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.
r. 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.

s. The Applicant has submitted that that since the product cannot be kept in stock for long, the production has been considered as sales.
t. Apr.-Dec.2018 share of Malaysia in imports were 12% and other countries share was 88%. However, post December the share of imports of Malaysia surged to 78% whereas the market share of other countries slipped to 22%.
u. Quarterly analysis shows that share of imports in relation to production had declined to 2% in the Q3 of 2018-19 which increased to 75% in Q1 of 2019-20. Similarly, share of imports in relation to consumption had declined to 1% in the Q3 of 2018-19 which increased to 40% in Q1 of 2019-20. Thus, imports in absolute as well as relative terms have increased significantly in the POI.
v. The entire surge in imports have happened after the customs duty change in Jan., 2019. Therefore, the injury to the domestic industry is required to be examined considering Jan.-June, 2019 period in comparison to the immediate preceding year (i.e., pre-surge period).
w. 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 *** MT in April-Dec 2018 which declined to *** MT in the POI, i.e., a decline of more than 2.4%. The domestic industry has not been able to sell the subject goods due to presence of imports in the market which have taken over the domestic market.
x. The capacity utilization of domestic producers has declined significantly with the surge in imports. Whereas the capacity utilization was 43% before surge started, it declined to 39% and thereafter 31% in just two quarters of surge.
y. Domestic producers have significant underutilized capacities. The industry has not been able to utilize its capacity despite increase in demand because of increase in imports from Malaysia
z. Market share of domestic producers had increased to 69% in pre-surge period, the same declined to 65% and thereafter 54% in just two quarters of surge in imports.
aa. Profit of the domestic producers from production and sale of RBD Palmolein have declined drastically with the surge in imports. The domestic producers cannot afford to match the import price of RBD Palmolein after processing imported crude oil, because that will make it difficult for them to even recover their cost. Thus, many of the domestic producers have started importing RBD Palmolein in order to remain present in the market. Resultantly, the domestic producers have lost significant profits from production and sale of RBD Palmolein.
bb. The imports are suppressing the domestic prices, resultantly, the domestic industry is not able to take up the production activity.
cc. In addition to the serious injury already inflicted on the industry, increased imports of product were threatening serious injury to the industry because (a) The volume of imports has increased significantly in a relatively short period of time (b) The price difference between the domestic and imported product has led to increase in imports of subject goods from Malaysia. (c) 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. (d) The producers in Malaysia are one of the largest producers and exporters of subject goods in the world, second only to Indonesia.

dd. Existence of significant Government support to Malaysian producers would continue to keep them viable in a situation of insufficient duty differential. The Government of Malaysia grants significant support in the form of countervailable subsidies to the grower/processors/producer from the basic stage to the subject goods.

ee. Various subsidies being provided by the government of Malaysia is leading to lower cost of production of the product for the Malaysian producers vis-à-vis Indian producers. Resultantly, as soon as the customs duty differential declined from previous 10% to 5%, imports surged from Malaysia.

ff. Applicant requests safeguard measure for the period for which there shall be duty differential of less than 10%. While 10% duty differential itself is inadequate, the same is bare minimum for the industry to prevent the present injury being suffered by the domestic industry

gg. Article 5 of the CECA deals with provisions pertaining to "Notifications and Consultations Article 5.6 (1) says that the obligation on a party initiating bilateral safeguard investigation is to notify the other party immediately upon initiation of such investigation which has been done in the present case.

hh. Article 5.6 (6) deals with definitive measures and Article 5.5(5) specifically deals with provisional measures. It may be seen that consultations shall be initiated immediately upon request from the other party i.e., Malaysia in the present case. Thus, after notification of provisional measures, GOM could seek such consultation. However, there is no provision which requires GOI to hold consultation prior to invoking interim measures. To this extent, arguments of GOM are without sufficient legal basis.

ii. Para 6.2 of the written submissions submitted by the Government of Malaysia, has been claimed confidential in entirety. Such claims of excessive confidentiality have prevented the Applicant from providing any comment whatsoever. The Applicant is unable to give rejoinder of the submissions filed by the other party for that particular argument which was claimed confidential. In no way the parties should be allowed to claim the entire argument as confidential and there should be proper reasoning for claiming any information as confidential.

jj. There is no demand supply gap. The Indian capacities for the product are in the region of 1.30 crores MT, reasonably higher than the demand for the product in the Country. The Indian industry has capacities sufficient to meet the present and potential demand for the product in the country.

kk. Para 29 of the preliminary findings show that the Indian domestic production was *** in 2017-18 and constituted around 66% of the Indian consumption. Thus with increase in demand there is no reason for decline in Indian production to ***MT, i.e., by 9% particularly when the Indian industry is having surplus capacity.

ll. Indian capacity has always been higher than consumption in the country. This has also been noted by Government of Malaysia in their submission. Thus, to attribute incompetency of domestic producers to produce as a reason for imports is baseless and inappropriate when made at the level of a Government. The significant increase in imports at low price has forced the domestic industry to reduce their production.

mm. The fact of imports made by the domestic producers was admitted by the Applicant at the stage of application itself. The imports are happening only because imported subject goods are available at a price materially below cost of CPO processed into RBD

Palmolein. The fact that the imports are occurring at low prices and the domestic industry cannot import CPO, process the same and sell the subject goods at matching prices gets established by the imports of RBD Palmolein by the producers themselves. No producer would invest in refining capacities and thereafter keep the same idle, and resort to imports. It is a pity that refineries with massive investment and employment are getting converted into small time traders.

nn. The injury to the domestic industry is highlighted from the fact that the Domestic industry's production has shown an increase by 16.22% from *** MT in 2016 to *** MT in 2019. The same however declined thereafter in a short span of time to *** MT in the POI despite increase in demand. Further, since the duty levels changes w.e.f.. 1st Jan., 2019, the DG should consider the situation just before that and compare with the situation just thereafter.

oo. The Indian industry was already facing significantly underutilized capacities and with surge in imports, capacity utilization of the industry has declined very significantly. The Indian industry is not utilizing even half of its capacities. Paragraph 42 of the Provisional findings itself shows that the capacity utilization declined to mere 31% in Q1 of 2019-10 which was 43% in Q3 of 2018-19 (pre surge period). Since the duty levels changes w.e.f. 1st Jan., 2019, the DG should consider the situation just before that and compare with the situation just thereafter.

pp. It is admitted that the industry had been suffering on account of other factors as well. However, significant increase in imports have led to further decline in capacity utilisation of the domestic industry and have impacted the viability of the domestic industry. The cause of claimed injury during January 2019 to June 2019 is due to surge in Malaysian imports, whereas the cause of injury in earlier periods were due to reasons other than surge in imports from Malaysia. The DG should see causal link during the surge period and with duty differential issue leading to surge.

qq. The share of imports from Indonesia was higher between the years 2016 to 2018. However, it changed during the period January 2019 to June 2019. The GOM itself has highlighted the problem. When Indonesian producers were leading the imports, why Malaysian imports increased so significantly. The answer to this query is in the customs duty differentials and the same are required to be addressed by bridging the gap.

rr. The industry requests a protection to the fullest extent of measures permissible under the agreement for period for which the duty differential shall be less than 10%.

ss. 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.

tt. The Indian industry is operating their plant below 1/3rd of their capacities. Whereas the consumption of RBD Palmolein 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 Palmolein are thus totally unnecessary.

uu. 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 *** lacs, the employment deployed for the product has declined by about ***.

vv. The productivity of the Indian industry has declined significantly in the POI. There are no other factors that may be attributing to the serious injury to the domestic industry other than increased imports.

ww. The landed price of imports is significantly lower than the selling prices of the domestic industry. 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.

xx. Increased imports have led to increase in market share of imports and reduction in market share of the domestic industry. The Applicant has requested safeguard measure as provided under the Rules. 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%.

yy. 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.The Applicant has requested safeguard measures for one year. Applicant 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.

zz. It was also submitted that the imports from Malaysia have increased significantly whereas the production, sales and resultantly the capacity utilization of Indian industry has declined significantly.

aaa. While the GOI may consider a dumping, subsidy or general safeguard action to address the injury being suffered by the domestic industry for quite some time, whatever action is taken, the present duty differential between CPO & RBD Palmolein and between Malaysia & Indonesia needs to be addressed as an independent issue. Invoking other actions will not address this issue without changing the customs duty levels. Thus, while taking other actions, the present safeguard duty in any case needs to be confirmed.

bbb. Separately, basic customs duty under ASEAN agreement and present agreement have also changed w.e.f. 1st Jan., 2020. While the differential between crude and refined is insufficient for sustainable operations of the domestic producers, in any case, the customs duty under the two agreements is now the same. Therefore, safeguard duty in the present agreement without similar duty under ASEAN agreement would mean a futile safeguard duty, as the consumers would utilise benefit under ASEAN agreement.

ccc. However since imports of the subject goods are now under restricted list, it appears that the product shall now remain regulated. In view of this recent development, it appears that it may not be necessary to impose safeguard duty beyond the current period of 6 months. However, should the situation in future change due to any development unforeseen at this stage, in any case, industry shall appropriately approach the Government for appropriate remedy.

Views of the Government of Malaysia (GOM)

12. Submissions made by Government of Malaysia are as follows:

a. DGTR has failed to adhere to commitments in the CECA, since the GOM was not given adequate opportunity for prior consultations before the safeguard measure was initiated on 14 August 2019 as per Article 5.6(5)

b. As per para 29 of the Preliminary Findings on imports in relation to production and consumption, the Applicant is unable to meet the demand in the Indian market. Imports from Malaysia constituted only around 9.28% of Indian consumption in 2018-19 whereas Indian production was compared to the Indian consumption was 67.52%. Indian production alone was still unable to meet the Indian total consumption in the period 2018-19 and also during POI.
c. Impact of imports over production and sales is showing decreasing trend. Therefore, the imports did not injure the domestic industry in India. The capacity utilisation has remained in the range of 21% to 43%. Thus this is a problem with the Indian Industry and is not as a result of Malaysian imports.
d. MITI requested for consultation in accordance with para 6 of MICECA.
e. Applicant has been unable to meet the local demand of the Product Under Consideration (PUC) in the Indian market. This is evident as during the period of investigation (POI), the domestic production in India only consist *** MT or 59% of India's domestic consumption which is *** MT (Reference to para 29 of Preliminary Findings)
f. Imports from Malaysia during period of 2018-2019 only constituted 53.55% of the total Indian production and 31.76% of the Indian total consumption. In this regard, the Indian production alone was unable to meet the Indian total consumption over the period of 2016 upto during POI, hence being dependent on sources of imports of the PUC (Reference to para 29 of Preliminary Findings)
g. Companies named as petitioners in this investigation have been importing the PUC from Malaysia. This ascertains the fact that the domestic industry in India is not able to meet the domestic demand and also not cost efficient. Therefore, they have opted to import the PUC from Malaysia to either further process or trade it domestically.
h. Domestic industry's production has shown an increase by 16.22% from *** MT in 2016 to *** MT in 2019. The domestic demand has also increased by 4.26% for the same period.
i. Indian domestic industry failed to fully utilise their production capacity. It was clearly demonstrated in the table in paragraph 42 that the capacity utilisation of the Indian domestic industry only ranged from 31% to 35% between 2016 to POI.
j. Imports from Malaysia is not the cause of injury suffered by the domestic industry as the inefficient capacity utilisation has been evident since 2016. Imports from Malaysia had accounted for 15% of the domestic industry's production in that year, and 54% of the domestic industry's production in the POI.
k. Domestic industry has a huge capacity to produce up to *** MT annually. There has always been a huge gap between the demand and supply, whereby during the POI, the domestic demand was *** MT but the supply by the domestic producers was only *** MT. The gap in the demand and supply has been compensated with imports by companies who amongst others have been named as the petitioners in this investigation due to the cost advantage of imported product under consideration
l. Indian domestic industry's performance in terms of production, capacity utilisation, sales have been mediocre since 2016.
m. Share of imports from Indonesia have also been consistently higher than the share of imports from Malaysia between 2016 up to 2018

n. If objective of the safeguards measure is to protect the domestic producers / refiners in India against imports of the PUC from Malaysia, the DGTR is urged to stop imports of the PUC from all sources, such as Indonesia or other countries producing/exporting the PUC by imposing a global safeguard measure. By way of the imposition of this bilateral safeguard measure, imports of the PUC from other sources, namely Indonesia or other countries producing/exporting the PUC will be seen to rise, thus defeating the objective to protect the domestic industry.

Views of RSH Agro Products limited, Guwahati and Budge Budge refineries Ltd

13. Submissions made by RSH Agro Products limited, Guwahati and Budge Budge refineries Ltd are as follows:
    a. Government used to have a duty differential of 15% between RPO and CPO , but the duty difference has come down to 10% after recent duty hike from Malaysia, which makes it difficult for the refiners to survive.
    b. The existing differential tariff value is low which is also an unfavourable circumstance for the domestic edible oil refiners, it is suggested that at least $40-50 difference should be maintained.
    c. Imports of Refined palm oil from neighbouring countries like Bangladesh, Nepal, Srilanka etc is under 0% subject to value addition norms. Palm oil is grown mainly in Malaysia and Indonesia, however due to SAFTA they are trying to evade duties.
    d. To safeguard the interest of the domestic industry it is requested that (a) reinstatement of custom duty differential between RPO and CPO to be 15% atleast (b) Maximise differential tariff value between RPO and CPO by $40-$50 (to restrict edible oil imports under SAFTA and SAARC countries) (c) to restrict edible oil imports from SAARC countries under SAFTA without NOC from DRI (d) refineries in north east may be granted a 15% special rebate/refund of custom duty amount as they are situated at land locked/remote area so that they stay visible and competitive.
    e. In spite of substantial capital investments in their refineries factory sheds, plant and machineries, the average health of domestic edible oil industries is adversely affected. These industries are also labour intensive. Non-functioning of the domestic edible sectors will result in acute crisis in mitigating consumer demand clubbing with additional unemployment risk of people engaged in this trade.

C. Examination by the Director General

14. The information made available by the interested parties in their submissions, have been considered by the Director General for the purpose of the present determination and the Director General notes the following:

C.1 Product under Consideration (PUC)

15. 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.

C.2 Domestic Industry

16. Rule 2 (b) of the Rules, 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

(ii) whose collective production of the like good in India constitutes a major proportion of the total domestic production of the such good in India.

17. 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

18. 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 application 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),

19. It is considered that the application 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, in terms of Rule 2(b).

C.3 Period of Investigation (POI)

20. The period of January 2019 to June 2019 has been considered as the period of investigation (POI) for the purpose of determination as to whether imports of the subject goods have

increased in such quantities 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 the Rules, 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 imports 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, April 2018 to December 2018 and the POI. The figures in the present findings for the periods April 2018 to December 2018 and POI have been mentioned on annualised basis in order to be comparable to the previous year period.

C.4 Source of Information

21. 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 Directorate General of Commercial Intelligence and Statistics (DGCI&S). Information with regard to serious injury has been considered for the domestic producers as a whole.

22. Information with regard to serious injury has been provided by the Applicant in respect of domestic producers as a whole. After initiation, the Director General issued questionnaire to the Association directing them to provide information as per prescribed questionnaire from the domestic producers. 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

23. The Director General has considered evaluation of injury and serious injury on the following basis:
    a. Parameters such as market share, capacity, production, domestic sales, capacity utilisation, have been determined first for domestic producers as a whole and thereafter also for the participating domestic producers.
    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 participating domestic producers.

24. For threat of serious injury, the Director General has considered information as made available by the Applicant in their application and additional information submitted after initiation of the investigation. A copy of the information submitted by the Applicant post initiation of investigation has been placed in public file for perusal of the parties to allow

them to offer their comments if any, for consideration during final determination of safeguard duty.

C.5 Customs Duty under the CECA

25. Comprehensive Economic Cooperation Agreement between the Government of India and the Government of Malaysia (CECA) and India-ASEAN Free Trade Agreement (AIFTA) provided reduction of customs duty on CPO and RBD Palmolein as mentioned below.

	CECA Preferential Tariffs		
	Tariff line	CPO	RPO
	Base Rate	80	90
	Entry into Force (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

26. It can be noted that the customs duty differential between CPO and RPO was 10 % during the period from April, 2015 till December, 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 with consequent decline in imports of crude palm oil.

C.6 Increased Imports

27. Rule 2 (d) of the Rules, provides as follows:

> *"increased imports" means increase in imports from Malaysia whether in absolute terms or relative to domestic production*

28. The 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 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 Rules.

i. <u>Imports from Malaysia in absolute terms:</u>

29. 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

30. The imports of the product under consideration have increased significantly in the POI in absolute terms. There is a sudden, 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).

31. 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 an a surge of almost 29 times.

ii. <u>Share of increase in imports of subject goods from Malaysia and other countries</u>

32. 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%

33. It is noted that imports of the product under consideration from Malaysia in 2016-17 was 21% of total imports into India. There was no material increase in the volume of imports till Dec., 2018 in relation to total imports of the product under consideration in India. However, the imports of subject goods from Malaysia increased significantly to 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

34. 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	***	***	***	***
2	2017-18	376,136	***	***	***	***
3	2018-19	696,909	***	***	***	***
4	Apr.-Dec., 2018 (annualized)	271,099	***	***	***	***
5	POI (annualized)	2,596,225	***	***	***	***
6	Q1 18-19	97,239	***	***	***	***
7	Q2 18-19	78,879	***	***	***	***
8	Q3 18-19	27,206	***	***	***	***
9	Q4 18-19	493,584	***	***	***	***
10	Q1 19-20	804,528	***	***	***	***

35. It is noted that imports 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 in the Jan-June, 2019. Thus, imports have shown significant increase in imports in relation to production and consumption. The share, in fact, surged to 75% and 40% respectively in the April-June, 2019 period from 2% and 1% respectively in Oct.-Dec., 2018 period. The increase in imports in relation to production and consumption is sharp and significant in such a short period.

C.7 Serious Injury

36. 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.*

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

38. 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;*

39. 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.

40. 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.

41. 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;*

42. 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:

i. <u>Increase in imports in absolute and relative terms</u>

43. It is noted that the imports of subject goods have increased significantly in absolute as well as in relative terms in the recent period. Further, the increase in imports is noted under both the situation when it is compared between 2015-16 and January 2019 to June 2019, or with the period immediately preceding the surge period. It is also noted that there was significant increase in imports in April 2019 to June 2019 as compared to preceding quarter.

ii. <u>Production and Sales:</u>

44. The Applicant 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 Applicant 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 Applicant has also submitted relevant material from the Round Table on Sustainable Palm Oil evidencing therein the input output ratio between CPO and RBD Palmolein. The Applicant has also submitted that sales can be considered at the same level of production as the product under consideration cannot be kept in stocks for long time.

45. 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 i.e. CPO has been considered on the basis of imports of CPO in India, as publicly reported by the DGCI&S.

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

SN	Period	Production/Sales	Demand
		MT	MT
1	2016-17	***	7,190,365
2	2017-18	***	7,995,216
3	2018-19	***	7,510,304
4	Apr-Dec'18 annualized.	***	7,237,288
5	POI annualized	***	8,174,382

47. It is noted that the demand increased during the POI whereas, the Indian production and sales increased upto April-Dec 2018 period and have declined thereafter in the POI. The Indian production/sales was *** MT in April 2018 to December 2018 which declined to *** MT in the POI i.e. a decline of more than 2.4%.

iii. Capacity utilization

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

Period	Capacity	Capacity
	MT	%
2016-17	13,900,000	***
2017-18	13,900,000	***
2018-19	13,900,000	***
Apr-Dec'18	13,900,000	***
POI	13,900,000	***

Period	Capacity (MT)	Capacity	Production
2016- 17	1,39,00,000	***	***
2017-18	1,39,00,000	***	***
2018-19	1,39,00,000	***	***
2019-20 (Q1)	1,39,00,000	***	***
Q1 17-18	34,75,000	***	***
Q2 17-18	34,75,000	***	***
Q3 17-18	34,75,000	***	***
Q4 17-18	34,75,000	***	***
Q1 18-19	34,75,000	***	***
Q2 18-19	34,75,000	***	***
Q3 18-19	34,75,000	***	***
Q4 18-19	34,75,000	***	***
Q1 19-20	34,75,000	***	***
Apr-Dec'18	1,04,25,000	***	***
POI Jan-June'19	69,50,000	***	***

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

iv. Market share of the domestic industry

50. The movement of market share is as follows:

S. No.	Period	Market Share (%)	
		Malaysia	Indian industry
1	2016-17	9%	59%
2	2017-18	5%	66%
3	2018-19	9%	68%
4	Apr-Dec'18	4%	69%
5	POI	32%	59%
6	Jan.-March, 2019	24%	65%
7	Apr-June, 2019	40%	54%

51. 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.

v. Employment and Productivity

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

vi. Profit/loss

53. Cost of subject goods and its fair price after conversion from imported crude refined oil is as follows:

	Unit	POI Annualised
Crude Import Volume	MT	***
Import value Rs. Lakhs	Rs.Lakhs	***
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	Rs./MT	***
Less: By product	Rs./MT	***
Conversion Cost	Rs./MT	***
Net value of Palm Oil	Rs./MT	***
Profit	5%	***
Fair price	Rs./MT	***

54. As against the above fair price, the landed price of imported RBD Palmolein from Malaysia is as follows in the POI:

Particulars	UOM	Amount
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

55. It is noted that the domestic producers themselves started importing RBD Palmolein 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 1,500 per MT, 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	***

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

vii. <u>Price suppression/depression and Price undercutting:</u>

57. 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 Palmoelin	Rs./MT	***
Landed price of RBD Palmolein	Rs./MT	***
Difference	Rs./MT	***

58. It is noted that landed price of RBD Palmolein is significantly below the level of reasonable price of RBD Palmolein required by the domestic producers, should they import CPO and process the same into RBD Palmolein. This shows that the imports are supressing 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 subject goods from Malaysia.

C.8 Injury analysis of Domestic producers who have provided data

59. 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

60. It is noted 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.

61. 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

Year	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	***	***	***	***	***	***	***

Year	Capacity Utilisation (in %)						
	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	***	***	***	***	***	***	***

Year	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	***	***	***	***	***	***	***

Year	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	-

Year	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	-

Year	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	-

C.9 Conclusion on Injury

62. It is, thus, concluded that the imports of the product under consideration have increased significantly in absolute terms and in relation to gross imports into 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 concluded that the domestic industry has suffered serious injury as a result of increased imports of the product under consideration from Malaysia.

C.10 Causal Link

63. A comprehensive evaluation of parameters enumerated above demonstrates that serious injury had been caused by increased imports of subject goods from subject country during the POI. 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 had increased significantly in the POI in absolute as well as relative terms.
    b. The market share of domestic producers had declined whereas that of imports from Malaysia had increased.
    c. The landed price of import was significantly lower than the reasonable price of subject goods in the POI.
    d. Domestic producers were forced to import goods in order to maintain their market presence.
    e. Sales, production, capacity utilisation, manpower deployed and profits of the domestic producers declined as a result of increased imports in the POI.

64. It is, thus, evident that injury to the domestic industry had been caused by the increased imports during the POI and there was a causal link between increased imports of subject goods from Malaysia and serious injury to the domestic industry.

C.11 Threat of Serious Injury

65. 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;*

66. It is noted that imports of subject goods from Malaysia were 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 had adversely impacted the situation. The difference between the landed price of imports of subject goods and the reasonable price of subject goods along with the fact of huge capacities with export oriented producers in Malaysia indicated,at the time of issuance of preliminary findings, that the subject goods from Malaysia are likely to remain lucrative, posing further threat of injury to the domestic industry. However, since the imports of subject goods have been put under the "restricted category" vide Notification No. 39/2015-2020 dated 8th January, 2020 and also the fact that the duty differential between Crude Palm Oil and subject goods have become 7.5% under both CECA and ASEAN Agreement, it is noted that the imports from Malaysia under CECA appear to pose no further threat to the domestic industry.

D. Conclusion

67. It is noted that after examining the critical circumstances pertaining to the present case, the Director General had provisionally concluded that the injury being suffered by the domestic industry was on account of intensified increased imports of the subject goods from Malaysia and had recommended provisional duty for a period of 180 days vide Notification No. 22/4/2019 dated 26th August 2019. The Central Government imposed the provisional duty vide Notification No. 29/2019-Customs dated 4th September, 2019 and the said duty is in force till 2nd March 2020.

68. Meanwhile, when the investigation was underway, the Government amended the import policy of items under HS Code 151190 10 (Refined Bleached Deodorised palm oil, HS Code 151190 20 (Refined Bleached Deodorised Palmolein) and HS Code 151190 90 (others) vide Notification No 39/2015-2020 dated 8th January 2010 thus placing the subject goods under "Restricted" category. It has also been brought to the notice by the domestic industry that basic customs duty under ASEAN agreement (which includes Malaysia) and CECA has also changed w.e.f. 1st Jan., 2020. Now, the difference between crude palm oil and Refined Palmolein/Palm Oil is 7.5% in both these Agreements. It has also been submitted that while the differential between crude and refined is insufficient for sustainable operations of the domestic producers, in any case, the customs duty under the two agreements is now the same. Therefore, safeguard duty in the present agreement without similar duty under ASEAN agreement would mean a futile safeguard duty, as the

consumers would utilise benefit under ASEAN agreement. It has also been submitted that since imports of the subject goods are now under restricted list, the product shall now remain regulated. In view of these recent developments, it appears that it may not be necessary to impose safeguard duty beyond the current period of 180 days.

69. In view of the above stated facts, it is considered that the bilateral safeguard duty imposed vide notification no 29/2019-customs dated 4th September, 2019 under the CECA on the import of Refined Bleached Deodorised Palm Oil" and "Refined Bleached Deodorised Palmolein" for a period of 180 days from the date of imposition of the provisional duty is sufficient in the present circumstances.

E. Recommendations

70. The Preliminary Findings issued vide Notification No. 22/4/2019 dated 26th August, 2019 is therefore confirmed. The Director General recommends imposition of bilateral safeguard duty on imports of subject goods from the subject country in the form and manner described in the Preliminary findings issued vide Notification No. 22/4/2019 dated 26th August, 2019 under the CECA on the import of Refined Bleached Deodorised Palm Oil" and "Refined Bleached Deodorised Palmolein" for a period of 180 days from the date of imposition of the provisional duty by the Central Government issued vide Notification No. 29/2019-Customs dated 04th September, 2019.

71. The Director General, in view of the reasons recorded earlier, does not recommend further extension of bilateral safeguard duty.

(Bhupinder S. Bhalla)
Additional Secretary and Director General