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F. No. 22/8/2019-DGTR  
Government of India  
Department of Commerce  
Ministry of Commerce & Industry  
Directorate General of Trade Remedies  
Jeevan Tara Building, 5, Parliament Street, New Delhi

**NOTIFICATION**

**FINAL FINDINGS**

**Case No: SG-08/2019**

Dated 28.09.2020

**Subject: Final Findings of Bilateral Safeguard Investigation concerning imports of "Phthalic Anhydride" into India from Korea under India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017**

**A. BACKGROUND OF THE CASE**

1. Having regard to the Article 2.22 of the Comprehensive Economic Cooperation Agreement between the Government of the Republic of India and the Government of Korea (CEPA) and India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 (hereinafter referred to as the "Rules" or "Bilateral Safeguard Rules") thereof, I G Petrochemicals Limited and Thirumalai Chemicals Limited (hereinafter referred to as the "Applicants") have filed an application before the Director General of Trade Remedies (herein after referred to as the "Authority" or "Director General") in accordance with CEPA and Bilateral Safeguard Rules for initiation of bilateral safeguard investigation concerning increased imports of Phthalic Anhydride (PAN) (hereinafter referred to as the "product under consideration" or "subject goods") from Korea (hereinafter referred to as "subject country").
2. The Authority on the basis of *prima facie* evidence submitted by the Applicants, issued notification number SG-08/2019 dated 1<sup>st</sup> October 2019, published in the Gazette of India, initiating the investigation in accordance with the Rules.
3. 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. Preliminary findings were issued vide Notification No. 22/8/2019- DGTR dated 11th May 2020, recommending imposition of provisional safeguard duty on the imports of subject goods originating in or exported from Korea. The Central Government vide Notification No. 29/2020- Customs dated 6th July 2020 imposed provisional safeguard measures by eliminating the concessions given under the CEPA and increased the rate of custom duty to 7.5% on imports of subject goods to originating in or exported from the Korea for a period of 200 days.

## **B. PROCEDURE**

4. The procedure described below has been followed with regard to the investigation-
  - a. The Authority sent a copy of the initiation notification dated 1<sup>st</sup> October, 2019 to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, Government of Korea through the Embassy of Republic of Korea in India, the known producers and exporters in the subject country and known importers and other interested parties as mentioned in the application, in accordance with Rule 5(2) of the said Rules.
  - b. Copy of the non-confidential version of the application filed by the Applicants was made available to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, Government of Korea through the Embassy of Republic of Korea in India and the known producers and exporters in the subject country in accordance with Rule 5(3) of the Rules.
  - c. The Authority forwarded a copy of the public notice initiating bilateral safeguard investigation to the following known producers/exporters in the subject country and provided them an opportunity to file response to questionnaire in the form and manner prescribed and make their views known in writing within thirty days in accordance with the Rules 5(4) of the Rules:
    - i. Aekyung Petrochemical Co. Ltd.
    - ii. LG Petrochemical, Yeochon
    - iii. Hanwha Chemical Corporation
    - iv. OCI Company Limited
  - d. In response to the questionnaire issued, all four producers/exporters filed exporter's questionnaire response.
  - e. The Authority sent Importer Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 5(5) of the Rules:
    - i. Cray Valley Resins India Limited
    - ii. Goodless Nerolac Paints Limited
    - iii. Gargi Industries Limited
    - iv. Hindustan Insecticides Limited
    - v. Kemrock Industries & Exports Limited.
    - vi. Shalimar Paints Limited,
    - vii. U.K. Paints India Private Limited.
  - f. In response, the following importers have filed questionnaire response:
    - i. Sandeep Organics Private Limited
    - ii. Unity Organics Private Limited
    - iii. Nishant Organics Private Limited
    - iv. Dhanlaxmi Pigments Private Limited
    - v. Kesar Petroproducts Limited
    - vi. Mazda Colours Limited
    - vii. Shiv Dyestuff Intermediate Industries
    - viii. A-One Phthalo Colours Private Limited
    - ix. A-One Chemicals Limited
    - x. Narayan Organics Private Limited
    - xi. Narayan Industries

- xii. PCL Oil & Solvents Limited
- xiii. KLJ Plasticizers Limited
- xiv. Rachna Plasticizers
- xv. Payal Polyplast Private Limited
- xvi. Asian Paints Limited
- xvii. Kansai Nerolac Paints Limited
- xviii. Shalimar Paints Limited
- xix. Berger Paints India Limited

g. The Authority also sent questionnaire to the domestic industry. The domestic industry filed its questionnaire response.

h. The following interested parties filed submissions responding to the initiation notification:

- i. Chemexcil (Basic Chemicals, Cosmetics & Dyes Export Promotion Council)
- ii. The Gujarat Dyestuff Manufacturers Association
- iii. Korea Petrochemical Industry Association on behalf of Aekyung Petrochemical co ltd., Hanwha Chemical Corporation, OCI Company Ltd. & LG Chern Ltd.,
- iv. Government of Korea
- v. Indian Paint Association
- vi. KLJ Plasticizers Ltd.,
- vii. Payal Polyplast Pvt Ltd.,
- viii. Rachna Plastics
- ix. PCL Oil & Solvents Ltd.

i. After the issuance of the preliminary findings, the Director General held an oral hearing on 11th August 2020 in terms of Rule 5(6) of the Rules, where opportunity was provided to all interested parties to present their views. Thereafter, the interested parties were given opportunity to present their views in writing and offer comments on views expressed by other interested parties. Copy of written submissions filed by interested parties post oral hearing were made available to other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.

j. Post issuance of the preliminary finding, comments were filed by the following interested parties: -

- i. Government of Korea ( GOK)
- ii. Indian Paint Association
- iii. Korea Petrochemical Industry Association
- iv. KLJ Plasticizers Limited,
- v. Payal Polyplast Private Limited,
- vi. Rachna Plastics
- vii. PCL Oil & Solvents Limited.

k. Written submissions and rejoinders post oral hearing were filed by the following interested parties: -

- i. Domestic industry
- ii. Government of Korea
- iii. Indian Paint Association
- iv. Korea Petrochemical Industry Association

- v. The Gujarat Dyestuff Manufacturer's Association
- vi. Indian Plasticizers Manufacturers Association (IPMA)
- l. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- m. The Government of Korea (GOK) availed the opportunity of consultations which were held on 15<sup>th</sup> September, 2020. Concerns raised by GOK have been examined and addressed. Further, concerns raised by GOK have been raised through written submissions earlier have also been duly considered and appropriately addressed in the present findings.
- n. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this final finding.

## **C. Submissions made by the Applicants and other interested parties**

### **C.1. Product under consideration**

- 5. The submissions made by the Applicants in respect of product under consideration are as follows:
  - a. The product under investigation is "Phthalic Anhydride", falling under the HS code 29173500. Product under consideration is commonly used to produce Phthalate esters, which function as plasticizers.
  - b. The product being produced by the domestic industry is like article to imported product. The domestic product is comparable to the imported product.
- 6. No submission has been made by other interested parties in respect of product under consideration.

### **C.2. Domestic industry**

- 7. The Applicant has contended that apart from them, there are two existing producers in India, namely SI Group Limited and Asian Paints. Asian Paints has permanently shut down its plant in July 2017.
- 8. No submissions have been made by other interested parties in respect of scope of the domestic industry.

### **C.2. Confidentiality**

- 9. The submissions made by other interested parties in respect of confidentiality are as follows:
  - a. The Applicants have claimed excessive confidentiality in their Application as the data which was available in the final finding of the anti-dumping investigation has not been disclosed. Further, the requirements of the trade notice 10/2018 have not been complied with.

- b. Adjustment plan is vague, excessively confidential. The applicants failed to provide summarized/ non-confidential version of the adjustment plan which has deprived the interested parties of an opportunity to present its views on the viability of the adjustment plan.
- c. Domestic industry has claimed confidentiality about capacity expansion. However, this was disclosed in the oral hearing. Therefore, the information cannot be claimed as confidential.

### **C.3. Miscellaneous Submissions**

10. The submissions made by the applicants are as follows:

- a. With regard to adjustment plans, the domestic industry has submitted that it is taking measures to reduce costs. IG Petrochemicals has given an adjustment plan which includes action on reduction in raw material cost by replacing existing catalyst, improvement in recoveries, reduction in power and fuel cost, capacity additions and integrating utilities of existing plants, efforts to reduce costs on account of administrative overheads, personnel cost and finance cost. Thirumalai Chemicals has given an adjustment plan which includes reduction in cost by upgrading equipment for higher capacity & efficiency, improvement in yield, reduction in energy costs, reduction in oil consumption, reduction in wages & salaries, stores & spares, repair & maintenance and administrative overheads.
- b. Measures are necessary for a minimum period of 4 years in order to enable the domestic industry to successfully implement its adjustment plan.
- c. Applicants are in the process of expanding their capacities for the product under consideration which are expected to reach 4,84,000 MT for which they have incurred significant amount. The capacity will then be more than the demand in India.
- d. In past when protection was not provided for requested period, the domestic industry was not able to adjust itself.
- e. Decisions of capacity expansions are not taken overnight but happen over a period. Decision to expand capacity were taken when the domestic industry was in profits.
- f. Capacity expansion will ensure that the capacity in India will be more than the demand in the country.
- g. The past anti-dumping duties were not protection to domestic industry but only to counter the effect of dumping by the foreign producers.
- h. Applicants have requested only for suspension of concessions on imports from Korea to restore fair competition.
- i. BIS standard will only provide better quality to the consumers.
- j. The consumers have made baseless allegations about producers not responding to customer inquiries.

11. The submissions made by other interested parties are as follows:

- a. The application does not contain any evidence to satisfy the requirements of the Rules.
- b. The present investigation should be terminated as the substantive requirements of a valid bilateral safeguard measure have not been satisfied as the standards required for a safeguard investigation are much higher.
- c. The application is deficient as the data provided by the domestic industry does not correspond to the period identified in the initiation notification.

- d. The Applicants have not brought forward sufficient evidence to prove the conditions for initiation of the bilateral safeguard investigation. The four conditions laid down in Article 2.22 are not satisfied.
- e. Initiation of investigation is invalid and inconsistent under Rule 4(2)(b) of the Bilateral SG Rules which concerns obligation at the pre-initiation stage. The deficiency of not providing an adjustment plan at the time of the initiation of this investigation cannot be cured by subsequently providing an adjustment plan.
- f. Domestic industry in the previous global safeguard investigation had submitted a similar adjustment plan which it did not implement. This was considered as a main reason for not extending the safeguard protection by DG Safeguards
- g. View taken by the DG on adjustment plan is not as per the legal requirements of the bilateral safeguard measures.
- h. Domestic industry's stance has changed regarding adjustment plan from application to questionnaire response and final adjustment plan which shows lack of planning to positively adjust to the competition from imports.
- i. The initiation nowhere discloses whether domestic industry has submitted any adjustment plan to indicate how they will achieve increase in productivity, decrease in cost and above all reduction in their selling prices to meet international competition.
- j. Present investigation should be terminated in view of initiation of parallel anti-dumping investigation against Korea and other countries as there cannot be a simultaneous imposition of bilateral safeguard duty along with anti-dumping duty for the same product with overlapping POI.
- k. The provisional measures were recommended after a substantial passage of time as against the practice of recommending them within 1-3 months.
- l. No opportunity for hearing was given to interested parties before provisional finding and every issue should be examined afresh
- m. The capacity expansions proposed by the applicants are futuristic scenario which are never put into effect and do not scuttle submission that users were compelled to import because of demand-supply gap.
- n. There exists significant demand-supply gap and therefore the product under consideration will be imported into India and the domestic industry has not expanded its capacity.
- o. There have been two safeguard measures and anti-dumping measures in about 10 years, and the Applicants rely on import restrictions through trade remedies rather than devising any strategy to improve their performance.
- p. The product has been given protection for 10 years, and there cannot be argument for an emergency situation or sudden impairment to the domestic industry for safeguard measures.
- q. Authority observed in the sunset review investigation that increase in imports pursuant to September 2017 will be on account of demand-supply gap and it did not take into consideration tariff concessions under CEPA.
- r. The imposition of duty will allow the Applicants to create dominant position for itself in the market and create barriers for new entrants.
- s. Authority admitted in second sunset review that even if the domestic industry attempted to utilise 100% of the installed capacity, it would not be able to meet the domestic demand and imports pursuant to September 2017 will be on account of demand-supply gap.
- t. Period of investigation considered at the time of preliminary findings has been extended and modified from the period notified in the initiation notification.

#### **C.4. Increased imports from Korea**

12. The submissions made by the Applicants are as follows:

- a. Pursuant to India-Korea CEPA, the duty on imports of Phthalic Anhydride from Korea has been reduced to zero over the years.
- b. There is significant increase in the import volumes. Imports of product under consideration into India increased significantly in absolute terms and in relation to production, consumption and share in imports.
- c. Imports into India from Korea has duty advantage for Phthalic Anhydride under India –Korea CEPA. Hence, the country is now flooded with subject goods from Korea.
- d. India has become a preferred market for the Korean producers as the share of exports to India in the total exports has increased to more than 3 times.
- e. Korean imports enjoyed benefits of huge capacities and low freight cost and are now also aided by custom duty concessions.
- f. Had there been no benchmarking of price by the Korean imports due to duty concessions, the domestic industry would have sold at remunerative prices.
- g. The imports from Korea in absolute terms as well as in relative terms has remained significantly high even in the 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2019-20.

13. The submissions made by other interested parties are as follows:

- a. There are no critical conditions for issuance of preliminary finding as the rate of increase in imports is declining whereas in case of other countries it is increasing.
- b. As per Article 3.1 of the Agreement on Safeguards, there must be a reasoned and adequate explanation which demonstrates the connection between the reduction of the duty and the alleged increase in imports. Authority should identify and provide a reasoned explanation and demonstration of the same.
- c. There has been an increase in imports from Thailand and Indonesia as well with whom India has FTA. Further, increase in imports from Taiwan is also in line with increase in imports from Korea.
- d. There has been no recent, sudden, sharp, and significant increase of imports of phthalic anhydride from Korea.
- e. There should be an unforeseen development which should have caused increase in imports.
- f. The increase in imports coincides more with the expiry of the anti-dumping duty on the imports from China PR, Indonesia, Israel, Russia, Taiwan, Thailand and UAE, than the reduction in the custom duties under CEPA. The application is silent on the effects of expiry of anti-dumping duty as a reason for increase in imports.
- g. Imports have not increased in such quantities in the transition period from 2016-17 to 2017-18. There is no correlation between increase in imports and tariff concessions. The increase was due to reason other than CEPA.
- h. Imports from Korea are in proportion to the demand supply gap in India and comparable to other major source of imports like China PR, Thailand and Indonesia. Had elimination of duty been the reason for imports, then the entire imports would have shifted to Korea.
- i. The applicants admitted in the oral hearing that they are uncertain about the cause of imports which could be due to elimination of duties under CEPA, dumping or even subsidy.

- j. Quarter-wise data should have been considered for period for which surge in imports has been claimed by the domestic industry.
- k. Imports were necessitated to meet the demand-supply gap.
- l. While imports from Korea constituted about 23% of the Indian demand, other imports held about 24% of Indian demand.
- m. Imports under advance license must be excluded from total imports.
- n. As per WTO Appellate Body in Argentina Footwear and US – Steel Safeguard, the authority must consider the trend in imports over the period and the increase must be recent.
- o. Absence of price-based injury is also evident as the domestic industry has admitted that it will be in reasonable profits if landed price is increased to Rs 68.97 per MT which is equivalent to landed price of Q1.
- p. Import volumes declined in Q-3 and Q-4 of 2019-20 and the applicants still held more than 50% share in demand.

### **C.5. Injury**

14. The submissions made by the Applicants in respect of injury are as follows:

- a. Production and sales of the Indian industry has declined significantly in the most recent period. While the demand for the product has not increased, the imports have surged, thus adversely impacting the sales volume of the domestic industry.
- b. Capacity utilization of the industry has declined in Q1 of 2019-20.
- c. From the decline in production and capacity utilization, it is evident that the increase in imports is causing injury to the domestic industry.
- d. Market share of domestic industry has declined whereas market share of the imports has increased.
- e. The subject imports are significantly undercutting the prices of the domestic industry. The import prices have declined sharply in the last two quarters of Period of Investigation (POI). Thus, if the imports keep on increasing, the domestic industry will not be able to recover even processing costs and would incur significant financial losses.
- f. The profits of the industry were increasing till Q2 2018-19. The profits of the domestic industry have declined from Q2 2018-19 to Q1 2019-20, considering loss of sales during this period.
- g. The productivity of the Indian industry has improved initially but declined significantly in the POI.
- h. In addition to the serious injury already caused, imports are threatening serious injury as would be obvious from 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 the share of imports is increasing.
  - iii. The difference between domestic price and imported product price is quite significant.
- i. There are no factors other than increased imports that can be attributed to the serious injury caused to the domestic industry.
- j. The landed price of imports is significantly lower than the selling prices of the domestic industry.
- k. 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-priced imports.

1. Increased imports have led to increase in market share of imports and reduction in market share of the domestic industry.
- m. It is submitted that the imports from Korea have increased significantly whereas the production, sales and resultantly the capacity utilization of Indian industry has declined significantly.
- n. The production and sales of the domestic industry have remained impacted in the quarter of 2019-20 and the domestic industry has continued to lose margins.
- o. The domestic industry has the capacity to cater around 70-80% of the market. However, its share has been left restricted to 50-60%.
- p. Collective share of other country imports in Indian demand is lower than the Korean imports.
- q. Inventories with the domestic industry have remained higher in the 3rd and 4th quarter of 2019-20.
- r. Price undercutting in the latest quarter of 2019-20 is historically highest.
- s. Domestic industry has been forced to export because of the demand for its product in the market. The exports were made at loss marking prices.
- t. Contrary to the submissions of other interested parties, the imports from other countries have not increased in same line as increase in demand.
- u. The applicant cannot substantiate the reason for low price of imports but can only request for examination of low price of imports.
- v. In the past anti-dumping investigations, even though the applicants believed that imports were dumped, negative dumping margin was determined by the Authority for imports from Korea.
- w. The return on investment of the domestic industry has not only reduced but is negative in some period.
- x. If the domestic industry would have quoted remunerative prices, the price undercutting would have been higher.
- y. Domestic industry has invested around Rs \*\*\* cr in the past on its capacities and is investing another significant amount to cater to demand.
- z. Landed price of imports from Korea is lower than landed price of imports from non-Korea sources.
  - aa. There is no justification for referring to the injury examined in the anti-dumping investigation on the basis of 2016-17 data.
  - bb. Price underselling or injury margin are not a relevant parameter of injury determination under the safeguard rules.
  - cc. The respondents have provided information with respect to fall in the prices of the subject goods for last few days of 2019-20 only against examination of injury data for 4.5 years.
  - dd. Capacities in the other country are irrelevant for the examination of injury suffered by the domestic industry.
  - ee. Panel in US – Steel Safeguards investigation held that there may be a lag between the influx of imports and the manifestation of the injurious effects on the domestic industry of such an influx. Therefore, though the duties were reduced earlier, there was a gap when the injury was suffered.
  - ff. Any increase in imports due to the requirement of Asian Paints would have been visible in the year 2017-18 itself. However, as compared to 2016-17, imports increased only by 4800 MT.
  - gg. Claims of increase in imports of downstream products are mere conjectures and they are free to approach the Authority for remedy.

hh. The decision of Bihar Court in the matter of V Kameshwar Singh AIR 1952 SC 252 aptly highlights that public interest examination does not have any precise definition and therefore in no way is required to be done only considering the user industry.

ii. The other interested parties have misquoted the examination of the Authority in the previous investigation. The examination implied that a situation of demand-supply gap will result in imports.

15. The submissions made by the other interested parties in respect of injury are as follows:

- a. The domestic industry itself admits in its petition for the AD investigation that it was performing well and was in profits. Thus, the question of serious injury to the domestic industry on account of concessions granted in the Korea- India CEPA does not arise at all.
- b. The finding does not meaningfully address whether reduction or elimination of duties under Korea-India CEPA must alone result in an increase in the imports of the subject good, which consequently must be the substantial cause of serious injury to the domestic industry.
- c. The increase in imports of the product under consideration is not attributable to tariff concessions under the Korea-India CEPA, but a multitude of other factors like demand-supply gap, dumped imports as determined in previous investigations, absence of any correlation between tariff reductions and increase in imports etc.
- d. The landed price of imports and the selling price of domestic industry in April to September 19 are in same range as compared to 2017-18 wherein negative injury margin was determined. Thus, when the domestic industry was not getting injured in 2017-18, there is no question of injury to the domestic industry for the period April-September 2019.
- e. The contention of domestic industry that there is no requirement to compare the landed prices from Korea with the NIP of the domestic industry is not consistent with the practice of DGTR and the jurisprudence concerning serious injury. In a determination of 'serious injury' it is necessary to compare the landed value of the product under consideration from Korea with the NIP (or fair selling price) of the domestic industry as opposed to the NSR.
- f. Applicants have claimed injury in the present investigation solely on account of reduction or elimination customs duty whereas, in the anti-dumping investigation recently initiated, it was claimed in the petition that injury was on account of dumped imports. The domestic industry is presenting different and conflicting causes of injury before the Authority. As per Article 2.22, the increase in imports alone be the substantial cause of serious injury or threat of serious injury to the domestic industry.
- g. Key performance parameters of the domestic industry such as capacity utilization, production, sales, profitability do not show any injury.
- h. The increase in selling price is more than the increase in landed price.
- i. The Applicants have failed to demonstrate that the alleged injury is due to increase in imports and the reduction in custom duties. It has not been shown that the increase in the imports is due to the reduction or elimination of the customs duties and increase alone is the cause of injury to the domestic industry requirement of Article 2.22 of the India-Korea CEPA.
- j. The discussions in the annual reports of the Applicant do not show any sign of overall deterioration in the situation.

- k. The Applicant should provide data for the injury period determined by the Authority. The period for which data is provided in the Application is misleading.
- l. Data for previous years should have also been considered on quarterly basis. An analysis of annualized data is not practicable or reliable in safeguard investigations as also held by WTO Panel in India- Iron Steel Products
- m. The production of domestic industry has increased. This is in spite of various issues such as volatility in crude oil and other petrochemical products, slow-down in Far East, US-China Trade sanction etc, delay in completing the expansions to meet the demand etc.
- n. Sales of the domestic industry also increased in the latest period in comparison to 2007-08 by 38 points.
- o. There has been an increase in the capacity of the domestic industry. Additions in capacity at a time when the domestic industry is claiming serious injury should be seen as factor demolishing the injury claims of the domestic industry.
- p. The production expansion plans of the Applicants is a sign of domestic industry's judgment that there shall be increase in production and sales volume in the near future which guarantees that there is no serious injury that has been claimed by the domestic industry. In reality, there is a positive outlook.
- q. The import prices have increased following the trend of increase in prices of the domestic industry. The landed price of imports evidently had not forced the domestic industry to reduce its prices. On the contrary, net sales realisation has gone up.
- r. Domestic industry was earning high profits when anti-dumping duty was in force. The fall in current profits is not a decline but correction of abnormally high profits.
- s. In the ADD investigation concluded recently, negative determination on injury was done and likelihood of injury was also ruled out.
- t. Landed price of imports from Korea was higher than various other sources which means that there was no price attractiveness and the total capacity utilization of all exporters is about 99%-100% which rules out any excess unutilized capacity in Korea.
- u. When the domestic industry has been unable to establish serious injury as per CEPA, the claims of threat of serious injury should be taken with much caution.
- v. Price undercutting has reduced after the elimination of duties which shows that it did not lead to reduction in landed price. Prices of domestic industry are very high and are at profitable levels which is the reason for positive undercutting.
- w. While the return on investment has reduced, it is much better than certain historical period wherein the applicants had registered negative returns.
- x. DG has modified period of investigation considered at the time of provisional findings to draw specific conclusions in preliminary findings which would not have been possible otherwise. Period considered for preliminary findings show that period for which the injury is claimed is not in tandem with the period of duty reduction or elimination.
- y. Domestic industry has restricted its argument for loss making export sale to only one quarter which implies that it did not suffer loss making exports in the other 17 quarters.
- z. Recent decline of the domestic industry's performance since the first half of FY2019-20 is not explained with the time of reduction or elimination of duties under CEPA.
- aa. Domestic industry was doing very well in the immediate period after expiry of duties as return on investment reached a historical high level.

- bb. The landed price of imports from Korea have been higher than most of other source of imports ruling out any price injury also from Korean imports.
- cc. Imports from other countries recorded a higher fall in landed price than imports from Korea.
- dd. The price of the product in India was not governed by the landed price of imports. Difference between selling price and landed price could be due to high price charged by the domestic industry.
- ee. Serious injury as per CEPA and the Rules means a significant overall impairment in the position of domestic industry.
- ff. As per WTO Appellate Body in United States -- Safeguard measures on imports of fresh, chilled or frozen Lamb meat from New Zealand and Australia, the word serious connotes very high standards of injury. Same view was taken in US Lamb Case for serious injury and threat of injury.
- gg. There are no reasons provided for comparison of annualised data. Comparison does not provide objective evidence unless reasons are provided.
- hh. Preliminary finding is based on the data for 2<sup>nd</sup> quarter of 2019-20 that sets the tone that the performance of the domestic industry has declined.
- ii. Domestic industry was extremely well in period immediately after elimination of duties and earned 50-60% return on investment in the year in which the duties were eliminated.
- jj. The domestic industry was admittedly in profit till Q1 of 2019-20 as mentioned in anti-dumping petition. Data for Q3 and Q4 should not be considered as they are not part of period of investigation, and for which a parallel application has been filed for anti-dumping duty, where the domestic industry has alleged that injury is solely on account of dumping.
- kk. Authority should examine conditions of competition between the imports and the domestic products to assess injury to the domestic industry.
- ll. Applicants are filing data for quarter 3 and quarter 4 of 2019-20 at such belated stage of investigation.
- mm. Price undercutting reduced after elimination of duties which alone shows that the elimination of duties per se did not lead to any reduction in landed price leading to a higher price undercutting.

#### **C.6. Causal Link**

16. The submissions made by the Applicants in respect of causal link are as follows:

- a. In a situation of demand-supply gap, the imports will happen. However, increase in imports from Korea are not in proportion to increase in demand which gets substantiated by the fact that imports from other countries have declined in last 2 years.
- b. No evidence has been brought forward by other interested parties to show the reason of imports from the subject country.
- c. Benchmarking of prices only implies that Korean prices act as a standard of prices for other competitors which is the reason of low price of imports from other countries.
- d. The domestic industry has never informed its customers that it is facing production issues. Consumers may be called on to show communications. Revamp process was carried out when most of the sections of the plant were operational.

- e. Volatility in crude prices was not faced by the domestic industry alone but by all producers globally. Due to Korean imports, the domestic industry could not align its prices with crude prices.
- f. Had the increase in imports been due to cessation of duties, the imports would have increased from Taiwan and Israel as well. Major producer from Korea enjoyed nil antidumping duty and therefore, there is no reason to link increase in imports to cessation of duties.
- g. The performance of the domestic industry in the domestic market is solely dependent on the availability of raw material and competition with imports.
- h. Contrary claims have been made in respect of Orthoxylene. While some interested parties have argued that the domestic industry faced issues with regard to its supply, others have argued that domestic industry enjoys abundant supply.
- i. Appellate Body in US – Wheat Gluten took the view that the increased imports should be only one of the causes of injury and need not be the sole reason for the injury and authority need to only assess if there is a "genuine and substantial relationship of cause and effect" between increased imports and serious injury.

17. The submissions made by the other interested parties in respect of causal link are as follows:

- a. Delay in planned capacity expansions, planned short term shut-downs, volatility in the Orthoxylene prices, etc. may also have impacted the performance of the applicants.
- b. Falling difference in the raw material prices and the final product prices influence on performance of the domestic industry.
- c. In the anti-dumping investigation, the reason for injury is dumping from the 4 countries including Korea. Reason for attributing such injury to import on account of reduction/elimination of customs duties is not explained in the preliminary findings.
- d. There has been a sharper increase in imports from ASEAN countries as compared to the subject imports. Therefore, serious injury alone cannot be attributable to subject imports alone.
- e. Production and sales of the domestic industry were impacted because of planned shut down and maintenance, old technology, flash storms and floods. These are admission of fact that there exists injury due to other reasons.
- f. Market reports suggest that import prices for the product under consideration has plummeted recently on the back of grim global economy and crumbled crude futures. Average Indian prices on 20<sup>th</sup> March 2020 averaged \$720/tonne which was \$100/tonne below where price at month start.
- g. DGTR in the preliminary findings has failed to properly evaluate and assess the plausible alternative explanations with regard to the other factors causing injury.
- h. Authority is required to distinguish effects of different factors and then attribute injurious effects caused by increased imports.
- i. The decline in domestic sales can be attributed to increase in captive consumption.
- j. Applicants had claimed dumping as a cause of injury till the period September 2017.
- k. The production of domestic industry may have been impacted due to supply constraints of Orthoxylene in India.
- l. Applicants have admitted in their annual report that cause of the decline of the performance was the volatility of Crude oil and OX price and the challenges in the global trade environment, east slow down, softening of product prices and destocking

by downstream industries. Corrections in margin due to such spread should not be attributed to elimination of duties under CEPA.

- m. If the increase in imports was due to elimination of custom duties, the increase would have been visible from the year 2017-18. The domestic industry was not suffering injury until 2018-19. Increase in imports was more related to the end of anti-dumping duties of imports from Korea, Taiwan, and Israel.
- n. There were supply disruptions due to revamp process and other internal reasons of the applicants which forced users to import as there were no other source of supply.
- o. The CEO of TCL has mentioned in one of his speech that there was lower production and higher costs as the major revamp project was underway.
- p. As per the Investor' presentation of IGPL in August 19, the imports have increased in last 3 years on back of high domestic demand.
- q. The impact of closure of Asian Paints Plant has affected the decline in production and increase in imports, not the reduction of custom duty.
- r. The production of domestic industry has increased by 13 points in the latest period despite various issues such as volatility in crude oil and other petrochemical products, slow-down in Far-East, US-China Trade sanction etc, delay in completing the expansions to meet the demand etc

### **C.7. Public Interest**

18. The submissions made by the Applicants are as follows:

- a. Bilateral Safeguard measures will not stop imports from Korea or any other country and therefore there will be no shortage.
- b. Domestic industry will be required to compete inter-se and no monopoly will be created in the market.
- c. There have been multiple trade remedial investigations in the past, but users have never been able to substantiate the adverse impact of duties on them.
- d. Public interest examinations also need to consider the domestic industry.
- e. As against the claim that the subject goods are only intermediate products, a fully healthy intermediate industry is equally important for the growth of user industries.

19. The submissions made by other interested parties are as follows:

- a. The imposition of safeguard measure will seriously damage the downstream growth and impact the prospects of the domestic industry itself.
- b. Imposition of duties will be against public interest as there is a demand and supply gap and the goods are used as a chemical intermediate in production of various products.
- c. Public interest examination cannot be restricted to domestic industry only but needs to consider interests of larger industry.
- d. The imposition of the duty will lead to increase in the price of the imported product which will eventually lead to increase in the prices by the local producers.
- e. PAN is not a consumer item and is used to produce variety of value-added products. To give boost to vocal for local campaign, it is imperative to encourage production of value-added products like Phthalate Plasticizers and not burden with excessive taxes.
- f. The levy of Safeguard Duty on Phthalic Anhydride will open flood gates for imports of Phthalate Plasticizers which is not in a position to sustain any increase in PAN prices. Phthalate Plasticizers are also currently being imported in India with zero basic customs duty under various FTAs.

- g. Value addition in converting the raw materials namely PAN and Oxo Alcohols into phthalate plasticizers is as low as US\$ 50 per tonne and any increase in raw material price will make it difficult to compete with imported phthalate plasticizer.

#### **D. EXAMINATION BY THE AUTHORITY**

- 20. The information made available by the interested parties in their submissions, have been considered by the Authority for the purpose of the present determination. Further, the Authority notes that different interested parties have advanced similar arguments, albeit in different manner and language. The Authority has examined and addressed the submissions in the present finding. The examination herein below in respect of increase in subject imports, serious injury and causal link ipso facto deals with the submission of applicants and other interested parties.
  - a. The Authority notes that the purpose of the present investigation and proposed measure is required to be considered in right perspective. A concession was earlier given to imports from Korea, in a phased manner, under the trade agreement. The trade agreement provides for invoking safeguard measures and withdrawal of duty concession under certain conditions specified in the agreement. Thus, the objective of the present investigation is not to impose any additional tariff on the Korean imports. The purpose is to only consider whether or not the concession given earlier is required to be withdrawn. Besides, withdrawal of concession would in no way restrict or prohibit the imports into India, either from Korea or from other countries.
  - b. The Authority notes that imports are inevitable in a situation where the demand for the product is higher than the capacities available in the country. The purpose of the present investigation is not to ban or restrict the imports. However, in a situation where the demand for the product is higher than capacities in India, and there are significant imports into the country, the domestic industry prices get impacted by the landed price of imports. Thus, it is not import volume per se, but the price of imports that is the concern of the domestic industry. The fact is that the landed price of Korean imports by and large became lower than the landed price of non-Korean imports and selling price of the domestic industry. Thus, the domestic industry has been forced to align its prices to the Korean prices and was not able to fully align its prices to the changes in the raw material prices, leading to injury to the domestic industry.
  - c. As regard the contention that reduction or elimination of duties under Korea-India CEPA must alone result in an increase in the imports of the subject goods, which in turn must be the substantial cause of serious injury to the domestic industry, the Authority notes that the legal provisions under different laws are required to be harmoniously interpreted with regard to the purpose and objective sought to be achieved by these regulations. The authority notes that whether it is dumping or subsidy or tariff concessions, the effect of these is felt by the domestic industry in the form of lower price of imports. Tariff concessions or dumped or subsidized imports ultimately leads to reduced CIF price of imports and consequently reduced landed price of imports. Ultimately, it is the landed price of imports which competes with domestic selling price of the domestic industry. Thus, the relevant factor for consideration of causal link is whether the landed price of import from the subject country is the cause of injury or whether injury to the domestic industry is due to factors other than reduced price of subject imports. Further, in a case, it is also possible that the domestic industry suffers injury not only because of reduced

landed price of imports, but also due to other factors, such as plant shut down, lockdown, major maintenance, fire, flood, raw material shortages etc. Thus, the law requires authorities to consider whether the substantial cause of injury to the domestic industry is on account of the reduced landed price of imports or some other factor. The Authority further notes that reduction in price of imports could be because of tariff concessions or dumping or subsidy, or a combination of some or all of these. The domestic industry in such situations is entitled to seek protection for itself through simultaneous use of all these laws. The only bar under these situations is that the domestic industry cannot seek dual remedy for the same injury. However, this can be appropriately addressed while granting remedy to the domestic industry. It is further noted that the fact that domestic industry might have suffered injury due to dumped imports does not imply that the domestic industry has not suffered injury due to tariff concessions.

- d. The Authority further notes that neither the trade agreement, nor the present rules provide that duty concession should be the sole cause of injury to the domestic industry. The CEPA Agreement provides that increased imports alone should constitute a substantial cause of serious injury or threat thereof to domestic industry producing a like or directly competitive good. The Agreement further provides that a determination that an originating good is being imported as a result of the reduction or elimination of a customs duty provided under the Agreement shall be made only if such reduction or elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. Further, the Agreement also provides that the passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination referred to in the agreement. This clearly implies that increased imports may not be the sole cause of injury. The increased imports alone should be a substantial cause of injury. Even the antidumping rules do not provide that dumping should be the sole cause of injury to the domestic industry. In the present case, for instance, the injury to the domestic industry could be due to both dumping as well as duty concessions. It is quite possible that while some foreign producers resorted to dumping, some did not, even when all of them faced same level of customs duty. The Authority had in fact found during antidumping investigation that the degree of dumping differed materially in respect of different foreign producers.
- e. It is further noted that in order to determine whether and to what extent duty concessions have caused injury to the domestic industry, the Authority has additionally considered the data for longer period by considering the volume of imports and performance of the domestic industry prior to duty concession period, during tariff reduction/elimination period and during post tariff elimination period. The table below shows the factual position. After elimination of customs tariff there is significant increase in imports, both in absolute terms and in relation to production and consumption. While price undercutting was earlier negative, the same has progressively become positive as the duty concession has increased. Further, performance of the domestic industry has declined in the terms of market share and profits over the period. Further, in the most recent period, with further increase in imports, the performance of the domestic industry has declined in terms of production, capacity utilization, domestic sales volume and profit/loss. Thus, performance of domestic industry has shown deterioration with the primary cause being imports from Korea.

Year	Korea Imports	Production	Sales	Market share		Profit/loss	ROI	Price Undercutting
				Domestic industry	Korea			
	MT	MT Trend	MT Trend	% Range	%	Rs. Lacs - trend	% - trend	% - range
2007-08	14,015	100	100	70-80%	7%	100	100	(10-0)
2008-09	13,938	85	97	70-80%	7%	-142	-46	(10-0)
2009-10	11,420	94	130	70-80%	5%	68	74	(10-0)
2010-11	28,073	94	131	60-70%	10%	7	31	0-10
2011-12	16,183	95	128	65-75%	6%	-31	44	0-10
2012-13	14,409	97	138	60-70%	5%	35	87	0-10
2013-14	18,599	101	137	60-70%	7%	-137	-3	(10-0)
2014-15	15,124	118	158	70-80%	5%	-76	40	(20-10)
2015-16	25,252	124	156	60-70%	8%	132	122	0-10
2016-17	33,766	120	153	60-70%	10%	377	248	5-15
2017-18	41,664	124	160	55-65%	11%	770	353	0-10
2018-19	49,081	120	162	50-60%	13%	537	257	0-10
Q1 2019-20	22,819	113	138	45-55%	23%	34	61	5-15
Q2 2019-20	26,007	108	150	45-55%	25%	-4	9	0-10

f. With regard to the contention that the data provided by the domestic industry does not correspond to the period identified in the initiation notification, it is noted that the application contains data for the period April, 2007 to June, 2019. Further, while responding to initiation, the Applicants have provided data for the period up to Sept, 2019. Thus, the interested parties have access to the relevant information and an opportunity to comment on the information for the said period. The Authority has therefore considered the period from April, 2015 to Sept., 2019 for the purpose of examining increased imports and serious injury to the domestic industry. However, since the interested parties have contended that the Authority is required to consider whether the increase in import is as a result of tariff concessions under the agreement and are consequently causing injury, the Authority has additionally considered the information contained in the application for the period from April, 2007 to June, 2019 to determine whether the increased imports are a result of tariff concession. The period July-Sept., 2019 has also been added considering that this is a safeguard investigation and the Authority in the past has added data for subsequent period, post-initiation of investigation. However, considering the date of initiation, data for the subsequent period (Oct., 2019 – March, 2020) has not been considered for the present purposes.

g. As regards the submission that adjustment plan was not filed along with the petition originally and hence the initiation is bad in law, it is noted that the requirement of adjustment plan in the application is not with a view to decide on the need for

initiation. At the stage of initiation, only such information as is relevant for initiation, is required to be considered. Thus, while Rule 4(2)(b) provides for information on adjustment plan, it does not require the Authority to consider adjustment plan before initiating investigation. Even when application proforma provides for information on adjustment plan, it is noted that the said information is of no utility at the stage of initiation. In fact, the Authority could consider duty even for a period of one year, in which case information on adjustment plan would have been irrelevant. Thus, information on adjustment plan was not critical for a decision on initiation. The said information is relevant for duration of duty at the time of final determination as provided under Rule 10, and not at the stage of initiation. The domestic industry in any case has given an adjustment plan, after initiation of investigation.

- h. As regards the contention that the domestic industry had earlier drawn an adjustment plan which the domestic industry never implemented, the Authority notes that in the instant case, the domestic industry has committed an investment of Rs. \*\*\* crores, out of which, the domestic industry has already incurred an amount of Rs. \*\*\* crores and has committed an amount of Rs. \*\*\* crores. It cannot thus be contended that the domestic industry has not taken any measures to adjust itself.
- i. The Authority notes that the present investigation is a bilateral safeguard investigation initiated under India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 rules read with India-Korea Comprehensive Economic Partnership Agreement. The Authority has examined whether or not increased imports are as a result of tariff concessions under the agreement. For this purpose, the Authority has considered imports of the product from April, 2007 to Sept., 2019. It is noted that since 2015-16 the volume of imports has increased in absolute terms and in relation to production and consumption as the tariff concessions increased.
- j. The authority further notes that consideration of imports over the longer period covering pre-duty concession, duty concession and post-duty elimination period clearly shows significant surge in imports. Further, consideration of import in the most recent period further shows a significant surge in import.
- k. As regards imports from non-subject countries, it is seen that the landed price of imports duties are higher from non-subject countries as compared to landed price of imports from Korea. Further, the volume of imports from each of the other countries individually is much lower than the volume of imports from Korea.
- l. As regards imports from ASEAN countries, it is noted that the volume import from ASEAN countries is much lower than volume of imports from Korea both in absolute terms and in relation to production and consumption in India. Further, the increase in imports from ASEAN countries is far lower than the increase in imports from Korea.
- m. As regards the contention that imports have increased because of cessation of anti-dumping duty, the Authority notes that this does not establish that injury is not due to imports from Korea.
- n. As regards the contention that imports have increased due to demand supply gap, the Authority notes that demand supply gap justifies imports per-se. However, landed price of imports from Korea is lower than not only the selling price of domestic industry but also import price from several countries. Further, a number of countries have been supplying the product in Indian market. However, share of import from Korea shows dominant position gained by Korean imports. Further, it is seen that the domestic industry has faced decline in production and domestic sales

during the relevant period. Inventory with the domestic industry have increased. These facts show that while the volume of imports is due to demand-supply gap, these imports occurred at a price which caused injury to the domestic industry.

- o. As regards the contention that significant imports have happened under advance authorization scheme, the Authority notes that since imports are under zero duty under the Agreement, it defies the logic why any interested party would import under advance license from Korea and undertake export obligation when the same amount of duty exemption is available without undertaking any export obligation. The information provided by the importers/consumers do not show that a significant volume of Korean imports is under advance licence.
- p. Published unaudited quarterly results of petitioning companies also show significant decline in profits and do not negate the conclusion that the domestic industry prices were impacted by Korean imports.
- q. It has not been established by the interested parties how capacity revamps, delay in planned capacity expansions, planned short term shut-downs etc were the major cause of injury to the domestic industry in pricing its product or selling its production. The injury to the domestic industry is primarily seen in the pricing fetched by the domestic industry and resultant profitability in the product, and its sales volumes & market share and resultant impact on production, capacity utilization, inventories, exports.
- r. As regards volatility of crude prices, the same is a global factor and not peculiar to Indian market. In a free market, the domestic industry would have priced its product duly aligning to such factors.
- s. As regards possible adverse impact on profits due to capacity expansion, it is noted that the performance of the domestic industry in respect of profits and ROI declined steeply in the current period when there was no addition of capacity.
- t. As regards reference to the final findings of the sunset review, it is noted that the sunset review findings are based on April, 2016 to September, 2017 as the investigation period, whereas the injury in the current case is more pronounced in the most recent period and much after the POI investigated in the sunset review. Comparison of costs and prices between the two periods clearly shows that the domestic industry was unable to align its prices to the cost changes and consequently faced significant decline in profits.
- u. The Authority notes that the recommended measure will be limited to only imports from Korea. Imports from all other countries would continue to be made without any safeguard measures. Further, the present measure would not result in imposition of any additional duty. The present investigation was intended to examine whether the duty concession given earlier needs to be withdrawn. Source of supply shall not be curtailed as a result of these measures.
- v. As regards the justification for invoking provisional measures, it is noted that the reasons have been given in the preliminary finding.

The Authority had in the preliminary finding given sufficient justification for considering the 2<sup>nd</sup> quarter of 2019-20 for injury analysis. It has been a practice to add data for next quarter in the safeguard investigations. As regards inadequate time provided to other interested parties for making submissions on the data for 2<sup>nd</sup> quarter of 2019-20, it is seen the data was filed by the applicants on 15<sup>th</sup> January and therefore, other interested parties had sufficient time to file their submissions. In any case, the interested parties were given an opportunity to file their comments on the preliminary finding and thereafter at the time of oral hearing, they had the adequate opportunity to make oral submissions followed by written submissions

and rejoinder. The interested parties thus had multiple opportunities to express their views and offer their comments.

- w. As regards the need for imports from Korea due to demand and supply gap and cessation of anti-dumping duties, it is observed that the imports have not increased from all the sources in the same degree as these have from Korea. Suppliers from all sources enjoy equal right in the Indian market. Further, demand-supply gap justifies imports per se. However, the investigation has shown that the domestic industry was not able to align the prices with changes in raw material prices, leading to significant decline in profitability. Further, the trends in other volume parameters also show that the domestic industry has been prevented from selling to the extent it could have, in the absence of increased Korean imports. Share of imports from Korea shows dominant position gained by the Korean imports, as is evident from the trend of imports over longer period examined at relevant places in the findings.
- x. It was also observed in the sunset review investigation that the majority of exports from Korea was being done by a producer which was attracting nil rate of anti-dumping duty.
- y. As regards the submission that the preliminary findings were recommended after a substantial time, it is seen that there is no time limit prescribed under the CEPA for invoking interim measures, nor does delay in invoking provisional measures cause any prejudice to the interests of Korean suppliers. Further, there is no legal requirement to provide interested parties with an opportunity for oral hearing before the issuance of preliminary finding. Oral hearing is contemplated as a part of process before issuance of final findings. The interested parties have been given an opportunity of being heard. The parties have filed their submissions in writing and the same has been adequately dealt in the present findings.
- z. As regards the import price from non-subject countries, it is not appropriate to compare prices on CIF basis. The prices in the market are required to be compared on the basis of their landed price in India. The fact that prices from other countries have remained in the similar range merely shows, considering the volume of imports from Korea, that the Korean imports acted as a benchmark for the prices from other countries and suppliers. For this reason, even if the import prices from some countries were sporadically lower in a particular period, the same does not imply that these prices were benchmarking the prices in the market. A conclusion is required to be reached, after taking into account facts in entirety, not merely isolated facts. An analysis for the entire period show that the non-subject imports prices were generally higher than the Korean prices.
- aa. As was noted in the preliminary finding, volatility in the crude oil prices is a global factor and not peculiar to Indian market only. The fluctuation in the prices would have affected the Korean producers as well. In a market free from competition with Korean low prices, had there been a fluctuation in the price of the raw material, the domestic industry would have adjusted its prices accordingly. But the domestic industry was prevented from adjusting its prices by the low-priced imports from Korea. There is significant positive undercutting which shows that had the domestic industry aligned its prices with raw material changes, it would have lost further sales.
- bb. As regards the submission of other interested parties that the comparison of annualized data is not adequate, the Authority notes that it has compared the data on an actual basis. However, wherever length of the period is different, the same has been annualized while comparing with the data for other period.

cc. As regards the submission about duties being against public interest, it is noted that interested parties making these submissions have not given any verifiable information/ evidence demonstrating how invoking measures will be against public interest. The Govt. had earlier twice imposed global safeguard measures on this product, after finding the imposition of safeguard duty to be in the public interest. The present recommendation is not for imposition of additional duty. It is for withdrawal of a concession given earlier. Even otherwise, the scope of public interest is much larger and is not limited to the interests of consumers of the subject goods only. The measure is only against the Korean imports. Even these imports will continue, albeit at MFN rate of customs duty. All other sources of imports are open. It is also seen that the domestic industry is expanding its capacity and there will be additional material available in the domestic market.

dd. The measures including the anti-dumping duty and the BIS measures are not protection to the domestic industry. BIS is implemented for different objective and applies on non-discriminatory basis. Anti-dumping duty can be invoked only to the extent of margin of dumping and is meant to restrict unfair trade practice. The purpose of these measures is to not kill competition but to ensure fair competition in the market.

ee. The Authority notes that non-injurious price is calculated to determine injury margin in pursuance of lesser duty rule followed by India under anti-dumping mechanism. However, the present investigation is a bilateral safeguard investigation and there is no requirement to calculate non-injurious price or injury margin in such investigation.

ff. It is seen that the captive consumption of the domestic industry is very minimal and could not have been a cause of injury to the domestic industry.

gg. It is clarified that the Authority has considered actual data for the present determination. However, wherever the length of the period is not 12 months, the same is annualised while comparing with other periods of 12 months as per the established practice in order to ensure that the comparison is not flawed due to different lengths of periods.

hh. In relation to the submission that the imports did not increase with changes in customs duty, the Authority considers that a conclusion is required to be reached after taking into account the entirety of the period. There may be other factors as well at that point of time (for example, existing safeguard duty or ADD in some of the periods). Consideration of data over longer period, including the period of pre-concession, concession and post-concession phase, it is seen that the Korean imports of the product have increased in absolute and relative terms.

ii. As regards injury suffered by the domestic industry due to other factors, it is seen that no substantiated information or evidence has been brought on record to show that the primary cause of injury is such other factor.

jj. As regards the submission that the prices have globally declined in the end of March 2020, it is noted that the trend of imports and the economic parameters of the domestic industry has been examined over long period. Decline in prices, even if a global phenomenon, is required to be addressed, particularly when landed price of imports from Korea were lower than landed price of imports from other countries. The prices in the domestic market are a factor of import prices and cost of raw material. Therefore, fall in prices in the global market would not have affected the domestic prices as much, had the imports not entered at concessional duty.

- kk. It has been submitted by various interested parties that the domestic industry has been protected with trade remedial investigations over the past decade. Authority notes that it would not be appropriate to treat trade remedy actions as a protection, nor these actions are invoked only because the domestic industry has requested. These measures are invoked after following a quasi-judicial investigation with participation of all interested parties, and after due examination of merits, and in due compliance to the law.
- ll. It has been stated that the decrease in exports to other countries has no relevance to exports to India. The domestic industry has contended that whereas imports into India have increased, exports to other countries have declined.
- mm. As regards the claim that there is minor decline in profits, it is noted that the decline in profits is significant. In fact, the domestic industry suffered losses in Q-2 of 2019-20.

#### **D.1. Product under consideration**

- 21. The product under consideration in the present investigation "Phthalic Anhydride" (also referred to as PAN) falling under the tariff heading 29173500 is an anhydride of Phthalic Acid and is commercially produced by catalytic oxidation of Ortho-xylene or Naphthalene.
- 22. Phthalic Anhydride is a colourless solid. It is also described as Phthalic Anhydride flakes, Phthalic Anhydride (98% min.), Phthalic Acid Anhydrous, Phthalic Anhydride (99.8% min), etc.
- 23. Phthalic Anhydride is used to produce Phthalate esters, which function as plasticizers. Further, it is a chemical intermediate in plastic industry.

#### **D.2. Domestic industry**

- 24. The Rule 2(b) Bilateral Safeguard Measures Rules, 2007 states as follows: -

*"domestic industry" means the producers -*

- (i) as a whole of the like or directly competitive goods operating in the territory of India; or*
- (ii) whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;*

- 25. The present application has been filed by M/S IG Petrochemicals Ltd. and M/s Thirumalai Chemicals Ltd. SI Group Pvt. Ltd. is the only other known producer of the product in India. SI Group Pvt. Ltd. filed information in the prescribed format after initiation of investigations, but after expiry of the time limits. It is noted that no submissions have been made by either the Applicants or the interested parties over the scope of the domestic industry during the course of the investigations. Applicants' production constitutes a major share in gross Indian production. The application satisfies the requirement of standing under the Rules. Further, IG Petrochemicals Ltd. and M/s Thirumalai Chemicals Ltd. constitute domestic industry for the purpose of the present investigation.

### **D.3. Period of investigation**

26. The period considered at the stage of initiation was April, 2015 to June, 2019. Further, since this is a safeguard investigation, considering the past practice, the Authority considered the data for the period up to September, 2019 for the preliminary finding. The domestic industry provided data for the period up to March 2020. However, the Authority has already added data for the period up to September, 2019, the same was made available to the interested parties by the domestic industry as well as through preliminary findings, the investigation was initiated in October, 2019 and hence it is not appropriate to consider data for the period subsequent to initiation. Therefore, the data for the period subsequent to September, 2019 has not been considered in the present findings. Further, since the interested parties have raised concerns whether imports have increased as a result of concessions and whether the performance of the domestic industry has deteriorated due to duty concessions, the Authority has also considered the data for the period from 2007-08, which was part of the application.

### **D.4. Confidentiality**

27. Rule 6 of the Rules deals with confidentiality of information. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non - confidential version of the information filed on confidential basis. The Authority made available the non-confidential versions of the evidence submitted by various interested parties in the form of public file.

### **D.5. Customs duty under Comprehensive Economic Partnership Agreement**

28. The rate of custom duty on the imports of Phthalic Anhydride considering the concessions under the Comprehensive Economic Partnership Agreement between the Government of the Republic of India and the Government of Korea was as follows: -

<b>Applicable Customs duty rate</b>			
31 <sup>st</sup> Dec 2009	10.94%	2010-11	10.55%
31 <sup>st</sup> Dec 2010	9.38%	2011-12	8.99%
31 <sup>st</sup> Dec 2011	7.81%	2012-13	7.42%
31 <sup>st</sup> Dec 2012	6.25%	2013-14	5.86%
31 <sup>st</sup> Dec 2013	4.69%	2014-15	4.30%
31 <sup>st</sup> Dec 2014	3.13%	2015-16	2.74%
31 <sup>st</sup> Dec 2015	1.56%	2016-17	1.17%
31 <sup>st</sup> Dec 2016	0.00%	2017-18	0.00%
31 <sup>st</sup> Dec 2017	0.00%	2018-19	0.00%
31 <sup>st</sup> Dec 2018	0.00%	2019-20	0.00%

#### D.6. Source of information

29. The Authority has relied upon the DGCI&S data for computation of the volume and value of imports. Injury information has been considered from the application filed by the domestic industry. Information since 2007-08 has been considered from the application filed by the domestic industry.

##### a. Imports from Korea in absolute terms:

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

SN	Year	Import volume	Trend	Customs duty
		MT	Index	
1	2015-16	25,252	100	2.74%
2	2016-17	33,766	134	1.17%
3	2017-18	41,664	165	0.00%
4	2018-19	49,081	194	0.00%
5	Apr'19-Jun'19	22,819	361	0.00%
6	Jul'19-Sep'19	26,007	412	0.00%

31. It is seen that the imports of the product under consideration have increased significantly over the years.

##### b. Imports in relation to gross imports in India

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

SN	Year	Imports in MT			Share in imports	
		Korea	Other countries	Total imports	Korea	Other countries
1	2015-16	25,252	53,866	79,118	32%	68%
2	2016-17	33,766	58,285	92,051	37%	63%
3	2017-18	41,664	88,775	1,30,439	32%	68%
4	2018-19	49,081	95,579	1,44,660	34%	66%
5	Apr'19-Jun'19	22,819	23,384	46,204	49%	51%
6	Jul'19-Sep'19	26,007	23,830	49,837	52%	48%

33. It is seen that share of imports of the product under consideration from Korea increased over the period with the rising tariff concession whereas the share of other countries declined. The imports from Korea now command majority share with the duty concession increasing to its full extent. Even when imports are being reported from a number of other countries, their share collectively is lower than share of Korea alone.

c. **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	Particulars	Korea imports	Indian Production	Demand	Imports in relation to	
		MT	MT	MT	Production	Consumption
1	2015-16	25,252	3,07,008	3,32,413	8%	8%
2	2016-17	33,766	2,96,561	3,39,251	11%	10%
3	2017-18	41,664	2,89,491	3,72,030	14%	11%
4	2018-19	49,081	2,75,492	3,82,583	18%	13%
5	Apr'19-Jun'19	22,819	65,086	97,163	35%	23%
6	Jul'19-Sep'19	26,007	62,061	1,05,209	42%	25%

35. It is seen that the imports have increased significantly in relation to production and consumption with the increase in duty concessions.

**D.7. Injury**

36. Serious Injury is defined as follows under the Rules:

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

*(g) "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and*

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

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

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

*(a) the Authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the 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; and*

*(b) the determination under this rule shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat thereof and when factors other than increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports of the originating goods.*

39. It is noted that evaluation of the listed parameters needs to take into account peculiarities of different industries and situations. The Authority has 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 all factors, which are mentioned in the rules as well as other factors which are relevant for determination of serious injury, have been considered.

**a. Increase in imports in absolute and relative terms**

40. It is seen that the imports of subject goods have increased significantly in absolute term as well as in relation to production and consumption in India. It is also seen that the imports increased significantly with the full concessions given to the Korean imports.

**b. Capacity, Production, Capacity Utilization and Domestic Sales**

41. The details of capacity, capacity utilization and domestic sales are as follows:

SN	Years	Capacity	Production	Capacity Utilisation	Domestic sales	Export	Korea imports
		MT Trend	MT Trend	%- Trend	MT Trend	MT Trend	MT
1	2015-16	100	100	100	100	100	25,252
2	2016-17	100	97	97	98	103	33,766
3	2017-18	100	100	100	102	98	41,664
4	2018-19	100	97	98	104	63	49,081
5	Apr-Jun'19	100	91	92	89	70	22,819
6	Jul-Sep'19	100	87	88	96	92	26,007

42. It is seen that: -

- Production and capacity utilisation of the domestic industry has declined over the period;
- Domestic sales of the domestic industry increased till 2018-19 but have declined thereafter.
- Export sales declined till 2018-19, but increased thereafter. The applicant has claimed that it was forced to export because of imports from subject country. It is seen that the profitability of exports is much adverse as compared to domestic sales.

**c. Market share of the domestic industry**

43. The movement of market share was as follows:

SN	Particulars	Domestic industry (Range)	Korean imports	Other Producers (Range)	Other Countries	Total
1	2015-16	60-70%	8%	5-15%	16%	100%
2	2016-17	60-70%	10%	5-15%	17%	100%
3	2017-18	55-65%	11%	0-10%	24%	100%
4	2018-19	55-65%	13%	0-10%	25%	100%
5	Apr'19-Jun'19	45-55%	23%	0-10%	24%	100%

6	Jul'19-Sep'19	45-55%	25%	0-10%	23%	100%
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44. It is seen that whereas market share of domestic industry declined, that of Korean imports increased. On overall basis, whereas the domestic industry lost 16% market share over the period, the Korean imports gained the market share by almost the same level.

**d. Employment and Productivity**

45. The data on employment and productivity is as follows-

SN	Year	No. of Employees	Productivity per day	Productivity per employee
		Trend	MT/Day Trend	MT/Nos. Trend
1	2015-16	100	100	100
2	2016-17	100	97	97
3	2017-18	101	100	99
4	2018-19	103	97	95
5	Apr'19-Jun'19	103	92	89
6	Jul'19-Sep'19	103	87	85

46. The productivity per day and productivity per employee has witnessed decline in the recent years. The applicants have however submitted that performance on these accounts are dependent on a number of other parameters and is not directly linked to import competition.

**e. Inventory**

47. The data on inventory shows as follows-

SN	Particulars	Average stock (MT) Trend
1	2015-16	100
2	2016-17	121
3	2017-18	72
4	2018-19	71
5	Apr'19-Jun'19	140
6	Jul'19-Sep'19	132

48. It is seen that the level of inventories with the domestic industry increased over the period.

**f. Profit/loss**

49. The data on profits and return on capital employed shows as follows-

SN	Year	Profit/(loss)		ROI
		Rs. Lacs - trend	Rs/MT - trend	Trend
1	2015-16	100	100	100
2	2016-17	285	291	205
3	2017-18	584	570	295
4	2018-19	407	392	216
5	Apr'19-Jun'19	104	467	53
6	Jul'19-Sep'19	-13	-54	5

50. It is seen that the profits and return on capital employed have steeply deteriorated post 2017-18. The domestic industry suffered financial losses in the most recent period of July to September, 2019.

**g. Price undercutting**

51. The Authority examined whether the imports from Korea were benchmarking the prices of the product in the market. For the purpose, the Authority compared the landed price of imports from various countries with the landed price of imports from Korea and selling price of domestic industry.

SN	Year	NSR	Landed price	Price	Price
				Undercutting	Undercutting
		Rs/MT - trend	Rs/MT	Rs/MT	% Range
1	2015-16	100	56,387	***	0-10%
2	2016-17	113	61,185	***	5-15%
3	2017-18	119	66,989	***	0-10%
4	2018-19	135	74,225	***	0-10%
5	Apr'19-Jun'19	126	68,900	***	5-15%
6	Jul'19-Sep'19	112	63,618	***	0-10%
7	April to Sept.,19	119	66,086	***	0-10%

52. It is seen that the landed price of imports has been below the selling price of the domestic industry. Imports were thus undercutting the domestic industry prices.

53. The Authority examined the trends in cost of production, selling price of the domestic industry with the landed price of imports from Korea. It is seen that whereas the landed price of imports was earlier above the cost of sales, in the recent period, the landed price of imports are below the cost of sales. Had the domestic industry sold at these import prices, it would have suffered losses in the current period.

SN	Year	Cost of Sale	Selling price	Landed price
		Rs/MT - trend	Rs/MT - trend	Rs/MT
1	2015-16	100	100	56,387

2	2016-17	105	113	61,185
3	2017-18	99	119	66,989
4	2018-19	123	135	74,225
5	Apr'19-Jun'19	127	126	68,900
6	Jul'19-Sep'19	118	112	63,618
7	April to Sept.,19	122	119	66,086

## E. CONCLUSION

54. It is 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. Imports were undercutting the domestic prices. Landed price of imports were below the cost of sales of the domestic industry. As a result of significant surge in imports from Korea, the performance of the domestic industry has deteriorated, as seen in decline in production, sales, capacity utilization, market share, profit, ROI, rising less profitable exports and rising inventories. Considering the performance of the domestic producer in respect of various parameters, it is concluded, that the domestic industry has suffered serious injury as a result of duty concessions granted to Korean imports leading to increased imports of the product under consideration from Korea at low prices.

## F. THREAT OF SERIOUS INJURY

55. 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"*

56. It is noted that imports of subject goods from Korea are entering the Indian market in significantly 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 Korea has adversely impacted the situation. Considering the difference between Korean and domestic industry price, capacities with Korea and export volumes from Korea it is evident that the subject goods from Korea are likely to remain price attractive, posing continued threat of injury to the domestic industry. The threat of serious injury is established by the following factors: -

- The price difference between the domestic and imported product has led to increase in imports of subject goods from Korea.
- The producers from Korea are holding significant unutilized capacities.
- There is an increase in exports from Korea to India and decline in exports to the rest of the world.
- The demand of the product is growing and the Indian market is large and price sensitive.
- The volume of imports continued to remain high and performance of the domestic industry continued to remain adverse in the recent period.

In view of above it is concluded that the increased imports of subject goods from Korea have also caused threat of serious injury to the domestic industry.

## **G. CAUSAL LINK**

57. A comprehensive evaluation of performance of the domestic industry, as brought out hereinabove demonstrates that domestic industry has suffered serious injury and is threatened with further serious injury by increased imports from Korea. The Authority examined whether the injury to the domestic industry is due to duty concessions and consequent increase in imports from Korea. Additionally, in view of the arguments of the interested parties that the Authority is required to examine whether the claimed injury is on account of duty concessions or some other factors, the Authority also considered the performance of the domestic industry over longer period, including the period when there was no duty concession. Relevant information on this account is contained in the application filed by the domestic industry, which is also accessible to the interested parties through non-confidential version of the application and submissions.

- a. The Authority examined whether any other factor could have caused serious injury to the domestic industry. The Authority considered various known parameters and the factors brought by the interested parties and concluded that the reported injury to the domestic industry is not due to existence of other factors operating at the same time.
- b. The imports of product from Korea have increased significantly with increase in tariff concessions to the Korean imports and its eventual elimination of customs duty.
- c. With full duty concessions, the landed price of Korean import is lower than the selling price of the domestic industry. It was the Korean prices which were benchmarking the prices of the product in the market.
- d. The landed price of Korean imports is now below the cost of sales of the domestic industry.
- e. The capacity utilization of the domestic industry is below the optimum level and as a result production has declined. The production and domestic sales of the domestic industry have declined with rising imports as a consequence of duty concessions. The decline in domestic sales and rising inventories are a result of increase in imports in India.

58. 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 Korea and serious injury and threat of serious injury to the domestic industry as a result of duty concessions granted to Korean imports.

## **H. ADJUSTMENT PLAN**

59. Applicants have provided details of the adjustment plan during the course of the investigation. The Domestic Industry has submitted that it is taking measures directed towards reducing costs as mentioned in adjustment plan. Regarding adjustment plan given by the domestic industry, the Authority notes as under. .

- a. IG Petrochemicals Limited has drawn an adjustment plan which includes action on reduction in raw material cost by replacement of existing catalyst, improvement in recoveries, reduction in power & fuel cost, capacity additions and integrating utilities of existing plants, reduction of costs on account of administrative

overheads, personnel cost and finance cost. It is seen that the company has drawn a plan to expand capacity by 53,000 MT at a capital expenditure of Rs \*\*\* cr. This would result in significant cost reduction for the company.

b. Thirumalai Chemicals has drawn an adjustment plan which includes reduction in cost by upgrading equipment for higher capacity & efficiency, improvement in yield, reduction in energy costs, reduction in oil consumption, reduction in wages & salaries, stores & spares, repair & maintenance and administrative overheads. The company has reported to have drawn a plan to expand capacity by 1,20,000 MT. The company has committed a capital expenditure of Rs \*\*\* cr. This would result in significant cost reduction to the company.

60. The Authority notes that the applicants have drawn adjustment plan to become competitive vis-a- vis Korean imports.

## **I. PUBLIC INTEREST**

61. Interested parties have contended that imposition of safeguard duty would severely prejudice the public interest as a number of end user industries would be impacted. It has also been argued that the imposition of safeguard measures would make it costlier and this would be against consumer interest. Concerns have also been raised about the demand and supply gap in the country.

62. The Authority notes that the present measures are not directed towards imposing any additional duty but only towards withdrawal of concession given earlier, that too in respect of imports from Korea alone. Imports from all other sources are totally unaffected by the proposed measures.

63. As regards concerns of inadequate domestic capacity to cater to the demand, it is noted that the domestic industry could have met higher percentage of domestic demand in the absence of Korean imports. Imports from Korea in any case shall continue to be available at MFN rate of customs duty even after imposition of proposed measure. Further, imports from all other sources shall also remain accessible. It is also noted that the domestic industry is expanding its capacity. Post completion of expansion, the gross Indian capacity for the product shall be 4,84,000 MT, as against existing demand of 4,04,744 MT. Imports in any case are open from all sources to the consumers in case of demand exceeding domestic capacities.

64. The Authority notes that none of the interested parties have provided any verifiable evidence and information on how invoking present bilateral measures will lead to unbearable adverse impact. The interested parties have only made assertions that the product is an intermediate product and the imposition of duties will have an impact on the user industry. But these parties have not presented any relevant data. It is further noted that global safeguard measures have earlier also imposed on the product after due examination of public interest.

## **J. CONCLUSION AND RECOMMENDATION**

65. On the basis of the examination above, it is concluded that increased imports of subject goods have caused serious injury to the domestic industry. With regard to imposition of bilateral safeguard measure, Rule 10 of India – Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 states as follows:

(1) *The Director General shall, within eight months from the date of initiation of the investigation, or within an extended period not exceeding one year from the date of initiation of the investigation, as the Central Government may allow, determine whether-*

(a) *the increased imports of the originating good under investigation has caused or threatened to cause serious injury to the domestic industry; and*

(b) *a causal link exists between the increased imports of the originating good due to the reduction or elimination of a custom duty under the Trade Agreement and serious injury or threat of serious injury.*

(2) *The Director General shall also give his recommendation regarding bilateral safeguard measure which would be adequate to prevent or remedy serious injury and to facilitate adjustment.*

(3) *The Director General shall also make his recommendations regarding the duration of the bilateral safeguard measure:*

*Provided that where the period recommended is more than one year, the Director General may also recommend progressive liberalisation of the bilateral safeguard measure at regular intervals during the period of application, adequate to facilitate adjustment.*

66. After examining the above, it is concluded that

- imports of the product from Korea have increased and constitute “increased imports” within the meaning of the Rules and Korea-India CEPA.
- The increased imports has caused serious injury and threatened to caused serious injury to the domestic industry,
- there exists a causal link exists between the increased imports of the originating good due to the reduction or elimination of a custom duty under the Korea-India CEPA and serious injury and threat of serious injury to the domestic industry.

67. It is considered appropriate to recommend bilateral safeguard measure in terms of Rule 10 of India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017. Accordingly, the Authority recommends increasing the rate of customs duty on imports of subject goods originating in Korea RP to the level of Most Favoured Nation applied rate of customs duty on the subject goods as on the date of application of Bilateral safeguard measure or Most Favoured Nation applied rate of customs duty on the subject goods on the day immediately preceding the date of entry into force of the Trade Agreement, whichever is less. The measure is recommended for a period of two years as per table below from the date of issue of the notification of imposition of provisional duty by the Central Government vide Notification No.29/2020-Customs dated 6<sup>th</sup> July, 2020.

Year	Bilateral Safeguard measures
First year	Increase the rate of customs duty @ 100% to the level of Most Favoured Nation applied rate of customs duty
Second year	Increase the rate of customs duty @ 75% to the level of Most Favoured Nation applied rate of customs duty

68. Subject to the above, the Preliminary Finding notified vide notification dated 11<sup>th</sup> May, 2020 is hereby confirmed.



(B.B.Swain)  
Special Secretary & Director General

