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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**

**PRELIMINARY FINDINGS**

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

Dated 11<sup>th</sup> May, 2020

**Subject: Preliminary 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, M/s I G Petrochemicals Limited and M/s Thirumalai Chemicals Ltd. (herein after 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) (herein after referred to as the “product under consideration” or “subject goods”) from Korea RP (herein after referred to as “subject country”).
2. The Authority on the basis of the 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.

## **B. Procedure**

3. 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 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 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(4) of the Rules:
    - i. Cray Valley Resins India Ltd.
    - ii. Goodless Nerolac Paints Ltd.
    - iii. Gargi Industries
    - iv. Hindustan Insecticides Limited
    - v. Kemrock Industries & Exports Ltd.
    - vi. Shalimar Paints Limited,
    - vii. U.K. Paints India Pvt. Ltd.
  - f. In response, the following importers have filed questionnaire response:
    - i. Sandeep Organics Private Ltd
    - ii. Unity Organics Pvt Ltd



- iii. Nishant Organics Pvt Ltd
- iv. Dhanlaxmi Pigments Pvt Ltd
- v. Kesar Petroproducts Ltd
- vi. Mazda Colours Ltd
- vii. Shiv Dyestuff Intermediate Industries
- viii. A-One Phthalo Colours Pvt Ltd
- ix. A-One Chemicals
- x. Narayan Organics Pvt Ltd
- xi. Narayan Industries
- xii. PCL Oil & Solvents Ltd
- xiii. KLJ Plasticizers Ltd
- xiv. Rachna Plasticizers
- xv. Payal Polyplast Pvt Ltd
- xvi. Asian Paints Limited
- xvii. Kansai Nerolac Paints Limited
- xviii. Shalimar Paints Ltd
- xix. Bergen Paints India Ltd

- 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 Chem Ltd.,
  - iv. Government of Korea
  - v. Indian Paint Association
  - vi. Collective Submissions on behalf of KLJ Plasticizers Ltd., Payal Polyplast Pvt Ltd., Rachna Plastics and PCL Oil & Solvents Ltd.
- i. 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.
- j. The submissions made by the interested parties so far, wherever found relevant, have been considered while issuing these preliminary findings.

**C. SUBMISSIONS MADE BY THE APPLICANTS**

- 4. The submissions made by the applicants 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.
- c. Apart from the applicants, there are two existing producers in India namely; SI Group Limited and Asian Paints. Asian Paints has permanently shut down their plant in July 2017 and their plant has been bought out by one of the applicants; M/s Thirumalai Chemicals Ltd.
- d. Pursuant to India Korea CEPA, the duty on imports of Phthalic Anhydride from Korea has been reduced to zero over 8 years.
- e. There is significant increase in the import volumes. Imports of product concerned into India increased significantly in absolute terms and in relation to production, consumption and share in imports.
- f. Imports into India from Korea has duty advantage for Phthalic Anhydride under India -Korea CEPA Agreement, so the country is now flooded with subject goods from Korea.
- g. 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.
- h. Capacity utilization of the industry has declined in Q1 of 2019-20.
- i. From the decline in production and capacity utilization it is evident that the increase in imports is causing injury to the domestic industry.
- j. Market share of domestic industry has declined whereas market share of the imports has increased. Market share fell sharply below to 50% Q1, 2019-20).
- k. The subject imports are significantly undercutting the prices of the domestic industry. The import prices have declined sharply in the last two quarters of 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.
- l. The profits of the domestic industry have declined from Rs. \*\*\* Lacs in Q2 2018-19 to Rs.\*\*\* Lacs in Q1 2019-20, considering loss of sales during this period. The profits of the industry were increasing till Q2 2018-19.
- m. The productivity of the Indian industry has improved initially but declined significantly in the POI.
- n. 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.
- o. There are no factors other than increased imports that can be attributed to the serious injury caused to the domestic industry.



- p. The landed price of imports is significantly lower than the selling prices of the domestic industry.
- q. 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.
- r. Increased imports have led to increase in market share of imports and reduction in market share of the domestic industry.
- s. 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.
- t. 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.

5. The submissions made by Korea Petrochemical Industry Association are as follows:

- a. The application does not contain any evidence to satisfy the requirements of the Rules.
- b. Key performance parameters of the domestic industry such as capacity utilization, production, sales, profitability do not show any injury.
- c. The Applicants have failed to demonstrate that the alleged injury is due to the 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 custom duties and increase alone is the cause of injury to the domestic industry requirement of Article 2.22 of the India-Korea CEPA.
- d. Delay in planned capacity expansions, planned short term shut-downs, volatility in the ox (Orthoxylene ) prices, etc. may also have impacted the performance of the Applicants.
- e. The discussions in the annual reports of the Applicant do not show any sign of overall deterioration in the situation.
- f. 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.
- g. 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.
- h. 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.
- i. Imports were necessitated to meet the demand supply gap.
  - j. The Applicants had claimed dumping as a cause of injury till the period September 2017.
  - k. While imports from Korea RP constituted about 23% of the Indian demand, other imports held about 24% demand.
  - l. The production of DI 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.
  - m. Sales of the DI also increased in the latest period in comparison to 2007-08 by 38 points
  - n. There has been an increase in the capacity of the domestic industry. Additions in capacity at a time when the DI is claiming serious injury should be seen as factor demolishing the injury claims of the DI.
  - o. The production expansion plans of the Applicants is a sign of DI'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.
  - p. 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 DI to reduce its prices. On the contrary, NSR has gone up.
  - q. 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.
  - r. 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.
  - s. In the ADD investigation concluded recently, negative determination on injury was done and likelihood of injury was also ruled out.
  - t. The initiation nowhere discloses whether domestic industry has submitted any adjustment plan as to how they will achieve increase in productivity, decrease in cost and above all reduction in their selling prices to meet international competition.
  - u. There should be an unforeseen development which should have caused increase in imports.

## **D.2 Submissions made by the Korean Government**

6. The submissions made by the Korean Government are as follows: -
  - a. The current circumstances of the Indian domestic industry do not qualify for critical circumstances requiring imposition of provisional safeguard measures as defined under Article 2.24 of Korea – India CEPA.



- b. The present investigation should be terminated on the procedural ground as the domestic industry has not provided any adjustment plan.
- c. The analysis of economic parameters does not make out a case for injury or threat of injury to the domestic industry.
- d. There has been no recent, sudden, sharp, and significant increase of imports of phthalic anhydride from Korea RP.
- e. Any alleged increased in imports is not consequential to the reduction or elimination of the customs duties under the Korea-India CEPA.
- f. 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.
- g. 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.
- h. The application is deficient as the data provided by the domestic industry does not correspond to the period identified in the initiation notification.
- i. The imports from other countries have increased at a faster rate as compared to imports from Korea.
- j. 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.
- k. There is no sudden, significant or sharp increase in the imports as per the language of Article 2.1 of the Agreement on Safeguards and the Article 2.22 of the Korea-India CEPA.
- l. The 4 requirements of the Article 2.22 of the Korea- India CEPA have not been complied with and hence the investigation shall be terminated.
- m. The imports could have also increased as a result of expiry of the anti-dumping duty on the imports from Israel, Korea and Taiwan.
- n. The performance of the Applicants has increased in terms of production, sales, market share, inventories, profits, cash profits, etc.
- o. In compliance with the Article 4.2(b) of the agreement and Rule 7 of the rules, the Authority is required to examine causal link between the increase in imports and injury and do the non-attribution analysis.
- p. The imposition of the duties would weaken the economic ties of the two countries.

### **D.3 Submissions made by the Indian Paint Association**

- 7. The submissions made by the Indian Paint Association are as follows: -
  - k. 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.



- l. The Applicant has not provided the data for the period as decided in the initiation notification.
- m. The application does not allow a reasonable understanding of the allegations as it fails to meet the standards laid down in Trade notice no. 10/2018.
- n. The trade notice issued by DGTR is applicable for all trade remedy investigations.
- o. The Applicants have not provided the adjustment plan as required under Rule 4(2)(b) of the Bilateral Safeguard Rules.
- p. The alleged increase is not a result of the reduction or elimination of the custom duties as is required under Article 2.22 of the Korea- India CEPA.
- q. The standards of “serious injury” under the Agreements on Safeguards is “very high” and “exacting”.
- r. All the factors listed down in Article 4.2 (a) have to be examined for evaluation of injury.
- s. As per the Applicants annual reports, the volatility in the prices of the Ortho-Xylene, shut down of plant for maintenance etc have also impacted the performance of the industry.
- t. There is absence of causal link in the investigation. The Authority should examine causal link and perform non-attribution analysis.
- u. 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.
- v. The domestic industry does not have the ability to meet the domestic demand. The imports from Korea RP have increased with the increase in demand.
- w. The imposition of duty will allow the Applicants to create dominant position for itself in the market and create barriers for new entrants.
- x. There is no “such recent, sudden, sharp and significant increase in quantities” in line with Article 2.22 of CEPA and decision of WTO Appellate Body in Argentina Footwear and US Steel Safeguards cases.
- y. There are no critical circumstances which warrant the need of imposition of provisional safeguard duty.
- z. The requirement of injury in the safeguards is high. The overall position of the domestic industry is to be substantially evaluated and as per WTO Appellate body they should be ‘at minimum’.
- aa. Significant imports are happening under Advance Authorization Scheme.
- bb. Article 4.2(b) requires the Authority to distribute the effects of increase in imports and demonstrate the causal link and ensure non-attribution analysis.
- cc. Contrary to the allegation by the petitioners that the “demand of the product has not increased”, there is a positive trend in demand.
- dd. As against the claim made by the Applicants, the volume of imports from other countries have increased.
- ee. The increase in selling price is more than the increase in landed price.



#### **D.4 Submissions made by Chemexcil (Basic Chemicals, Cosmetics & Dyes Export Promotion Council)**

8. The submission made by Chemexcil is as under: -  
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.

#### **D.5 Submissions made by the Gujrat Dyestuff Manufacturers Association**

9. The submissions made by Gujrat Dyestuff Manufacturers Association are as follow: -
- a. The petition did not provide any appropriate evidence to substantiate the grounds for initiation of safeguard investigation satisfying the requirements of CEPA.
  - b. The reduction or elimination of the customs duty was not even a remote cause of the increase in the imports and no evidence has been provided to substantiate the contention that domestic industry suffered "serious injury".
  - c. The impact of imports from other countries and expiry of Anti-dumping duties on Korea, Taiwan and Israel is not explained in the petition.
  - d. There has been an increase in imports at comparable level to Korea RP from Thailand and Indonesia with which India has signed FTA and other countries.
  - e. The price of imports from Korea was higher as compared to prices of imports from other countries.
  - f. As per the disclosures in the annual reports in the petition, there has been production cut and increase in imports were necessitated to meet the demand supply gap.
  - g. 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.
  - h. As per the Investor' presentation of IGPL in August 19, the imports have increased in last 3 years on back of high domestic demand.
  - i. The impact of closure of Asian Paints Plant has affected the decline in production and increase in imports, not the reduction of custom duty.
  - j. The petitioners are unable to produce and supply as there is a slow growth in the production of ortho-xylene which might have led to domestic industry finding it difficult in getting raw materials.
  - k. The management speech by Thirumalai Chemicals Limited on 25th July, 2019 stated with regard to performance in FY 2018-19 that "the first half of the financial year was outstanding in every parameter". It has also been stated that the customers in downstream industries started destocking and the prices were driven further down by the knee-jerk reaction of nervous bankers.
  - l. In the Managing Director's speech of IG Petrochemicals Ltd., it was said that "the year 2018 was marked by volatile crude oil prices which inflated the raw material prices for PA as well".
  - m. The injury data in the presented in the petition do not show any "serious injury".



- n. The injury period considered for the purposes of present investigation is from April, 2015 to June 2019 and as per the initiation notification but the injury data is not available for this period.
- o. The petitioners have claimed dumping as a cause of injury till the period September 2017.
- p. The data for the latest quarter could have annualized instead of converting previous years into equivalents of a quarter which is not a fair approach.
- q. The production of DI has increased by 13 points in the latest period despite various issues such 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.
- r. Sales of the DI also increased by the latest period in comparison to 2007-08 by 38 points which shows DI did not suffer any injury.
- s. There has been an increase in the capacity by 26 points of the domestic industry. The additions in capacity is the cause of serious injury should be seen as factor nullifying the injury claims of the DI.
- t. The price undercutting claimed by the DI is redundant as the same could be on basis of a high NSR charged by DI themselves.
- u. The inventory remained in the range of \*\*\* MT over the years, shows no injury now.
- v. As per given data, there is decline in profitability after Q1 2018-19, when ADD on imports of PUC from Korea, Taiwan and Israel was rescinded. It is not a decline in profitability parameter but correction of abnormally high profits.
- w. There is no causal link between alleged increase in imports from Korea RP and for the reasons contented and injury claimed.
- x. The domestic industry has not submitted any adjustment plan.
- y. The purpose of bilateral safeguard duty is to benefit public at large however, as there is demand supply gap in India the present investigation is not in public interest.

**D.5 Submissions made by the KLJ Plasticizers Ltd, Payal Polyplast Pvt Ltd, Rachna Plastics and PCL Oil & Solvents Ltd.**

10. The submissions made by KLJ Plasticizers Ltd, Payal Polyplast Pvt Ltd, Rachna Plastics and PCL Oil & Solvents Ltd are as follow: -
- a. The petitioners failed to provide evidences to justify that the increase in imports from Korea RP is because of reduction in customs duties.
  - b. The impact on the domestic industry of increase in imports from Thailand and Indonesia, with which India has signed FTA, is not explained. The imports have increased from Taiwan and Israel as well.
  - c. The increase in imports may have happened due to the expiry of the anti-dumping duty and not because of reduction in customs duties. Further, the domestic industry was in huge profits at the time of duty, which may have been corrected now.
  - d. There is a demand-supply gap in India which is also causing the increase in imports.



- e. The domestic industry is facing difficulties in supply of the subject goods because of revamp of production capacities, volatility in Orthoxylene prices, delay in planned capacity expansions, planned shutdowns for short periods etc.
- f. IGPL's investors stated in a presentation on August 19 that "the imports have increased in last 3 years on back of high domestic demand".
- g. The domestic industry is incapable to fulfil the demand which led to increase in imports from other countries.
- h. Further, as per IGPL, "there was a planned shutdown of our PA 2 Plant as it required a catalyst change".
- i. The TCL CEO mentioned in his speech that "the major revamp project underway in India led to lower production and higher costs".
- j. The Asia Paints plant shut down in July 2017 impacted the production of PAN in India.
- k. The Applicants have faced raw material issue as well as there was capacity revamp which could have impacted the production.
- l. The speech by promoter of Thirumalai Chemicals Limited on 25th July, 2019 stated that the first half of the financial year was outstanding in every parameter but there was a slowdown in the months followed. The customers in downstream industries started destocking and the prices were driven further down.
- m. Managing Director's Speech of IG Petrochemicals Ltd. said that "the year 2018 was marked by volatile crude oil prices which inflated the raw material prices for PA as well".
- n. The injury data does not show any serious injury and there has not been any impairment in the situation of domestic industry.
- o. The petitioners should be directed to provide injury data for the injury period as decided by the Authority as the data provided in the petition does not fulfil the data requirement by the Authority.
- p. The injury period in the petition is not same which is determined by DG hence, objective examination of injury is not possible.
- q. The imports from Korea increased from 2007-2019. However, the imports from other countries increased drastically in the same time period which clearly shows that imports have increased from all the countries and the claim that imports from Korea increased due to reduction of customs duty has no basis.
- r. Due to the supply constraints of OX( Orthoxylene) , the production of DI may have been impacted. Also, volatility in cure oil and other petrochemical products, slow-down in Far East, US-China Trade sanction etc, delay in completing the expansions would have contributed.
- s. The domestic industry did not justify their claim of serious injury as there is increase in its volume and price parameters.
- t. Price undercutting was 0-5% positive in the sunset investigation. However, it was found that domestic industry did not suffer any injury. The landed price of imports evidently had not forced the domestic industry to reduce its prices and on the contrary NSR has gone up



- u. The petitioners could not establish any causal link between alleged increase in imports from Korea and Injury claimed by DI.
- v. The application contains no adjustment plans on how the Applicants are planning to correct their present situation to achieve increase in productivity, decrease in cost and correction in selling prices to meet international competition.
- w. The substantial part of imports was necessitated to meet the demand- supply gap and if any bilateral duty is imposed that would be against the public interest.

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

11. The information made available by the interested parties in their submissions, have been considered by the Authority for the purpose of the present determination. The Authority has examined views of interested parties and has appropriately considered the same for the purpose of the preliminary findings.
  - a. The Authority notes 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 information for the period from April, 2007 to Sept., 2019. The Authority has 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 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.
  - b. As regards adjustment plan, the Authority notes that while the same is relevant for duration of duty, and not at the stage of preliminary determination, the domestic industry in any case has given an adjustment plan, after initiation of investigation.
  - c. 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 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 seen that volume of imports has increased in absolute terms and in relation to production and consumption as the tariff concessions increased.
  - d. As regards imports from non-subject countries, it is seen that the landed price of imports after adding applicable customs duties are higher from non-subject countries as compared to landed price of imports from Korea. This establishes that the imports from other countries are not the primary cause of injury to the domestic industry.



- e. As regards the contention that imports have increased because of cessation of anti-dumping duty, the Authority notes that this does not establish that the injury is not due to imports from Korea. Further, it is noted that at least one producer from Korea was not subject to anti-dumping duty.
- f. As regards the contention that imports have increased due to demand supply gap, the Authority notes that demand supply gap may, at the most, justify imports per-se. However, landed price from 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 do not show that increased imports are due to closure of production by Asian Paints.
- g. 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 would any interested party import under advance license and unnecessarily undertake export obligation when the same amount of duty exemption is available without undertaking any export obligation.
- h. The Authority notes that the present investigation is under India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 and India-Korea Comprehensive Economic Partnership Agreement.
- i. As regards statements in the annual reports of the petitioning companies, the Authority notes that the injury to the domestic industry has largely occurred in the current year. Further, published unaudited quarterly results of petitioning companies also show significant decline in profits.
- j. It has not been established by the interested parties how capacity revamps, delay in planned capacity expansions, planned short term shut-downs etc could have been a major cause of injury to the domestic industry when the information relied upon in the present data does not include any costs on these accounts.
- k. As regards volatility of crude prices, the same is a global factor and not peculiar to Indian market.
- l. As regards 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.
- m. 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.
- n. It is further noted that the proposed measure will be limited to only imports from Korea. Imports from all other countries would continue to be made without any safeguard measures. Thus, source of supply shall not be curtailed as a result of the proposed measures.



## **E.1 Product under consideration**

12. 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
13. PAN is a colourless solid, variously referred as Phthalic Anhydride flakes, Phthalic Anhydride (98% min.), Phthalic Acid Anhydrous, Phthalic Anhydride (99.8% min), etc. Phthalic Anhydride is used to produce Phthalate esters, which function as plasticizers. It is an important chemical intermediate in plastic industry.

## **E.2 Domestic industry**

14. 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;*

15. 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 at present. 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. Applicants' production constitutes a major share in gross Indian production. Therefore, the application satisfies the requirement of standing under the Rules. Thus, IG Petrochemicals Ltd. and M/s Thirumalai Chemicals Ltd. constitute domestic industry for the purpose of the present determination.

## **E.3 Period of investigation**

16. The period considered for the purposes of present investigation, as notified in the notice of initiation, is from April, 2015 to June, 2019. Further, since this is a safeguard investigation, considering the past practice, the Authority has considered the data for the period up to Sept., 2019, being the most recent period for which the data is available.

## **E.4 Confidentiality**

17. 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 evidences submitted by various interested parties in the form of public file.

#### **E.5 Customs Duty under Comprehensive Economic Partnership Agreement**

18. The rate of custom duty on the imports of Phthalic Anhydride considering the concessions under the Comprehensive Economic Partnership Agreement (CEPA) was as follows: -

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

#### **E.6 Source of information**

19. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCIS) to arrange for details of imports of subject goods. The Authority has relied upon the DGCIS data for computation of the volume and value of imports for the required analysis.

#### **E.7 Increased imports from Korea RP**

20. Rule 2 (c) of India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 states:

*"increased imports" includes increase in imports from the Republic of Korea whether in absolute terms or relative to domestic production;*

21. The said Rules require an examination whether imports of the PUC increased in such quantities in absolute and relative terms so as to constitute "increased imports". The said Rules require an analysis of the imports, in both absolute terms and in relation to



imports into India, production and consumption in India. Analysis of increased imports of the product under consideration has been conducted having regard to the said rules.

**i. Imports from Korea RP in absolute terms:**

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

SN	Years	Import volume	Trend	Customs duty
		MT	Index	
1	2015-16	25,252	100	2.74%
2	2016-17	36,822	146	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	181	0.00%
6	Jul'19-Sep'19	26,007	206	0.00%
7	April to Sept.,19	48,826	193	0.00%

23. It is seen that imports of the product under consideration have increased significantly in absolute terms over the period.

**ii. Imports in relation to gross imports in India**

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

SN	Years	Imports in MT			Share in imports	
		Korea RP	Other countries	Total imports	Korea RP	Other countries
1	2015-16	25,252	53,866	79,118	32%	68%
2	2016-17	36,822	63,115	99,937	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%
7	April to Sept.,19	48,826	47,214	96,041	51%	49%

25. 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. Korean imports 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.



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

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

	Years	Korea imports MT	Indian Production MT Trend	Demand MT	Imports in relation to	
					Production %	Consumption %
1	2015-16	25,252	100	3,32,413	8%	8%
2	2016-17	36,822	97	3,47,995	12%	11%
3	2017-18	41,664	100	3,72,030	14%	11%
4	2018-19	49,081	97	3,82,583	18%	13%
5	Apr'19-Jun'19	22,819	91	97,163	35%	23%
6	Jul'19-Sep'19	26,007	87	1,05,209	42%	25%
7	April to Sept., 19	48,826	112	2,02,372	38%	24%

27. It is seen that imports from Korea increased significantly in relation to production and consumption in India with increase in duty concession.

**E.8 Injury**

28. 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*

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

30. 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.*

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

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

32. It is seen that the imports of subject goods have increased significantly in absolute 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**

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

SN	Years	Capacity	Production	Capacity Utilization	Domestic sales	Export Sales Trend	Korea RP imports
		MT	MT Trend	%	MT	MT	MT
1	2015-16	3,06,110	100	89%	2,18,825	100	25,252
2	2016-17	3,06,110	97	86%	2,14,580	103	36,822
3	2017-18	3,06,110	100	89%	2,24,112	98	41,664
4	2018-19	3,06,110	97	87%	2,27,235	63	49,081
5	Apr'19-Jun'19	76,528	91	82%	48,465	70	22,819
6	Jul'19-Sep'19	76,528	87	78%	52,738	92	26,007
7	Apr-Sept.,19	1,53,055	112	80%	1,01,203	81	48,826

34. It is seen that

- production and capacity utilisation of the domestic industry has declined over the period;
- whereas domestic sales of the domestic industry were increasing till 2018-19, the same have declined significantly thereafter;



- c. the exports have declined in 2018-19 and increased thereafter. The profitability of exports is, however, adverse as compared to domestic sales.

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

35. The movement of market share was as follows:

SN	Years	Domestic industry	Korean imports	Other Producers	Other Countries	Total
1	2015-16	66%	8%	10%	16%	100%
2	2016-17	62%	11%	10%	18%	100%
3	2017-18	60%	11%	5%	24%	100%
4	2018-19	59%	13%	3%	25%	100%
5	Apr'19-Jun'19	50%	23%	3%	24%	100%
6	Jul'19-Sep'19	50%	25%	3%	23%	100%
7	April to Sept.,19	50%	24%	3%	23%	100%

36. 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**

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

SN	Year	No. of Employees	Productivity per day	Productivity per employee
		Trend	Trend MT/Day	Trend MT/Nos.
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
7	April to Sept.,19	103	89	87

38. The productivity per day and productivity per employee has witnessed decline in 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 imports.

**e. Inventory**

39. 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	Q1-2019-20	140
6	Q2-2019-20	132

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

**f. Profit/loss**

41. 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
7	April to Sept.,19	45	98	32

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

**g. Price undercutting**

43. 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 Undercutting	Price Undercutting
		Rs/MT Trend	Rs/MT	Rs/MT	%
1	2015-16	100	56,387	*****	0-10%
2	2016-17	113	60,274	*****	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%

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

45. 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 were 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	60,274
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**

46. It is provisionally concluded that the imports of the product under consideration have increased significantly in absolute terms and in relation to gross imports in India, Indian production and consumption. As a result of significant surge in imports from Korea RP, the domestic producer has suffered serious injury in terms of decline in production, sales, capacity utilization, market share, profit, ROI and rising less profitable exports and rising inventories. Considering the performance of the domestic producer in respect of various parameters, it is provisionally concluded, pending further investigations 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**

47. 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;*

48. It is noted that imports of subject goods from Korea are entering the Indian market in significant increased quantities in absolute terms as well as in relation to production and consumption in India. The domestic industry's capacity was underutilized and the intensified imports from Korea has adversely impacted the situation. Considering the difference between the landed price of imports of subject goods, the huge capacities with Korea coupled with the fact of their high export orientation 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: -

- a. The price difference between the domestic and imported product has led to increase in imports of subject goods from Korea;
- b. The producers from Korea are holding significant unutilized capacities, as established by the questionnaire response filed by the Korean producers. Resultantly, producers from Korea are continuously looking for additional markets;
- c. There is an increase in exports from Korea to India and decline in exports to the rest of the world;
- d. The demand of the product is growing and the Indian market is large and price sensitive.

49. In view of above it is provisionally concluded that the increased imports of subject goods from Korea have caused serious injury to the domestic industry. Further, the domestic industry is faced with continued threat of serious injury from imports from Korea.

#### **G. Causal Link**

50. 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. Further, 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 party 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 parameters brought by the interested parties and concluded that the reported injury to the domestic industry is not due to possible 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 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 in the recent period 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.

51. 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. Critical Circumstance**

52. Rule 8 of Bilateral Safeguard Rules provides that the Authority shall proceed expeditiously with the conduct of the investigation and in critical circumstances, where there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry and where delay in imposition of provisional bilateral safeguard measure would cause damage to the domestic industry which would be difficult to repair, the Authority may record a preliminary finding regarding serious injury or threat of serious injury to the domestic industry as a result of increased imports of an originating good. The Authority holds that the following facts establish the existence of critical circumstances warranting imposition of interim safeguard measures.

- a. With duty concessions increasing to full extent in 2017-18, imports of the product surged to 32% in 2017-18 and to 34% in 2018-19 and 49% in April 2019 – June 2019 and have remained at high levels thereafter.



- b. With significant duty concessions during the present period, the domestic industry profits have declined significantly and turned into losses in Q2, 2019-20.
- c. The production and sales of the domestic industry have declined despite increase in domestic demand of the product.
- d. Market share of the domestic industry has declined significantly.
- e. As a result, domestic sales of the domestic producer declined significantly in the most recent period (April -Sept., 2019 period). Further, profitability of the domestic industry has also suffered significantly in this period and incurred losses in Q2, 2019-20. The sales volumes in April to Sept., 19 were 8% lower than volumes sold in 2015-16.
- f. The domestic industry has been forced to export the subject goods at a price lower than the domestic selling price.

53. It is noted that the factors present constitute critical circumstances and are affecting the overall performance of the domestic industry, justifying imposition of provisional bilateral safeguard measure.

#### **I. Adjustment plan**

54. Applicants have provided details of the adjustment plan during the course of the investigation. The Domestic Industry has quantified that it shall take measures directed towards reducing costs on a number of accounts. The domestic industry has submitted that it is taking measures to reduce costs. IG Petrochemicals has given an adjustment plan which includes action plan 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. The Authority considers that the Applicants have drawn an adjustment plan to become competitive vis-a- vis Korean imports.

#### **J. Conclusion and Recommendation**

55. On the basis of the preliminary determination above, it is provisionally concluded that increased imports of subject goods have caused serious injury and also threat of serious injury to domestic producers. It is considered that critical circumstances exist where delay in imposition of safeguard measures would cause irreparable damage to the domestic producers. With regard to imposition of bilateral safeguard measure, Rule 9 of India- Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 states as follows:



*(1) The Central Government, on the basis of the preliminary findings of the Authority, may -*

*(a) suspend further reduction of any rate of customs duty on the originating good provided for under the Trade Agreement; or*

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

*(i) the Most Favoured Nation applied rate of customs duty on the originating good in effect at the time when the bilateral safeguard measure is taken; and*

*(ii) the Most Favoured Nation applied rate of customs duty on the originating good in effect on the day immediately preceding the date of entry into force of the Trade Agreement.*

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

56. After examining the above, it is considered appropriate to recommend provisional bilateral safeguard measure in terms of Rule 9 of India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017. Accordingly, pending final determination, the Authority provisionally recommends increasing the rate of customs duty on imports of subject goods originating in Korea RP to the level of MFN duty on the subject goods as on the date of application of the bilateral safeguard measure or MFN duty on the subject goods on the day immediately preceding the date of entry into force of the Trade Agreement, whichever is less.

57. The provisional bilateral Safeguard measure on the import of the said product, as above, is recommended for a period of 200 days (two hundred days).

#### **K. FURTHER PROCESS**

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

- a. The Authority invites comments on preliminary findings from all known interested parties within 30 days from the date of issue of preliminary findings. The comments received from them would be examined in the final findings.
- b. The Authority would conduct an oral hearing to provide an opportunity to all interested parties to present their views relevant to the investigation. Issues and concerns raised during the oral hearing will be examined in the final findings. The date of the oral hearing would be announced on the DGTR website (dgtr.gov.in).
- c. The Authority would conduct verification to the extent deemed necessary.

 11/05/20

**(Bhupinder S. Bhalla)**  
**Additional Secretary & Director General**