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F. No. 22/1/2020 - DGTR
Government of India
Ministry of Commerce and Industry
Department of Commerce (Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building, -Parliament Street, New Delhi -110001

18th July, 2020

NOTIFICATION

Case no. (SG) 01/2020

Subject: Final Findings of review investigation for continued imposition of Safeguard duty on imports of "Solar Cells whether or not assembled in modules or panels" into India - Proceedings under the Customs Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 - Reg.

(A) Introduction

1. An application dated 15 January 2020 was filed before me on 15 January 2020 under Rule 18 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (hereinafter also referred to as the "Rules") by the Indian Solar Manufacturers Association (ISMA) on behalf of three Indian producers, namely (i) M/s Mundra Solar PV Limited, Adani House, Meetha Khali 6 Road, Navrangpura, Ahmedabad-380009, Gujarat; (ii) M/s Jupiter Solar Power Limited, Village Katha, Post Office Baddi, Teh. Nalagarh, Dist. Solan, Himachal Pradesh-173205; and (iii) M/s Jupiter International Limited, Village Katha, Post Office Baddi, Teh. Nalagarh, Dist. Solan, Himachal Pradesh-173205, seeking continued imposition of the existing safeguard duty (hereinafter also referred to as the "Duty") against imports of "Solar Cells whether or not assembled in modules or panels" (hereinafter also referred to as the "product under consideration" or "PUC") into India.

2. The existing safeguard duty on the product under consideration was imposed pursuant to the final findings issued by the Director General (Safeguards) under Rule 11(1) of the Rules, and published in the Gazette of India (Extraordinary) on 16th July 2018 recommending levy of safeguard duty @ 25% *ad valorem* during the 1st year, @ 20% *ad valorem* during the next 6 months and @15% *ad valorem* during the next 6 months on imports of "Solar Cells whether or not assembled in modules or panels" into India for protection of the domestic industry from the serious injury caused by the increased imports of the PUC. Based on the said final findings and in exercise of powers conferred by sub-section (1) of section 8B of the Customs Tariff Act, 1975(51 of 1975) read with Rules 12 and 14 of the Rules, the Central Government vide Notification No.01/2018 - Customs (SG) dated 30th July, 2018 imposed on "Solar Cells whether or not assembled in modules or panels", falling under sub-heading number 8541.40.11 of the First Schedule to the said Customs Tariff Act, when imported into India, a

safeguard duty at the rate of:

(i) twenty-five per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 30th July, 2018 to 29th July, 2019 (both days inclusive);

(ii) twenty per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 30th July, 2019 to 29th January, 2020 (both days inclusive); and

(iii) fifteen per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 30th January, 2020 to 29th July, 2020 (both days inclusive).

3. Further, the said notification exempted levy of safeguard duty on imports of the PUC from notified developing countries other than China and Malaysia under Clause (a) of sub-section (6) of Section 8B of Customs Tariff Act 1975,

4. The Customs Tariff Heading 8541 4011- Solar cells, whether or not assembled in modules is split into the following two headings, vide Section 117(b) of the Finance Act 2020 (No.12 of 2020) read with entry No.2 of Schedule III thereof w.e.f. 01.02.2020:

8541 4011- Solar Cells, not assembled

8541 4012- Solar Cells assembled in modules or made up into panels

5. Vide customs notification No. 1/2020-Customs (SG) dated 2 February 2020, the two new tariff headings mentioned hereinabove were substituted in the place of single tariff heading in the earlier customs notification No. 1/2018-Customs (SG) dated 30 July 2018.

6. Thus, the existing safeguard duty is applied on "Solar Cells whether or not assembled in modules or panels" classifiable under the Tariff Headings 85414011 and/or 85414012 of Chapter 85 of Schedule I of the Customs Tariff Act 1975. The Customs tariff classification is, however, indicative only and is in no way binding on the scope of the product under consideration as mentioned in the final findings dated 16th July 2018.

7. On the basis of the written application referred to in paragraph 1 above and having satisfied itself, on the basis of the prima facie evidence submitted by the applicants regarding evidence of serious injury and that the domestic industry is adjusting positively, the Director General initiated a review investigation, in accordance with Section 8B of the Act, read with Rule 18 of the Rules, for examining the need for continued imposition of safeguard duty on the PUC vide Notice of Initiation (NOI) No. F.No.22/1/2020-DGTR dated 3rd March 2020.

8. In accordance with Rule 18 read with sub-rules (2) and (3) of Rule 6 of the said Rules, a copy of the NOI dated 03.03.2020 and a copy of a Non-confidential Version (NCV) of the application dated 15.01.2020 filed by the Domestic Industry were forwarded to the Central Government in the Ministry of Commerce & Industry, Ministry of Finance, Ministry of New and Renewable Energy, Ministry of Power, Ministry of MSME, Ministry of Consumer Affairs

Food and Public Distribution and the Governments of major exporting countries through their Embassies in India, and the interested parties mentioned in the said application. Further, a questionnaire seeking information from the interested parties as prescribed under Rule 6(4) of the Rules was forwarded to the known interested parties with a request to make their views known in writing within 30 days from the date of issue of the NOI.

9. In response to the NOI and oral hearing, either a request to consider as interested parties or submissions were received from the following parties:

1.	M/s Indian Solar Manufacturers Association
2.	M/s Jupiter Solar Power Limited
3.	M/s Jupiter International Limited
4.	M/s Mundra Solar PV Limited
5.	Indonesian Embassy
6.	Government of Malaysia
7.	China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME)
8.	M/s ACME Solar Holdings Limited
9.	M/s Solar Power Developers Association
10.	M/s Canadian Solar Manufacturing (Thailand) Co., Ltd.,
11.	M/s All India Solar Industries Association
12.	M/s Shapoorji Pallonji Infrastructure Capital Company Pvt. Ltd.
13.	M/s Azure Power India Private Limited
14.	Council on Energy, Environment and water
15.	M/s REC Solar Pvt Ltd, Singapore
16.	M/s Vikram Solar Ltd
17.	Taipei Economic and Cultural Centre
18.	M/s Suzhou Talesun Solar Technologies Co., Ltd.
19.	M/s SB Energy Pvt. Ltd,
20.	M/s GRT Jewellers (India) Pvt. Ltd
21.	M/s Acme Cleantech Solutions Pvt. Ltd.
22.	M/s AMP Energy India Private Limited
23.	M/s Avaada Energy Private Limited.
24.	M/s Ayana Ananthpuramu Solar Private Ltd
25.	M/s Emmvee Photovoltaic Power Private Limited
26.	M/s Goldi Solar Private Ltd

27.	M/s TEPSOL Photovoltaic Power Ventures Pvt
28.	M/s North India Module Manufacturer Association (NIMMA)
29.	M/s Insolation Energy Pvt Ltd (On behalf of NIMMA)
30.	M/s Patanjali Renewable Energy Pvt Ltd
31.	M/s Renewsys India Pvt Ltd
32.	M/s Websol Energy System Ltd
33.	M/s Viraj Solar Maharashtra Pvt Ltd

10. The Authority hosted the list of interested parties on the DGTR's website.

11. To enable access of all non confidential version (NCV) submission by all interested parties, the Authority advised all interested parties exchange their NCV submissions with each other through email in view of the practical difficulties faced by them in accessing the public file due to Covid-19 crisis.

12. An oral hearing was held on 3rd July 2020. In terms of sub rule (6) of rule 6 of the Rules, all the interested parties who participated in the oral hearing were requested to file written submission of the views presented orally. Copy of written submissions filed by an interested party was made available to all the other interested parties as was advised in the oral hearing. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.

13. The submissions made by all interested parties pursuant to the oral hearing or otherwise have been appropriately examined and addressed under the relevant paras. As many issues are repetitive, they have been collectively addressed at the relevant paras. Data submitted by the Domestic Industry has been verified through desk study to the extent considered necessary.

(B) Submissions made by interested parties

14. The submissions made by various interested parties are summarized below:

i) Governments of exporting countries

15. Governments of Indonesia, Malaysia and Taiwan made their views known to the DG(Safeguards).

16. In the written submission filed pursuant to the oral hearing, Indonesia contended that (a) increase of imports and unforeseen development also need to be looked into in a review (b) Indonesia was excluded from the application of safeguard measure in the original investigation as imports from Indonesia constituted less than 3% of total imports into India and should continue to be so under any subsequent review, and (c) current imports from Indonesia continues to be less than the de minimis level of 3% and accordingly no safeguard duty shall be imposed on imports from Indonesia.

17. In the written submissions filed pursuant to the public hearing, Government of Malaysia submitted that (a) the imports of product under consideration has drastically reduced post imposition of safeguard duty in July 2018 and Malaysia should be excluded as per Article 9 (1) of the Agreement on safeguard, and (b) as per Article 12(2) of the Agreement on safeguard, in the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided to the Committee on Safeguards. Malaysia also suggested to inform the interested party of the developments of domestic industry's adjustment plan after the imposition of safeguard measure.

18. Taiwan in its written submissions filed pursuant to the oral hearing raised the following issues:

(i) Article 8 of the Agreement on safeguard gives right of suspension of substantially equivalent concessions or other obligations under GATT 1994 to exporting countries if duration of safeguard measures is more than 3 years.

(ii) Information provided in the petition does not support the claim of the domestic industry regarding extension of safeguard measure for another 4 years period.

(iii) Article 2.1 of the Agreement provides that for levy of safeguard measures, there should be an increase of imports, absolute or relative to domestic production. Total imports into India have decreased from 9,790 Mega Watts in 2017-18 to 8,754 Mega Watts in 2019-20 (A).

(iv) Imports from Taiwan fell from 393 Mega Watts in 2017-18 to 24 Mega Watts in 2019-20. Taiwan's share in total imports is approximately 0.28% in 2019-20.

(v) One of the constituents of domestic industry is situated in special economic zone. The Authority had clearly observed in the final findings of the original investigation that unit situated in special economic zone cannot be considered as part of domestic industry for the purpose of safeguard investigation. The standing of the applicants as domestic industry and claim of serious injury should be assessed based on the remaining two constituents of domestic industry only.

(vi) Revised adjustment plan cannot be relied upon because domestic industry has not provided complete information regarding its fulfilment and compliance of adjustment plan submitted during original investigation. If safeguard duty imposition in the range of 25% to 15% has not allowed the domestic industry to implement its original adjustment plan, there is no certainty that the revised adjustment plan will be implemented when safeguard duty of less than 15% will be in force.

(vii) The information provided in the petition of the domestic industry regarding market share, production, capacity, capacity utilisation, domestic sales etc. during the period of investigation shows substantial improvement. This indicates that domestic industry is not suffering any serious injury.

(viii) According to the Union Budget of India for 2020-2021, we note that India has

proposed to make the amendments in the first schedule to the Customs Tariff Act 1975, creating tariff item 8541.4011 for "Solar Cells, not assembled" and tariff item 8541.4012 for "Solar Cells assembled in modules or made up into panels" and that a tariff rate of 20% has been proposed to be effective from 2 February 2020. We concern that the tariffs on these products raised by India have surpassed India's zero bound commitment in the WTO.

ii) Exporters or trade or business associations from exporting countries

19. The following exporters and trade or business associations from the exporting countries filed submissions in this review:

(i) REC Solar Pte Ltd ("REC Solar")

(ii) Canadian Solar Manufacturing (Thailand) Co Ltd ("Canadian Solar")

(iii) China Chamber of Commerce for Import and Export of Machinery and Electronic Products ("CCCME").

20. Submissions in response to the initiation notice and oral hearing made by REC Solar:

(i) As per Rule 18 of the Rules, provisions of Rules 5, 6, 7 and 11 apply mutatis mutandis to a review investigation. Accordingly, review application submitted by an applicant is to be substantiated by sufficient evidence regarding increased imports, serious injury or threat of serious injury, causal link between increased imports and alleged serious injury or threat of serious injury and a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to import competition. The initiation of the investigation does not comply with the requirements of under Rule 5.

(ii) If the DI had not filed the questionnaire response along with the DI petition, this implies that the application examined by the Hon'ble DG did not include the adjustment plan. Thus, if the application for initiation of this present review investigation did not include the revised adjustment plan, thus the Hon'ble DG has not followed the requirement under Rule 5 of the Indian SG Rules.

(iii) The applicants do not meet the criteria for being considered as 'domestic industry' on account of two factors - (a) JIL is not a 'producer' of the PUC as it merely carries out repurposing/ incremental job work. (b) The DI, as identified, is not representative of the major proportion of the total domestic production – with or without the inclusion of JIL within the scope of DI.

(iv) Alpha product is designed under a Design Patent issued by Singapore as well as by governments in other jurisdictions including Europe. A Design application made by them in India is pending. Because of the use of patented design, the product - (i) uses proprietary advanced technology, is of superior quality, space efficient, and more environmental friendly, (ii) commands a higher price in the Indian market and (iii) is neither identical nor alike in all respects to the articles

manufactured in India. Alpha product shall be excluded from the scope of the PUC as it is patented and such exclusion will be in line with the decision of the Indian authority in the Anti-Dumping duty investigation concerning imports of *Cold Rolled Flat Products of Stainless Steel* from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA dated 24 November 2009 where certain patented grades of stainless steel were excluded.

(v) Rule 2(e) provides for two scenarios in which a product can be declared as a "like article". WTO panels and appellate body in multiple cases have resorted to the test of 'likeness' such as *Japan - Alcoholic Beverages* and *Canada – Periodicals.* The WTO Appellate Body endorsed the basic approach set out in the 1970 Report of the Working Party on Border Tax Adjustment. As observed by the DG (SGD) in the final findings of safeguard investigation against import of Hot Rolled Coils/sheet/strips dated 08 December 2009, likeness of the products shall be assessed by considering physical characteristics, end use, manufacturing process and price relationship.

(vi) Base year to determine any increase or decrease in import volumes in the present review investigation should not overlap with the Original Investigation. However, this has not been followed in the present case where 2016-17 has been taken as the base year for all data analyses and projections.

(vii) Only six months import data is available for the year 2019-20. Such import data cannot be 'annualized' to construct import volume for the year 2019-20 because such annualization will not be an evidence of actual imports as required under the relevant provisions and as interpreted by WTO DSB.

(viii) It would be insufficient to make an affirmative determination of increased imports based on only a minor increase in imports. Though the volume of imports has increased slightly during the period of investigation, the increase is not sharp, sudden or significant enough to cause serious injury as interpreted by WTO DSB Appellate Body in WT/DS-121 Argentina-Footwear (EC).

(ix) Data clearly highlights that if import figures of March 2020 are considered then the import of the PUC has actually declined from 2018-19 to 2019-20 by 1% instead of increasing as claimed by DI on the basis of annualised figures

(x) The injury in a safeguard investigation cannot be determined on a same footing as in an anti-dumping or a countervailing duty investigation and that it must be analyzed on a higher standard. The term "serious injury" is also defined in Article 4.1(a) of the Agreement on Safeguards. The DI has made significant improvements during the POI. There is increase in production, sales, market share, productivity etc. The respondent claims that DI has been able to increase its capacity utilization as well as production but has nowhere indicated that the imports are causing serious injury to the DI with respect to the sales of PUC in domestic market

(xi) Article 4.2(b) of the AoS expressly states that injury caused to the DI by factors other than increased imports "shall not be attributed to increased imports". Any decline in domestic prices is attributable to the falling prices of PUC globally and not the imports of PUC into India. DI's performance, if any, is not attributable to increased imports. Some of the 'factors which demonstrate a break in the causal link between increased imports and alleged serious injury and threat thereof are demand-supply gap, inherent deficiency in Indian Solar Manufacturing Industry, insufficiency in showing increase in imports and absence of serious injury.

(xii) The capacity utilization of the DI has increased from 44% in 2016-17 to 75% during 2019-20(A) which is an equivalent increase by 70%. Similarly, domestic production of the DI has increased from 100 indexed-MW points in 2016-17 to 171 indexed-MW points during 2019-20(A) which is an equivalent increase by 71%. The domestic sales by the DI have increased in volume from 100 indexed-MW in 2016-17 to 166 indexed-MW in 2019-20(A). It is incorrect to say that the domestic share has gone down considerably during the POI.

(xiii) Market share of DI shows a sharp increase in the most recent period. It must be noted that the market share of the DI has increased from 60 Indexed-% points in 2018-19 to 124 Indexed-% points in 2019-20(A) which is an equivalent increase by 64% in a year whereas the market share of imports has actually seen a decline by 3 Indexed-% points during the same period.

(xiv) DI should not include MSPL in calculating price undercutting. The undercutting provided in the petition is not accurate and should be re-calculated. The DA should direct the DI to refile revised data at the earliest for purpose of reasonable analysis in the present investigation.

(xv) Price undercutting is calculated based on average prices charged by domestic producers including MSPL i.e. the SEZ unit. In the price undercutting calculations, SEZ units shall not be included. The price undercutting for solar cells has decreased from 55-65% range in 2016-17 to 0-10% range during the POI. Similarly, the price undercutting for solar module has decreased from 35-45% range in 2017-18 to 5-15% range during the POI.

(xvi) Some of the 'factors which demonstrate a break in the causal link between increased imports and alleged serious injury and threat thereof are enlisted as follows

a. Demand Supply gap
b. Inherent deficiency in Indian solar manufacturing industry
c. Insufficiency in showing increased imports
d. Absence of alleged serious injury

(xvii) Rule 18 of the Indian SG Rules requires the DI to adjust positively before the Hon'ble DA can make a recommendation for continued imposition of the SG duty. DI is enjoying duty protection since July 2018 and has yet not made the requisite efforts to adjust positively in accordance with the adjustment plan. DI

has not provided information on usage of PERC technology or Bi-facial technology projects, which was another step they intended to undertake while enjoying the duty protection. DI has not produced documentary evidence regarding positive adjustment. Further, the revised adjustment plan provided with the questionnaire response is vague and excessively confidential DI should have at least provided a non-confidential summary of the comparison between the adjustment plan provided during the original safeguard investigation and as provided in the present review investigation.

(xviii) The DI has not adduced any evidence as to how continued imposition of safeguard duty on the PUC will not affect the consumers/ user industry and the user industry/consumer in India heavily relies on imports of PUC from other countries.

(xix) Imposition of safeguard duty is not in public interest. Given the increasing demand of the PUC globally as well as in India, it is very likely that the user industry may not be able to procure the PUC from the DI in line with its requirements. In such circumstances, the user industry would have no other option but to import the PUC from overseas. As their projects cannot be closed due to the unavailability of the PUC in domestic market, such continuous imposition of duty would make imports financially unviable. This would be severely prejudicial to the interest of the user industry in India.

(xx) continued imposition of duty will create trade barriers for imports which would lead to formation of monopoly by the DI. And it will result in damage to the downstream industries which collectively are large employers in the country. They have tremendous scope for further generating employment if this duty is removedA concept note was issued by the Ministry of New and Renewable Energy, Government of India, dated 15 December 2017 wherein it stated the following: "The present maximum solar cell manufacturing capacity per year is only around 3 GW against an average requirement of 20 GW i.e. 15%. Balance capacities have to be procured from international market." Any increase in imports of PUC in India is attributable to the lack of domestic supply. The Indian solar manufacturers have been using obsolete technology and are highly insufficient to meet the domestic demand.

(xxi) However, the Indian manufacturers lack an integrated production chain. This has resulted in inherent deficiencies rendering them uncompetitive against global companies.

(xxii) DI has proposed to liberalize the duty at the meagre rate of 0.05% in a year which in itself shows that it is not willing to positively adjust. Given the oddity of the reduction such meagre liberalization is unheard of in any safeguard investigation. Even in the Final Findings of the Original Investigation the Hon'ble Authority has recommended 5% reductions in three stages.

(xxiii) Indian Government's proposal to raise the Basic Customs Duty ('BCD') on the

imports of the PUC by 20%.48 This will be 5% higher than the current levy of 15% safeguard duty and thus is over and above the 14.95% duty that the DI has requested in review. In sum with the increase in BCD the DI is no longer in need of a safeguard duty to protect its interests. safeguard levy in addition to the increase in BCD will result in an irreversible negative impact on the overall user industry which is already facing supply shortages.

(xxiv) During 2019-20, 94% of imports of PUC into India came from three countries - China PR - 75%, Thailand -10.2% and Vietnam -9.4%. DI has also argued that not only import of the PUC is coming into India in significant quantities from China PR, Thailand and Vietnam, the import price from Vietnam and Thailand has also decreased consistently throughout the POI. Where the DI is suffering from unfair trade practice, such as low-priced imports, the remedy lies under the anti-dumping provisions and not the safeguard provisions.

21. Submissions in response to the initiation notice and in its written submissions and oral hearing made by Canadian Solar:

(i) Volume of Imports from Thailand are inflated in the petition. Imports from Thailand are not above 3% if import quantity as per the methodology determined by the domestic industry is taken into account for assessing volume of total imports and volume of imports from Thailand. They were less than three percent in the year 2016-17 and the year 2017- 18 i.e. in the first two years of the period of investigation. No rule which provides that the Authority should rely on the last 18 months period in the period of investigation.

(ii) Rule 18(1)(i) does not provide for imposition of safeguard duty afresh on countries that were not originally subject to safeguard duty. Accordingly, developing countries excluded from the scope of safeguard duty pursuant to the original investigation cannot be included pursuant to a review.

(iii) Safeguard duty should normally not be extended in a review unless there are extraordinary circumstances requiring such as an extension.

(iv) Safeguard duty should normally not be extended in a review unless there are extraordinary circumstances requiring such an extension. Extension of safeguard duty for another period will also result in suspension of substantially equivalent level of concessions and other obligations existing under GATT 1994 between India and exporting WTO member countries in accordance with Article 8 of the Agreement on Safeguards.

(v) In the original investigation the Authority relied on the binding tariff concession of 0% basic customs duty on imports of the PUC pursuant to the IT Agreement ("ITA-I"). Tariff rate under HS code 8541 4011 and 8541 4012 has already been increased to 20% vide the Finance Act, 2020 with effect from 1st February 2020. The Government of India is now expected to announce its decision to impose this increase in customs duty rate on import of solar cells and modules. It should be

clearly specified whether ITA-1 restricts India's freedom of action and prevents it from raising customs duties on import of solar cells and modules. It is inconsistent with Article XIX of GATT to impose both safeguard duty and customs duty on the imports of PUC. In any case, to ensure that India does not communicate conflicting stance to WTO, both safeguard duty and customs duty should not be imposed. Authority should consider that if basic customs duty of 20% is imposed as contemplated under the First Schedule of Customs Tariff Act, domestic industry will get sufficient protection and there is no need for additional safeguard duty of 15%.

(vi) Solar Cells and Solar Modules have different physical characteristics, different usage, different pricing and different production process and they should be treated separately for the purpose of determining standing of the domestic industry in the present safeguard review. Authority must assess whether production of each of the subject goods by the petitioners constitute a major proportion of the total Indian production as has been done by the authority in the antidumping investigations concerning (a) *Front Axle Beam and Steering Knuckles from China PR* and (b) *Penicillin – G and 6APA from China and Mexico.*

(vii) Standing of solar cells and solar modules should be assessed separately. To increase their utility of solar cells, a number of individual PV cells are interconnected together in a sealed, weatherproof package called a module. There are several standalone producers of solar modules who are not producers of solar cells. Production of these module producers cannot be excluded from total domestic production. Total Indian production of both solar cells and solar modules should be taken into account to determine whether the share of domestic industry in total production constitute major proportion or not. If it is done so, it would clearly establish that the domestic industry does not have sufficient standing for solar modules because the share of the petitioners in total module production in India is very less and would not amount to major proportion share .

(viii) Trade Notice SG/TN/1/97 dated 6th September 1997 provides the format of application and the data to be provided in the application. However, petitioner companies have claimed complete confidentiality with regard to several economic parameters, which is relevant for assessment of serious injury and have not complied with the requirements of Annexure I of Trade Notice No. 10/2018 dated 7th September 2018 issued by the DGTR that provides guidelines for disclosure of information in confidential and non-confidential version of the petition. The domestic industry has also not shown any good cause for such excessive confidentiality in contravention of the Trade Notice. The claims of confidentiality by the petitioner over Appendix 10 of the petition shall be disallowed.

(ix) In terms of Article 7.2 of the WTO Safeguards Agreement , Article 2.1 of the Agreement and Rule 18 of the Rules safeguard measures can be imposed or

extended only if there is 'increase in imports' of the subject product. Only six months import data is available. Such import data cannot be 'annualized' to construct import volume for the year 2019-20 because such annualization will not be an evidence of actual imports as required under Article 2.1 of the WTO Safeguard Agreement, Section 8B(1) of the Customs Tariff Act, and the Rule 11 of the Safeguard Rules. WTO Panel in *India- Certain Measures on Imports of Iron and Steel Products* noted that objective data for the full financial year is required for assessment of trend in comparison with previous two years.

(x) In the Safeguard review of PX-13 OR 6PPD (Rubber Chemicals) into India and the Safeguard review of Phenol into India under, the DG safeguards examined whether there is increase in imports or not into India. Thus, there is no doubt that the requirement of increase in imports is applicable in safeguard review as well.

(xi) In the present safeguard review, the DI should show that there is continued increase in imports in the subsequent years after 2017-18 i.e. 2018-2019 and the year 2019-2020. However, the import data shows that there is no increase in imports in this period. Increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough to cause or threaten to cause 'serious injury'.

(xii) The increase in imports should not be viewed in comparison with the base year of 2016-17. As per the data shown in the petition, there is decline in imports in recent period if 2017-18 is considered as the base year.

(xiii) imports from China PR have not increased during the period of application of safeguard duty during last two years despite gradual reduction of safeguard duty from 25% to 15%. Thus, the apprehension that if safeguard duty is further reduced to 0% after 29th July 2020, it will result in increase in imports from China PR is unfounded.

(xiv) The petitioner companies cannot be treated as domestic industry in terms of Article 4.1(c) of the AoS and Section 8B(6)(b) of the Act, as their collective output does not constitute a major proportion of the total domestic production.

(xv) Further, the Petition does not disclose the following:

(a) total production of the petitioner companies of cells and modules;

(b) total Indian production of cells and modules;

(c) Percentage share of petitioner companies in total Indian production in cells and modules;

(d) Percentage share of two petitioner companies having manufacturing units in DTA in total production of cells and modules (after excluding production of SEZ Units).

(xvi) Domestic industry has not disclosed total Indian production and aggregate figure of its total production during the POI. The total Indian production cannot be confidential because the information does not pertain to the domestic industry specifically. In absence of disclosure of this information, no effective rejoinder submission can be made by the other interested parties in response to the claim that the domestic industry had more than 30% share in total Indian production during the entire POI. If the petitioner companies are unwilling to disclose the information, Authority is requested to disregard such information in terms of Rule 7(3) of the Safeguard Rules.

(xvii) Authority should verify whether the capacity of two petitioner companies located in DTA would constitute a 55-60% share in total Indian production during April 2019 to September 2019 as their combined capacity is only 390 MW.

(xviii) Jupiter International Ltd. was not the petitioner company in the original investigation. The petition does not provide information regarding (i) reason for non-inclusion of Jupiter International Ltd. in the original investigation (ii) the reason for inclusion of Jupiter International Ltd in the present review investigation. (iii) Standalone capacity, production and sales of Jupiter International Ltd. during the period of investigation (iv) Date of commencement of production of subject goods by Jupiter International Ltd.

(xix) Petitioners located in SEZ units should not be considered as part of domestic industry as their primary goal is to cater to the export market. The final findings dated 27 September 2012 of the DG Safeguards in the Electrical Insulators case, where WSI Industries (located in SEZ), was excluded from the scope of the domestic industry. SEZ unit cannot be included within the scope of the domestic industry as stated in the Manual of Operating Practices for antidumping cases issued by DGTR.

(xx) If Mundra Solar PV Limited is excluded from the scope of the domestic industry, the non-injurious price of the domestic industry would reduce substantially.

(xxi) The domestic industry is not adjusting positively. Indosolar Ltd. has become non-operational and is undergoing insolvency proceedings and ten more companies have also become non-operational during this period. The safeguard duty is not permitting the domestic industry to adjust positively and therefore there is no need for extension of safeguard duty.

(xxii) Revised adjustment plan not provided in the petition but in the questionnaire response of each petitioner company and is treated as confidential. The petitioner companies have also not provided non-confidential summary of the same.

(xxiii) Rule 17 of the Safeguard Rules provide for progressive liberalization of duty at regular intervals. Requirement of liberalization of safeguard duty at regular intervals is not a symbolic requirement and cannot be met by merely reducing safeguard duty by 0.05% at the end of each year. Request for such low

liberalization of duty evidences that the safeguard duty is not required to be continued because it will not be useful to facilitate adjustment.

(xxiv) Rule 18 of the Safeguard Rules requires that safeguard duty can be extended to prevent or remedy serious injury. The petitioner companies are not suffering serious injury or threat of serious injury. In terms of the decision of the Appellate Body in WT/DS 178- US – Lamb existence of serious injury or threat of serious injury cannot be easily assumed. The Authority should satisfy itself based on the evaluation of economic parameters of the domestic industry that the injury suffered by the domestic industry is 'serious' in nature.

(xxv) Domestic producers who are experiencing decline in market share are not included as domestic industry in the application. Market share of petitioner companies has increased during the period of investigation. Market share of other Indian producers of subject goods has reduced substantially. Objective assessment of material injury cannot be made without examining performance of the other Indian producers who are experiencing decline in market share.

(xxvi) From the data, it is evident that the capacity, sales and production of the domestic industry has significantly improved in the POI. It is clear that the domestic industry has faced no injury in terms of employees and productivity per day. Both parameters have witnessed a healthy increase. Therefore the domestic industry has not suffered injury at all, leave alone injury in the nature of 'overall impairment' which can be categorized as serious injury.

(xxvii) Price undercutting should be determined after adding safeguard duty. In any case price undercutting trend shows that there is no correlation between price undercutting by imports and the profit/loss experienced by the domestic industry. In 2016-17, the domestic industry was making profits. In the year 2017-18, price undercutting reduced by 41 indexed points from the base year, however, the domestic industry started incurring losses. In the year 2018-19, price undercutting was at the lowest for both cells and modules, however, the losses incurred by the domestic industry was the highest.

(xxviii) The market share of domestic industry has increased by approximately 50% during the period of investigation. The market share of imports has remained stable and has only increased by 2% during the period of investigation.

(xxix) The domestic industry's reliance on Article 9.1 of the Agreement on Safeguards to contend that developing countries can be included within the scope of a levy pursuant to a review is incorrect since if exclusion of imports from developing countries were required to be reviewed periodically, Agreement on Safeguard would have provided review mechanism for such purpose. If developing countries are included within the ambit of the levy after two years of safeguard duty, an inconsistent practice would be created which would result in unpredictability.

(xxx) The Phenol safeguard investigation does not support the contention of the Domestic industry as in the first review proceedings initiated on the said product, the SGD was not extended to other developing countries which were not included within the scope of the original levy. A third review investigation was conducted after the first review was over in order to assess whether the import of Phenol from other countries had increased.

(xxxi) The domestic industry has wrongly equated imposition of safeguard duty with the survival of domestic industry. Other module producers in India namely (i) Patanjali Renewable Energy Private Limited and (ii) Goldi Solar Private Limited have specifically objected to the continuation of safeguard duty on import of solar cells. They have stated that the indigenous cell manufacturing is hardly 3 GW, which constitutes only 25% of the requirement of module manufacturers. Both companies have protested against extension of safeguard duties on imports of solar cells, since manufacturing of solar modules is dependent on imports. If claim of DI that reduction in imports is in public interest in general is accepted, then it would mean that safeguard duty should be imposed on all imports into India for which there is a domestic producer in India. The requirement of public interest is to be examined in the context of the PUC and not generally in relation to imports into India.

(xxxii) Continuation of SGD will result in its imposition for a total period of six years. India has not imposed safeguard duty for a continuous period of six years on any product in last 25 years.

22. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s CCCME:

(i) Authority has considered only two companies namely Jupiter International Limited and Jupiter Solar Power Limited for the scope of the domestic industry and excluded Mundra Solar PV Limited (SEZ). However, no clarification has been provided with regard to activities of JIL and JSPL. JSPL, being only a job-worker manufacturing subject goods as per orders of JIL, cannot be considered as part of DI. This is a new development which had been hidden by the petitioners till the time of oral hearing.

(ii) Request of petitioners to reconsider SEZ unit as part of DI is incorrect as Section 53 of SEZ Act 2005 provides that a special economic zone is deemed to be a territory outside the customs territory of India for the purpose of authorized operations. Further, Section 30(a) of the SEZ Act provides that any goods removed from SEZ to the DTA shall be chargeable to duties of customs including safeguard duties where applicable on such goods when imported which is a condition also applicable to EOUs. The petitioners located in SEZs and EOUs cannot be considered as domestic industry as they are at a separate commercial position on account of the various incentives and benefits that accrue to them. Hence, SEZ units are not impacted by the conditions of competition in the domestic industry and accordingly, there is no reason for including SEZ units into

the Domestic industry.

(iii) Certain products which the Indian Domestic Industry has no or insufficient capability to produce, i.e. thin film products, mono-crystalline solar products and solar cells, should be excluded from the scope of subject goods.

(iv) Solar cells are raw materials for modules. Several other materials and additional production processes are needed to manufacture modules from solar cells. Therefore, they are different products, which are needed by different types of clients. Considering these facts, solar modules should be excluded from scope of PUC.

(v) The revised adjustment plans submitted in the questionnaire response by M/s Jupiter Solar Power Limited and M/s Jupiter International Limited, are insufficient and inappropriate. In Safeguard investigation concerning imports of Phthalic Anhydride (PAN), PX-13 OR 6PPD (Rubber Chemicals), Cold Rolled Flat Products of Stainless Steel of 400 Series , Not Alloyed Ingots of Unwrought Aluminium into India , Flexible Slabstock Polyol (FSP), the DG refused to imposed SGD when the DI failed to produce documentary and corroboratory proof regarding adjustment plan. The petitioner only claimed reduction of costs but did not provide any evidence about the steps they have undertaken to adjust and whether there is relationship between the steps they have undertaken and the reduction of cost. Even in the questionnaire response, the description of their adjustment is quite abstract.

(vi) In the revised adjustment plan provided by DI, the cost of manufacturing has shown a downward trend. This has been fueled by the reducing prices of main raw material, namely silicon wafers internationally. Reduction in cost of production, due to reduction in raw material prices globally cannot be attributed to positive implementation of Adjustment Plan.

(vii) Claim that adjustment plan is not necessary for the levy of safeguard duty is incorrect as Rule 5(2)(b) of the Customs Tariff which is mutatis mutandis applicable to safeguard reviews requires adjustment plan to be submitted.

(viii) A safeguard measure may be adopted only if there is evidence of increased imports causing serious injury and such increase must have occurred as a consequence of unforeseen developments as per Article XIX:1(a) of GATT and as confirmed by the Appellate Body on Argentina -Footwear (EC). The Questionnaire Format for prospective applicants requires them to provide evidence regarding existence of unforeseen developments which has not been provided by the applicant. Reliance has been placed upon *US- Lamb* and Final Findings issued in case of *Hot Rolled Flat products of Stainless Steel of 304 grade into India from China PR (F.No. D-22011/06/2012)* wherein it was held that SGD could not be imposed on the absence of unforeseen developments.

(ix) The reason for increase in imports from China PR is not any unforeseen

development but the GOI's vision to promote renewable sources of energy, which results in an increase in the demand for solar cells and modules. The demand-supply gap will have to be filled by imports from China PR and other countries in the absence of adequate domestic supply. The DI only argued that levy of measures is unforeseen but ignored that causal relationship between such developments and increase in imports is also necessary. The Indian market is a free and demand-oriented market, so increase in imports is caused by increase in demand instead of levy of trade remedy measures by other countries. Excess capacities cannot be seen as unforeseen developments within the meaning of Article XIX of GATT. In line with India's commitments for reduction of CO2 emissions by 33-35% from 2005 levels, India targets achieving 100 GW of solar generation by 2022 and this cannot be considered as unforeseen either. Commitments under certain international agreement may be unforeseen, but the fact that certain international agreement may be signed and may cause influence and change to relevant market is indeed foreseen.

(x) Purpose for which the petitioner requests a continuation of the duty is not to remedy the injury but to obtain unjustified trade protection through illegal means to maintain its monopoly or dominant position in the market. The domestic industry does not have enough capacity to meet Indian demand. Imports have to be made to meet the demand supply-gap. Negative effect of imposition of SGD will include: (1) trade relationship between India and other countries; (2) the various downstream industries and consumers in India; (3) the healthy development of the Solar Cell Industry, and will also adversely affect the Rural Electrification projects initiated by the Current Government on large scale. In the Final Findings on Methyl Acetoacetate, the DG safeguard did not recommend imposition of SGD as the Domestic Industry was not able to demonstrate that the imposition of SGD on said product was in public interest.

(xi) Initially, the petitioner had filed an application for ADD in 2012 wherein DA recommended duty on the imports of Solar Cell. However, no ADD was levied pursuant to such recommendations since domestic solar capacity was insufficient to meet the government's ambitious targets for power generation from green energy sources. Later, in 2017, Petitioners again sought ADD but the investigation was later terminated on request of petitioners due to "unreasonable and unjustifiable grounds" put forward by the petitioners.

(xii) The demand of huge costs associated with manufacturing cells is a great challenge to the Domestic Industry. According to one manufacturer, a 100 MW cell manufacturing facility calls for an investment of ₹800 million ($10.53 million), excluding land and infrastructure costs. However, a 100 MW cell facility would not have the same economies of scale to compete with imported cell prices, especially Chinese cells. An optimum capacity of 500 MW is what would be profitable, for which investment about ₹4 billion ($52.63 million) is required. Even if domestic manufacturers do decide to invest, there is no guarantee of demand as government policies change too often without much

notice. When the DI's manufacturing capacity is insufficient to even fulfil demand of locally manufactured products required for projects under DCR category, it is vague/absurd to curb or impose duty on imports which will affect the entire industry.

(xiii) No surge in imports of subject goods has been experienced in the recent past, either in absolute or relative term. However, the reason for the increase of imports in India from 2016 to POI is not the sudden surge of imports, but the growth of the Indian market demands following the development of downstream industry.

(xiv) The sales of domestic industry are showing positive trend with significant growth. The market share of domestic Industry has increased drastically during the POI as compared to the base year 2016-17. Capacity remains unchanged during the injury period and period of investigation. However, production has increased sharply during 2019-10. The cost of sale has decreased. The profitability of the domestic industry has improved. Accordingly, capacity utilization has also increased during the POI when compared to the base year. Thus, there is no injury to the domestic industry from the imports from subject countries.

(xv) Rule 5(2)(b) of the Rules states that the application shall be supported by a statement of efforts being taken or planned or both to make adjustment to import competition. Since current investigation was initiated on March 2020, hence the proposed adjustment plan for 2019-20 becomes infructuous. In essence, the DI wants a blanket extension of safeguard duty for four years but has no plans to improve its competitiveness post 2022.

iii) Importers, Domestic Producers and trade/business associations in India

23. The following importers and trade or business associations from India have filed submissions in this review:

(i) Solar Power Developers Association ("SPDA")

(ii) Shapoorji Pallonji Infrastructure Capital Co. Ltd ("Shapoorji")

(iii) Vikram Solar Limited ("Vikram")

(iv) Patanjali Renewable Energy Pvt Ltd ("Patanjali")

(v) Goldi Solar Private Limited ("Goldi")

(vi) RenewSys India Private Limited ("Renewsys")

(vii) Websol Energy System Ltd. ("Websol")

24. SPDA has reiterated the submissions made by Canadian Solar Thailand during the course of the investigation and the same have not been stated again to avoid repetition. Only

those arguments which have specifically been raised by SPDA and do not find mention in the submissions of Canadian Solar have been reproduced below:

(i) MNRE had issued Order dated 02.01.2019 regarding Approved List of Models & Manufacturers (ALMM) for Solar PV cells & modules, providing for enlistment of models and manufacturers of solar PV cells and modules, complying with the BIS Standards in ALMM List-I (for solar PV modules) & ALMM List-II (for solar PV Cells). The list is scheduled to be published on 30th September 2020. Therefore, the DG is requested to examine whether the petitioner companies have adjusted positively to attain quality to ensure reliability and consistency and qualify to be included in this list.

(ii) Imports from China PR have not increased during the period of application of safeguard duty despite gradual reduction of safeguard duty from 25% to 15%. Thus, the apprehension that reduction of safeguard duty to 0% after 29th July 2020, would result in increase in imports from China PR is unfounded.

(iii) Furthermore, EU withdrew the antidumping and countervailing duties on solar cells and modules against China with effect from 3rd September 2018 and this has led to increase in exports from China to EU and India's share in China PR exports have declined proportionately from 29.6% to 7.3%. Thus, there is no requirement for China to increase its exports to India if safeguard duty is withdrawn.

(iv) Indosolar Ltd. and ten other domestic producers of the PUC have become non-operational or are undergoing insolvency proceedings. Therefore, Domestic Industry is not adjusting positively so as to warrant extension.

(v) Relying on decline in import price of the PUC into India during the 4 year POI is simplistic and misleading.

(vi) The domestic industry cannot reasonably claim that all countries including developed countries such as EU countries, Taiwan, Singapore and other smaller developing countries such as Thailand, Vietnam, Malaysia, Indonesia, etc. are exporting PUC to India at cheap and unfair prices and are undercutting the price of domestic industry even though domestic industry has taken sufficient steps towards positive adjustment in last two years.

25. Submissions in response to the initiation notice and in its written submissions and oral hearing made by Shapoorji :

(i) Review Applicants has failed to establish that the pre-conditions specified in Rule 18(2) have been satisfied so as to warrant continued imposition of Safeguard duty beyond the two-year period (from July 2018 to July 2020)

(ii) The current review investigation should not be undertaken as a Writ Petition, filed by the Company, challenging the validity of the previous imposition of Safeguard duty on PUC is sub- judice before the Hon'ble Madras High Court.

(iii) Review Applicants do not qualify as a 'domestic industry' in terms of Section 8B read with Rule 18 Safeguard Duty Rules and should not be permitted to file the review application for the continuation of the imposition of Safeguard duty on PUC. Review Applicants have a very small portion of the domestic installed capacity which disqualifies them from being considered as a DI and they cannot be permitted to file the review application

(iv) There has not been any increase in the import of PUC. Assessment of whether there has been any increase in the imports or not should be done by analysing the import volumes during the years in which Safeguard duty is imposed viz 2018-19 and 2019-20 with the year immediately prior to the imposition of Safeguard duty viz. 2017-18 which would be the last year considered in the Final Findings dated 16.07.2018. Comparing the import volumes with any year before such a year (2017-18) would imply that the Agreement, CTA or the Safeguard Rules envisage imposition of Safeguard duty till import becomes lower than the imports in the first year of the period under investigation of the original investigation – which is not the case. An assessment in imports in absolute terms and in relative terms (to the domestic sales) indicates that the same have not increased.

(v) Any assessment of whether the DI is adjusting positively should necessarily take into account, the impact of Safeguard duty not just on solar cells but also on solar modules / panels which form part of the PUC and imports of which have been subject to Safeguard duty.

(vi) There is no evidence to show that the DI is adjusting well to the imposition of Safeguard duty. In terms of the adjustment plan, the DI had provided future performance for the next 3 years as under:

i. long term procurement of raw material, rate and volume discounts if better cash flow is achieved.

ii. higher utilisation of capacity leading to better conversion cost;

iii. better apportionment of semi-fixed and fixed costs;

iv. better credit ratings would lower the cost of borrowing and better servicing of debt;

v. efforts towards backward integration and developing an entire eco-system;

vi. technology development and R&D.

(vii) Review Applicants have merely shown that they have achieved costs reduction (of raw material, conversion costs, fixed costs). Apart from this, the Review Applicants have not given any data or made any claim to show that the DI has achieved the other performances (in the adjustment plant) or have taken

appropriate steps to fulfil the same. DI cannot claim that it is adjusting positively to the imposition of Safeguard duty without providing information / data to show that appropriate steps have been taken to fulfil the aforesaid adjustment plan. In absence of such information / data, the claim of the Review Applicants is false and cannot be accepted.

(viii) Essential economic figures of the DI and other domestic manufacturers of PUC are ambiguous and vague which has made appropriately responding to the Review Application difficult. It renders response an empty formality and is against the principles of natural justice. Economic data for the period prior to the imposition of Safeguard duty on PUC viz. period prior to 30th July 2018 has been wrongly taken into account in the Review Application. Aggregate Data should have been provided instead of indexed data.

(ix) DI is not facing any serious injury which would warrant continued imposition of Safeguard duty. There has not been an absolute increase in imports. Even on relative terms, when the volume of imports are compared with the domestic sales it is seen that volume change in both import and domestic sales is based on the demand / consumption. Both volume and domestic sales dipped when there was a dip in consumption, however, in 2019-20 when consumption and demand was higher, domestic sales recuperated with a growth in sales of 101% than imports which saw only a 9.2 percent increment. After the imposition of Safeguard duty in 2018, market shares of domestic sales is on a rise with about 40.9% increase in market share from2017-18 to 2019-20 for the DI, compared with only a 0.99 % increase in the market share for the same period for the imports. Domestic sales (in MW) clearly show that while there was dip in 2018-20 (due to reduction in consumption) the same sales level shot up again in 2019-20 with increment of 130.5 % from the previous year 2018-19. Therefore, imports do not seem to have an impact on the domestic sales which is on an upward trend. Except in the year 2018 -19 when the consumption /demand was low, production quantity and capacity utilisation has incrementally increased to cater to such a demand. This shows that imports have not had a negative impact on such indicators.

(x) The fact that installed capacity has not been increased is not due to the imports, but for various other economic factors which puts the DI at a disadvantage.

(xi) Profits and Losses figures show that in 2019-20 the domestic producers have drastically recuperated (upto an extent of 91.1 %) from the losses faced during the year 2018-19. This clearly shows that the imports do not adversely affect the domestic industry

(xii) Data in relation to the certain other relevant economic factors such as inventory,numbers of employees and productivity per employee have also been compared. Reduction / Stagnation in the employee number is due to the fact that manufacturing of solar cells has over the years become automated due to technological advancement. High productivity per employee in the year 2019-20 is indicative of the positive growth of the domestic industry which have not

suffered serious injury due to the imports.

(xiii) Methodology for price undercutting (which is alleged to be the main source of injury) has not been provided (d) The combined installed capacity for Jupiter International and Jupiter Solar Power Ltd has been provided without providing individual installed capacities for each of the companies

(xiv) The Review Applicants have determined a year wise non-injurious price (and basis that price underselling) point without so much as providing any methodology / basis for the same and that provided figures in indexed form – making the data in relation to the same vague, ambiguous and incomprehensible making it impossible for the Company to rebut the claim of the Review Applicant.

(xv) Domestic producers have managed to substantially reduce the cost of the solar cells – and at the same time have been able to improve their overall financial health including reduce their losses. In such a scenario, where the domestic industry is financially improving at a time when the Review Applicant's are alleging price undercutting shows that lower landed value of imports while undoubtedly giving competition to the domestic producers do not cause serious injury to them. In any event, lower landed value of the imports is only one criteria which is adverse to the domestic industry and the same cannot be the sole basis for claiming serious injury.

(xvi) Any injury, if at all, are due to economic which have nothing to do with import of the PUC which would persist even if Safeguard duty is continued to be imposed.

(xvii) The imposition of Safeguard duty would do little to remove the underlying reasons for the DI being at a competitive disadvantage, and problems pertaining to demand and visibility would persist. While imposition of Safeguard duty would reduce the unit costs for Indian manufacturers and improve cash flows, effect of such a benefit would only be temporary. Some of the key factors which are responsible for the competitive disadvantage of the DI – clearly showing that injury, if at all, is caused due to such factors (and not due to surge in imports) have been provided herein under

a. Higher cost of finance:
b. Higher electricity prices
c. Lower economies of scale
d. Lack of vertical integration
e. Lack of increase in installed capacity
f. Under-utilisation of DI: In furtherance
g. PUC manufactured by the DI are not as bankable as the imported PUC

(xviii) Continued imposition of Safeguard duty would hamper Public Interest. In this regard, the following may be taken into account:

i. It would lead to further erosion of imports of PUC (which forms an essential part of solar power projects), thereby making it impossible for India to achieve its Paris Convention target of installing 100GW of solar energy capacity.

ii. Due to imposition of Safeguard duty, the cost of module increased, in turn, leading to increase in project cost and electricity tariff costs. This eventually led to delays in awarded projects and cancellation of tenders, especially as developers have expressed doubts about the viability of tariff caps recommended by the Ministry of New and Renewable Energy ("MNRE").

iii. Increase in tariff led to cancellation of nearly 5 GW of awarded project capacity, which was a setback to the Government's goal of installing 100 GW of solar power capacity.

iv. Project deployment viz. solar power projects is more labour intensive and provides for around 3.45 (utility) and 24.72 (rooftop) direct full-time equivalent jobs per MW. Cancellation / Delays in solar power projects led to curtailing of huge employment potential.

v. Problems relating to recovery of additional Safeguard duty cost and cancellations of projects which led to uncertainty and hurt investor sentiment.

vi. Imposition of Safeguard duty on imports would be in violation of Article 51(c) of the Constitution of India which requires a state to endeavour to foster respect for international law and treaty obligation.

vii. Imposition of Safeguard duty has adversely impacted standalone module manufacturers which have faced an increase in raw material cost as they are largely dependent on imported solar cells.

viii. Solar power developers instead of procuring domestically manufactured solar module manufactured out of domestically produced solar cells, structured their transaction in manner so as to procure the maximum amount of modules made from imported solar cells (which were cheaper and better in quality) when the Safeguard duty rate was at its lowest. The intended effect of Safeguard duty to improve the competitiveness of the domestic producers of solar cells was limited.

ix. Chinese Government in 2018 decided to replace the system of providing subsidies and brought in a system of competitive bidding for the solar projects as a result of which the growth of solar projects would be limited in China. This has impacted the domestic solar cell manufacturers in China leading to a collapse in prices which have huge built out capacity largely dependent on the Chinese demand. Such prices are also reflected in the imports and are unlikely to reduce any further even if Safeguard

duty is continued to be imposed – especially as it would be imposed only at a lower rate (than what was earlier imposed).

x. This factor coupled with the factor that Safeguard duty has had a negative impact on the growth of the solar industry in general due to project cancellations / delays, increase in tariffs etc. would further dis-incentivize investment in the DI – consequently leading to an effect completely opposite of what was initially intended.

(xix) DI has no intentions / ability to adjust positively is clear as they have proposed liberalisation of merely 0.05% at the end of each year, thereby enabling them to take maximum protection of the Safeguard duty for the a long duration of time.

(xx) If the allegation of the DI is that dumping results in the injury to the DI and they should take recourse to a separate anti-dumping investigation. Having not done so, the DI cannot allege this as a ground under a Safeguard investigation.

26. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s Vikram :

(i) DG (Safeguards) should clarify that under the provisions of Section 30 of the SEZ Act read with Section 8B (6) of the Customs Tariff Act, 1975, any safeguard duty imposed on solar cells whether or not assembled in modules or panels would not be payable on clearance of solar cells and/or modules from SEZ units to DTA.

(ii) If clearance from SEZ units to DTA is subject to levy of safeguard duty, SEZ units will be at a disadvantage vis-a-vis DTA units and the SEZ units will die an unnatural death and thousands of people will have to lose their jobs.

(iii) This will also adversely affect the country's ability to produce indigenously manufactured cells and modules as the entire investment made by PV cell and module manufactures including that of VSL, which operates out of SEZ, will become redundant.

(iv) Imposition of safeguard duty without settling interpretation issue between the provisions of Section 30 SEZ Act 2005 and Section 8B(6) of Customer Tariff Act or otherwise without exempting units set up in the SEZs would be counterproductive and defeat the very purpose of its imposition. Any imposition of safeguard duty without exempting units set up in the SEZs from safeguard duty will cause irreparable harm to SEZ units and thus will not accord the adequate safeguard protection to the domestic industry as a whole.

27. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s Patanjali :

(i) The Government should extend the imposition of safeguard duty for another 3-4 year but only on import of modules and not on cells.

(ii) The Indigenous Cell manufacturing is hardly 3 GW (25% of Indigenous Module Manufacturing) so most module manufacturers have to import Chinese Cells after paying safeguard duty and this increases the cost of indigenous modules are costlier than the Chinese modules.

(iii) Till India have extra cell manufacturing capacity to cater requirement s of the module manufacturers, SGD should be discontinued on cells, so that the cost indigenous module could be reduced.

28. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s Goldi :

(i) The Government should extend the imposition of safeguard duty for another 3-4 year but only on import of modules and not on cells.

(ii) Indian manufacturers are keen to substantially expand their manufacturing capacities with further investment into Cell Production. However, due to lower cell production capacity and high demand, maximum module manufacturers have to import the cells and needs to pay SGD and this could be increasing the cost of Indigenous Modules.

(iii) Till India have sufficient capacity to cater domestic requirements of the module manufacturers, SGD should be discontinued on cells import, so that the cost of indigenous modules could be reduced.

29. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s RenewSys and Websol:

(i) There is no prohibition in law for SEZ units to be considered as domestic producers of an article for the purpose of constituting Domestic Industry within the meaning of Section 8B(6)(b) of the Customs Tariff act, 1975.

(ii) SEZ clearances to the DTA do not attract customs duties, since India has reduced its customs duties to 'nil' for the PUC pursuant to being a signatory to ITA:1. DTA clearances for the PUC by the producers based in the SEZ do not attract any customs duties. SEZ units are under an obligation to maintain positive Net Foreign Exchange (NFE). Since sale of the subject goods into the DTA are considered for the purpose of computing positive NFE, SEZ Units do not have any impediment in continuing to sell the same in the DTA and no compulsion to export either for the purpose of maintaining positive NFE.

(iii) There is no embargo and in fact there is a specific provision which facilitates the sales in DTA by such SEZ units. Such DTA sales by the SEZ units compete in the domestic market with other manufacturers of the subject goods based out in the DTA. Therefore, these SEZ units are also domestic producers of the subject goods. The SEZ Units have consistently been selling the subject goods in the DTA, that they are not subject to customs duties while clearing the subject goods into the DTA as the customs duties are 'nil' on the PUC.

(iv) In view of the fact that no customs duties are leviable on DTA clearances, these SEZ units producing the subject goods are at par with the other domestic producers of the subject goods.

(v) Finding of the Ld. DG Safeguards in the case of Unwrought Aluminium is both per incuriam and sub silentio. In this regard, the Hon'ble Supreme Court has categorically held in the case of State of U.P. & Anr. v. Synthetics and Chemicals Ltd. & Anr. [(1991) 4 SCC 139] that a decision on an issue which is per incuriam and sub-silentio is not a binding precedent and can be discarded from consideration when deciding a subsequent case.

(vi) For the reasons stated above, the earlier final finding shall be reconsidered and SEZs shall be included as an integral part of the domestic industry and thus prevent supplies from SEZ to DTA from the levy of safeguard duty.

iv) Applicant domestic industry - Indian Solar Manufacturers Association ("Domestic Industry" or "DI")

30. Submissions in response to the initiation notice and in its written submissions and oral hearing made by domestic industry :

(i) The product under consideration in the present investigation is 'Solar Cells whether or not assembled in modules or panels'. For practical use, Solar Cells are packaged and connected into an assembly and such an assembly of Solar Cells is referred to as a Solar Panel or Solar Module. The electrical connections are made to the Solar Cells in series to achieve desired output wattage and / or in parallel to provide a desired current capability. In view of Entry No.2(ii) of the Third Schedule to the Finance Act 2020, and the Customs notification No.1/2020-Customs (SG) dated 2 February 2020 existing safeguard measures' i.e. 15% duty is applicable on 'Solar Cells whether or not assembled in modules or panels' classifiable under Customs Tariff Headings 85414011 and 85414012. However, the tariff heading is indicative only and is in no way binding on the scope of the imported product under investigation. The description of the product alone must be dispositive for the purposes of imposition of safeguards measures.

(ii) The PUC is being manufactured using either of the two major technologies: (1) Crystalline Silicon (c-Si) based Solar Cell technology, also known as Silicon Wafer based technology, and (2) Thin Film technology. The c-Si technology may use n-type and p-type Silicon, and also mono crystalline and multi crystalline Silicon materials. The Thin Film technology may use Amorphous Silicon, Cadmium Tellurium (CdTe) or Copper Indium Gallium Selenium as semi-conductor materials. Solar Cells based on both c-Si technology and Thin Film technology are imported into India.

(iii) The applicants manufacture Solar Cells / modules / panels using only c-Si technology and not Thin Film technology. The products are covered under

Attachment A, Section 1 of the Ministerial Declaration on Trade in Information Technology Products, popularly known as Information Technology Agreement (ITA-1). Since India is a signatory to ITA-1, the imported products are exempt from basic customs duties. The relevant tariff heading identifies cells, modules and thin film modules as one product and the duty exemption is applicable to all the three types i.e. c-Si solar cells, c-Si solar modules/panels and Thin film modules/panels The focus must be on the identification of the products, and their "like or directly competitive" relationship and not on the processes by which those products are produced while determining the scope of 'like article' as held by the Appellate Body In US – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia.

(iv) In the absence of any material differences between the two types of Solar Cells, any attempt at drawing a distinction between c-Si technology products and thin film technology products would result in defining not "like or directly competitive product" but a *portion* of such like or directly competitive products. Such an approach is inconsistent with determination of like or directly competitive product under the AoS and has also been reiterated by the WTO Panel's in Dominican Republic – Safeguard Measures.

(v) There are no material differences between the two Solar Cells manufactured in terms of function or end use, since Solar Cells based on both c-Si and Thin Film technologies are used to generate electricity using the photovoltaic process. Accordingly, there being no basis for differentiating between the two types of Solar Cells for the determination of a "directly competitive/substitutable product" in relation to the imported products, the PUC has correctly been determined as "Solar Cells whether or not assembled in modules or panels".

(vi) In the investigations conducted by EU and USA, thin films technology products were excluded from the scope of product under investigation. However, Canada included the same within the scope. The inclusion and/or exclusion of thin films from the scope of product under consideration is a case-by-case determination based on facts of each case. The facts surrounding the present case in India make it essential to include thin films also in the scope of product under investigation. Otherwise, the entire exercise may lead to circumvention of safeguard duties since the importers may simply switch to thin films to avoid any duties. "Thin Film Modules" are also imported under the same heading and are exempt from basic customs duty like solar cells/modules.

(vii) In the Final Findings of the Designated Authority in the Final Findings of the first anti-dumping investigation, thin films were considered as like article with solar modules made from c-Si technology and included in the PUC for the following reasons which are also applicable to this review:

a. Difference in technology do not alter or impede the end uses of solar panels through either technology;

b. Even though the technology is different the principle adopted in both the technologies are similar i.e. photovoltaic process to convert sunlight into electricity;

c. Even though the basic raw materials differ, technical character of raw materials used under both the technologies have the qualities to suit photovoltaic technology;

d. Crystalline Solar cells are semiconductor p-n junction diodes which converts light into electricity. Similarly, thin film based solar cells are also semiconductor p-n junction diodes and convert light into electricity.

e. There is a direct competition between both the technologies as the products of both the technologies can produce power out of solar light and developers can chose either of the technologies for their power projects in the inception stage and thereafter simultaneously in independent lines.

f. Both goods are offered in module/panel form to the ultimate end user under both the technologies.

g. The cost/pricing is also decided based on factors such as Watt per unit, efficiency of the cell/modules and the competition in the market parlance between the crystalline and thin film products are also generally based on such factors under both the technology;

h. The Solar Cells of all technologies were classified under common Customs Classification tariff heading 8541 40 11 with common tariff heading. After the amendment w.e.f 01.02.2020 also, thin film modules are also covered under tariff heading 8541 40 12 which also covers modules with cells made of c-Si solar cells.

i. Imposition of safeguard duty on the product of one technology, which is functionally substitutable with the product of another technology would be futile, as the product having no duty can replace the other in the market.

j. Power Purchase Agreements between DISCOMS and Solar Power Developers do not differentiate between the technologies for setting up solar power plants.

(viii) Despite the Tariff heading 85414011 being divided into Tariff heading 85414011 (Solar Cells, not assembled) and Tariff heading 85414012 (Solar Cells assembled in modules or made up into panels), cells and modules deserve to be treated as a single product. Solar cells and solar cells arranged into modules form a single product and fall under the scope of the PUC for the reason that solar modules are nothing but an assembly of Solar Cells that are packaged and connected into an assembly for practical use. In the finding of the USITC in the safeguard investigation on imports of solar cells into the US, a single domestic product consisting of all forms of CSPV Cells, whether or not partially or fully assembled

into other products was considered. The USITC found that although CSPV modules are not "like" CSPV cells, they are "directly competitive" within meaning of safeguard statute. Since CSPV cells are the basic element of a CSPV module, both cells and modules share the same primary physical properties. The characteristics of CSPV cells that enable them to convert sunlight into electricity are not affected by the module assembly process but are an essential function of the module in CSPV solar systems; likewise, CSPV modules cannot sever their intended function of converting sunlight into electricity without the inclusion of CSPV cells. The processes used to manufacture CSPV modules from CSPV cells are technologically sophisticated, more labour intensive than manufacturing CSPV cells, and add value to the product, but they enhance rather than change the basic function of the CSPV cells, which is to convert sunlight into electricity. Both CSPV cells and CSPV modules are integrated into photovoltaic solar systems that convert sunlight into electricity for use in residential, commercial and utility applications. CSPV cells represent a substantial portion of the total cost of finished CSPV modules and prices of cells generally correlated with module prices during the POI. For these reasons, a single domestic product was defined which included both CSPV cells and CSPV modules.

(ix) In the anti-dumping investigation under Section 9A of the Customs Tariff Act, 1975 on imports from China, Malaysia, Taiwan and USA, the Designated Authority had also considered Solar Cells and Modules to be a single product for almost identical reasons in the Final Findings dated 22.05.2014.

(x) REC Solar has not been granted any patent in India and has failed to provide evidence that Indian purchasers cannot and do not use domestically produced goods for the end-uses for which they use REC's patented products. Many engineering products would have patents and they would still be subjected to trade remedy investigations because they satisfy the requirements of increased imports/dumping/subsidisation causing injury to the domestic industry in the importing country

(xi) India has also subjected the patented products to trade remedy measures in several cases. In the Safeguard investigation concerning imports of Cold Rolled Flat Products of Stainless Steel of 400 series cited (final findings dated 23rd March 2015) where In a similar situation, DG Safeguards has rejected the claim for exclusion of the product from the scope. In the Final Findings in Anti-dumping investigation concerning imports of Seamless tubes, pipes & hollow profiles of iron, alloy or non-alloy steel (other than cast iron and stainless steel), whether hot finished or cold drawn or cold rolled of an external diameter not exceeding 355.6 mm or 14'' OD, originating in or exported from China PR dated 9th December, 2016 the authority has held that patented goods and other sub category cannot be excluded from the scope of PUC as long as are technically and commercially substitutable with the domestic like goods and any such exclusion will lead to circumvention

(xii) The Final Findings in Anti-Dumping duty investigation concerning imports of

Cold Rolled Flat Products of Stainless Steel from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA relied upon by REC Solar PTE Ltd is not applicable to the facts and circumstances of the present case for the simple reason that though a patent application has been made in India, the said patent has not yet been granted.

(xiii) Besides submitting that the Alpha Product is of superior quality, space efficient, uses proprietary advanced technology and is environmentally friendly which allegedly leads to their product being priced higher than that of the Domestic Industry, it has not been the case of REC Solar PTE Ltd. that their product is not in direct competition with and not commercially substitutable by the domestic like product for the same end use. REC Solar PTE Ltd. has not provided any evidence which demonstrates that users have used their products for any use other than for generating electricity through photovoltaic effect.

(xiv) In determining product scope, the focus should be on the like or directly competitive nature of the domestically produced article with that of the imported article. Solar cells of various types produced by different technologies vary in terms of efficiency, price, physical characteristics, like size and weight etc. These variations only lead to a trade off in price and efficiency. However, the final usage of the PUC produced by the Domestic industry and that which is imported remains the same i.e. to produce power through the photovoltaic effect.

(xv) M/s CCCME have not produced any evidence to demonstrate that the PUC using these technologies which are not produced by the DTA units do not compete with the article produced by these units.

(xvi) The collective production of the petitioners accounts for more than 50% of the total production of the PUC in India and as such, represent a major proportion of the total Indian production and therefore, constitute Domestic Industry of the like article in India.

(xvii) In the original investigation, the DG held that producers located in SEZs cannot be considered as domestic producers. The Director General should revisit their decision of not considering SEZ unit as part of domestic industry for the following reasons:

a. Section 53 mandates that SEZs shall be considered to be outside the customs territory of India for a limited purpose i.e. for the purposes of undertaking the authorized operations. Though an SEZ is deemed to be outside the customs territory of India to the extent provided under the SEZ Act, it is very much a part and parcel of the territory of India and subject to its laws and regulations.

b. It is observed that 'import' under the SEZ Act means receiving goods or services by an SEZ Unit from a place outside India whereas 'export' means supplying goods from the DTA to an SEZ Unit. DTA clearance by SEZ

units are not considered as 'import' into India or 'export' from an SEZ.

c. Though goods removed from an SEZ to the DTA are chargeable to customs duty as leviable on such goods when imported into India in view of Section 30, it is may be noted that the same is not considered as 'import' as held by the Hon'ble High Court of Allahabad in India Exports.

d. Clearances of goods from an SEZ to the DTA are also not considered to be 'exports'. Rather, DTA sales to SEZ units are considered to be 'exports' under the SEZ Act, 2005 for the purpose of making available benefits to the Special Economic Zone Unit/Developer just as in the case of actual exports such as duty drawback, DEPB benefits, etc. However, other liabilities that flow from actually exporting from DTA to a territory outside India such as levy of export duties are not attracted.

e. Except for specific exemptions and exclusions provided under SEZ Act, 2005, DTA sales by SEZs are subject to the same levies as that of goods produced in the DTA such as Central Sales Tax unlike in the case of imports. Therefore, units situated in SEZ cannot be considered to be situated outside India and continue to be part and parcel of India. Right to seek protection from the DG should also be made available to SEZ units as it is available to any other unit in India.

f. Sale of PUC from an SEZ to the DTA will not attract safeguard duty as is clear from a combined reading of Section 8B(2A) and Section 30 of the SEZ Act, 2005

g. Section 9A pertaining to the levy of anti-dumping duty, Section 9 with respect to countervailing duty and Section 8B pertaining to the levy of safeguard duty all state, in no uncertain terms, that the same are applicable on imports of an article into India

h. If an article is not imported into India, none of the aforesaid duties are payable. In this regard, though by a deeming provision, a legal fiction is created whereby SEZ's are considered to be outside the customs territory of India, there is no provision under any extant law in India which deems the clearance of goods manufactured in an SEZ to the DTA as an import.

i. That clearance of goods manufactured in an SEZ to the DTA does not amount to import into the territory of India has been reiterated in a catena of judgments including Essar Steel v. Union of India [2010 GLH (1) 52], India Exports v. State of U.P. & Ors [(2012) 47 VST 126], Tirupathi Udyog Limited rep. by its Manager-Administration Shri D.V. Saradhy v. Union of India (UOI) through the Secretary, Ministry of Finance and Ors. [2011 (272) ELT 209(A.P.)].

j. Without factum of import, there can be no levy of anti-dumping duty, countervailing duty or safeguard duty

k. The mention of levy of anti-dumping duty and countervailing duty during DTA clearance mentioned in Section 30 has to mean duty payable on the value of the inputs (in the event that the inputs imported from specified countries attract anti-dumping duty or countervailing duty or safeguard duty) used on the finished product and not on the finished product itself.

l. Same principle also applicable to safeguard duties levied against any like article that is also manufactured in an SEZ and cleared into the DTA. This is also evident from Section 8B(2A) of the Customs Tariff Act, 1975

m. Section 30 of SEZ Act read with Section 8B(2A) of CTA make it clear that safeguard duty is only payable on inputs used in finished products and not finished product manufactured in the SEZ and cleared into the DTA..

n. SEZ units cannot be barred from being considered as domestic producers of the like article or from being considered as part of the Domestic Industry. Under safeguard law, Clause (b) of sub-section (6) of Section 8B of the Customs Tariff Act, 1975 defines Domestic Industry

o. DA has considered SEZ unit manufacturing the PUC as part of the Domestic Industry of the like article in the previous Anti-Dumping Investigation on imports of Solar Cells, whether or not assembled partially or fully in Modules or Panels or on glass or some other suitable substrates, originating in or exported from Malaysia, China PR, Chinese Taipei and USA in the Final Findings dated 22.05.2014. Thus, as far as anti-dumping proceedings are concerned, SEZ units producing the PUC are considered to be Domestic Industry of the like article under both Rule 2(b) of the AD Rules 1995 and Section 9A of the Customs Tariff Act, 1975.

p. In both Safeguard law as well as Anti-Dumping law, the provisions do not stipulate that only producers of a like article situated in the DTA shall be considered as Domestic Industry or for that matter, like article produced in an SEZ and cleared into the DTA for domestic consumption is not to be considered as domestic production of the like article. Producers of a like article in a SEZ are required to be considered as part of the Domestic Industry considered as producers of a like article situated in a SEZ do not suffer from any limitation or impediment in selling it in the domestic market of India.

q. DTA clearances of goods by an SEZ are liable for payment of customs duty as leviable on them if imported. However, as noted in the Final Findings of the Designated Authority in the previous anti-dumping investigation, India's import tariff on the PUC which falls under Customs Tariff Item 85414011 of the Customs Tariff Act, 1975 is 'Free' and therefore, no customs duty is leviable on DTA clearances by SEZ units manufacturing the same. SEZ units also have an obligation to maintain positive Net Foreign Exchange ("NFE") which, in view of the

methodology for computation thereof as prescribed under Rule 53, imposes a further obligation on SEZ units to export the goods produced by them.

r. As such, there is a limitation on the quantum of sales that can be made by an SEZ unit in the DTA for consumption in the domestic market. However, in the facts of the present case, DTA clearances by SEZ units manufacturing the PUC are also counted towards fulfillment of positive NFE in view of Rule 53(A)(l) of the SEZ Rules, 2006. There is no compulsion on the producers of the PUC that are based in SEZs to export the goods for the purpose of maintaining positive NFE and neither is there any restriction or limitation to sell the same in the DTA since positive NFE can be achieved through DTA sales. Further, since the tariff heading is 'free', no customs duty is payable on the PUC cleared from the SEZ either. This also makes it abundantly clear that the SEZ units are selling the subject goods in the domestic market without any restrictions and competing in the domestic market of the PUC

s. In the Safeguard Investigation concerning Imports of Saturated Fatty Alcohol, the Authority had considered M/s VVF Limited, a 100% EOUs, to be Domestic Industry The Designated Authority has also regularly considered 100% EOUs to be eligible for inclusion into the scope of the Domestic Industry. For e.g., 100% EOUs have been considered to be part of the domestic industry in the antidumping investigations concerning (a) DPP Red 254 from China PR and Switzerland; (b) Vitamin-A Palmitate from China PR and Switzerland.

t. It is to be noted that similar to SEZs, 100% EOUs are also considered to be outside the DTA in as per Para 9.16 of the FTP 2015-20 (which is pari materia FTP 2009-14). Both 100% EOUs and SEZs are similarly situated as they are not considered to be in the DTA and their sales in the DTA are also contingent upon maintaining positive NFE. Therefore, tests that are applicable for gauging the eligibility of 100% EOUs for inclusion into the scope of Domestic Industry should also be applicable for testing the eligibility of SEZ units.

u. In the facts of the present case, it is seen that as the SEZ units can achieve positive NFE through domestic sales, there is no restriction on the quantity of sales and neither is there a compulsion to export. SEZ units having no restriction on the sale of like article in DTA are required to be considered as part of the Domestic Industry under section 8B(6)(b) of the Customs Tariff Act, 1975.

v. Therefore, DG shall consider the SEZ unit of M/s Mundra Solar PV Limited as part of the Domestic Industry manufacturing the PUC in India and consider its data for the purposes of the present investigation.

w. In the safeguard final findings concerning unwrought aluminum and electrical insulators, SEZ units were not considered to be part of the Domestic Industry for the reason that SEZ units were set up in SEZs for the purpose of export, that clearances by the SEZ unit in question was subject to customs duty and that supplying goods from the DTA to an SEZ Unit was considered as an export. This reasoning is incorrect and based on an erroneous understanding of the relevant legal provisions. These decisions are also per incuriam as they did not consider the binding decisions of Allahabad, Gujarat and Andhra Pradesh High Courts.

(xviii) Assuming that SEZ units cannot be included within the scope of the Domestic Industry and that the scope of the Domestic Industry restricted to only DTA units following decision made in the original investigation, the two applicant DTA units i.e. Jupiter International Ltd ("JIL") and Jupiter Solar Power Ltd ("JSPL") account for a major proportion of the domestic production (after excluding SEZ units).

(xix) There is no embargo in domestic producers who had not participated in the original investigation from participating in the sunset review as Domestic Industry. As per the statutory definition under Section 8B(6)(b), the "domestic industry" means the producers as a whole of the like article or a directly competitive article in India or whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India. There is no restriction that only those domestic producers who had petitioned for imposition of measures during the original investigation have to be taken as domestic industry in a sunset review also.

(xx) Interested parties are also unable to demonstrate that the rationale put forth by the Petitioners for including SEZs within the scope of Domestic Industry is incorrect and they have only relied upon previous Final Findings which have been distinguished and demonstrated by the Petitioners to be per incuriam i.e. in ignorance of settled law and statute. The reliance placed upon the DGTR manual of operating procedures cannot be of any assistance to the opposing interested parties as the same cannot overrule the binding precedents on this issue laid down by the Hon'ble High Courts.

(xxi) Section 8B only states that the collective output of the like or directly competitive article of the domestic producers who participate in the investigation should constitute a major share of the total production of the said article to be considered as Domestic Industry. Even if MSPVL is not considered within the ambit of Domestic Industry, the combined production of JIL and JSPL in production of the like article in the DTA constitutes a major proportion.

(xxii) Installed capacity of the subject goods is irrelevant for the purpose of determining standing of the Domestic Industry and the only relevant criterion is actual production.

(xxiii) Solar modules produced from imported solar cells cannot be considered for the purpose of domestic production of the like article in India. Even solar modules produced from domestically produced solar cells cannot be taken into consideration for the purpose of calculating total domestic production of the subject goods as this would result in double counting of the total production of the like article. This is because domestically produced solar cells will first be accounted for at the time of production by the Solar Cell manufacturers and thereafter, again be counted at the time of arrangement into modules by the domestic module manufacturers. This would lead to counting the same solar cell twice for calculating total output of the PUC in India and is therefore, impermissible.

(xxiv) Information regarding standalone capacity, production, sales of Jupiter International Ltd. during the POI, date of commencement of its production, exact nature of relationship between Jupiter Solar Power Ltd. and Jupiter International Ltd. and sales and/or purchase transactions of subject goods between these two entities have been provided to the Ld. DG Safeguards has been provided in the Petition and the Confidential version of the Domestic Producers Questionnaire Response filed by Jupiter Solar Power Ltd. and Jupiter International Ltd.

(xxv) Para 17.12 in the Manual of Operating Practices for Trade Remedy Investigations of the DGTR states that as long as the applicants in the SSR account for a major portion of the total domestic production, the applicants need not be the same as that in the original investigation.

(xxvi) Section 8B does not provide that the domestic producers seeking protection by way of safeguard measures should constitute a minimum percentage before they can be considered as a major share. Rather, the statute stipulates that they should account for a major share of the total production of the said article in India.

(xxvii) Issue regarding what constitutes "a major share" came up before the Dispute Settlement Body of the WTO constituted under the Dispute Settlement Understanding in the case of China - Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States w herein it was held that applicants should constitute sufficiently important, serious and significant share of the domestic production for being considered as Domestic Industry.

(xxviii) The abovesaid observations of the WTO Panel provide decisive guidance in view of the law laid down by the Hon'ble Supreme Court in the case of Commissioner of Customs, Bangalore v. G.M.Exports [(2016) 1 SCC 91] wherein it laid down the guidelines for construing and ascertaining the meaning of legislations which have been enacted pursuant to India's international obligations as a result of being a signatory to a multilateral agreement in the nature of the Agreement on Safeguards

(xxix) Language used in Section 8B(6) of the Customs Tariff Act, 1975, which is the definition clause of Domestic Industry in the Indian legislation incorporating

India's obligations under the WTO, also refers to 'a' major share rather than 'the' major share which clearly establishes the intent of the legislature to not restrict the domestic producers to a minimum of 50% of the total domestic production before they are eligible to be considered as Domestic Industry

(xxx) The facts recorded in the impugned Final Findings with respect to the share in the domestic production of the Petitioners in the DTA considered for the purposes of the present investigation reveals that they accounted for no less than 30-35% of the total domestic production during the period of investigation considered in the present review and as much as 55-60% during the most recent period.

(xxxi) Present Petitioners based in the DTA have been in existence for a sufficiently long period and have seen the ravages of increased importation which has caused serious injury and forced them to resort to emergency measures. Therefore, Applicants, whether including or excluding SEZ units, are liable to be considered as Domestic Industry of the like and directly competitive article in India as the percentage of production accounted for by them is sufficiently large to qualify as an important, serious or significant proportion of total production.

(xxxii) JIL does not merely perform incremental job work but has produced the directly competitive article during the period of investigation. It has also produced the directly competitive article through JSPL on a job work basis. Therefore, the activities of JIL do not constitute merely incremental work.

(xxxiii) Increase in imports is not a requirement in a sunset review. The fact that Rules 5, 6, 7 and 11 apply mutatis mutandis in a review has to be seen in the context of the purpose of review which is stated in both Section 8B(4) of the Customs Tariff Act, 1975 and Rule 18 of the Safeguard Rules. **As per Article 7.2 of the Agreement on Safeguards,** only the procedure for conducting review set out in Articles 2, 3, 4 and 5 will apply. Besides the procedural aspects in these provisions, the requirement of an increase in imports for the initial levy do not apply. Hon'ble Madras High Court has held in the case of *Saint Gobain India Private Limited v. Union of India, Ministry of Finance and Ors* that the agreement to which India is a signatory and in pursuance of which the relevant legislation in this regard has been introduced into the municipal law as well as the purpose of the legislation must be the guiding force while interpreting the Indian law

(xxxiv) The measure in question came into force with effect from 30 July 2018. In order to assess the situation of the domestic industry post imposition, one has to compare it with the situation that prevailed pre-imposition. Only for the purposes of enabling comparison between pre and post imposition of measure, data for 2016-17 and 2017-18 have been presented.

(xxxv) Domestic Industry has also procured DGCI&S data for the months of Oct 2019 to Feb 2020 and a non-confidential summary has been provided in the written submissions filed by the domestic industry pursuant to the oral hearing held on 3 July 2020 and the interested parties have got an opportunity of presenting

rejoinders thereon.

(xxxvi) The duties were put in place w.e.f. 30 July 2018. As a consequence of imposition of duties, import volume came down to 8,010 MW during 2018-19. But this decline in imports was very short- lived as imports have demonstrated an increasing trend again.

(xxxvii) Assuming for that an increase in imports is necessary, from an examination of the three corresponding quarters for 2018-19 and 2019-20, it can be seen that imports have shot up in the 2019-20.Despite imposition of safeguard duty, import volumes of the subject goods have not gone back to earlier levels and are still coming into India at increased levels.

(xxxviii) It is pertinent to note that while the volume of imports have gone up except the slight dip in volumes experienced pursuant to the levy of safeguard duty in 2018-19, imports prices of the PUC have been on a consistent decline. Despite the imposition of safeguard duty, import volumes of the subject goods have not gone back to earlier levels and are still coming into India at increased levels.

(xxxix) In response to the imposition of safeguard duties, import prices have gone down further which has reduced the intended effect of the safeguard duty. This is palpable from the fact that the volume of imports have gone up with the sharp drop in import prices in 2019-20 coupled with the fact that the safeguard duty was reduced to 20% w.e.f 01.08.2019 and 15% w.e.f 02.01.2020. Import prices have reduced progressively on a month-by-month basis. Between April 2018 and February 2020, import prices of cell declined by 50% and module by 30%.

(xl) Though import volumes from China PR reduced post imposition of safeguard duty, they continued to be the largest exporter of PUC to India.

(xli) After EU withdrew the antidumping and countervailing duties on solar cells and modules against China with effect from 3rd September 2018, exports from China to EU has increased from 5.36% in 2017 to 25.7% in 2019 (1H) and India's share in China PR exports have declined proportionately from 29.6% to 7.3% which coincides with the imposition of SGD by India. This fact clearly demonstrates that the removal of duties by the EU has resulted in an increase of exports to it from China whereas imposition of duties by India has resulted in reduction of exports to it from China PR. If safeguard duty is removed on imports from China, China will start re-exporting the goods in increased quantities to India. Therefore, the contention of interested parties that there is no requirement for China to increase its exports to India is counter intuitive.

(xlii) Exports of the PUC from China to Thailand and Vietnam have increased after imposition of the safeguard duty by India which is currently in force. Thereafter, a corresponding increase has been witnessed in imports of the PUC from Thailand and Vietnam into India.

(xliii) Imports from Thailand and Vietnam now account for approximately 12.46% and

11.7% respectively amongst total imports of the PUC into India in the most recent period i.e. 2019-20 (April - September) whereas they accounted for only 0.26% and 0.70% prior to imposition of safeguard duty in 2017-18 despite total imports being higher. Levy of safeguard duty shall be extended to both Thailand and Vietnam since they have increased beyond the threshold requirement of 3% for developing countries.

(xliv) Article 9.1 of the Agreement on Safeguards provides that safeguard measures shall not be applied against a product originating in a developing country Member 'as long as' its share of imports of the product concerned in the importing Member does not exceed 3%. The use of the phrase 'as long as' establishes embargo on application of safeguard measure shall be in force till such time the import volumes remain within the de minimis level of 3%. Once the de minimis level is crossed, there is no restriction for applying a safeguard measure.

(xlv) Vide Final Findings in review dated 11th December, 2001 of safeguard measures on Phenol, Malaysia, South Africa and Singapore were included within the scope of the measure pursuant to the review though these countries were not included at the time of the original measure. Similarly, vide Final Findings dated 4th February, 2002 in review of safeguard duty on imports of Acetone, South Africa and Singapore were included within the scope of the safeguard duty pursuant to the review though they had not been included within the scope of the measure at the time of the original levy.

(xlvi) In a review of safeguard measures conducted by EU on Steel product, developing countries which were excluded from the purview of the original levy were included within its ambit pursuant to the review of the measure. A second review investigation was also conducted by EU and developing countries which were excluded pursuant to the first review were included within its ambit. Therefore, other WTO members have also extended safeguard measures to developing countries pursuant to a review when these countries have exceeded the de minimis threshold in the most recent period of the review.

(xlvii) The determination of whether the share of Indonesia in total imports of the PUC may be determined as per DGCI&S data for the most recent period which data is available and if the same is de minimis, then it is liable to be excluded.

(xlviii) M/s Canadian Solar Thailand has compared the total quantity as given in DGCI&S data which is an aggregate of different units of measurement. The aggregate total of all such units cannot give any meaningful indicator of the volume of imports. The different units of measurement must be converted into one single unit for the purposes of analysis. The most appropriate unit for the product concerned is wattage, which has been used by the authority in the original investigation also. upon conversion to wattage, imports from Thailand accounts for 12.46% during the most recent period.

(xlix) Very purpose of review is to evaluate whether the safeguard duty is required to

prevent or remedy serious injury to the Domestic Industry. Therefore, if quantum of imports have increased from other developing countries which were not included within scope of measure pursuant to original investigation, serious injury to Domestic Industry cannot be prevented or remedied if these developing countries which have exceeded the 3% threshold are not included within the scope of the measure that is to be continued.

(l) Confidentiality has been claimed with respect to data such as economic parameters i.e. production, sales, market share as well as adjustment plan which is business sensitive and confidential in conformity with Rule 7. Adequate non-confidential summary has been provided in lieu thereof to facilitate a reasonable understanding of information. Only where the information was not amenable for summarization has full confidentiality been claimed. The domestic industry has conformed with the requirements of Trade Notice SG/TN/1/97 dated 6th September 1997 and provided indexed figures regarding the relevant economic parameters. Petitioners have also provided complete information regarding its economic parameters in the confidential version as per the prescribed format provided in Trade Notice SG/TN/1/97 dated 6th September 1997.

(li) Though Trade Notice No.10 of 2018 is not applicable to safeguard proceedings, the petitioners have conformed with the requirements for making claims of confidentiality provided therein.

(lii) JIL and JSPL are related entities as JSPL is a subsidiary company of JIL. Therefore, it can be said that there are two group of companies who have filed the present application namely, Jupiter and MSPVL. Therefore, if actual information is disclosed in line with the trade notice assuming that there are more than two domestic producers, then it will result in disclosure of confidential information to the other applicant group company. As a result, the very purpose of the confidentiality is defeated. The combined data for JIL and JSPL has been shared in the petition of the Domestic Industry in the portion where the performance of the Domestic Industry in the DTA has been provided.

(liii) Petitioners have submitted all indexed figures relating to injury parameters in Section 5 of the application.

(liv) Furthermore, combined installed capacity of JSPL and JIL has been provided without their individual installed capacities for the reason that JSPL has produced the PUC for JIL during the most recent period on job work basis and therefore, their combined capacity becomes relevant rather than their individual capacities.

(lv) There is no embargo on interested parties to procure DGCI&S data on their own and make submissions on such data. The data was received only two days prior to the oral hearing and was sorted a day before the hearing so there was not adequate time to share the non-confidential summary. Summary of DGCI&S data has been shared by the Domestic Industry in the written submissions. The Domestic Industry is barred from sharing the raw and unsorted DGCI&S data in

the public file as the same is confidential as per trade notice no.10 of 2018. Therefore, the interested parties have to procure the unsorted and raw DGCI&S data on their own, the procedure for which is laid down in the aforesaid trade notice.

(lvi) In the present investigation, there are 3 applicants only with one in the SEZ which was excluded in the previous investigation. Therefore, as the possibility existed that the SEZ unit shall be excluded, the data has been provided for both SEZ and DTA units combined as well as for the DTA units and SEZ units separately.

(lvii) Since JSPL has produced only on job work basis, the actual production and other related data cannot be revealed as the actual data of JSPL and JIL can be ascertained on that basis. This data has not been revealed as the same is business sensitive information and prejudicial to the interests of the petitioners if revealed. A non-confidential summary has been provided by the Domestic Industry in conformity with Rule 7(2) in the form of a trend analysis of the Domestic Industry's performance parameters from the year 2016-17 onwards to facilitate a reasonable understanding of its performance before and after the investigation.

(lviii) Neither Section 8B of the Customs Tariff Act, 1975, nor the Rules made thereunder impose an obligation on the Ld. DG Safeguards to analyze whether increased imports were a result of unforeseen developments in a review investigation. Since unforeseen developments and the effect of obligations were already determined as causes which led to the increase in imports which consequently warranted the imposition of safeguard measures, it is not required that the same unforeseen developments and the effect of obligations which led to the increase in imports be re-examined in a review, nor is it likely or even possible for unforeseen development and the effect of obligations (which are not the same as those which were gauged during the original measure) to have led to an increase in imports in the intervening period after the imposition of the measure but prior to its review. During the original investigation, the Director General determined that increase in imports was directly responsible for the serious injury caused to the Domestic Industry of the like and directly competitive article in India.

(lix) If the Domestic Industry has taken measures to adjust to import competition, the yardstick for gauging whether the safeguard duty should be continued or not should depend on an assessment of whether the economic situation of the Domestic Industry has improved to the extent that there is no threat of serious injury recurring to it despite continuing to face import competition.

(lx) Of paramount importance is whether the PUC is still being imported in significant volumes, whether such significant volumes are undercutting the prices of the Domestic Industry sans the safeguard levy, whether the installed capacity with the Domestic Industry has not been fully utilized despite adequate demand in the market due to continued significant importation of the PUC, whether the Domestic Industry is able to sell the product in the market or whether its inability

due to the influx of imports has led to an increase in inventories.

(lxi) Only in the context of comparing the situation of the domestic industry post-imposition of measures with reference to a period prior to the imposition, data for the pre-imposition is being considered.

(lxii) There is no requirement to provide a revised narrative of the Petition as there is no such prescription in law and secondly, the descriptive narrative provided for DTA units in the petitioners' applicant also provide the combined details of the units of the Domestic Industry based in the DTA.

(lxiii) Share of the domestic industry in domestic production as a range has been provided by the Domestic Industry to all interested parties

(lxiv) While the demand increased by 35% from 2016-17 to 2019-20 (A), imports maintained their dominant market share. The domestic industry also gained market share in the same period marginally by ***% which evidences that it is adjusting to the market in a positive direction. However, market share of other Indian producers has halved which evidences the fact that the Domestic Industry as a whole is still suffering from serious injury. Actual increase in market share of the Domestic Industry is only ***% which is negligible. The overall market share of all domestic producers in India has dropped from ***% in 2016-17 to ***% in April 19 – Sep 19.

(lxv) The production and sales of the Domestic Industry has increased as a result of the protection of safeguard duties and due to implementation of its adjustment plan. However, the overall position of domestic producers is fragile as the sales of other domestic producers located in the DTA have dropped sharply.

(lxvi) The improvement in capacity utilisation is a direct result of imposition of measures and due to the Domestic Industry being able to bring its cost of sales down through implementation of its adjustment plan. However, considering that protection of safeguard duty has been in force for the past two years and the massive demand of the PUC in India, the installed capacity of the Domestic Industry has remained underutilized due to competition from imports which are lowering in prices. The Domestic Industry has not been able to sell its entire production which has led to an increase in inventories. Without the protection of SGD, import prices would undercut the prices of the Domestic Industry and circumscribe its ability to sell its product. This would lead to increased inventories and idling of production facilities and gains made towards this end would be lost.

(lxvii) The productivity per employee has improved substantially which indicates that the Domestic Industry has improved its efficiency as per its adjustment plan

(lxviii) Profitability of the Domestic industry turned severely negative in 2018-19. However, with increased production and sales coupled with significant reduction in cost of sales, the Domestic Industry has been able to reduce its losses

from 2018-19. However, profitability of the Domestic Industry remains negative and its situation remains fragile.

(lxix) With respect to the contention by interested parties that profitability differs in 2017-18 shown in the current petition from that in the original investigation, the original investigation consisted of five applicants viz. (i) M/s Mundra Solar PV Limited, (ii) M/s Indosolar Limited, (iii) M/s Jupiter Solar Power Limited, (iv) M/s Websol Energy Systems Limited, and (v) M/s Helios Photo Voltaic Limited whereas in the present investigation, it consists of only (i) M/s Mundra Solar PV Limited, (ii) M/s Jupiter International Limited, and (iii) M/s Jupiter Solar Power Limited. Therefore, it is but obvious that the performance parameters including that of profitability would not be identical. Furthermore, the factum of profits during 2017-18 for the present applicant compared to those of the original investigation which showed negative profitability is not relevant as the impact on profitability as a result of serious injury caused by increased imports displays the same trend for both sets of applicants While profitability of the applicants in the original investigation decreased sharply from -22 in 2016-17 to -107 in 2017-18, that of the present applicants also witnessed a plunge from 100 to 22 though still barely profitable. Therefore, the data provided by the Domestic Industry is reliable as the incidence of the adverse impact of increased imports correlate for both sets of applicants.

(lxx) Though inventory levels improved in 2018-19, the inventory levels have again witnessed a considerable jump in the most recent period despite the presence of adequate demand.

(lxxi) Increase in imports at extremely cheap prices during April 19-Sept 19, especially from Vietnam and Thailand have circumscribed the ability of the Domestic Industry to sell its product in the domestic market which has led to the piling up of inventories.

(lxxii) Without the inclusion of safeguard duty, the prices of imports continue to undercut the selling price of the Domestic Industry. Without safeguard duty, serious injury to Domestic Industry would occur to a much greater degree and improvement in position of Domestic Industry in relation to production, sales, productivity and profitability would be wiped out as users would increasingly switch back to cheaper imports.

(lxxiii) In sunset reviews, prices of imports shall be examined sans safeguard duty to gauge whether serious injury is likely to recur due to price undercutting if safeguard duty is discontinued.

(lxxiv) Safeguard duty is not applicable to imports from Thailand and Vietnam which account for approximately 24% of all imports into India during April 2019-Sept 2019. Furthermore, landed value of imports from Thailand and Vietnam are very low. With a substantial portion of the PUC being imported into India without the levy of safeguard duty, imports continue to suppress and depress the prices of the

Domestic Industry which has to align its selling prices accordingly.

(lxxv) As a consequence of price undercutting, the prices of the Domestic Industry were suppressed and depressed which led to downward revision of prices by the Domestic Industry.

(lxxvi) Thereby, though the margin of price undercutting reduced as a result of the price depressing effects, the losses of the Domestic Industry mounted as it had to sell the PUC at unremunerative prices.

(lxxvii) Applicants have latest state of the art production facilities and are capable of producing solar cells of latest technologies. In many cases, efficiency of domestically produced solar cells are significantly higher than imported solar cells.

(lxxviii) Efficiency is not cause of injury. There is a market for domestically produced solar cells and domestic producers are able to sell their production. However, domestic producers have to compete with imported goods in terms of price. Since imports continue to enter Indian market at very low prices, domestic producers are seriously injured.

(lxxix) Imported goods continue to undercut prices of the domestic industry during Apr-Sep 2019. Low percentage of price undercutting is only because domestic industry has to compete with imports by reducing its prices. Domestic producers are forced to match import prices. Otherwise, they will not get orders.

(lxxx) Price underselling would be a more appropriate parameter of the extent of injury caused by imports. import prices have consistently declined and are preventing the domestic industry from realising remunerative prices for the domestic like articles.

(lxxxi) There are no other known causes for continued serious injury post imposition of safeguard measures.

(lxxxii) As per the statutory prescription under Section 8B(4), it is not necessary for the Domestic Industry to continue to suffer from serious injury and it is sufficient for the Domestic Industry to show that it has taken measures to adjust to the serious injury suffered by it and upon demonstrating that such serious injury will recur.

(lxxxiii) 2016-17 and 17-18 have been included for the reason that the performance of the Domestic Industry before and after the imposition of anti-dumping duty can be analyzed in order to facilitate an understanding of their condition before and after the imposition of SGD

(lxxxiv) The interested parties cannot be allowed to approbate and reprobate at the same time i.e. first contend that the Domestic Industry is not adjusting positively to serious injury and in the same breath, also contend that the Domestic Industry is no longer suffering from serious injury as their economic condition has improved

from that during the original investigation. Eleven domestic producers including Indosolar becoming non-operational without any other reason attributable to their closure is clear evidence of the fact that the presence of low priced imports have continued to cause serious injury to the Domestic Industry. Therefore, it is submitted that the contradictory submissions of the interested parties opposing the levy clearly establish that both serious injury due to imports still exists and that the Domestic Industry has adjusted positively to import competition as it has been able to reduce the extent of serious injury that was being suffered by it during the original investigation to a considerable degree.

(lxxxv) The fact that production facilities of the Domestic Industry are yet to be fully utilized despite the demand supply gap establishes the fact that imports are preventing the Domestic Industry from selling the directly competitive article in the domestic market by undercutting their prices.

(lxxxvi) No evidence has been provided to substantiate the claim that the PUC produced by the Domestic Industry is inferior or for that matter, that lenders have refused to finance projects which propose to use the domestically produced PUC for the reason that domestically produced cells are of inferior quality

(lxxxvii) The applicants acknowledge improvements in some performance parameters post imposition but, the position of the domestic industry continues to be in a precarious and fragile condition financially. Though production, sales, capacity utilisation and market share have increased, the profitability of the Domestic Industry continues to be negative due to continued price pressure from substantial quantities of imports coming into India without the levy of safeguard duty, etc

(lxxxviii) Lack of vertical integration, increase in installed capacity and leveraging economies of scale which have been cited as factors causing injury to the Domestic Industry all form part of its adjustment plan and details of the same have also been provided in the Domestic Producers Questionnaire Response filed by the applicants.

(lxxxix) Insofar as allegation regarding low utilization of capacity due to seasonal nature of tenders is concerned, the Domestic Industry has provided its data from 2016-17 to 2019-20 which shows that even over an extended duration of time, the Domestic Industry's capacity remains underutilized despite an exponential increase in demand. Therefore, any injury attributed to tenders being seasonal are controverted by the extended duration over which the performance of the Domestic Industry has been gauged.

(xc) The various other factors causing injury to the DI that have been cited by M/s Shapoorji Pallonji are not backed by any factual data or evidence and are merely in the realm of surmises and conjecture. Neither the citation, nor the source has been provided to verify the basis of such claims.

(xci) The domestic producers need more time to adjust to the market situation. These circumstances necessitate the continued imposition of the duties to enable the domestic industry to gain stability and establish itself in the market.

(xcii) The Domestic Industry requires the protection of SGD in order to alleviate the pressure of low import prices and thereby achieve profitability to be able to implement their adjustment plan.

(xciii) Imports cater to more than 90% of the demand and have adversely impacted the investments made by the domestic industry.

(xciv) Article 5.1 does not impose an obligation to consider adjustment plans in the context of imposition of safeguard duty as observed in the report of the WTO Panel in Korea — Dairy. The purpose of levy of safeguard measures is to provide the Domestic Industry with adequate time to adjust to import competition and does not oblige the Domestic Industry to provide an adjustment plan in order to be eligible for protection of the levy.

(xcv) Rather, the question of adjustment becomes relevant with respect to progressive liberalization of duty which has to be determined by the investigating authority based on an examination of the time required by the Domestic Industry to adjust to import competition.

(xcvi) Since the very condition for levy of safeguard duty is to prevent or remedy serious injury to the Domestic Industry, evidence of the industry adjusting positively to import competition entails both an improvement in the condition of the Domestic industry as well as an examination of whether the intended effect of the adjustment plan proposed during the original investigation has been achieved to a reasonable extent. In this regard, intended effect of the adjustment plan proposed by the Petitioners during the original investigation was reduction in cost of sales to better compete with low priced imports.

(xcvii) Petitioners planned to reduce their cost to become cost-competitive with exporters from outside India by taking up a number of steps which included (i) Renegotiation with existing suppliers of raw materials with view to reduce cost of raw material by entering into long term bulk contracts as may be required. (ii) Projects for backward integration by establishing plants for manufacture of wafers and ingots from basic raw material and help realise economics of scale. (iii) Taking up projects for forward integration by establishing facilities for manufacturing modules by those who only have facilities for making cells. (iv) Taking up projects, wherever feasible, for technically superior products using PERC technology or Bi-facial technology. (v) Reduction of cost of conversion primarily by ramping up utilisation of capacity, depending upon the quantum of safeguard duty imposed which would prompt the requisite changes in the market. (vi) Reduction of financing cost as the cost of borrowing was substantial at the relevant point of time and had a significant impact on the return on capital employed.

(xcviii) Within one and half years, the domestic producers have achieved a cost reduction of *** - *** cents/watt. The domestic industry achieved a weighted average cost reduction of *** cents/watt. These have been demonstrated in detail in the respective domestic producers questionnaire responses of the applicants.

(xcix) It must be considered as evidence of the Domestic Industry adjusting. However, due to the continuing fall in prices of imports, the present review has been necessitated as the Domestic Industry has to achieve even more cost saving to be competitive again and to this end, a revised adjustment plan has been provided. Insofar as the constituents of the Domestic Industry having changed are concerned, it is submitted that the relevant criterion is whether the Domestic Industry of the like and directly competitive article is adjusting. Even if producers who had not participated during the original investigation partake in the review, it is sufficient to demonstrate that these domestic producers which are new are also adjusting positively as a result of the protection afforded by the safeguard duty.

(c) The details of the adjustment plan are confidential in nature as it is business sensitive information and an adequate non-confidential summary thereof that allows for an adequate understanding of steps sought to be undertaken have been disclosed in Annexure 4 of the NCV domestic producers questionnaire response of the applicants.

(ci) Claim of M/s Canadian Solar Thailand that petitioner companies have not claimed that they have made concrete efforts to meet the six step adjustment process is factually incorrect and contrary to the material on record inasmuch as each of the applicants have provided their revised adjustment plan alongwith the reduction achieved till September 2019 pursuant to the original investigation at Annexure 4 of their respective Domestic Producers Questionnaire Response.

(cii) While domestic industry is positively adjusting itself to meet import competition, import prices have continued to decline steeply which is continuing to cause serious injury to the domestic industry. Therefore, the domestic industry needs more time to pull itself together to overcome its fragile financial situation caused by increasing imports.

(ciii) A revised adjustment plan has been prepared and provided to the Director General by each petitioner company taking into account their own peculiar facts and cost structure.

(civ) The adjustment plan is in line with the earlier one tendered during the original investigation but the cost reductions and other measures sought to be achieved have been revised in view of the further fall in import prices.

(cv) Interested parties have failed to appreciate that safeguard duty was sought for a period of four years during the original investigation and had submitted the adjustment plan according to the said time line. Therefore, the fact that the revised

adjustment plan is more or less in line with the earlier adjustment plan is only logical and should come as no surprise to these interested parties.

(cvi) The present adjustment plan has clearly achieved substantial cost reductions whereas certain steps such as R&D to develop and adopt new technologies are yet to be achieved as the Domestic Industry is still suffering from losses due to a resurgence in imports at prices which have lowered further. Further steps towards an adjustment plain which has already been successful to a large extent in order to achieve additional cost savings is a viable plan.

(cvii) With respect to the contention that the reduction in cost of sales is due to decline in prices of silicon wafers, the decrease in cost of sales was a result of lower cost savings achieved through the adjustment plan. Otherwise, the Domestic Industry would not have been able to reduce the gulf between imports prices and NSR of Domestic which existed before the imposition of SGD pursuant to the original investigation if the only determining factor for prices internationally was raw material price. In case raw material was the only determining factor for price, the difference between imports and the NSR would have remained the same pre and post levy of SGD.

(cviii) Insolvency of Indosolar can be attributed to the fact that though the preliminary findings dated 05.01.2018 of the Director General in the original Final Findings recommended 70% provisional safeguard duty on a finding that critical circumstances exist for the levy thereof, due to a stay obtained from the Hon'ble Madras High Court in a frivolous litigation initiated by a solar power developer viz. M/s Shapoorji Pallonji resulted in a stay upon imposition of provisional duty till 16.04.2018. Thereafter, despite the recommendation to impose final SGD and the consequential notification levying the same, the levy could not be given effect to due to the stay dated obtained by M/s ACME Solar Holdings in WP 12817 of 2018 which led to issuance of Instruction No.12/2018 whereby it was decided not to insist on payment of safeguard duty at the time of clearance of the PUC till further orders of the Hon'ble Orissa High Court. Stay was finally vacated by the Hon'ble Supreme Court vide order dated 10.09.2018 in SLP (c) 24009-10 of 2018. Due to the prolonged delay in imposition of SGD despite the Director General already having determined under Rule 9 of the Safeguard Rules that critical circumstances existed where delay in the imposition of provisional duty would lead to damage which would be difficult to repair as far back as 05.01.2018, the SGD could not be levied due to frivolous litigation by members of the SPDA. Consequently, as no provisional safeguard duty could be imposed due to the stay on the preliminary findings, the inevitable outcome of the delay in the imposition of SGD was that M/s Indosolar continued to suffer from serious injury during the pendency of the original investigation and thereafter also which pushed it beyond the brink of being able to salvage its operations and implement its adjustment plan. Furthermore, serious injury suffered by other domestic producers before imposition of safeguard duty ultimately proved to be grievous and therefore, this only reinforces the fact that continuation of safeguard duty is

required. Therefore, this fact clearly establishes that discontinuation of SGD measures, which have demonstrated their efficacy by an improvement of all economic parameters of the Domestic Industry, would damage the Domestic Industry again which would be difficult to recover from.

(cix) Since India aims to generate 100 GW of solar power generation by 2022 for achieving India's commitments under the Paris Agreement which calls for reduction by 33-35% of CO2 emissions by the year 2022, the domestic industry have made significant investments in expanding installed capacity. However, the prevailing imports prices would result in the imported PUC capturing the entire domestic market and destroy the domestic industry in the process.

(cx) The continuation of safeguard duties will provide an incentive for continuous investment, capex expansion and reduction in cost by achieving the economies of scale.

(cxi) Continued imposition of safeguard duty is also in the larger public interest and non-levy of safeguard duty would be against the public interest of India because local manufacturing will cease to exist and Rs. 11,000 Crores investment will become insolvent and result in mass unemployment. Effect of continued imports on Domestic Industry is palpable from the closure of a number of domestic producers. Already existing skewed import dependence of Government of India will continue to inflate exponentially as India was China's top export destination to the extent of US$ 4.1 billion in FY 2017-18 and imports from China declined to some extent only after the imposition of Safeguard Duty.

(cxii) Considering that domestic cell manufacturers are facing an imminent threat to their existence, not continuing of safeguard duty shall result in complete erosion of the domestic cell manufacturing base and solar module manufacturers will become entirely dependent on imported solar cells for manufacturing modules. The fall in landed prices of solar cells arranged in modules has been much higher than that of only solar cells. Upon total winding up of domestic cell manufacturing operations in India, module manufacturers will be at the complete mercy of exporters who would then be in a position to dictate prices and can simply increase the prices of solar cells making module manufacturers uncompetitive as well. This will have a cascading effect on other upstream and downstream industries involved in the manufacture of equipment for solar modules such as EVA Sheets and solar glass and destroy India's solar equipment manufacturing capabilities entirely.

(cxiii) Not protecting the Domestic Industry when it has been adjusting positively under the protective umbrella of safeguard duty would be against the Hon'ble Prime Minister's make in India campaign.

(cxiv) Though detailed guidelines have been issued in this regard by the MNRE vide office memorandum dated 22.07.2019, the projects envisaged thereunder are yet to take off and any tangible benefits released as a consequence thereof.As the

domestic producers have not yet benefitted from the KUSUM program, the protection of safeguard duty is required. Furthermore, Domestic Producers also intend to supply to entire domestic market. The imposition of safeguard measures will ensure that the Domestic Industry can supply to the entire domestic market at large, become competitive and not solely dependent on KUSUM program for its survival.

(cxv) As India has made commitments under ITA-1, it is prevented from increased the BCD. As long as effective rate remains zero, fact that BCD has been increased to 20% is of no consequence. There is no embargo on both SGD and BCD being levied simultaneously.

(cxvi) SGD is only a tariff measure and therefore, there is no embargo on meeting the demand supply deficit through imports. That imports of the PUC have not abated despite the levy of SGD which clearly evinces that demand supply gap is being met through imports. SGD only increases prices and does not prohibit importation unlike quantitative measures.

(cxvii) Public interest does not cover only the immediate interests of users and consumers of the product in question. The long term public interest would be served only when Indian power sector is capable of meeting its capital equipment requirements from within and not dependent on imports.

(cxviii) The purpose of SGD is to protect and remedy serious injury suffered by the Domestic Industry due to increased import competition. Whether a measure is in public interest has to be determined by considering the intent and purpose of the legislation under which the said determination is being made. If the SGD is capable of achieving the aforesaid objective, the levy must be considered as being in public interest.

(cxix) With respect to the contention that technologically advanced solar cells such as PERC and Bi facial are only produced by MSPVL which is excluded, M/s MSPVL is liable to be considered as Domestic Industry. Variations of PUC produced by it are very much a result of technological capabilities of Domestic Industry. If only DTA units are considered, since JSPL and JIL were older units than MSPVL which started its production in 2017, further research and development and investing in capex for installing production facilities with newer technologies require a venture to be profitable. In the wake of increased import competition, the profitability of JIL and JSPL was severely impacted which prevented them from taking steps in this regarded. Despite imposition of SGD and improvement in financial position, the Domestic Industry is yet to become profitable again and therefore, it has not been able to invest in R&D and acquire new technologies. However, Domestic Industry has taken concrete steps towards realizing its adjustment plan which has resulted in a large part of it being implemented. Once the Domestic Industry is able to become profitable again with the help of SGD, it will be able to invest further in this front. Therefore, protection of SGD is required to be extended as imports continue to undercut the prices of

the Domestic Industry and continue to put immense pressure on the ability of the Domestic Industry to sell its production for a reasonable price.

(cxx) Reliance upon Methyl Acetoacetate is misplaced as SGD was not found to be in public interest in said case as Domestic Industry had utilized its production facilities for manufacturing products other than PUC and claimed loss of market share as a result of import competition. Furthermore, it was found not to be in public interest as no documentary evidence had provided regarding impact on the downstream industry. price undercutting was also negative which would render imported goods much costlier than domestically produced PUC and create unfair market condition. Finally, no serious injury and threat or even a threat thereof was found to the Domestic industry. In present case, serious injury had already been determined pursuant to original investigation. However, CCCME has failed to appreciate that in the present case, the Domestic Industry has provided evidence that the Central Government has taken steps to balance the interests of affected power developers with the Ministry of New and Renewable Energy having notified a pass-through facility vide Notification F. No. 283/3/2018-GRID SOLAR dated 02.04.2018 which provides a clarification on "change in law" clause of the agreements. Thereafter, the Ministry of Power has also issued directions to the CERC on 27.08.2018 for allowing pass through of safeguard duty paid on imported solar cells and modules. In pursuance thereof, certain Solar Power Developers have also been allowed pass through of the additional safeguard duty borne by them on the imported PUC and the evidence of the same was attached as Exhibit 389 in the written submission of the Petitioners. Therefore, Central Government has taken adequate steps to safeguard interests of solar power developers.

(cxxi) Regarding impact on ultimate consumer, Domestic Industry had quantified impact of 95% safeguard duty on prices of power in their submissions during original investigation and same was also taken into consideration by Director General who determined that actual impact would be somewhere in between that suggested by Domestic Industry and that by opposing parties. Thereafter, DG had recommended 25% safeguard duty which was found to be in public interest after considering impact on ultimate consumer. In present case, SGD sought is much lower than original investigation.

(cxxii) PUC produced by the Domestic Industry adheres to the applicable BIS norms. Solar Photovoltaics, Systems, Devices and Components Goods (Requirements for Compulsory Registration) Order, 2017 prohibits manufacture, store for sale, sale or distribution of photovoltaic cells which do not conform to the Specified Standard. Had the product sold by applicants not conformed to applicable BIS norms, they would not have been able to manufacture, store or sell the PUC.

(cxxiii) M/s SPDA and M/s Canadian Solar Thailand have themselves referred to the factum of closure of many domestic producers producing the directly competitive article in India. Therefore, the question of taking unfair advantage of trade remedial measures does not arise and a clear case is made out for their

continuation.

(cxxiv) Safeguard duties, which are interim measures, provide for the domestic industries to calibrate their position in their industry on being faced with international competition.

(cxxv) Level of safeguard duty afforded pursuant to the original investigation did not provide full protection necessary for Domestic Industry to achieve desired objective of fully implementing adjustment plan. As the safeguard duty is already very low, level of liberalization sought is much lower so that Domestic Industry can achieve revised cost savings planned in the present review.

(cxxvi) WTO Appellate Body Report in Ukraine – Definitive Safeguard Measures on Certain Passenger Cars cannot be relied upon to contend that liberalisation of duty is intended to have substantial reduction of duty at regular intervals as the Appellate Body only held that progressive liberalisation of the duty cannot be delayed and put off to a later date and the same has to be liberalized at regular intervals. Nowhere is it observed that extent of liberalization should be substantial, nor minimum extent of liberalization required at regular intervals.

(cxxvii) The quantum of reduction and duration of levy depends on the extent necessary to facilitate positive adjustment of the Domestic Industry.

(cxxviii) Exclusion of M/s MSPVL was not the reason for the downward revision of SGD to 25%. injury margin during original investigation was higher than amount of SGD recommended and can be verified from records of original investigation.

(C) EXAMINATION & FINDINGS OF DIRECTOR GENERAL (SAFEGUARDS)

31. Based on the (a) information presented in the petition by the domestic industry, additional information presented by various interested parties, various submissions made by the interested parties and other primary and secondary records available, and (b) verification of information and evidence presented by the interested parties to the extent considered necessary, I have examined the same and record my final finding as under:

a) Applicable legal provisions

32. The first proviso to Section 8B(4) of the Customs Tariff Act, 1975 provides that *if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition.* The second proviso states that *in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.*

33. Rule 18 of the Rules states as follows:

(1) The Director General shall, from time to time, review the need for

continued imposition of the safeguard duty and shall, if he is satisfied, on the basis of information received to him, that -

(i) safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of duty;

(ii) there is no justification for the continued imposition of such duty, recommend to the central Government for its withdrawal.

Provided that where the period of imposition of safeguard duty exceeds three years the Director General shall review the situation not later than the mid-term of such imposition, and, if appropriate, recommend for withdrawal of such safeguard duty or for the increase of the liberalization of duty.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding 8 months from the date of initiation of such review or within such extended period as the Central Government may allow.

(3) The provisions of rules 5, 6, 7 and 11 shall mutatis mutandis apply in the case of review.

34. Rule 4(5) of the Rules enjoins a duty on the Director General Safeguards *to review the need for continuance of safeguard duty*. A perusal of the above provisions shows that in a review, the Director General (Safeguards) is required to examine the evidence and to determine that -

(a) it is necessary that the safeguard duty should continue to be imposed to prevent or remedy serious injury; and

(b) that the domestic industry is positively adjusting i.e. whether the domestic industry has taken measures to adjust to such injury or threat thereof.

35. The investigation has been conducted in accordance with the said rules and the final findings are recorded through this notification.

b) <u>The Product Under Consideration (PUC)</u>

36. The product under consideration in the original investigation was defined as follows:

"Solar Cells whether or not assembled in modules or panels" classifiable under Tariff Heading 8541 and Tariff Item 85414011 of the Customs Tariff Act, 1975. Solar Cells are also known as Photovoltaic Cells in the market parlance. Photovoltaic technology enables direct conversion of sunlight into electricity at the atomic level and Solar Cells are solid state electrical devices that convert sunlight directly into electricity by the photovoltaic

effect. For practical use, Solar Cells are packaged and connected into an assembly and such an assembly of Solar Cells is referred to as a Solar Panel or Solar Module. The electrical connections are made to the Solar Cells in series to achieve desired output wattage and / or in parallel to provide a desired current capability."

37. As noted earlier, the Customs Tariff Heading "8541 4011- Solar cells, whether or not assembled in modules" is split into the following two headings, vide Section 117(b) of the Finance Act 2020 (No.12 of 2020) read with entry No.2 of Schedule III thereof w.e.f. 01.02.2020:

8541 4011- Solar Cells, not assembled

8541 4012- Solar Cells assembled in modules or made up into panels

38. Vide customs notification No. 1/2020-Customs (SG) dated 2 February 2020, the two new tariff headings mentioned hereinabove were substituted in the place of single tariff heading in the earlier customs notification No. 1/2018-Customs (SG) dated 30 July 2018.

39. Thus, the existing safeguard duty is applied on "Solar Cells whether or not assembled in modules or panels" classifiable under the Tariff Headings 85414011 and/or 85414012 of Chapter 85 of Schedule I of the Customs Tariff Act 1975. The Customs tariff classification is, however, indicative only and is in no way binding on the scope of the product under consideration.

40. Various interested parties opposing the review have submitted that Solar Cells and Solar Modules can not be treated as the same and that the domestic industry does not possess Thin-film technology and "PERC" (Passivated Emitter Rear Cell) based technology, Bi-facial N-type solar cells, 5 and 6 bus bar High efficiency solar cells and mono crystalline technology and therefore, the PUC should be restricted to only such products for which the DI has production capability or has actually produced.

41. Further, REC Solar PTE Ltd. has claimed that their Alpha product has been awarded a design patent by Singapore and other territories including Europe and that its design application is also pending in India. REC Solar claims that their Alpha product (i) uses proprietary advanced technology, is of superior quality, space efficient, and more environmental friendly, (ii) commands a higher price in the Indian market and (iii) is neither identical nor alike in all respects to the articles manufactured in India. They seek exclusion of their Alpha product from the scope of the PUC as they hold certain design patents for it and have relied upon the observations made in Anti-Dumping duty investigation concerning imports of *Cold Rolled Flat Products of Stainless Steel* from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA dated 24 November 2009 for this purpose.

42. On carefully examining this aspect, I note that Solar cells of various types produced by different technologies vary in terms of efficiency, physical characteristics like size and weight etc., and price. These variations though lead to trade off in price and efficiency, the end-use of the PUC is only to produce power. Insofar as the reliance on the Final Findings in Anti-

Dumping duty investigation concerning imports of *Cold Rolled Flat Products of Stainless Steel* from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA is concerned, I have noted that specific grades of the PUC which the Domestic Industry were not producing were excluded as these grades were required for specific end use applications which could not be substituted by the like article produced by the Domestic Industry. In the present case, besides submitting that the Alpha Product is of superior quality, space efficient, uses proprietary advanced technology and is more environmental friendly, it has not been the case of the interested party that their product is not in direct competition with and is not commercially substitutable by the domestic like product.

43. In the Final Findings dated 9th December, 2016 in the Anti-dumping investigation concerning imports of Seamless tubes, pipes & hollow profiles of iron, alloy or non-alloy steel from China PR, the authority held that patented goods and other sub category cannot be excluded from the scope of PUC as long as they are technically and commercially substitutable with the domestic like goods and any such exclusion will lead to circumvention.

44. The Rules hold a domestic producer as "*a producer of the like article or directly competitive article in India or a trade or business association, a majority of members of which produce or trade the like article or directly competitive article in India*" and "like article" defined as "*like article means an article which is identical or alike in all respects to the article under investigation.*" The common and overlapping applications of the PUC i.e. conversion of sun light directly into electricity by the photovoltaic effect, establishes that imported and domestically produced subject goods are directly competitive. The variations in technology only lead to a trade off in price and efficiency. This, therefore, does not warrant any exclusion from the scope of PUC as stated in the initiation notification. Further, these issues were also dealt in the original finding and therefore I find no merit in the contention of the interested parties regarding exclusion of certain grades or variants of the PUC and uphold and confirm the scope of PUC as considered and mentioned in the original investigation.

45. Taking into account the change in the customs tariff headings, the PUC is defined as follows:

> *"Solar Cells whether or not assembled in modules or panels" classifiable under Tariff Heading 854140 and Tariff Items 85414011 and 85414012 of the Customs Tariff Act, 1975. Solar Cells are also known as Photovoltaic Cells in the market parlance. Photovoltaic technology enables direct conversion of sunlight into electricity at the atomic level and Solar Cells are solid state electrical devices that convert sunlight directly into electricity by the photovoltaic effect. For practical use, Solar Cells are packaged and connected into an assembly and such an assembly of Solar Cells is referred to as a Solar Panel or Solar Module. The electrical connections are made to the Solar Cells in series to achieve desired output wattage and / or in parallel to provide a desired current capability.*
>
> *The Customs tariff classification is, however, indicative only and is in no way binding on the scope of the product under consideration".*

c) Scope and Standing of Domestic Industry (DI)

46. Clause (b) of sub-section (6) of Section 8B of the Customs Tariff Act, 1975 defines Domestic Industry (hereinafter also referred to as the "DI"), as follows:

'(b) "Domestic industry" means the producers -

i. as a whole of the like article or a directly competitive article in India; or

ii. Whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India'

47. As regards scope and standing of the DI, the original final findings dated 16.07.2018 and the initiation notice dated 03.03.2020 has already clarified that SEZ units are outside the scope of the DI. The scope of DI in the review is also limited to units in DTA.

48. The review application is filed by ISMA on behalf of (i) M/s Mundra Solar PV Limited, Adani House (SEZ); (ii) M/s Jupiter Solar Power Limited (DTA); (iii) M/s Jupiter International Limited (DTA). The DGTR in this case has limited the Domestic Industry only to 2 DTA units i.e. M/s Jupiter Solar Power Limited and M/s Jupiter International Limited in accordance with the original findings dated 16.7.2018. With regard to the production of JIL and JSPL, the Director General found the following:

(i) JIL and JSPL are DTA units and belong to the same group. JSPL is a subsidiary of JIL.

(ii) JSPL was an applicant in the original investigation. JSPL was producing on its own account during 2016-17 and 2017-18. JSPL also got solar cells produced by JIL on job work basis during 2016-17, 2017-18 and 2018-19. Since March 2019, JSPL did not produce on their own account but produced only on job work basis for JIL. JIL is producing on its own account and also getting the produced on job work basis through JSPL.

(iii) Some interested parties have contended that JSPL has done only incremental job work. However, it is found that JSPL has carried out all production activities as it has produced solar cells from wafers supplied by JIL. It is also found that JIL has produced solar cells on its own account as well as got them produced by JSPL on job work basis.

The 2 DTA units account for a major share of total domestic production (more than 50%) in India of the PUC. For the purpose of computing the share, the production by SEZ Units has been excluded as stated above.

d) Period of Investigation

49. At the time of initiation, the period of investigation (POI) for the present investigation was considered as 1st April 2016- 31st March 2017, 1st April 2017- 31st March 2018, 1st April 2018- 31st March 2019 and 1st April 2019-30th September 2019. The said period was

considered as long enough to take into consideration the market conditions and other factors that are relevant for ascertaining the need for continued imposition of Safeguard Duty.

e) Source of Information

50. At the time of initiation, the DI had provided transaction-wise import data for the PUC from Directorate General of Commercial Intelligence & Statistics (DGCI&S), Department of Commerce for the period 2014-15 to 2019-20 (up to September 2019) and the same was taken into consideration for analysis at the time of initiation. The DI has later provided DGCI&S import data up to February 2020. The Post-POI import data has also been considered from 1st October 2019 to 28th February 2020.The data provided by the applicant has been verified on the basis of data received from the DGCIS and desk study by referencing the certified financial records submitted by DI.

f) Confidentiality and information submitted

51. The DI have provided some information in their application on confidential basis and has requested that it be treated as confidential. The DI have also provided a non-confidential version (NCV) of their application, as required under Rule 7 of the said Rules read with Trade Notice dated 21.12.2009 issued by Director General (Safeguards) under File No. D-22011/75/2009. Further, the DI have submitted reasons justifying their claim of confidentiality of this information.

52. In terms of Rule 7 of the said Rules, the applicant may choose not to disclose information which is by nature confidential and provide a non-confidential summary thereof. The DI have submitted reasons for claiming confidentiality of the information and furnished a non-confidential summary of the information filed on confidential basis. Some of the interested parties have claimed that the guidelines for disclosure of information in confidential and non-confidential version of the petition in Annexure I of Trade Notice No. 10/2018 dated 7th September 2018 issued by the DGTR has not been observed by the DI while filing the petition.

53. The claims of the DI regarding confidentiality along with the reasons furnished for such claim have been considered in accordance with the requirements of Rule 7. The applicant has provided the NCV of the application as per the established-practice which was made available to all the interested parties

g) Nature and quantum of import

54. Some of the interested parties have claimed that Rule 5 of the Rules requires that for any initiation of investigation, the Director General must find an increase in imports. In particular, clause 5(3) requires that the Director General shall not initiate an investigation pursuant to an application made under sub-rule (1) unless he examines the adequacy and accuracy of the evidence provided in the application and satisfies himself that there is sufficient evidence regarding increased imports. Since there have been no increase in imports, there is no basis to impose Safeguard Duty.

55. I observe that the criterion of increased imports would not be applicable in a review as

the purpose of review, as per Rule 18, is to assess whether a continued imposition of Safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively.

56. The quantum of imports needs to be examined keeping in mind the impact of the safeguard measure already in force and whether the imports would continue to injure the domestic industry, if the safeguard measure was removed. In this regard, it is to be noted that even after imposition of safeguard duty, import volumes of the subject goods have not gone back to earlier levels but are still coming into India at increased levels.The actual imports in 2017-2018 were 9790 MW which remained at 8010 MW in 2018-19 and 8545 MW in 2019-20. (Annualized -Actual data considered till February 2020)

57. Imports were 6,375 MW in 2016-17 and it increased to 9,790 MW in 2017-18. The duties were put in place w.e.f. 30th July 2018. As a consequence of imposition of duties, import volume came down to 8,010 MW during 2018-19. But this decline in imports was short- lived as the import volume for the most recent period i.e. 2019-20(Annualized- Actual data till September 2019) was 8,754 MW.

Particulars	**Unit**	**2016-17**	**2017-18**	**2018-19**	**2019-20 (A)**	**April 19 – Sep 19**
Cells	MW	785	1,280	2,024	2,588	1,294
Modules	MW	5,590	8,510	5,986	6,167	3,083
Total Imports	MW	**6,375**	**9,790**	**8,010**	**8,754**	**4,377**
Trend	MW	100	154	126	137	

58. It is noted that even if the base year of the injury period is considered, imports have grown by 2379MW i.e. an increase of 37%. Furthermore, Imports of 4,377 MW made during first half of FY 2019-20 were lower than 4,917 MW imported during the corresponding period of FY 2017-18. While there was no safeguard duty during the first half of FY 2017-18, imports during the first half of FY 2019-20 were subjected to a Safeguard duty of 25% from 1st April to 29th July 2019. Therefore, the import volumes reduced by 1780MW in 2018-19. However, with the liberalization of safeguard duty to 20% w.e.f, 30th July 2019, imports have again demonstrated an upward trend and have increased by 744MW in 2019-20(A) i.e. an increase of 9%.

59. It is also relevant to note that increase has been witnessed in imports of the PUC from Thailand and Vietnam into India which now account for approximately 12.46% and 11.7% respectively amongst total imports of the PUC into India in the most recent period i.e. 2019-20 (April - September) whereas they accounted for only 0.26% and 0.70% respectively prior to imposition of safeguard duty in 2017-18 despite total imports being higher. Furthermore, the prices of imports from Thailand and Vietnam have also reduced drastically and are much lower than the prices of imports from China PR, which are also subject to safeguard duty @

15% currently over the import price in Rs./watt as demonstrated below:

Row Labels	Unit	2017-18	2018-19	2019-20 (April - September)	2019-20(A)
CHINA PR	Rs./watt	21.76	17.49	15.58	15.58
THAILAND	Rs./watt	18.53	9.33	10.58	10.58
VIETNAM SOC REP	Rs./watt	10.59	12.87	11.13	11.13

60. In fact, import prices from Thailand and Vietnam have been undercutting prices of the Domestic Industry even after imposition of safeguard duty.

g) Unforeseen developments and the effect of obligations

61. Some of the interested parties opposing the review filed by DI have contended that in the case of a review also, a safeguard measure may be continued only if there is evidence of increased imports causing serious injury to domestic industry and such increase in imports must have occurred as a consequence of unforeseen developments as provided in Article XIX:1(a) of General Agreement on Tariffs and Trade (GATT). In this regard, it has been pointed out by these interested parties that no information regarding unforeseen developments or the effect of obligations has been filed by the DI at the time of making the application. In this regard, I observe that unforeseen development and the effect of obligations are necessary preconditions for imposition of Safeguard Duty at the time of the original measure only as is the observation that increase in imports is not a necessary criterion as the Rules require two issues i.e. whether the safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively to be examined. Therefore, neither is an increase in imports a necessary precondition for continuation for safeguard measures, nor is such increase in imports required to have been caused by unforeseen developments or the effect of obligations which are the requirements for justifying the imposition of the original measure only.

62. It is reiterated that in the determination made in the original Final Findings, it was observed that the increase in imports during the relevant injury period in the investigation was as a result of unforeseen developments and the effect of the obligations incurred by India under the GATT. I do not consider it is required to revisit the issue in the present review.

h) Serious injury and/or threat of serious injury

63. The next matter for determination is whether extension of safeguard duty is necessary and whether imports of the PUC have continued to cause serious injury to the DI of like or directly competitive products or to prevent or remedy serious injury which may result as a consequence of the discontinuation of duties. The examination of injury to the DI of the PUC includes examination of various parameters such as DI's sales; production; capacity utilization, market share vis-à-vis imports amongst others as stated below;

(i) **Share of domestic market:** It can be seen from the table below that while the demand increased by 34% from 2016-17 to 2019-20 (A), imports maintained their dominant market share. The domestic industry also gained market share in the same period marginally by 1.1% evidencing that it is positively adjusting

Market Share in Demand	Unit	2016-17	2017-18	2018-19	2019-20 (Annualized)	April 19 - Sep 19
Imports	% (Indexed)	100	101	105	102	102
Domestic sales by the DI	% (Indexed)	100	88	60	124	124
Domestic sales by other Indian producers	% (Indexed)	100	84	36	49	49
Demand/Consumption	MW (Indexed)	100	152	120	134	67

(ii) **Production and Sales: From t**he table below representing the production and sales of the Domestic Industry and total imports of the PUC, it is noted that though the production and sales of the Domestic Industry have increased as a result of the protection of safeguard duties and due to implementation of its adjustment plan, however, the overall position of domestic producers continues to be fragile as the sales of other domestic producers, other than SEZ, have dropped.

Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (A)	April 19 - Sep 19
Total imports	MW	6,375	9,790	8,010	8,754	4,377
Production of DI	MW (indexed)	100	129	64	170	85
Sales of DI	MW (indexed)	100	134	72	166	83
Sales of Other Indian Producers	MW (Indexed)	100	128	43	66	33

(iii) **Capacity utilisation** The capacity utilisation of the DI increased from 44% in 2016-17 to 75% in 2019-20 (A). However, considering that the protection of safeguard duty has been in force for the past two years and the massive demand of the PUC in India,

the installed capacity of the Domestic Industry continues to remain underutilized due to competition from imports.

Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (A)	April 19-Sept. 19
Installed Capacity	MW (Indexed)	100	100	100	100	50
Production of DI	MW (Indexed)	100	129	64	170	85
Capacity Utilisation	%	44%	57%	28%	75%	75%

(iv) **Employment and Productivity:** The employment generated by the DI has dropped during the injury analysis period.

Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (A)	April 19-Sept. 19
No. of employees	No. (Indexed)	100	96	69	69	69
Productivity per employee	MW (Indexed)	100	135	94	249	125

(v) However, the productivity per employee has improved substantially which indicates that the Domestic Industry has improved its performance as per its adjustment plan.

(vi) **Profit / Loss:** It can be seen that the profitability of the Domestic industry turned negative in 2018-19. However, with increased production and sales coupled with reduction in cost of sales, the Domestic Industry has been able to reduce its losses from 2018-19. However, it is noted that the profitability of the Domestic Industry remains negative and its situation remains fragile.

Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (A)	April 19-Sept. 19
Profit/ Loss	Rs./Watt (Indexed)	100	22	(204)	(18)	(18)
Domestic Sales Price	Rs./Watt (Indexed)	100	78	40	37	37
Cost of sales	Rs./Watt (Indexed)	100	90	95	49	49

(vii) **Inventory:** Though inventory levels improved in 2018-19, they have sharply increased in the most recent period i.e. in 2019-20(A) as indicated in the table below.

Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (A)	April 19-Sept. 19
Inventory	MW (Indexed)	100	120	11	272	141

(viii) **Price Undercutting:** It can be seen that without the inclusion of safeguard duty, the prices of imports continue to undercut the selling price of the Domestic Industry and cause serious injury to it .

Particulars	Unit	2016-17	2017-18	2018-19	April 19 - Sep 19
Landed Value of Imports					
Solar Cells	Rs./Watt	15.42	13.68	8.95	8.76
Solar Modules	Rs./Watt	29.20	22.56	19.10	16.80
Net Sales Realisation of DI					
Solar Cells	Rs./Watt (Indexed)	100	78	39	37
Solar Modules	Rs./Watt (Indexed)		100	61	57
Price Undercutting					
Solar Cells	Rs./Watt (Indexed)	100	59	6	4
Solar Modules	Rs./Watt (Indexed)		100	4	15
Price Undercutting (%)					
Solar Cells	% Range	55-65	35-45	5-15	0-10
Solar Modules	% Range		35-45	0-10	5-15

Some interested parties have raised an objection with respect to the price undercutting analysis stating that the price undercutting should be analyzed after addition of safeguard duty into the landed value of the PUC. In this regard, it is noted that this being a review to examine the extension of safeguard duty to prevent recurrence of injury the impact of imports without Safeguard Duty needs to be evaluated.

i) <u>Post POI trend</u>

64. During the first three quarters of 2019-20, imports have increased by 33% compared to the first three quarters of 2018-19. Further, the increase in import volume was also coupled with a decline in import prices. The value and per unit price of imports during the period of investigation including the post-POI period is tabulated below:

Particulars	Unit	2016-17	2017-18	2018-19	Apr-Sep 2019	Apr-19 to Feb-20	2019-20 (Annualised)
Cells	Rs. in Lacs	121,126	175,202	181,155	113,301	207,785	226,675
Cells	Rs./watt	15.42	13.68	8.95	8.76	7.91	7.91
Modules	Rs. in Lacs	1,632,107	1,920,223	1,143,368	517,875	849,750	927,000
Modules	Rs./Watt	29.2	22.56	19.1	16.8	16.32	16.32
Total	Rs. in lac	**1,753,233**	**2,095,425**	**1,324,523**	**631,176**	**1,057,535**	**1,153,675**
Total	Rs./watt	31.29	34.10	27.50	21.40	16.54	14.42

65. The weighted average import price per watt has declined from Rs.27.5 during 20-16-17 to Rs.13.5 during 2019-20. The monthly trend of import prices show a further decline during the last few months as shown in the table below:

	Cells	Modules		Cells	Modules
FY2018-19	**8.95**	**19.10**	**FY2019-20**	**7.91**	**16.32**
2018-04	12.08	22.40	2019-04	8.61	17.36
2018-05	11.96	23.26	2019-05	8.92	16.00
2018-06	9.73	22.61	2019-06	9.04	16.29
2018-07	8.50	21.83	2019-07	9.03	15.97
2018-08	8.26	20.93	2019-08	8.70	17.76
2018-09	8.06	20.02	2019-09	8.25	16.82
2018-10	8.07	19.75	2019-10	8.30	15.85
2018-11	7.91	18.02	2019-11	7.61	16.02
2018-12	7.77	17.24	2019-12	6.91	15.18
2019-01	8.24	17.09	2020-01	6.84	14.86
2019-02	8.87	17.62	2020-02	6.11	14.86
2019-03	8.92	16.94			

As may be seen from the table above, solar cell import prices have come down from Rs.11.96 per watt in April 2018 to Rs.6.11 per watt in February 2020. During the same period, import prices of modules came down from Rs.23.26 per watt to Rs.14.86 per watt.

j) Margin and Threat of Injury

66. For the purpose of evaluating existence of injury, a Fair selling price (FSP) has been computed by considering an appropriate reasonable return on the Cost of Production. The margin of injury has thereafter been computed as difference of landed value of imports of Solar cells and the FSP. An analysis of the data during the most recent period i.e 1.4.19 to 30.9.19 of POI indicates that the landed prices of imports continue not only to undercut the Net Sales Realization (NSR) of the Domestic Industry but also are preventing the DI to realise a fair price. Furthermore, the inventories of the Domestic Industry have also witnessed a sharp rise in the most

recent period. Therefore, if the safeguard duty is removed now, the users of the PUC will increasingly switch back to imports of PUC to levels received at the time of initiation of subject investigation. Consequently, the serious injury that was being suffered by the Domestic Industry would recur as the profitability of the Domestic Industry continues to be negative and the progress made by DI would be nullified.

k) Causal link

67. As per Rule 11(1), it is required to determine whether a causal link exists between imports of the PUC and the serious injury or threat thereof to the Domestic Industry of the like competitive product. In this regard, the observations by the WTO Panel in Korea-Dairy which sets forth the basic approach for determining "causation" has been noted. Therefore, in performing the causal link assessment, I am obliged to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. In addition, if factors other than increased imports have caused injury to the Domestic Industry, any injury caused by such factors should not be attributed to imports.

68. The analysis of data for the period 2016-17 to Sept 2019 indicates that imports of the PUC have remained at significant levels. Furthermore, the import prices of the PUC have also come down drastically. The prices of imports continue to be below the net sales realisation of the Domestic Industry. Without safeguard duty, imports would undercut the prices of the Domestic Industry. The profitability of the Domestic Industry is currently negative and would be adversely affected if safeguard duty on the PUC is removed.

69. The following factors are noted and have been considered as relevant in establishing that a causal link exists between the discontinuation of safeguard duties and continuation and recurrence of serious injury to the Domestic Industry:

a. The volume of imports in the domestic market of the PUC in India has remained significant. With the imposition of safeguard duty @25% w.e.f. 30th July, 2018, overall imports reduced in 2018-19. However, with the reduction in safeguard duty to 20% from July 30th 2019, imports have again witnessed an increase.

b. The market share of imports has maintained its dominant position further increasing slightly during the injury analysis period. The market share of the Domestic Industry also increased marginally as a result of protection afforded by safeguard duty. However, market share of other domestic producers not forming part of the Domestic Industry reduced. Though production, sales and capacity utilization of the Domestic Industry has improved with the imposition of safeguard duties, the capacity utilization is still less than ideal considering the massive demand of the PUC in India. Furthermore, with the reduction of duty w.e.f. 30th July, 2019, imports of the PUC have increased again which has resulted in substantial increase in inventory levels.

c. In the Final Findings in the original investigation, it was noted that import

prices were suppressing and depressing the prices of the Domestic Industry. A comparison of the landed value of imports with the net selling prices of DI indicates that the prices of imports are still undercutting that of the Domestic Industry. Therefore, if safeguard duty is discontinued, users will switch back to the imported PUC which would lead to recurrence of price suppression and the market share gained by the Domestic Industry would be lost.

d. Due to the current safeguard duty being in place, increased efficiency has reduced the cost of sales thereby enabling the Domestic Industry to reduce losses with a increased likelihood of being profitable. In case the safeguard duty is not extended, the resultant price undercutting would erode and nullify the positive adjustment made by the DI, pushing it back to the situation of serious injury.

e. The profitability of the DI continues to be negative though it has improved from previous year.

f. The interested parties have not pointed out any other factors which are also causing injury to the Domestic Industry at the same time;

70. Therefore the afore stated comprehensive evaluation of parameters demonstrates that serious injury being caused to the DI is likely to continue in future if the safeguard duty is not extended and the same is therefore necessary to extend safeguard duty to prevent further serious injury to the Domestic Industry.

I) <u>Adjustment plan</u>

71. During the original investigation, the Domestic Industry presented an adjustment plan for becoming competitive against the imported PUC in the form of steps such as:

a. long term procurement of raw material, rate and volume discounts if better cash flow is achieved;

b. higher utilisation of capacity leading to better conversion cost;

c. better apportionment of semi-fixed and fixed costs;

d. better credit ratings for lowering the cost of borrowing and better servicing of debt;

e. efforts towards backward integration and developing an entire eco-system;

f. technology development and R&D.

72. Some of the interested parties have raised an objection that the Domestic Industry has not provided any evidence regarding having implemented the adjustment plan that they had furnished during the original investigation which is why they have asked for continuation of the safeguard duty.

73. In this regard, as noted above, the focus of the steps narrated towards the adjustment plan of the Domestic Industry was on gaining competitiveness by achieving cost reduction. The information provided by the Domestic Industry with respect to the steps taken towards adjustment reduction of cost have been verified from the records of the respective domestic producers and it is observed that the domestic producers have taken steps enumerated by them in their initial application for improving their efficiencies though they still need to make further progress to attain the targets fixed in the adjustment plan. As a result of the efforts made by them, it has been noted that within one and half years in terms of the adjustment plan, the domestic producers have achieved a cost reduction of 2.48 cents/watt till September 2019 as against a target of 12.25 cents/watt in fixed costs. The Authority further notes that for reducing the raw material prices the DI changed logistics from air to sea and also started using larger size wafers.

74. The abovesaid cost reductions have been facilitated by reduction in raw material costs, achieving economies of scale as a result of reduction in conversion costs due to better utilisation of capacity and reduction in fixed cost due to reduction in number of employees and increased production.

75. Therefore, it has been observed that the domestic industry has made the efforts enumerated by it with respect to original adjustment plan, and is positively adjusting itself to meet import competition. However, import prices have continued to decline steeply and are undercutting the prices of the Domestic Industry without inclusion of safeguard duty. Therefore, the domestic industry is required to be given more time to pull itself together to overcome its fragile financial situation caused by imports of the PUC.

76. The domestic producers have presented a revised adjustment plan detailing the steps it has planned to take to reduce its costs further in order to meet import competition. The revised adjustment plan includes the following steps proposed by the Domestic Industry:

- Further reduction in raw material costs: With better cash flow, DI will be in position to further re-negotiate prices with suppliers by entering long term contract, rate discount and volume discount. The company also intends to establish facilities to produce the major raw material i.e. wafers.

- Further reduction in Conversion Costs: The Domestic Industry has stated that the target reduction in cost is yet to be achieved and a further increase in production quantity will help the Domestic Industry to achieve the same in the next few years and has provided a revised target in this regard.

- Further reduction in fixed cost by increasing production, automation of manufacturing process and achieving operational efficiencies.

- By full utilization of plant and machinery, the depreciation cost will be reduced in the next few years

- Reduction in SGA, Finance and other costs.

77. The Domestic Industry has projected that its adjustment plan will be completed in the next three years. The revised adjustment plans were submitted by the domestic producers along with their respective questionnaire responses. Therefore, it is observed that if the duties are not continued, imports would cause further injury and wipe out the fragile domestic industry in India. On the earlier adjustment plan it is noted that domestic industry has not been able to achieve the projected target as they have been able to achieve cost reduction mainly on fixed costs only due to their efforts. Nevertheless, the domestic industry has evidenced positive adjustment.

m) <u>Public Interest</u>

78. Some of the parties have argued that continued imposition of safeguard duty on imports of PUC would not serve any public interest. On the contrary imposition of safeguard duty would severely prejudice the public interest as a number of end users of the PUC such as solar power developers may close down. In this regard, it is observed that the expression 'public interest' does not cover in its ambit consumer interest alone. It is a much wider term, which covers in its ambit the general social welfare taking into account the larger community interest. While the imposition of safeguard duty may result in increased cost of the imported PUC in the hand of buyers and a slightly increased cost of power at the hands of the end user, it is important to keep in mind the objective of imposition of safeguard duty. The purpose of imposition of safeguard duty is to provide time to the domestic industry to make positive adjustment to meet with the new situation of competition offered by the increased imports. The imposition of safeguard duty, for the period and to the extent considered adequate, would, therefore not only minimize the adverse effect, if any, for the customers but also give them a wider choice to source their requirements, and at competitive prices. The domestic producers who have set up plants with huge investments provide employment to a large number of people and make valuable contribution to the national economy. Imposition of safeguard duty may enable the domestic producers to survive in the face of competition offered by the increased imports, will, therefore, also be in the long-term interest of the buyers of the PUC as well as end users.

79. The primary concern of module manufacturers has been the demand supply gap between their installed capacity to manufacture solar modules in comparison to installed solar cell manufacturing capacity which necessitates imports. However, it is observed that this is only a temporary situation where the gap will have to be filled by imported solar cells at a higher price till the domestic manufacturers ramp up their capacity to meet the demand. On the other hand, considering the current factual situation where domestic cell manufacturers are facing threat to their existence, not continuing the safeguard duty shall result in complete erosion of the domestic cell manufacturing base and solar module manufacturers will become entirely dependent on imported solar cells for manufacturing modules. Upon total winding up of domestic cell manufacturing operations in India, module manufacturers will be at the complete mercy of exporters who would then be in a position to dictate prices and can simply increase the prices of solar cells making module manufacturers uncompetitive as well. This will have a cascading effect on other upstream and downstream industries involved in the manufacture of equipment for solar modules

such as EVA Sheets and solar glass and destroy India's solar equipment manufacturing capabilities entirely. On the other hand, levy of safeguard duty will ensure the subsistence of domestic cell manufacturers which will then provide a wider choice of suppliers to module manufacturers to source cells from. Furthermore, though the prices of procurement of solar cells may increase temporarily, the cost of domestically produced solar cells shall come down once the cell manufacturers adjust to the competition. In turn, this will bring down the cost of production of solar modules and help module manufacturers compete better with imported modules from which they are admittedly facing tough competition. It is noted that the Domestic Industry has been attempting at backward integration and certain key supplies such as solar glass, EVA Sheet, back sheet, etc. have already made significant investments for improving production capacity in India. Some interested parties have drawn attention to the announcement by the Government on increasing basic custom duty on PUC to 20%. This announcement indicates that tariff application on PUC is also an important aspect of public interest.

80. Therefore, levy of safeguard duties to protect the Domestic Industry is in the larger public interest as it will lead to increase in employment, capex expansion, R&D and Foreign Direct Investment (FDI). Suppliers of raw materials and consumable such as wafers, paste, EVA, junction box, solar glass, will also be encouraged to establish new units. On the other hand, if the protective levy of safeguard duty is not continued, it will lead to the extinction of the Domestic Industry which would be a much more disastrous situation for the economy of the country.

81. It has also been submitted that imposition of safeguard duty will adversely affect India's target to achieve 100GW of solar power generation by 2022 due to the demand and domestic supply gap which necessitates imports. In this regard, it is noted that safeguard duties are only in the nature of tariff measures and not quantitative restrictions. Therefore, the shortfall in the domestic demand can be met by imports, albeit after paying safeguard duty. The objective of safeguard duty is to enable the domestic producers to become internationally competitive. Therefore, protection accorded to the Domestic Industry will help to lower its cost to the level of international prices which will be in the long-term interest of solar power developers and end users as they will not be solely reliant on the imported PUC. It is, therefore, observed that continued imposition of safeguard duty on the PUC is in Public interest. The cost of production of the domestic industry with a reasonable interest when compared with landed value of imports indicates continued price injury to the Domestic Industry. To prevent this injury the existing Safeguard needs to be extended for some more time continuing with ongoing progressive liberalisation of Safeguard duty.

n) <u>Developing nations</u>

82. Proviso to Section 8B(1) of the Customs Tariff Act, 1975 provides that Safeguard Duty shall not be imposed on article originating from a developing country so long as its share of imports does not exceed 3% of the total imports of that article or, where the article is originating from more than one developing country, then, so long as the aggregate of the imports from all such developing countries, each with less than 3% import share taken together, does not exceed 9% of the total imports of that article. Further, Notification No.19/2016-Custom (NT), dated 5th February, 2016 specifies the developing countries for

the purposes of this provision. Upon applying this legal provision read with the said notification to the available data in the present case, the finding is that import of the PUC is originating from more than one specified developing country including China PR, Thailand and Vietnam. However, as a percentage of the total imports of the PUC into India, the imports from China PR, Thailand and Vietnam individually account for more than 3% while the share of every other developing country is individually less than 3%. Some of the interested parties have contended that the Domestic Industry has incorrectly projected imports from Thailand as more than 3% during the injury period whereas it is much less. In this regard, it has also been contended that in a review, developing nations which were excluded from the application of the safeguard measure cannot be included within its scope pursuant to a review.

83. At the instance of the interested parties, the import data of the PUC from Thailand was reverified and it has been found that the quantum of imports from Thailand exceeds 3% in 2018-19 and from 1st April, 2019 to 30th September, 2019. Furthermore, I find the submission that new developing countries cannot be included pursuant to a review to be without any merit since the very purpose of the review is to evaluate whether the safeguard duty is required to prevent or remedy serious injury to the Domestic Industry. Therefore, if the quantum of imports have increased from other developing countries which were not included within the scope of the measure pursuant to the original investigation, serious injury to the Domestic Industry cannot be prevented or remedied if these developing countries which have exceeded the 3% threshold are not included within the scope of the measure that is to be continued. Therefore in such a situation, the continuation of the measure will be reduced to an empty formality as it would not be applicable to influx of imports from these new sources which continue to cause or threaten serious injury to the Domestic Industry. I have also noted the Final Findings in review dated 11th December, 2001 of safeguard measures on Phenol wherein Malaysia, South Africa and Singapore were included within the scope of the measure pursuant to the review though these countries were not included at the time of the original measure. Furthermore, I have also noted the Final Findings dated 4th February, 2002 in review of safeguard duty on imports of Acetone in which South Africa and Singapore were included within the scope of the safeguard duty pursuant to the review though they had not been included within the scope of the measure at the time of the original levy. Accordingly, this issue raised by the interested parties is not accepted.

84. It is further noted that the collective share of the developing countries whose individual share is less than 3% does not exceed 9% of the total imports of the PUC into India. Therefore, the import of the PUC originating from developing countries except China PR, Thailand and Vietnam, are not recommended to be subjected to levy of Safeguard Duty in terms of proviso to Section 8B(1) of the Customs Tariff Act, 1975.

o) <u>Conclusions</u>

85. On the basis of the above examination and analysis, it is concluded that:

i. After a decline in imports in 2018-19 as a consequence of the imposition of safeguard duty on the PUC, imports have increased for the period between 1st April

2019 to September 2019 pursuant to reduction in rate of safeguard duty from July 30th, 2019. There has been a significant increase in imports of the PUC in absolute terms as well as in relation to total Indian domestic production over the entire POI;

ii. The domestic industry is continuing to suffer serious injury which is evidenced from an overall consideration of its performance, particularly on the basis of its capacity utilization which is sub-par considering the demand of the PUC, increasing levels of inventory and negative profitability. Though the Domestic Industry has improved its production and sales and reduced its losses, its position continues to be fragile and would relapse into further serious injury if the safeguard duty is discontinued;

iii. Import prices have continued to decline over the injury period i.e. 2016-2017 to 2019-2020 (A). Without safeguard duty, import prices are below the selling price of the Domestic Industry and would undercut the prices of the Domestic Industry if removed. Consequently, there is every likelihood that the severe price suppression and depression being suffered by the Domestic Industry before the imposition of safeguard duty would recur and the profitability of the Domestic Industry will get further adversely impacted;

iv. The cost on the Solar Power Developers and the ultimate consumer will increase as a result of safeguard duty on the PUC. However, imposition of safeguard duty would be in public interest because it will prevent complete erosion of manufacturing base of solar industry in the country which has made substantial investments. The Domestic Industry has though not fully adhered to the adjustment plan but have made serious efforts to implement its adjustment plan which has improved their performance and will further lead to its increased competitiveness vis-à-vis imports and also lower cost of the PUC to the domestic consumer in the long run.

p) <u>Recommendations</u>

86. The imports of 'PUC' into India, have not only continued to cause serious injury to the Domestic Industry but also threaten to cause serious injury to the domestic producers of "PUC" and it will be in the public interest to continue the imposition of safeguard duty on imports of the PUC into India in terms of Rule 18 read with Rule 12 of the Customs Tariff (Identification And Assessment of Safeguard Duty) Rules'97. It is noted that the domestic industry has sought extension of the Safeguard duty further for a period of four years with progressive liberation of Safeguard duty to 14.95%, 14.90%, 14.85% and 14.80% in the four years respectively. Keeping in view that 2 years of protection has already been provided and DI has improved its position but needs some more time to adjust, extension of Safeguard for a period of another one year would be adequate. Further during this period, the existing quantum of duty would continue to be liberalised at a pace so as to ensure that adjustment by DI is attained within the span of one year only. Accordingly, the safeguard duty as indicated below is considered appropriate to continue protection to the domestic industry to facilitate further positive adjustment. Following safeguard duty is recommended to be imposed w.e.f. 30.7.2020 on PUC imported under sub-heading 85414011 and 85414012 of the First Schedule of the Customs

Tariff Act, 1975. The Tariff Items mentioned herein are indicative only and the description of the imported goods will determine the applicability of the recommended Safeguard Duty.

Year	**Safeguard duty recommended**
First 6 Months	Safeguard duty @ 14.90% ad valorem
Next 6 Months	Safeguard duty @ 14.50% ad valorem

87. As the imports from developing nations, as listed in Notification No.19/2016-custom(NT) dated 5th February,2016, except China PR, Thailand and Vietnam do not exceed 3% individually and 9% collectively, the import of product under consideration originating from developing nations except China PR, Thailand and Vietnam will not attract Safeguard Duty in terms of proviso to Section 8B (1) of the Customs Tariff Act, 1975.

(Bidyut Behari Swain)
Director General (Safeguard)