

**MINISTRY OF FINANCE**

**(Department of Revenue)**

(OFFICE OF THE DIRECTOR GENERAL OF SAFEGUARDS)

NOTIFICATION

New Delhi, the 6<sup>Th</sup> - June , 2011

**Sub: Safeguard investigation concerning imports of N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 also known as 6PPD, Vulconox4020 etc) into India into India-Final Findings**

GSR - Having regard to the Custom Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 thereof.

**PROCEDURE**

1. An application was filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997[hereinafter referred to as "Safeguard Rules"] by M/s NOCIL Ltd., C-37, TTC Industrial Area, Thane-Belapur Road, Navi Mumbai-400705 for imposition of Safeguard Duty on imports of N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 also known as 6PPD, Vulconox 4020 etc.) into India alleging that increased imports of N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 also known as 6PPD, Vulconox 4020 etc.) was causing and/or threatening to cause serious injury to the domestic producers of N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 also known as 6PPD, vulconox 4020 etc.) in India. Having satisfied that the requirements of Rule 5 were met with, safeguard investigation against imports of N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 also known as 6PPD, Vulconox 4020 etc.) was initiated vide notice of initiation dated 27<sup>th</sup> December, 2011 and published in the Gazette of India, Extraordinary on the same day.
2. A copy of the notice was sent to the governments of major exporting countries through their embassies in New Delhi. A copy of initiation notice was also sent to all known interested parties listed below:
3. **Domestic Producers**

SN	NAME OF UNIT	FACTORY ADDRESS
1	NOCIL Limited	C-37, T.T.C. Industrial Area, Off Thane Belapur Road, Navi Mumbai – 400705 Ph.: 022-2767/2735/2789

		Fax: 022=2767/1865 Email: gadgilm@nocilindia.com
2.	PMC Rubber Chemicals India Private Limited	103 G.T. Road West PO Rishra 712248, Dist : Hooghly West Bengal, India
3.	Lanxess India Private Limited	Kolshet Road, Thane – 400 607, Maharashtra India
4.	Merchem Ltd.	Grove Centre, 44 Development Plot, Kalamassery, Cochin-683109, Kerala, India.

#### 4. Importers

- a. J.K. Industries Ltd., 7, Council House Street, Kolkata – 700 001
- b. CEAT Limited, 463, Dr. Annie Besant Road, Worli, Mumbai – 400 030.
- c. Apollo Tyres Ltd., 6<sup>th</sup> Floor, Cherupushpam Building, Shanmugham Road, Kochi – 682031, Kerala.
- d. Birla Tyre, C/o Kesoram Industries Ltd., 8<sup>th</sup> Floor, 9/1, R.N. Mukherjee Road, Kolkatta – 700 001.
- e. MRF Limited, 126, Greams Road, Chennai – 600 006
- f. Metro Tyres Limited, B-27, Focal Point, Ludhiana – 141 010.
- g. Poddar Tyres Ltd., Poddar Nagar, GT Road, Jugiana, Ludhiana – 141010.
- h. Raison Industries Ltd., 14, 3 Palmohan Aptt., Punjabi Bagh West, New Delhi – 110 026.
- i. Rubber Products Ltd., Wagie Estate, Near Precitex, Thane – 400 601.

- j. Puneet Resins Ltd., 84 Atlanta, Nariman Point, Mumbai – 21.
- k. Rishiroop Polymers Pvt. Ltd., 65 Atlanta, Nariman Point, Mumbai – 21.
- l. Automative Tyre Manufacturers Association, PHD House (4<sup>th</sup> Floor), Opp. Asian Games Village, Siri Fort Institutional Area, N. Delhi – 110 016.
- m. All India Rubber industries association, 1009, Padma Tower-1, 5,Rajendra Place, New Delhi-110008.

**Exporters**

- l. Solutia Inc., St. Louis, Missouri, USA (World Headquarters) 575 Maryville Centre Drive, St. Louis, Missouri 63141, USA
  - m. Lanxess NV, 51369, Leverkusen, Germany
  - n. Dusio, a.s., Administrativna budova ev. C. 1236, 927, Q3 Safa, Slovak Republic
  - o. Jingasu Sinorgchem Technology Co., Ltd., Shanghai Operation Centre, Jingasu Sinorchem Technology Co. Ltd., 22F, Yongda International Tower, No. 2277, Longyang Road, Pudong New Area, Shanghai, PR China
  - p. Korea Kumho Petrochemicals Co. Ltd., 21-24F Kumho Asiana Main Tower #115, Sinmunno 1-Ga, Jongno-Cu, Seoul 110-857, Korea
  - q. Flexsys SA/NV (Part of Solutia Inc.) Parc Scientifique-Fleming, Rue Laid Burniat 3, Louvain –La – Neuve, 1348, BELGIUM
  - r. Nanjing Chemical Industry Corporation, No. 560, Heyen Road, Nanjing, Jingasu Province, China – 210038.
  - s. Shangyu Lixing Chemical Co. Ltd., Shangyu Fine Chemical Zone 5 RD, Zhejiang, China P.C. : 312369.
  - t. Northeast Auxillary Chemical Industry Co. Ltd., Wuqiang Industry Park, Hebei, China.
  - u. United Rubber Chemical Corp. Office Address : Suite 1505 Building A, Nanxincang International Tower, 22, Dongsishitiao, Dongcheng District, Beijing, China 100007
  - v. The Organic Chemical Industry Limited of Tongling Chemical Industry Group, Address : No. 1269 JinlingDao, Tongling City Anhui Province, China, Postal Code : 244003.
5. **Exporting Nations:**
- i. European Union

- ii. Germany
  - iii. Czech Republic
  - iv. Belgium
  - v. PR China
  - vi. Republic of Korea
  - vii. Arab Republic of Egypt
  - viii. USA
6. Questionnaires were sent to all known domestic producers, importers and exporters and were asked to submit their response within 30 days.
  7. Request to consider them as interested parties were received from the following parties/exporting nations and all the requests were accepted:
    - i. M/s Puneet Resins Ltd., Mumbai
    - ii. M/s Rishiroop Polymers Pvt. Ltd., Mumbai
    - iii. M/s Solutia Inc., USA
    - iv. Sh. Abdelrahman Fawzy, Ministry of Trade and Industry of Egypt
  8. Requests for extension of time to submit their replies were made by the following parties:
    - i. M/s Jiangsu Sinorgchem Technology Co., Ltd., China PR
    - ii. M/s Kumho Petrochemicals, Korea
    - iii. Automative Tyre Manufacturers Association, New Delhi.
  9. After taking into account the time limits for completing the investigation within the prescribed period, requests for extension of time to submit reply as per Rule 6(4) of Safeguard Rules were allowed, as prayed for, and the parties concerned were accordingly informed.
  10. The information presented by the applicant i.e. M/s NOCIL was verified by on-site visits to the plants of the domestic producers and through the Central Excise records to the extent considered necessary. The applicants have submitted cost data verified and duly certified by practicing cost accountant. The non confidential version of verification report is kept in the public file.
  11. All the written submissions of applicant and interested parties were taken on record. The non confidential information received or acquired has been kept in the public file.
  12. A public hearing was held on 21.02.2011, notice for which was sent on 28<sup>th</sup> January 2010. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997. Copy of written submission filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinder, if any, to the written submissions of other interested parties.
  13. Some of the interested parties requested data from the applicant in the format "Questionnaire for Domestic Producers". The same was provided to the concerned

interested parties and also kept in the Public File. The interested parties were given the desired extra time to file their response to the above submission of applicant.

14. All further submissions filed by Domestic Industry were made available to the other interested parties and kept in the Public file. The interested parties were given sufficient time to file response of the same. The additional data of import procured during the course of investigation was kept in Public file. The submissions of applicant on increased import and other economic parameter like market size, share of import in total domestic demand etc. after adding the additional import data were made available to other interested parties and kept in public file giving sufficient time to file reply.
15. All the views expressed by the interested parties and other domestic producers either in the written submissions or in the rejoinders and response to the domestic industry submissions were examined and have been taken into account in making appropriate determination. As there are large number of interested parties who have filed their submissions, their contentions and the issues arising there-from are dealt with at appropriate places without referring to specific name of the interested party for the sake of brevity.

### **Views of Domestic Industries and other Interested Parties**

#### **Applicants**

16. The product for which application has been filed for SG duty is a Rubber Chemical PX-13 or 6PPD which is extensively used in treating natural rubber, synthetic rubber (SBR, Butadiene Rubber, Nitrile Rubber, and Carboxylated Rubber and other synthetic rubber based compounds used for manufacture of various rubber products.
17. There are three more producers of the goods but the applicant M/s NOCIL account for more than 50% of production and hence is a major producers.
18. The product is being imported in the Indian market for a long period and has the history of dumping from various sources. The details of dumping cases are given in the Table below:-

Description	Case 1	Case 2
Countries Involved	Taiwan and EU	China and Korea
Initiation	August, 2004	July , 2007
Period of Investigation	Jan., 03 – Dec., 03	April 2006-March 2007.
Interim Duty	8th April 2005	28th.Feb. 2008
Customs	7 <sup>th</sup> July, 2005	5 <sup>th</sup> May, 2008

Definitive Duty	16th August 2005	1st October, 2008
Customs	7 <sup>th</sup> July, 2005	12 <sup>th</sup> Dec, 2008
Duty Imposed	<u>EU</u> - US\$ 816-840 pmt	<u>Korea</u> – Rs. 10.35 per/kg
Review	May 2010 (SSR)	August, 2010 (MTR)
Period of Investigation	April 09 to March 10	April, 09 to March,10

19. The import and injury related data from 2000-01 to 2010-11(Dec.2010) has been filed by the applicant with argument that the product has dumping history since 2003. There are number of cases wherein the Investigating Authorities of other member countries have taken long period for injury analysis and submitted a statement showing various cases and number of years considered in these investigations. Further there is no specific obligation in the AoS regarding period of investigation and its breakdown is left to the discretion of the investigating authority which is also in conformity with US-Line Pipe case.
20. The applicant claimed that Imports "increased" in the recent past, but not necessarily be increasing up to the end of the period of investigation at the same rate. The petitioner submits that the data of the recent past cannot be seen in isolation as has been argued by the opposition. Also in the present case, the increase in imports has to be determined in the light of the existing anti-dumping duties. There has been a sudden, sharp and significant increase in imports of the subject goods during the injury period in spite of anti-dumping duties in force.
21. There has been a decline in imports in the year 2008-09 due to anti-dumping duty imposed on imports from China and Korea. This decline was temporary in nature and the imports once again started increasing at a higher pace in the subsequent years.
22. There are two important unforeseeable events that led to the increase in imports. They are (a) Special Relationship between KKPC and Sinorgchem and (b) Recession in the global market leading to significant drop in demand for the product in developed countries and China.
23. Korea Petrochemicals (KKPC) is the sole producer of 6PPD in Korea. The production of 6PPD requires 4-ADPA as the penultimate stage intermediate for 6-PPD. KKPC does not have its own facilities for production of 4-ADPA. Sinorgchem is one of the producers of Rubber Chemicals in China, engaged in production of only 6PPD and 4-ADPA. The company has been involved in a major legal dispute over patent issues in the U.S. for violation and use of production technology patented by a leading Global producer (Flexsys). On being prevented from selling in the very large U.S. market, Sinorgchem has drawn alternate market strategies. It is towards this end that Sinorgchem has gone in for some arrangement with KKPC wherein Sinorgchem will produce and

supply 4-ADPA to KKPC, KKPC will produce 6PPD and will supply the same in the existing and new market of Sinorgchem and KKPC globally. The Special Relationship has been stated even in the Annual Report of KKPC for the year 2008-09. Sinorgchem has been selling 4-ADPA at subsidized price to KKPC. The price at which Sinorgchem has sold 4-ADPA in Indian market is higher than the price at which the company has sold to KKPC. Korea market for 6PPD was close to 7000-8000 M.tons. About 50% of the demand in Korean market was being met through imports. Thus, KKPC has a domestic demand of about 4000 MT. Despite existing capacities far beyond this, the company went for further and significant expansion only because of the relationship between the two parties and with a view to get other global producers out of market.

24. The special relationship is the cause of significant price difference despite of current anti-dumping duties on Korean goods.
25. The recent global recession led to the significant drop in demand of the product in major markets (which includes China, Europe and USA). The global market for tyres continues to be sluggish after the global recession, whereas the Indian market is quite strong. The information published by the tyre industry and its association is clearly indicative of the increase in demand/consumption. Resultantly, the Indian market is increasingly becoming lucrative to the foreign producers. Further, petitioner submits that there is decline in exports of tyres in Europe and EU markets and consequent decline in PX-13 consumption in third countries exporting to Europe which lead to accumulation of inventories with the producers. Therefore the only option left with them was to increase their export into markets less affected by the recession. India being one such market was targeted and the imports increased in huge quantities.
26. The current enhancement in the applicable duty in force on imports from Korea and the revised anti-dumping duty that may be determined in the mid-term review by Designated Authority following the current review would still fall far below the injury margin in the current period of investigation. Therefore, the domestic industry has filed the present safeguard petition seeking imposition of safeguard duty only to the extent of unaddressed injury. In fact, the domestic industry was cautious of the situation that it was not entitled to dual remedy for the same injury and in order to address the aforementioned situation, the domestic industry on its own has clarified to the Director General (Safeguards) that the domestic industry is looking for safeguard duty only to the extent of unaddressed injury as a result of imposition of anti dumping duty.
27. The petitioner submits that, the penultimate intermediate required for this product PX – 13 is 4 ADPA. The 4 ADPA required by Korean Manufacturer is sourced from China which is a Non Market Economy as classified by the Anti Dumping Authorities. Further the Chinese Government offers various direct and indirect incentives to its domestic industry like Export Tax Rebates, a Weak Currency (RMB), etc. It may be noted for the same product PX 13, the ADD levied on the Chinese source is determined at Rs. 42.70/Kg whereas for Korea, it is determined at Rs. 10.35/Kg. The major difference on this front is treatment of Korea as a Market Economy despite the major input 4ADPA is being

sourced out of China and that the value addition from 4 ADPA to PX 13 is not very significant.

28. In the recent case of Caustic Soda in India, the Director General has recommended for levy of Safeguard duty in addition to the Anti-dumping duty already in force. The Government of India accepted the recommendation and imposed Safeguard duty along with the Anti-dumping duty. Hence it is wrong to say that both duty can not be levied.
29. The petitioner submits that domestic industry is legally justified in filing the present application. WTO laws also permits the same. No violation of either domestic or international law has been pointed out by the interested parties. The petitioner refers and relies on the reply of European Union to the issues raised by China on dual remedy (G/SG/Q2/EEC/4) which is as follows:

*–The EU received requests for a safeguard investigation, as well as an anti-dumping and an anti-subsidy proceeding. In all three cases, the requisite conditions for the initiation of the cases were met. Indeed, as far as the safeguard investigation is concerned, an analysis of the evidence submitted by Belgium in its request for safeguard measures indicated that there was a sudden, recent and sharp increase in imports and that this increase caused serious injury.□*
30. The petitioner claimed confidentiality as per Rule 7 of Safeguard Rules 1997 on factual information relating to product under consideration alone, such as capacity, production, sales volumes (domestic & exports), inventories, costs, prices, profit/loss, market share, etc. Petitioner has not claimed confidentiality on any information that is contained in the annual report, or information that the petitioner has placed in public domain. Petitioner submits that disclosure of actual information with regard to petitioner domestic industry can also jeopardize the future business in the product. The implications of disclosure of information that may have to be disclosed as a result of argument by the interested parties are-Firstly, there is only one petitioner in this case, which would mean all parties would know actual information about that company. Secondly, there are three other companies in India, competing with each other and domestic industry fiercely in the Indian market, and trying their level best to know business secrets of other company in order to draw their future business strategy. The moment such information is disclosed, all these companies can derive the information about the other company in matter of minutes – something which they might be trying to know for a very long period and for which they might have even spent huge money and yet might be unaware. Thirdly, the moment the information is disclosed, each & every consumer would come to know how their procurement price was in the past, i.e., were they paying high or low or just & fair price vis-à-vis their competitors buying from the same source (which directly impact the competition). Fourthly, the consumers would instantly know how their prices are vis-à-vis cost structures of their supplier, which would directly impact the future price negotiation between these parties. Fifthly, the foreign producers would come to such huge business information about the majority Indian Producer that they can draw clear plans for eliminating the Indian Producer (which is the entire intent). The information can be gold mine

information for a prospective Indian Producer trying to set up a plant in India, having no definitive information about the actual current performance of current producers. Sixthly, the consumers are competing in the downstream product and pricing to other buyers is the biggest business information for them. If so, the consumer would immediately get tremendous business information about its competitor who is otherwise a producer of one of the inputs.

31. The petitioner contended that past cases in DG Safeguards were without such confidentiality because the number of applicants were more and the information given in the petition was already in Public domain i.e. in Annual Report of the applicant companies. The present case justify confidentiality as in rubber chemicals industry no player in the said business ever discloses product wise installed capacities – production, sales volume, etc. Even if one looks at the balance sheets (Annual Reports) of Indian competitors, viz. Lanxess India Pvt. Ltd., PMC Rubber Chemicals India Pvt. Ltd., one does not get any breakup of individual product wise capacities, sales volumes, production, etc. Even in a company like China Sunline or Lanxess or Solutia Inc., one does not get product wise production capacity, sales volume, etc. In case of Lanxess, Solutia Inc., rubber chemicals get clubbed with other business. Even KKPC, rubber chemicals get clubbed with other business
32. Petitioner has so far participated in three completed investigations and three ongoing investigations. Petitioner has not disclosed any of these information in their dumping petitions. Such claim of the petitioner has been accepted/admitted by the Designated Authority. Under the circumstances, disclosure of this information now in safeguard petition would seriously jeopardize the petitioner's claim before the Designated Authority on Anti-dumping.
33. As regards Adjustment Plan at the outset, petitioner submits that the Panel in the Korea — Dairy Safeguard case rejected the view that Article 5.1 imposes an obligation to consider adjustment plans.
34. The Indian Producers have laid down adjustment plan which focuses on a) Cost reduction b) Further utilization of existing production capacity c) Capacity expansion to cater the growing demand.
35. The petitioner industry i.e. NOCIL is setting up another manufacturing facility at Dahej wherein the company intends- to produce \*\*\*MT of PX-13 at an estimated expenditure of Rs.\*\*\*Cr. The total commitment as on 30<sup>th</sup>-April 2011 stands at Rs. \*\*\* Crores and the amount already spent upto 30.04.2011 is Rs. \*\*\* Crores. The project is slated to be commissioned from March 2012 and production from April 2012. A certificate from Chartered Engineer has been submitted giving detail of the work done and to be done and certifying that it is quite possible to commence production from April 2012. Also a certificate from practicing cost accountant giving detail of the expenditure already done and committed has been submitted.

36. The expanded capacity would be sufficient to take care of present and potential demand of PX-13 in the Country after taking into account the production capacities with other Indian producers and likely growth in demand and imports of PX-13 against exports.
37. The expansion would result in minimum cost saving of Rs.\*\*\*/Kg to the company. The applicant submitted a certificate from practicing cost accountant in support of the same. Further the petitioner is hopeful of cost reduction on account of overhead cost once it is able to sell more material in the market.
38. Further, this expansion would enable the company to face fair competition from imports. The petitioner requested safeguard duty for a period of three years so that it is in a position to face the import competition.
39. The Adjustment Plan is not required to be fully operational when Safeguard duty is imposed. The domestic industry is required to give adjustment plan in such a way that if safeguard duty is imposed, the same would enable domestic industry to facilitate positive adjustment.
40. It is relevant to point out that one of the Indian producers, M/s. Laxness is a multinational company having production facilities in India and outside India. The petitioner submitted that M/s. Laxness had temporarily suspended its production and in order to meet out its customers requirements it has resorted to supplies of the material from its production facilities outside India. If the production had not been suspended, the company would have produced the same quantities of subject goods domestically. Owing to the absence of permanence in the said arrangement, the imports were excluded as the inclusion would have otherwise distorted the data.
41. The said manufacturer M/s Lanxess have started production as is evident from import of 4 ADPA by them. Import data of 4ADPA at JNPT, Nhava Sheva is submitted in support of the said claim.
42. The petitioner informed that the average import of preceding years for ICD Ludhiana and Cochin port has been added in the import figure of 2009-10 and 2010-11 as the same was not available. Appropriateness of the same has not been disputed by the interested parties at the time of oral hearing. Petitioner submits that these imports are required to be added in order to arrive at imports of the product under consideration in India during relevant period.
43. It was argued at the time of oral hearing that the petitioner has shown increased imports by excluding imports made by Lanxess (and there is no justification in excluding these imports). It was further argued that once these imports are excluded, imports show a decline. Interested parties even presented graphs showing decline in imports. Petitioner submits that all these submissions are misplaced as there is increase in import whether the data of Lanxess is included or excluded from the total import.
44. The imports in relation to production has increased throughout the period from 2000-01 to 2010-11. Imports has also increased with reference to consumption.

Surge in imports is leading to injury to the domestic industry. Market Share of domestic industry steeply declined whereas that of imports steadily and steeply increased. Capacity utilisation of domestic industry declined. This decline in capacity utilisation is despite increase in demand for the product under consideration in the Country.

45. Domestic industry is being forced to export its production, despite significant domestic demand. Such exports are not a matter of choice, but a compulsion for the domestic industry, driven out of continuous increased imports of the product in the Country. It has been argued by the opposing parties that it is a false case that the domestic industry is constrained to export. The petitioner submits that in the presence of sound demand in the domestic market, the petitioner is exporting the product at prices lower than what it can fetch in the domestic market in the normal circumstances. The only reason for these increased imports can be lower prices. The petitioner is unable to get demand for its products in the domestic market, and therefore is compelled to export the product under consideration. The petitioner submitted data on Korean Landed price of Import and their domestic sale and Export price in support of their claim.
46. Profitability and return on investments are still lower than the levels registered in the past. This is despite of improvement by at least \*\*\*% on the cost position over the last 4-5 yrs.
47. Production of the domestic industry, which was increasing till 2009-10, declined thereafter. The domestic industry enhanced its capacities in view of rising demand. Even when demand for the product in the Country is significantly high, the domestic industry was not able to fully utilize its capacity. Further, even though the domestic sales increased over the injury period, the same were far below the production level and domestic demand. In fact, the domestic industry was constrained to export a very substantial part of its sales in view of its inability to sell more volumes in the domestic market. It is pointed out in this regard that exports of the domestic industry are more of a compulsion than a choice or preference.
48. The fact that the petitioner has not been able to utilize its production capacities for the product under consideration can be seen from the data they have submitted on Production Hour lost since 2007-08 to 2010-11(upto Dec.).
49. The landed price of imports is lower than the (a) selling price of the domestic industry and (b) cost of production of the domestic industry. The imports are significantly undercutting the domestic selling prices. The price undercutting is resulting in price suppression or depression.
50. Petitioner submits that the impact of increased imports shall be on commercialization of additional capacities being set up in India [by NOCIL and Merchem]. Firstly, given the surge in imports, the producers may not even find market for the additional capacities that are coming up. Secondly, even if the producers find some market, the prices are likely to be quite adverse. NOCIL alone is investing about Rs. \*\*\* crores. Significant investment is being made by Merchem. NOCIL alone will have an employment strength of more than \*\*\*

persons. Significant part of these investments have come from financial institutions. Thus, all these investments and employment are at stake due to surge in imports.

51. The petitioner submitted that there is no gap in demand and supply. They claimed that the import under duty free Advance License Scheme for use in export should be excluded from calculation for domestic demand. After considering the capacity available with the other Indian producer (present and future expansion), inventory available with the DI there is no demand and supply gap. On the contrary, the DI has excess capacity than domestic demand.
52. The domestic industry is losing sales opportunities. Consequently, production, capacity utilization, profits, return on investment and cash flow is not improving even after imposition of anti dumping duties due to continued presence of low price increased imports. Given the low prices offered by the foreign producers and significant freely disposable production capacities with foreign producers, the imports are surging further despite low prices offered by the domestic industry. Increased imports have led to increase in market share of imports and reduction in market share of the domestic industry. Decline in market share of the domestic industry has adversely impacted the production and capacity utilization of the domestic industry. It is thus evident that injury to the domestic industry has been caused by the increased imports.
53. Petitioner claimed that in addition to the serious injury already inflicted on the domestic industry, increased imports of PX-13 are threatening serious injury to the domestic industry. The threat of serious injury is established by the following factors:-
  - (a) The price difference between domestic and imported product is too high even after considering the prevailing anti dumping duties. Thus, the imports continue to remain lucrative;
  - (b) The foreign producers are holding significant unutilized capacities. Resultantly, the foreign producers are looking for additional markets to the extent possible;
  - (c) The special arrangements between the Chinese and Korea producer is providing significant mileage to the Korean producer. The Korean producer is therefore likely to intensify its activities in the Indian market;
  - (d) The global market for tyres continues to be sluggish after the global recession, whereas the Indian market is quite strong. The information published by the tyre industry and its association is clearly indicative of the increase in demand/consumption. Resultantly, the Indian market is increasingly becoming lucrative to the foreign producers.

54. Imposition of Safeguard duty is in Public interest. The PUI does not constitute a major cost element for the consumers. Majority consumption of 6-PPD is by tyre industry. Costs on account of 6-PPD constitutes below 1% of the price of tyre industry. In any case, there is no basis for a presumption that NOCIL will increase its prices as a result and to the extent of safeguard duty. NOCIL is only looking for additional market from the consumers. In the instant case, imposition of safeguard duty would be in public interests for the following reasons.
55. 6-PPD constitutes a major product for the producers of this product. Presence of domestic industry has kept the prices to reasonable levels. The intention of the Korean and in turn Chinese producer is to eliminate production of the product in India and then charge high prices. Should the domestic industry survive, benefit of the same will come to the consumers.
56. Fresh investment of about Rs. \*\*\* crores is being made by NOCIL alone. Significant investment is being made by Merchem as well. Majority of these investments are from financial institutions. The surge in imports is clearly likely to have serious impact on these public funds. NOCIL alone has employment of more than \*\*\* persons. This employment is clearly at stake if the domestic producers do not survive.

#### **Submission of Merchem Ltd (Domestic Producers)**

57. The company is in Rubber Chemical manufacturing and have capacity of \*\*\* MT. They are going to enhance the capacity to \*\*\*MT and the production of expanded capacity is expected from July 2011. The expansion would create employment of \*\*\* person.
58. The company strongly supports the imposition of safeguard duty on the PUI.
59. The import of PUI has shown an increasing trend. The increased import at price much below the production cost is causing serious injury and is threatening to cause serious injury.
60. The cost of production of 6-PPD (Ref: standard input output norm Sl. No. A1412) is approx. Rs. \*\*\*/kg. but the imports are taking place at price US\$3.30/kg(Rs. 148/kg).
61. The increased imports at low price has caused price depression and prevented price increase of the PUI in domestic market.
62. The increased import has made impossible to retain customers due to unviable price. The major producers of 6 PPD in developed countries are dumping their surplus quantities into India.
63. The imports have affected our profitability and operations very severely. This will further adversely impact our cash flow, growth opportunity etc. If the safeguard measure is not taken our plants will go in loss and would eventually be forced to close down.

## **VIEWS OF EXPORTING NATIONS**

### Views of European Commission

64. On the basis of information provided in the application, prima facie there appears to be no serious injury or even threat thereof as required by Article 4.1(b) of the WTO Safeguard Agreement (WTO SA).
65. The most recent data on imports given in the application is incomplete as per the claim of applicant that several ICDs could not make them available due to migrations of their databases. The same is required to be verified.
66. The petitioner is unable to identify unforeseen developments. As per Article XIX of the GATT, Safeguard measures should only be taken in exceptional circumstances.
67. No “critical circumstance” exists as required by Article 6 of the WTO justifying the imposition of provisional measures.
68. The imports from several countries were already under Anti Dumping duties in 2005 and 2008 and that these measures are currently under review (sunset and midterm review) and any double remedy should be excluded.
69. The increase in imports is not recent, sharp, and significant enough and there is no unforeseen developments. As per application, the imports in the most recent period increased by only 2% (from 8834 in 2009 to 9043 in 2010) which is not a sharp and significant increase in imports.
70. No serious injury or threat thereof. Capacity and production increased considerably between 2007-08 and 2009-10. During the same period, production and sales increased significantly.
71. No causal link between increased imports and the impairment in the position of industry. Negative effects produced by other factors having a bearing on the situation of the petitioner should not be attributed to imports.

### **Views of Arab Republic of Egypt**

72. As there is no Egyptian exports of the subject goods (PX-13), therefore, as per Article 9.1 of the Agreement on Safeguards, any safeguards measures that may be imposed on imports of PX-13, should exclude Egypt.

### **Views of the Republic of Korea**

73. Double jeopardy resulting from the simultaneous imposition of anti-dumping and safeguards duties. The Korean companies that are exporting PX-13 have already been imposed anti dumping duties by Government of India since October, 2008. Furthermore, in July, 2010, the Indian anti-dumping authorities launched a mid-term review at the request of its domestic industry.

74. As per Article 4 of the WTO Safeguard Agreement, in determining whether serious injury or threat is present, investigating authorities are to evaluate all relevant factors having a bearing on the condition of the industry, and are not to attribute to import injury caused by other factors.
75. No injury to domestic industry. As per the data in the petition filed by applicant, taking year 2006-07 as the base year, the production has increased from 100 to 161.15; capacity utilization from 100 to 112.20; domestic sales have doubled and profits have more than trebled i.e. profits have increased from 100 to 325.
76. No unforeseen developments and import increase was not 'recent, sudden, sharp and significant.

### **Views of the Exporters**

#### **Views of Jiangsu Sinorgchem Technology Co. Ltd, China PR**

77. Application for the initiation of safeguard investigation is without factual and legal basis. The investigating authority has not carried out due scrutiny of the application before the same was initiated.
78. The Indian Anti Dumping Authority had already initiated and imposed Anti-dumping Investigation on the subject product before the current safeguard investigation and Anti Dumping Duty is in place on almost all sources.
79. The Domestic Industry in India has always, by one way or the other, been protected by the Government of India in the past. The Domestic Industry in India is in a habit of seeking protection by way of trade barriers from the Government of India even though the same are not justified.
80. Deliberately details of imports from USA have been deleted from the information submitted to DG (Safeguards) to show increase in imports during the proposed period of investigation of Safeguards investigation (April 2010 to Sept 2010 Annualized). The trends in case of actual imports reported by Applicant Domestic Industry to DGAD is

Year	Imports Claimed with DGS (Mt)	Percentage Increase	Imports Claimed with DGAD (Mt)	Percentage Increase
2009-10	8834	100%	9828	100%

PERIOD OF INVESTIGATION ( Annualised)	9043	102%	9043	92%
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81. Trends of increase in imports during the period of investigation from 2009-10 have shown decline and not increase as claimed by the Applicant Domestic Industry.
82. Article 2.1 of AoS and Art. XIX, 1(a) of GATT 1994 requires that the increase in import must be recent enough, sudden enough, sharp enough and significant enough both in quantitative and qualitative term to cause serious injury. In India the data to determine the increased import provided is of most recent three years eg. Acetylene Black case. The 10 year period of investigation is abnormally long and against the practice of Safeguard.
83. Domestic Industry may be asked to file complete and comprehensive details as per Domestic Industry Questionnaire and then other interested parties may be given opportunity by way of filing response to the Questionnaire. The DI has not provided information required in the said questionnaire for adjustment plan like Project report by Chartered Engineering firm and project cost by practicing cost accountant.
84. Nothing has been submitted on unforeseen development that lead to increased imports. Hence the investigation should not have been initiated.
85. The relationship between KKPC and Sinorgchem is normal business relationship and is not special. Sinorgchem has never sold 4ADPA to KKPC at low price but at a profitable market price.
86. The adjustment of VAT refund rates for products from time to time is normal practice for many countries. The Government of China applies the VAT refund rates at 17% on many products and is not limited to 6PPD and this can not be termed as unforeseen development.
87. The Director's report of DI for the year 2009-10 clearly says that there is no effect of recession in 2009-10. The Indian industry and global tyre industry is operating at their normal level. Hence claim of unforeseen development is not correct.
88. As required under the Annexure to Trade Notice No.SG/TN/1/97 dated 6/09/97, no detailed adjustment plan has been offered by the Domestic Industry to the Directorate General (Safeguards) as part of their application. It is not clear from the Initiation Notification that what measures have been proposed by the Domestic Industry to adjust itself to the competition being faced due to alleged surge in imports. In absence of viable Adjustment plan the investigation is not proper as per the law.

89. The Domestic Industry has failed to prove objectively the alleged imports, absolute or relative, the alleged serious injury or threat of serious injury to the Domestic Industry and a causal link between increase in imports and the alleged serious injury or threat thereof.
90. Main reason for decline in production, market share of the Domestic Industry and share of domestic producers in domestic consumption and fall in capacity utilization of the Domestic Industry is mainly due to shut down of plant by one of the domestic producers.
91. In line with the rulings of the Appellate Body in US-Lamb case we are of the opinion that the mandatory requirement has not been fulfilled and the Initiation Notification is grossly vitiated due to non-compliance of Article 4.2(b).
92. The applicant failed to demonstrate the existence of causality between surge in import and serious injury and threat of serious injury.

#### **Views of Kumho Petrochemical Co. Ltd., Korea**

93. The petitioner has not made out any development that was unforeseen which resulted in the increased imports of goods into India and hence the conditions prescribed under Article XIX: 1(a) is not fulfilled.
94. Secondly, the petition has not brought out that the increase in imports was due to the effect of obligations undertaken by India under GATT, including tariff concessions. Merely because India is a member of WTO and has undertaken some obligations under GATT, one cannot presume that the increase in imports in the subject goods was due to the effect of those generic obligations undertaken under WTO.
95. Application should be referred to DGAD as the domestic industry has claimed before the DGAD that dumping was causing material injury to them. At the same time, the domestic industry has claimed before the DG (SGD) that increased imports was causing serious injury to them. In such situations, what shall be done according to the law is the question to be answered in this case.
96. In this case, it may be seen that close to 97% of the imports are coming only from dumped sources or countries that have been found to be dumping the goods into India by DGAD. Rightfully, antidumping duties are already in place against almost all countries that export the subject goods to India. Since the antidumping duty has already been put in place and the existing duties are under review, there is no warrant for the DG(SGD) to initiate one more set of investigation to see whether safeguard duty is required to be levied. Only to prevent such situations, the rules provide that the DG(SGD) shall forward the application to the DG(AD) as the goods are dumped.
97. Import data has been manipulated. Though the petitioner has included the imports made by the Lanxess (the other domestic producer in their petition before the DGAD), however, they have excluded such import without any legal basis to place on record manipulated figures to get undue advantages.

98. Initiation of the proceedings by the Authority is in gross violation of the provisions of Rule 5. It is mandatory for the Domestic Industry to submit a statement on the efforts being taken to meet the import competition. Understanding the extraordinary nature of safeguard measure and the obligation of the Domestic Industry to establish the efforts taken by it to adjust to global competition, the DG has prescribed the Questionnaire Format for Domestic Industry requiring them in section IV to provide 'Information on Adjustment Plan'. However, the Petitioner has not filed the questionnaire till date.

99. There is no increased imports as is evident from the data below:-

S. No	Year	Import of subject goods (MT)	Increase in imports (MT)	Increase in imports (%)
1	2009-10	8,834		
2	2010-11- April to September	4,533	209	2.37
	2010-11- annualised	9043		

100. It is clearly evident that the increase in import of the subject goods during the first half of 2010-11 is a mere 289 Tones or 2.37% on an annualized basis. Thus, there was no significant increase in imports.

101. While all the other injury parameters like fall in production, capacity utilisation etc. have been considered for M/s NOCIL Ltd alone, the fall in market share has been considered for all the producers put together.

102. Safeguard measure is an emergency device designed to relieve a domestic industry of an acute injury caused by radical increase in imports. Gradual or even sporadic increase in imports over a long period of time is unlikely to put a domestic industry in a situation that justifies an emergency remedy like safeguard duty.

103. Increase from 5655 MT in 2004-05 to 9066 MT in 2010-11 representing an increase of 60%, even if considered significant, has happened over a period of 7 years and hence is not recent enough. Increase in imports from 8834 MT in 2009-

10 to 9066 MT in 2010-11 represents a mere 2.62% increase and hence is not significant enough. The increase is definitely not sharp enough or sudden enough or significant enough.

104. A close examination of the following injury data reveals that there is no injury to the Domestic Industry.

S. No.	Particulars	2007-08	2008-09	2009-10	2010-11	(Annualised) Change in 2010-11 compared to 2007-09
1	Installed capacity	258	258	274	274	6%
2	Production	235	238	273	253	8%
3	Domestic sales volume	122	117	174	177	45%
4	Export Sales volume	441	474	418	282	-36%
5	Cost of sale	107	137	122	124	25%
6	Selling Price	96	132	121	120	25%
7	Profit/Loss per Kg	-5	89	106	88	1860%
8	Profit as a % of selling price	-1	56	63	52	5300%
9	Cash Profit	24	110	1871	162	575%
10	ROCE	-1	83	95	76	7700%
11	Wages	74	71	97	107	45%

105. Capacity has increased from 100 in 2000-01 to 274 in 2010-11. Even if we consider the performance during the last four years, capacity has increased from

258 in 2007-08 to 274 during 2010-11 – an increase of 6%. Production has increased by 2.53 times during the past decade. More specifically, production increased from 235 in 2007-08 to 253 in 2010-11 – an increase of 8%. Capacity utilisation has been maintained at around 91%-92% despite significant capacity additions. Domestic sales have increased from 122 in 2007-08 to 177 in 2010-11 – an increase of 45%.

106. Only export volume recorded a fall of 36% in 2010-11 as compared to 2007-08, which could be the only cause for injury suffered by the Domestic Industry.

107. Cost of sales increased from 107 in 2007-08 to 124 in 2010-11 as compared to the increase in selling price from 96 to 120 during the same period. Thus, while cost of sale increased by 17 basis points, selling price increased by 24 basis points.

108. From a loss of (5) in 2007-08, the domestic industry has achieved a profit of 88 during 2010-11 recording an increase of 93 basis points. ROCE has increased

from (-1) to 76 during the said period.

109. The above data presented by the petitioner in the application does not show any evidence of ‘serious injury’ suffered by them due to increased imports. On the contrary, the domestic industry has grown from strength to strength in the last 4 years.

110. The goods subject to safeguard investigation are used in manufacture of tyres, which is one of the primary requirements of automobile industry. The automobile industry is facing serious competition from import of tyres. If a safeguard duty is imposed on the import of 6 PPD, the prices of the tyres in the the domestic market would increase. This would lead to a situation in which imported tyres would be more competitive as compared to the domestically produced tyres. It will be detrimental to the interest of tyre manufacturers as well as automobile manufacturers and ultimately costly to the common man.

111. In the absence of feasible adjustment plan provided by Domestic Industry, the authority cannot impose safeguard duty. In the final finding of White/ yellow phosphorous case the Director General did not recommend Safeguard duty even after ascertaining material injury caused by increased imports because the DI in the Adjustment plan did not establish that it would be in position to compete with international competition. The said order was held by Hon’ble High Court and Supreme Court of India.

112. Though this may be permissible interpretation of Art. 5.1 of AoS that there is no obligation on part of investigating authority to consider adjustment plan but Rule 5 of Safeguard Rules 1997 specifically provide for Adjustment plan. The domestic law regarding Adjustment Plan should prevail over international law.

113. The domestic industry is not interested in their expansion at Dahej in Gujrat as stated in the Adjustment plan. They have invested only 10% of the project money even after three years as is evident from their Chairman's statement in the shareholder meeting available in public domain.
114. The claim of DI for Safeguard duty as difference between injury margin and Anti dumping duty has no legal basis. Art. 11.1 of ADA provides levy of anti dumping duty to the extent necessary to counteract dumping. Art. 5.1 of AoS authorize levy of Safeguard measure to prevent injury and facilitate adjustment. Hence under AoS it is not necessary to impose Safeguard duty equal to the injury margin.
115. KPC has entered into a contract with Sinorgchem China for uninterrupted supply of 4-ADPA , a raw material of 6-PPD. This contract cannot be termed as special relationship. Both KKPC and Sinorgchem compete with each other in global market. The increase import has nothing to do with the above long time contract of the two companies.
116. The Chinese supplier is exporting 4ADPA to KKPC at lower price than to India. The KKPC is getting preferential pricing because of bulk order and longtime contract. It has nothing to do with unforeseen development.
117. The capacity of KKPC in excess to domestic demand has nothing to do with unforeseen development.
118. The price variation between different countries will always exist. Also only Korean price is compared with domestic selling price whereas there are significant import from other countries. The petitioner is more dominant in determining the sale price than KPC in Indian market.
119. The global recession caused decreased in import of 6 PPD in India in 2008-09. Further the global recession between 2007-09 has not impacted the petitioner as its sale and other injury parameter shows increase.
120. The DI has submitted revised injury data after addition of omitted import data of Cochin and Ludhiana port. However, non inclusion of certain import can not alter or vary the injury suffered by the DI like cash profit investment etc. The revised injury data should not be entertained by the authority as the same suffers from serious inherent errors and misrepresentations. Further country wise import from two ports is not available.
121. Domestic sale and sale value has increased in 2010-11 compare to 2009-10. The profit has increased in 2008-09 and 2009-10. A slight decrease in 2010-11 compare to 2009-10 does not indicate serious injury.

#### **Views of M/s Solutia Inc., USA**

122. The domestic industry has flouted the guidelines prescribed in Director General Safeguards Trade Notice dated 21 Dec 2009 regarding claiming confidentiality. The provisions contained in Rule 7 of Safeguard Duty Rules have

- also not been adhered to in this case. The Domestic Industry has claimed confidentiality even on the volume related information which does not fall in the category of confidential information.
123. There is no examination/analysis either in the application or in the initiation notification as to how the present investigation is justified when almost all the imports of the subject goods are from countries which are subject to anti-dumping investigations either sunset review or midterm reviews.
  124. The very basis for seeking additional protection of safeguard duty over and above the anti-dumping duties is presumptuous and contrived. This could not have formed an accurate and adequate basis for initiation of the investigation seeking safeguard duty up to full extent of injury margin.
  125. There is no mention with respect to unforeseen circumstances having led to increase in imports either in the application or in the initiation notification.
  126. There is complete harmony between imports and demand pattern and therefore the pattern of imports in the present case cannot be regarded as a consequence of unforeseen circumstances.
  127. There is an increase of merely 2.4% in imports during Apr10-Sep 10 vis a vis 2009-10 which cannot be regarded as recent, sudden, sharp and significant enough to warrant any safeguard initiation. Trend of imports in last five years or earlier period is totally irrelevant as has been done in this case.
  128. No legal or logical justification has been given for excluding the imports by M/s Lanxess.
  129. There are no details in the application or in the initiation notification with respect to imports in relation to domestic production which is a necessary condition for initiation and imposition of safeguard duty.
  130. The domestic industry has taken different time periods for different parameters as per their convenience which is illogical.
  131. Domestic industry has taken price as one of the indicators of injury in the application which is wrong as price and other factors are not relevant in a safeguard investigation.
  132. There is no causal link between the imports of the subject goods and the alleged serious injury.
  133. Domestic Industry has further extended the investigation period upto Dec.2010 which may not be allowed.
  134. The unforeseen development cited by DI is highly localized and specific to specific companies and can not be used for Global Safeguard protection. Further global recession can not be Unforeseen development for the year 2010.

135. The Designated authority for Antidumping has so far not disclosed whether the Anti dumping duty will be restricted to dumping margin or injury margin. There is no evidence in support of the presumption that the Anti dumping duty may be restricted to Dumping margin.
136. The price and other factors are not relevant in Safeguard investigation and should not be brought under the phrase “under such circumstances”.
137. In the event of revision of import data and consequently the injury data, the domestic Industry may be asked to file fresh submission and the same should to made available to the interested parties with 30 days time to reply.

**Views of Importers (ATMA)**

138. The surge in imports alleged by the DI does not fulfil the prerequisites of being sharp, recent, sudden and significant enough as is required under law. Further, the domestic industry has excluded imports made by Lanxess from total imports for inexplicable reasons. DI’s argument that imports by Lanxess on account of suspension of production are not injurious holds no merit.
139. The increase in imports during 2010-11(annualized) vis a vis preceding year is a meager 2.3% only which is totally insignificant and does not warrant any safeguard measure.
140. In case imports made by Lanxess are included, which should have been the case, there is actually a decrease of 8% in the import volumes during the period stated above.
141. Competent authority seems to have relied on trends in imports over a period of time instead of recent imports which is against the mandate under Article 2.1 of the AOS and Sec 8B of CTA, 75.
142. The domestic industry is claiming three different injuries for the same product against three different sources (Antidumping MTR, Antidumping SSR and Safeguards) involving the same period of investigation. It is not clear on what basis does the domestic industry is arguing that Antidumping duty is not sufficient and is approaching the DG Safeguards for differential duty when DGAD is bound to determine a rate of duty which would remedy the injury to the domestic industry.
143. The domestic industry has failed to adduce any evidence to show that there is presence of critical circumstances and unforeseen circumstances.
144. There is no injury as per the injury parameters viz production, installed capacity and capacity utilization to the domestic industry in this case. Installed capacity has increased by 44 % and capacity utilization has increased to 137% in 2010-11.

145. Domestic sales have risen proportionately to the increased domestic demand, which shows that the domestic industry faces no competition from dumped imports.
146. The profitability of the domestic market is evident from the fact that in first six months period of 2010-11, the value of domestic sales was 40% higher than the entire year comprising 2009-10 and profitability increased by 56% during the same period.
147. Even during the years from 2001-02 and 2005-06, when imports have been marginal, the domestic industry preferred to export the product under consideration and not supply to the domestic market. Hence, the argument that DI is constrained to export is patently false. The DI exports more than 50% of its product.
148. An investigation can maximum comprise a period of 5-6 years but examination of factors over 10 years is unprecedented.
149. The surge in import is not as has been in cases where DG Safeguard has recommended Safeguard duty.
150. The DI is not able to fulfill the demand of consumers in India and hence import is taking place even after imposition of Antidumping duty. There is demand supply gap of the product in country. In 2009-10, the demand increased by 142% and the DI even on operating at \*\*\*% capacity is not able to fulfill the same.
151. If duty free import under Advance license is excluded for assessing demand supply gap then these import should also be excluded from the total import to assess increase import and injury analysis.
152. The present and future capacity of Merchem is a speculative figure. Further the domestic sale figure of M/s Merchem is also speculative. Hence the demand – supply figure provided by DI should not be accepted.
153. Apportionment of duty asked for by DI is not tenable as only Anti dumping duty imposed on import from Korea is on dumping margin. For other countries namely EU, China and Taiwan it is on injury margin. Hence differential duty to the extent of injury will hold merit only in case of Korean import.
154. The safeguard duty is not in public interest. Once the DI builds the additional capacity, the user industry will entirely be at the mercy of Domestic Producers which will make the Indian Tyre industry uncompetitive.
155. The DI is redirecting its exports in Indian market as the domestic Sale is more lucrative. This shows that the domestic market is robust and thriving in last 6 months.
156. The production figure for Lanxess to show the demand supply gap is based on conjuncture and should not be accepted.

157. The DI Annual report of 2009-10 says that-

*“ Although the export market has shrunk considerably due to global economic showdown, the domestic tyre market has improved considerably. The company is hopeful that given the improved domestic market, it would be in a better position to strengthen its domestic business presence.”*

158. The above statement is for the fact that there is fall in export market prompting the DI to go for domestic sales.

159. The adjustment Plan as proposed by DI will take shape in 2012 at the earliest. There is no plan of action as to how the user industry should manage in the interim within the limited resource available in the country.

#### **Submissions on behalf of All India Rubber Industries Association**

160. The domestic industry is already enjoying a considerable degree of protection i.e. antidumping duty on imports from EU, Chinese Taipei, China and Korea.

161. The data submitted by the domestic industry that the present petition has been filed purely with the ulterior motive of further countering international competition. It is significant to note that the domestic industry has not been able to establish either present serious injury or threat of serious injury.

162. There is no causal link between the alleged serious injury faced by the Petitioners and the supposed increase in imports.

163. The emphasis and focus of the Petitioners complaint in this case is based on pricing as the data does not support rapid increases in imports and thus the Petitioners have resorted to allegation of adverse effects on pricing to initiate a safeguards case. However it should be noted that the right forum for grievances against unfair pricing is the DGAD and not DG Safeguards.

164. The petitioners are forum shopping by approaching the DGAD for enhancement of existing antidumping duty and seeking to impose a safeguards duty on the same product.

165. The user industry is already agitating the fact that there already subsists limited domestic capacity to supply to cater to the demand of the user industry before various authorities. Moreover, the fact that the domestic industry exports majority of its production further exacerbates the situation and curtails local supply of the PUC.

166. The investigation is against public interest as the user industry is already suffering on account of high cost of natural rubber (an alternative to the PUC) due to international prices. Thus, any increase in the cost of the PUC shall result in making production unprofitable.

#### **Examination and Findings:**

167. I have carefully gone through the case records, the replies filed by the domestic producers, users/importers, exporters and exporting nations. Submissions made by the various parties and the issues arising there-from are dealt with at appropriate places in the findings below.

**Product Under Investigation:-**

168. The product under investigation has been defined in the Notice of Initiation as Rubber Chemical N-1, 3-dimethyl butyl-N'Phenyl Paraphenylenediamine, also known as PX-13 or 6- PPD. The other trade or brand name for it are 6C, Pilflex 13, Sirantox 4020, Anti-oxidant 4020, Kumhonax 13, Vulconax 4020. The product under consideration is classified under various subheadings of customs classification heads 3812,3810, as well as under 2921 , 2925,2934 and 2942 (at six digit levels) of the Customs Tariff Act 1975.

169. The interested parties have not raised any issue with regard to the product under investigation. Therefore, it is confirmed that the product under investigation is Rubber Chemical N-1, 3 Dimethyl butyl- N'Phynyl Paraphenylenediamine also known as PX-13 or 6-PPD.

170. PX-13 is produced by hydrogenation of a mixture of 4-nitrodiphenylamine and methyl isobutyl ketone in an autoclave at moderately high pressure in the presence of a noble metal catalyst. The resulting reaction mass, which contains unreacted ketone, by-products, etc., is filtered to remove the catalyst, which is then recycled. The filtrate is distilled to remove low boilers and is then flaked to give the finished product. The low boilers are redistilled to recover the unreacted ketone. Catalyst is recycled until the activity is reduced. It is then removed from the system.

171. PX-13 is extensively used in treating natural rubber, synthetic rubber (SBR, Butadiene Rubber, Nitrile Rubber, and Carboxylated Rubber) and other synthetic rubber based compounds used for manufacture of various rubber products. The user industry are mainly the tyre manufacturer. Even the other industry also use the product for processing the various types of natural and synthetic rubbers.

172. No differences in the production process, characteristics or end-uses between imported product with different brand like PX-13 etc. named in para 168 above and domestically produced PX-13 were identified or raised by any of the interested parties during the course of this investigation. Both the products have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process& technology, functions & uses, product specifications, pricing, distribution.

173. Therefore, it is held that domestically produced Rubber Chemical PX-13 or 6PPD or vulconox 4020 etc falls under the ambit of like or directly competitive product in all respects to the imported Rubber Chemical PX-13 also known as

6PPD , vulconox 4020 and that the domestically produced Rubber Chemical PX-13 or 6-PPD or vulconox 4020 is a like article to the imported Rubber Chemical PX-13 or 6-PPD( or other names refered in para 168) within the meaning of Rule 2(e) of Safeguard Duty Rules 1997.

### **Domestic Industry**

174. Section 8B(6)(b) of the Customs Tariff Act 1975 defines domestic industry as follows:

- (b) “Domestic industry” means 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 inIndia*

175. As per the records of the case, besides applicant M/s NOCIL Ltd. there are three other manufacturers of this product. They are M/s Lanxess Pvt India ltd. M/s PMC Rubber Pvt Ltd. Hooghly and M/s Merchem, Ernakulam. One of the producer namely M/s Lanxess is a multinational company having production facilities in India and outside India. The production capacity of the Indian producers are as follows:-

### **in MT**

Sl.No	Name of Company	2007-08	2008-09	2009-10	2010-11(Annualised)
1	Lanxess India Pvt. Ltd	***	***	***	***
2	PMC Rubber	***	***	***	***
3	Merchem Ltd	***	***	***	***
4	NOCIL Ltd. (Applicant)	***	***	***	***
5	Total Indian Production	***	***	***	***
6	Share NOCIL	Above 65%	Above 65%	Above 75%	Above 70%

176. M/s Merchem Pvt. Ltd. Ernakulam , through written submission supported the application for levy of Safeguard duty claiming that the increased low price import is causing serious injury and threatening to cause injury to the domestic manufacturers. Besides their existing manufacturing capacity and future plan M/s Merchem did not submit data on relevant economic parameter in detail. They did not responded to the further query of the authority and also not participated in investigation.

177. There is no concept of supporter in safeguard investigation. Hence they are not treated as Domestic Industry in subject investigation.
178. It is found that the petitioner accounts for more than 50% of the Indian production of the PUI. Therefore, it is held that the applicant domestic producer constitute and represent the domestic industry as defines in Section 8B(6)(b)(ii) of the Customs Tariff Act 1975.

### **Period of Investigation**

179. The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard and the relevant Article XIX of GATT do not specifically define what the Period of Investigation should be. However the issue of period of investigation has been dealt in Panel findings in US-Line Pipe Case against Korea. The Panel in this case ruled that it is up to the discretion of the investigating authority of the importing Member to decide the “length of the period of investigation” and its “breakdown”:

*“We note that the Agreement contains no requirements as to how long the period of investigation in a safeguards investigation should be, nor how the period should be broken down for purposes of analysis. Thus, the period of investigation and its breakdown is left to the discretion of the investigating authorities.*

*In the case before us the period selected by the ITC was five years and six months, which is a period similar in length to the one used by the Argentine investigating authority in Argentina — Footwear Safeguard. However, we note that the Appellate Body, in the findings relied upon by Korea to argue the question of the length of the period of investigation, emphasized not the length of the period per se, but that there should be a focus on recent imports and not simply trends over the period examined. In the case of the line pipe investigation the ITC did not merely compare end points, or look at the overall trend over the period of investigation (as Argentina had done in the investigation at issue in Argentina — Footwear Safeguard). It analysed the data regarding imports on a year-to-year basis for the 5 complete years, and also considered whether there was an increase in interim 1999 as compared with interim 1998.*

*We are of the view that by choosing a period of investigation that extends over 5 years and six months, the ITC did not act inconsistently with Article 2.1 and Article XIX. This conclusion is based on the following considerations: first, the Agreement contains no specific rules as to the length of the period of investigation; second, the period selected by the ITC allows it to focus on the recent imports; and third, the period selected by the ITC is sufficiently long to allow conclusions to be drawn regarding the existence of increased imports.”(paras. 7.196, 7.199 and 7.201)<sup>1</sup>*

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<sup>1</sup> WT/DS202/R DT, 29.10.2001 Panel report in US-Line Pipe case

180. The Panel in the same US-Line pipe case ruled that:  
*"In a safeguard investigation, the period of investigation for examination of the increased imports tends to be the same as that for the examination of the serious injury to the domestic industry. This contrasts with the situation in an anti-dumping or countervailing duty investigation where the period for evaluating the existence of dumping or subsidization is usually shorter than the period of investigation for a finding of material injury. We are of the view that one of the reasons behind this difference is that, as found by the Appellate Body in Argentina – Footwear Safeguard, "the determination of whether the requirement of imports "in such increased quantities" is met is not a merely mathematical or technical determination." The Appellate Body noted that when it comes to a determination of increased imports "the competent authorities are required to consider the trends in imports over the period of investigation". The evaluation of trends in imports, as with the evaluation of trends in the factors relevant for determination of serious injury to the domestic industry, can only be carried out over a period of time. Therefore, we conclude that the considerations that the Appellate Body has expressed with respect to the period relevant to an injury determination also apply to an increased imports determination."* (Para 7.209)<sup>2</sup>
181. From the above it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguard and Art. XIX of GATT provides specific guidelines on the period of investigation. The relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased import and serious injury and it should not only end in the very recent past but the investigation period should be the recent past.
182. The applicant in this case submitted import and injury data from 2000-01 to 2010-11(Sep. 2010) contending that longer period is required to be taken in this case because of long dumping history of the PUI . The Notice of Initiation was issued with import and injury data submitted by applicant from 2000-01 to 2010-2011(upto Sep.2010). Subsequently, the applicant submitted figure from October to December 2010. The additional information of 3 months was made available to all concerned and kept in the Public File as required under Rule 6(7) of Safeguard Rules 1997.
183. The interested parties claimed that the period is too long and relatively shorter and meaningful period should be taken for investigation. They contended that even past precedence is also not of more than 6 years and hence for meaningful analysis shorter period may be taken.
184. Considering the long History of Dumping of the PUI, Levy of Antidumping Duty since 2005 and that the period selected should be sufficiently long to allow conclusion to be drawn regarding existence of increased imports and to neutralize the effect of seasonal variation longer sample size i.e. Annual Data has been considered from F.Y. 2005-06 to 2010-11(Upto December).

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<sup>2</sup> WT/DS202/R DT. 29/10/2001 panel report in US –Line Pipe case

### **Source of Information**

185. The product under investigation is imported into India under various heading and sub heading of Customs Tariff Act 1975(refer para 168).The Safeguard investigation was initiated on the basis of import data of IBIS submitted by the applicant domestic industry. The transaction wise import data containing description of the product, was made available to the other interested parties. None of the interested parties have questioned the correctness of the transaction wise import data except for exclusion of certain quantity(1154MT) in the F.Y. 2009-2010 from a particular country and for taking average import for ICD Ludhiana, Cochin for the F.Y. 2009-10 and the 2010-11(upto Dec.) submitted by DI. They requested authority to ascertain the actual import at these two ports and to arrive at the correct import figure. Accordingly, the transaction wise import data was procured from the Custom authorities of above two ports and kept in the Public File.
186. The submissions of all concerned were taken into account. The IBIS transaction wise import data submitted by the petitioner including the transaction wise data procured from ICD Ludhiana and Cochin which were not included in IBIS data with revised figure of import volume were placed in Public File with related revised data of economic parameters like total demand, share of import in total demand etc., for verification by all concerned and comments as per Rule 6(7) of Safeguard Rules. The compiled transaction wise import data was considered for assessment of increased import in the investigation.
187. The other economic parameters relating to the petitioner submitted with application and during investigation have been verified to the extent necessary and the non confidential version of verification report was placed in Public file for all concerned. Further, the data on various economic parameters like production, sales, capacity and utilization and inventory duly verified with the record of Central Excise Authority, an office of Central Government, has been considered .The analysis of data has been done primarily in relation to domestic industry only. However in order to analyse the market share of imports, the data of other industry provided by the Domestic Industry and ascertained from concerned Central Excise has been referred to. Further the import data available at the website of KITA and information available at the website of ATMA have been referred. The cost data duly certified by the practicing Chartered Accountant has been considered. If any other information is used the source is mentioned with the information.

### **Confidentiality of Information submitted**

188. The DI has provided information on confidential basis and sought confidentiality on the information /data submitted. The DI provided non confidential version of all submission including the application for safeguard measure as per the provisions of Safeguard Rules 1997 and Trade Notice No. SG/TN/1/97 dt. 06.09.1997. Further the DI has submitted reasons for seeking confidentiality at the time of filing the application and also post hearing written submission which has been discussed in para 30 to 32 of this findings.

189. The other interested parties like exporters and User/Importers have also requested for confidentiality of information and have submitted the confidential and non confidential version of all submissions. However they objected to the excessive confidentiality claimed by the DI and argued that meaningful argument can be put forward only with actual data on economic parameters and hence the same should not be granted.
190. The submission of domestic industry (para 30 to 32 of this finding) has been considered. Further it is seen that confidentiality has been allowed by designated authority of Anti Dumping in ADD investigation of identical product. It is also seen that all the participating industry maintains confidentiality of various economic parameter for the PUI.
191. Rule 7 of the Safeguards Rules and Art. 3.2 of WTO AoS provide for confidentiality. The petitioner is not required to disclose such information which is confidential information of the company, disclosure of which can cause serious prejudice to the business interests of the company, which is not in public domain and which the petitioner has not disclosed before public at large in the past. Accordingly confidentiality, as prayed for by DI, is granted.

### **Increased Imports**

192. The legal requirement for increased import are:-
- 1) Section 8B of Customs Tariff Act, 1975: Power of Central Government to Impose Safeguard Duty

*If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article.*

- 2) Article 2 of Safeguard Agreement:

*1. A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.*

193. It has been claimed by the interested parties that the import data shows increase of only 2%-3% in 2010-11 (upto Sep.10) compare to 2009-10 and hence the recent increase in import is not sharp and significant. The Panel in US- Line Pipe case observed in a statement that the word “recent” implies a retrospective analysis; but that it does not imply an analysis of the conditions immediately preceding the authority’s decision nor does it may imply that the analysis must focus exclusively on conditions at the very end of the period of investigation:

*“[W]e note that the Appellate Body in Argentina-Footwear Safeguard found that ‘the phrase “is being imported” implies that the increase in imports must have been sudden and recent’. According to Korea, the phrase ‘is being imported ... in such increased quantities’ refers to ‘the period immediately preceding the authority’s decision’. The word ‘recent’ — which was used by the Appellate Body in interpreting the phrase ‘is being imported’ — is defined as ‘not long past; that happened, appeared, began to exist, or existed lately’. In other words, the word ‘recent’ implies some form of retrospective analysis. It does not imply an analysis of the conditions immediately preceding the authority’s decision. Nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation. We consider that an analysis that compares the first semester of 1998 with the first semester of 1999 is not inconsistent with the requirement that the increase in imports be ‘recent’.” ( para. 7.204)<sup>3</sup>*

194. In the US-Steel Safeguard case the Panel in findings upheld by the Appellate Body addressed the question of how recently the imports must have increased and stated :

*“As the Panel in US — Line Pipe did, that Article 2.1 of the Agreement on Safeguards speaks of a product that ‘is being imported ... in such increased quantities’. Thus, imports need not be increasing at the time of the determination; what is necessary is that imports have increased, if the products continue ‘being imported’ in (such) increased quantities. The Panel, therefore, agrees with the US — Line Pipe Panel’s view that the fact that the increase in imports must be ‘recent’ does not mean that it must continue up to the period immediately preceding the investigating authority’s determination, nor up to the very end of the period of investigation. As pointed out by the Panel in US — Line Pipe, the most recent data must be the focus, but should not be considered in isolation from the data pertaining to the less recent portion of the period of investigation. However, as indicated by the present continuous ‘are being’, there is an implication that imports, in the present, remain at higher (i.e. increased) levels.*

*Whether a decrease in imports at the end of the period of investigation, in the individual case, prevents a finding of increased imports in the sense of Article 2.1 of the Agreement on Safeguards will, therefore, depend on whether, despite the later decrease, a previous increase nevertheless results in the product (still) ‘being imported in (such) increased quantities’. In this evaluation, factors that must be taken into account are the duration and the degree of the decrease at the end of the relevant period of investigation, as well as the nature, for instance the sharpness and the extent, of the increase that intervened beforehand.*

*To give an extreme example, a short and very recent slight decrease would not detract from an overall increase if imports have increased tenfold over the several years beforehand. Conversely, to give an opposite extreme example,*

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<sup>3</sup> WT/DS202/R DT. 29.10.2001 Panel report in US- Line Pipe case

*one could no longer talk about a product that ‘is being imported in (such) increased quantities’, or in fact in any increased quantities at all, if, at the time of the determination, import numbers have plummeted nearly to zero or to a level below any past point in the period of investigation. (paras. 10.162 to 10.164<sup>4</sup>).*

195. In the same US-Steel Safeguards, the Appellate Body confirmed that imports need not be increasing at the time of determination and insisted on the investigating authority’s obligation to examine the trend of imports over the entire period of investigation :

*“We agree with the United States that Article 2.1 does not require that imports need to be increasing at the time of the determination. Rather, the plain meaning of the phrase ‘is being imported in such increased quantities’ suggests merely that imports must have increased, and that the relevant products continue ‘being imported’ in (such) increased quantities. We also do not believe that a decrease in imports at the end of the period of investigation would necessarily prevent an investigating authority from finding that, nevertheless, products continue to be imported ‘in such increased quantities.’” (para. 367)<sup>5</sup>.*

196. The table below contains the import data for period under investigation i.e. from 2005-06 to 2010-11 (upto Dec.).

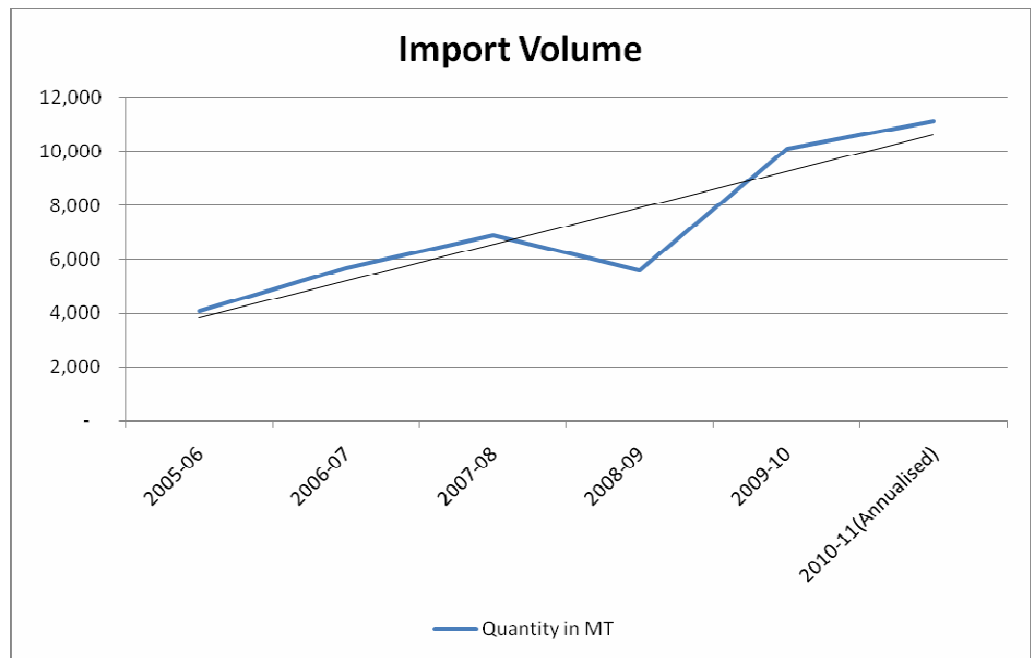
**TABLE-1**

Sl. No.	Financial Year	Quantity in MT	Increase in MT
1.	2005-06	4,077	
2.	2006-07	5,652	1,575
3.	2007-08	6,860	1,208
4.	2008-09	5,606	-1,254
5.	2009-10	10,090	4,483
6.	2010-11(Annualised)	11,109	1,020
7.	2010-11(Upto Dec. 2010)	8,332	
	Overall increase since 2005-06	7,032	

<sup>4</sup> WT/DS248/R DT. 11.07.2003 Panel Report in US-Steel Safeguard case

<sup>5</sup> WT/DS 248-54/AB/R & WT/DS 258-59/AB/R Appellate Body report in US- Steel Safeguard case.

**GRAPH-1**



197. The import data above shows that the import has increased by 172% in 2010-11(Annualised) with reference to the base year 2005-06. The increase in 2009-2010 with respect to 2008-09 was of 79% and in 2010-11 with respect to previous year was by 10%.

198. Intervening trend of imports: The imports increased by 39% in 06-07 compare to 05-06 and by 21% in 07-08 compare to preceding year. There was decrease in import by 18% in 2008-09 compare to 2007-08. The temporary decrease in f.y. 2008-09 was due to levy of Anti-dumping duty on imports from Korea and China, the main exporting countries of the PUI. The Table below contains data of Import of PUI from Korea and China.

**TABLE-2**

Financial Year	Import from China (in MT)	Import from Korea (in MT)
2006-07	1570	3336
2007-08	3287	3158
2008-09	1795	2980
2009-10	1831	6030
2010-11(upto Dec.)	1258	5328

199. The import of PUI from Korea and China were almost equal in 2007-08. The total import from Korea and China decreased by 26% in 2008-09 compare to 2007-08. The decrease from Korea was less than 5%. However there was sudden and sharp surge of total import in 2009-10 compare to 2008-09 from 5606 MT to

10,090 MT (79.98%). The Korea accounted for 3050 MT and China only 36 MT in the said total increase of 4483 MT. The increase in import from Korea by 102% in F.Y. 2009-10 was despite of levy of Anti-dumping duty in F.Y. 2008-09. The increase continued in F.Y 2010-11(upto Dec.).

200. Relative increase in import-The import in relation to Indian production is as below :-

**TABLE-3**

Financial Year	Import in relation to production (Indexed)	Import in relation to production (in %)
2005-06	100	***
2006-07	153	***
2007-08	124	***
2008-09	100	***
2009-10	157	***
2010-11(upto Dec.) Annualised	207	***

201. The import has increased in relation to production and has reached maximum level in 2010-11. The import in relation to Indian production has increased by \*\*% from base year. The import in relation to production increased by \*\*% in 2009-10 compare to 2008-09 and \*\*% 2010-11 compare to 2009-10.
202. In view of above it is held that there was increase in import in absolute and relative term and that the increase in import was recent enough, sudden enough and sharp enough.

#### Unforeseen Development

203. The Appellate Body in Argentina – Footwear (EC case) has held that the phrase Unforeseen Developments means the developments which were unexpected. ‘Unforeseen developments’ requires that the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been ‘unexpected’. The Body in the same case noted a GATT panel report which held that the development must have been unforeseen at the time of tariff negotiation. The Appellate Body in Korea-Dairy case<sup>6</sup> held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.
204. The Appellate Body, in Argentina — Footwear (EC), then held that the requirement of “unforeseen developments” did not establish a separate “condition” for the imposition of safeguard measures, but described a certain set of “circumstances”:
205. The panel on US- Steel Safeguards concluded that the confluence of several events can unite to form the basis of an unforeseen development:

<sup>6</sup> Para 86 of Korea Dairy case Appellate Body Report Of WTO

“The United States argues that the robustness of the US dollar was a development which combined with the other developments, namely, the currency crises in Asia and the former USSR and the continued growth in steel demand in the United States’ market as other markets declined, lead to increased imports.”

206. The petitioner has pointed out two events which constitutes unforeseen development namely a) Special relationship between KKPC and Sinorgchem and (b) recession in the global market leading to significant drop in demand for the product in developed countries and China. The petitioner has submitted evidences for the same (refer para 22 to 27 of this findings).

207. It is noted that there is mention of special relationship with M/s Sinorgchem in the Annual Report of Korea Kumho for the year 2009 :

*–Our specialty chemicals business – the industry leader in 6PPD production capacity –saw sales decline and price fall as Chinese competitors pursued a low price strategy. Shortages in the 4-ADPA feedstock market and restrictions on our ability to enter the Chinese market due to our special relationship with feedstock supplier Sinorgchem resulted in a lower operation rate that further hurt profitability. □*

208. The ADD duty @ Rs. 42.70/kg and @Rs. 10.35/kg was imposed on the goods imported from China and Korea respectively in f.y 2008-2009<sup>7</sup>. The import data of Korea in the table below shows substantial increase in import of the 4ADPA, the penultimate stage intermediate for 6PPD from the same F.Y. i.e. 2008-09 onwards.

209. The unit price of import of 4ADPA from China to Korea came down from US\$3.54/kg in 2008-09 to US\$2.68/kg. in 2009-10 which is also the year of levy of ADD duty at higher rate on China . The table below contains import data of 4ADPA from China to Korea.

**TABLE-4**

Sl. No.	Financial Year	Quantity in MT	Rate in US\$/Kg
1	2005-06	10815	3.20
2	2006-07	11492	2.57
3	2007-08	15465	2.67
4	2008-09	23631	3.54
5	2009-10	23118	2.68
6.	2010-11(Upto Sep.)	13036	2.69

Source: Applicant from Korea Customs Data(KITA site)

210. The unit import price of 4ADPA in India from EU and China is given in the Table below. It is seen that the import price of 4ADPA into Korea from China is much less than import price of the same goods into India from China and EU. Further the increase in 4ADPA import from China into Korea was in the year of

<sup>7</sup> Notf.No. 133/2008 Cus. dt.12.12.2008 of Government of India

levy of ADD duty at higher rate on Chinese import into India i.e. in the year 2008-09.

**TABLE-5**

Sl. No.	Financial Year	Rate /Kg in US\$ from EU	Rate /Kg in US\$ from China
1	2006-07	3.09	2.85
2	2007-08	3.13	3.02
3	2008-09	3.83	3.88
4	2009-10	-	2.91
5	2010-11(Upto Sep.)	3.10	2.94

Source:IBIS data submitted by applicant.

211. It is seen that the capacity available with the KKPC is more than the demand in Korea. Despite of excess capacity, the said company has gone for expansion up to \*\*\* MT despite of the fact that the existing capacity was much higher than the total demand of Korea. The capacity was expanded for exports market and additional market opportunities will be the requirement of the said company to justify the investment made.

212. The table-2 in paragraph 198 of this finding contains import data of PUI from Korea and China into India. It is seen that after levy of ADD at higher rate on PUI imported from China, the imports from Korea increased by 3050MT (102%) and that from China decreased.

213. During the worldwide recession there was decrease in demand of tyre and tubes in rest of the world (mainly USA, EU and China) due to crash of Automobile Industry. However, from the data of Tyre and Tube Production in India<sup>8</sup> it is seen that even during the world wide recession, the production of tyre and tube were on increase in India. The data below shows continuous increase in production since 2005-06 to 2009-10. The increase in production compare to 2005-06 is by 62% in tyre and 52% in Tube. Consequently the demand of PX-13 increased tremendously in India as compared to the rest of the world leading to its increased imports into India.

**TABLE-6**

F. Y.	Tyre Production in 000 Nos.	Tube Production in 000 Nos.
2005-06	66032	53421
2006-07	73545	62376
2007-08	81103	70810
2008-09	82107	69733
2009-10	97137	81448

214. The above developments are unexpected and changed the demand supply ratio and caused price difference between domestic and import goods leading to increase in imports.

<sup>8</sup> Source : All India Tyre Manufacture Association website

## Serious Injury and Threat of Serious Injury

215. **Statutory framework:** “Serious injury” means an injury causing overall impairment in the position of a domestic industry,<sup>9</sup> and “threat of serious injury” means a clear and imminent danger of serious injury.<sup>10</sup>

216. The panel in United States – Fresh Chilled or Frozen lamb Meat from Australia and New Zealand ruled that<sup>11</sup>:

*We note that in our view SG Article 4.1(b) and 4.2(a) do not require the competent national authority to show that each listed injury factor is declining, i.e., point in the direction of serious injury or threat thereof. The competent national Authority is required to make its determination in the light of the developments of injury factors on the whole in order to determine whether the relevant industry’s condition is facing ‘significant overall impairment’ in the industry’s conditionis imminent. We agree with the Appellate Body’s statement in Argentina-Footwear that :*

*“ It is only when the overall position of the domestic industry is evaluated, in the light of all the relevant factors having a bearing on a situation of that industry, that it can be determined whether there is ‘a significant overall impairment’ in the position of the industry--- An evaluation of each listed factor will not necessarily have to show that each such factor is ‘declining’. In one case, for example, there may be significant decline in sale, employment and productivity that will show ‘significant overall impairment’ in the position of the industry, and therefore will justify a finding of serious injury. In another case the certain factor may not be declining but the overall picture nevertheless demonstrate ‘significant overall impairment’ of domestic industry.*

217. It is seen that -

The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 technically requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for

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<sup>9</sup> Section 8B(6)(c) of the Customs Tariff Act, 1975.

<sup>10</sup> Section 8B(6)(d) of the Customs Tariff Act, 1975.

<sup>11</sup> WT/DS177-178/R dt 21.12.2000 Para 7.203 of panel report in US- SG Measure on Fresh Chilled or Frozen Lamb Meat from New Zealand and Australia.

different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is "declining". In one case, for example, there may be significant decline in sales, employment and productivity which will show "significant overall impairment" in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate "significant overall impairment" of the industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall position of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.<sup>12</sup>

218. Accordingly, in analyzing serious injury or threat of serious injury, all factors which are mentioned in the rules as well as other factors which are relevant for determination of serious injury or threat of serious injury, have been considered. No single factor has been considered as dispositive. All relevant factors within the context of the relevant business cycle and conditions of competition which are relevant to the affected industry have been considered. The determination of serious injury or threat of serious injury is based on evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.

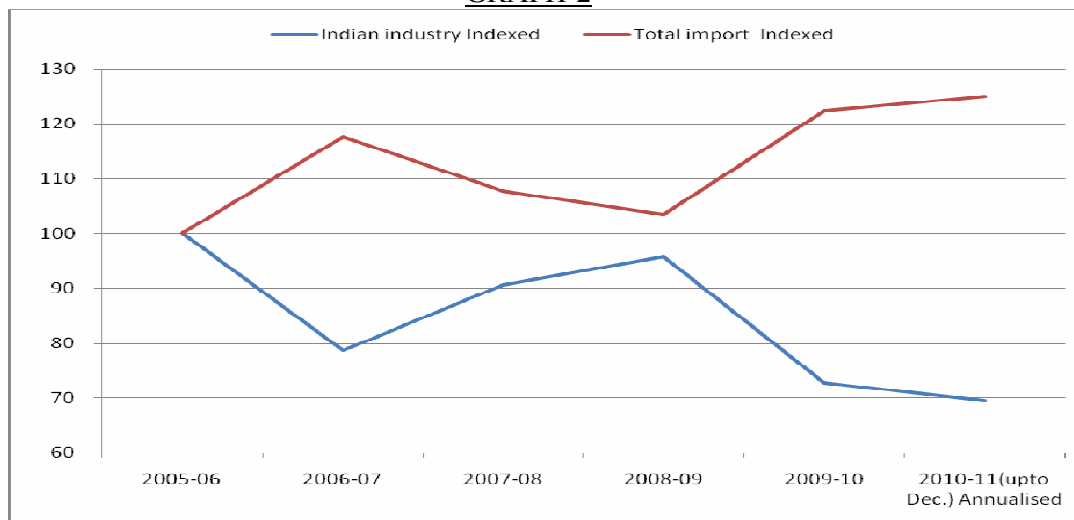
219. Market Share of Domestic industry taken by increased imports: The table contains the share of Indian industries and Imports in the Indian market:

**TABLE-7**

Financial Year	Share of Indian industry in total market size % (Indexed)	Share of import in total market size %	Share of DI in total market size in % (Indexed)
2005-06	100	54.92	100
2006-07	79	64.57	60
2007-08	91	59.19	62
2008-09	96	56.83	70
2009-10	73	67.21	69
2010-11(upto Dec.) Annualised	69	68.92	66

<sup>12</sup> Based on Para 139 of Argentina footwear Case Appellate Body Report Of WTO

**GRAPH-2**



220. The table above shows that the share of Indian Industry is decreasing and that of import is increasing except in F.Y. 2008-09 when ADD was imposed on imports from Korea and China. The share of Indian Industry has come down by \*\*% compare to base year and \*\*% compare to 2008-09. The Indian industry lost major share in 2009-10 and 2010-11 when there was steep increase in import. The applicant domestic industry has lost \*\*% share compare to base year of \*\*% and has come down to \*\*% in 2010-11.

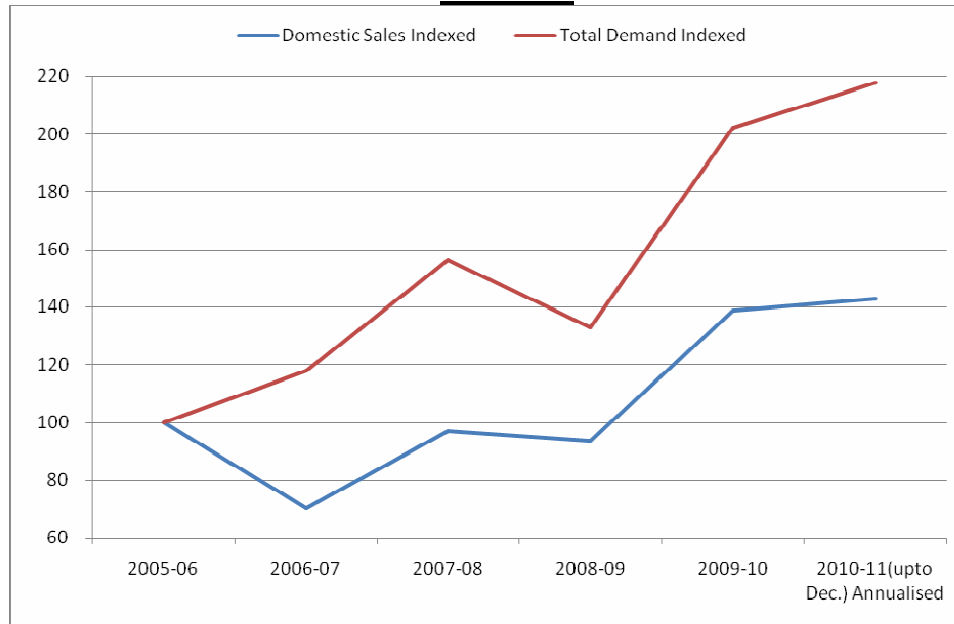
221. The loss of market share is attributed to increased imports.

222. The table below contains sales by domestic industry, total demand and Sales as a percentage of demand.

**TABLE-8**

Financial Year	Sales by DI	Total Demand	Indexed
			Sales as % of demand
2005-06	100	100	100
2006-07	70	118	60
2007-08	97	156	62
2008-09	93	133	70
2009-10	139	202	69
2010-11 (upto Dec.) Annualised	143	217	66

**GRAPH-3**



223. The demand of PUI has increased since 2005-06 but the sales of DI decreased. However with the imposition of ADD in 2008-09 the sales of DI started increasing in 2009-10 and 2010-11. The increase in sale is not in proportion to increase in domestic demand which was taken by increased imports after 2008-09.
224. The table below shows the landed price of import with ADD, the DI selling price and the DI export price.

**TABLE-9**

Financial Year	05-06	06-07	07-08	08-09	09-10	10-11 (Upto Dec.)
Landed price of imports with ADD (Rs./Kg.)	229.73	192.66	147.02	247.29	192.59	189.84
DI Domestic Selling price (Indexed)	100	90	82	113	103	103
DI export price(Indexed)	100	90	79	110	93	89

225. The data in the table above shows that the imports after 2008-09 were taking place much below the DI domestic sale price and even below the DI export price. It is concluded that the low price increased imports has affected the sale of domestic industry despite of high domestic demand.
226. Production:- The table below shows the production of the PUI on yearly basis.

**TABLE-10**

Sl. No.	Financial Year	Indexed	
		Production Capacity(MT)	Production in MT
1	2005-06	100	100
2	2006-07	104	91
3	2007-08	140	136
4	2008-09	140	138
5	2009-10	149	158
6	2010-11(upto Dec.) Annualised	149	131

227. The production of DI decreased in 2006-07 with respect to previous year .Thereafter the DI increased its capacity with increase in demand of PUI in domestic market from \*\*\*MT to \*\*\*MT in 2009-10. However, the production of DI was not up to its capacity despite of high increase in demand. With continuous increase in import the production decreased by \*\*% in 2010-11 compared to 2009-10.

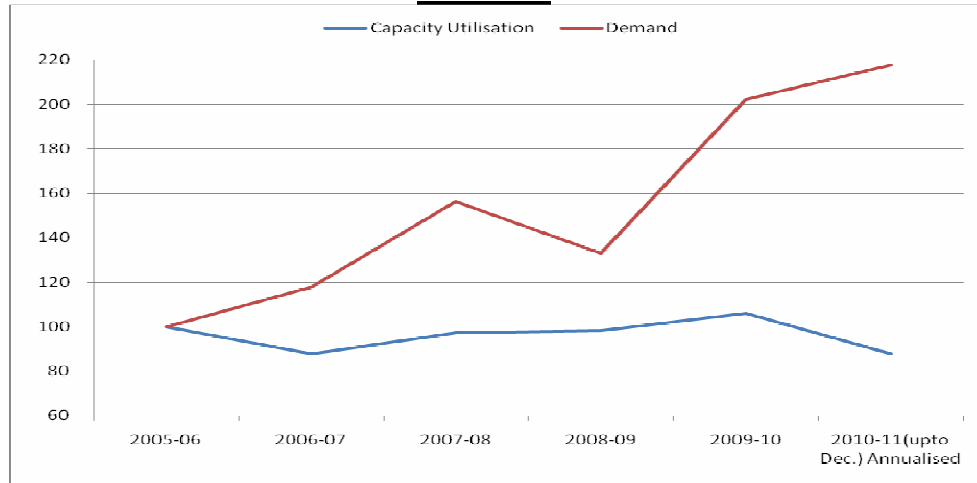
228. The table below shows the capacity utilisation of PUI with reference to demand in the domestic market.

**TABLE-11**

Financial Year	Capacity Utilisation in % (Indexed)	Demand in MT
2005-06	100	7,424
2006-07	88	8,753
2007-08	97	11,590
2008-09	98	9,864
2009-10	106	15,011
2010-11(upto Dec.) Annualised	88	16,117

229. The capacity utilisation of DI has decreased by \*\*% from base year and by \*\*% from 2009-10 in the 2010-11 despite of increase in demand by \*\*%. The capacity utilisation of DI is showing downward trend. The decrease in capacity utilization despite of increase in demand is due to increased imports.

**GRAPH-4**



230. The table below contains data of the production hour lost by the Domestic Industry. It is seen that the DI is not able to utilise its production capacity and the loss of production is maximum in 2010-11.

**TABLE-12**

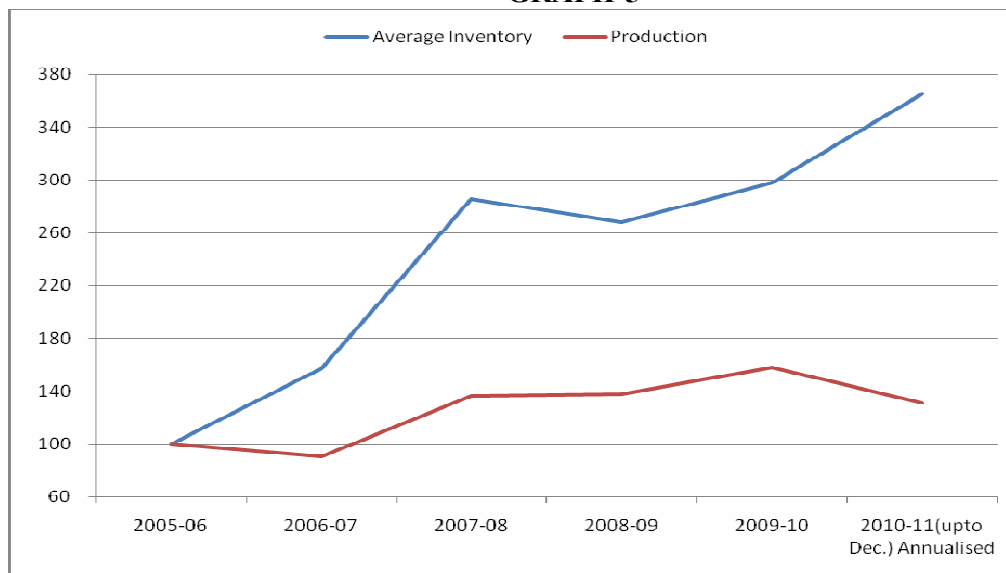
	2007-08	2008-09	2009-10	2010-11
Production Hour lost	100	780	297	947
Production lost in MT	100	780	297	948

231. Inventory: The table below contains the average inventory on yearly basis. Further the graph below is plotted taking the yearly average inventory and yearly production data in Indexed form.

**TABLE-13**

Sl. No.	Financial Year	Indexed	
		Average Inventory	Production
1	2005-06	100	100
2	2006-07	157	91
3	2007-08	286	136
4	2008-09	268	138
5	2009-10	298	158
6	2010-11 (upto Dec.) Annualised	365	131

**GRAPH-5**



232. The table above shows that the inventory of Domestic Industry is increasing since 2005-06. The inventory continued to increase in 2009-10 and 2010-11. The inventory increased by \*\*% in 2010-11 compared to 2009-10 when there was decrease in production by \*\*% in the same period.

233. The increase in inventory is attributed to increased imports at low price.

234. **Effect of Price:** The argument has been raised that price is not a relevant factor for consideration in safeguard investigation. At what price the imports are entering is not the relevant factor because it is not the unfair competition which is the subject matter of safeguard action but it is the competition per se offered by the increased imports to the domestic producers, even if it is at fair price. Only in this context the import price is not relevant. However when it comes to determination of serious injury or market disruption or threat thereof, the law requires an examination of change in level of sales, profitability etc. of the domestic producers. These factors undoubtedly depend on the prices of competing products and in that context import price do become relevant and require examination particularly to assess their affect on domestic situation and also the reason for increase in import.

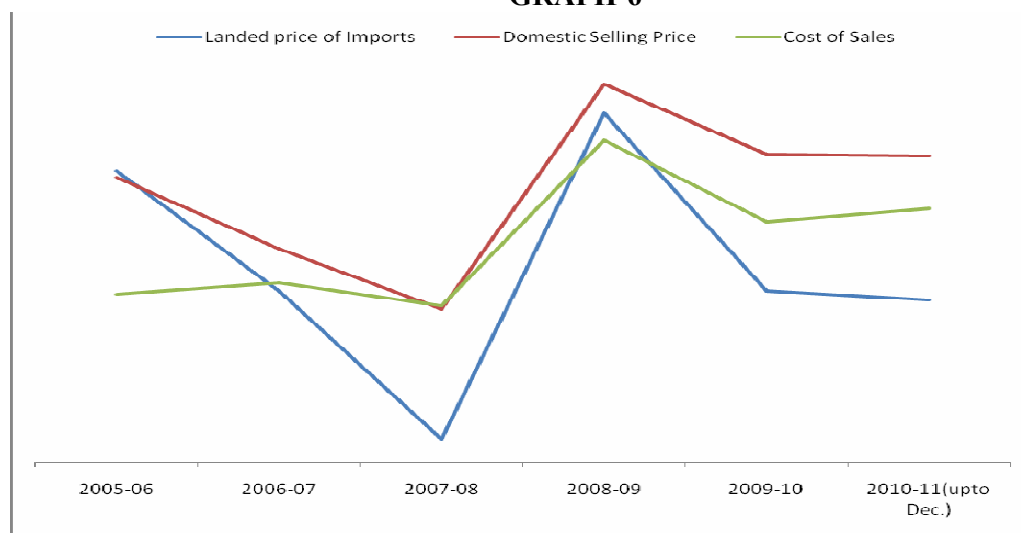
235. The table below contains landed price of import with ADD duty, selling price of Domestic Industry and the cost of sale of Domestic Industry.

**TABLE-14**

Sl. No.	Financial Year	CIF Price of Import	Landed price of	Selling Price of DI	Cost of Sales of

			imports with ADD	(Indexed)	DI (Indexed)
1.	2005-06	198.98	229.73	100	100
2.	2006-07	167.28	192.66	90	102
3.	2007-08	135.55	147.02	82	98
4.	2008-09	205.66	247.29	113	125
5.	2009-10	162.14	192.59	103	112
6.	2010-11(upto Dec.)	161.98	189.84	103	114

**GRAPH-6**



236. The annual average landing price of import with ADD (on imports from EU and Taiwan only) showed declining trend since 2005-06. There was correction of landed price of import with ADD after levy of Anti-dumping duty on imports from Korea and China. However, the price further deteriorated and came down below the 2005-06 and 2006-07 level in 2009-10 and 2010-11. This led to reduction in price of the domestic producers from 2009-10 onwards.

237. The continuous depression in domestic sale price is indicator of injury being suffered by domestic industry as it results in loss of market share to imports. Imports are causing significant price undercutting despite current Anti-dumping duties.

238. The cost of sale increased by Rs. \*\*\*/Kg from 2005-06 to 2009-10 and the selling price of DI increased by only Rs. \*\*\*/Kg but the CIF import price dropped by Rs. 36.85/Kg and landed price of import with ADD by Rs. 37.14/Kg. Further in the current year 2010-11 the cost rose by Rs. \*\*\*/kg compare to 2005-06 but the selling price increased by only Rs. \*\*\*/kg and the CIF import price declined by Rs. 37/kg and landed price of import with ADD by Rs. 39.89/kg. Due to

increased import at low price the DI is not able to increase its domestic selling price in proportion to increase in cost.

239. The difference between import price and domestic selling price is too high making the imports lucrative and posing continued threat of increased import.

240. Profit / Loss: The table below contains the profit/ loss and ROCE.

**TABLE-15**

**Indexed**

Financial Year	Profit/loss in Rs.Kg	ROCE in %
2005-06	100	100
2006-07	29	20
2007-08	(3)	(1)
2008-09	48	47
2009-10	57	53
2010-11 (upto Dec.)	45	39

241. The profitability of domestic industry dropped steadily till 2007-08. It improved thereafter with imposition of Anti-dumping duty in 2008-09 when imports came down. However the same started deteriorating after that and the profit in F.Y. 2010-11 has declined further compared to 2009-10 and has reached below 2008-09 level. The domestic industry is not able to regain their profit margin of 2005-06.

242. The ROCE has declined upto 2007-08 and increased thereafter. However the same further declined by \*\*% in 2010-11 compared to 2009-10.

243. The increasing price difference between the import and domestic selling price is reducing the profitability of the domestic industry.

244. Significant Global Surplus Capacity : The domestic industry submitted following figures for the capacity in excess of demand, available with the foreign suppliers which is causing increased imports at low price into India causing serious injury/threat to serious injury to the domestic manufacturers.

All figures are in MT

**TABLE-16**

SN	Country	Producer	Capacity in MT	Domestic Demand	Surplus
1	Korea	Korea Kumho (KKPC)	70,000	8,000	62,000

2	China	Sinorgchem	120,000	-	-
		Nanjing Chemicals	30,000	-	-
		Tongling Xenda	10,000	-	-
		Northeast Aux	10,000	-	-
		Shangyu Lixing	2,000	-	-
		Jiangsu Donglong	8,000	-	-
		China Sunsine	15,000	-	-
	Total China		195,000	90,000	105,000
3	EU Region	Flexsys	65,000	-	-
		Lanxess	38,000	-	-
		Dusslo	18,000	-	-
	Total EU		123,000	32,000	91,000
4	Japan	Sumitomo	10,000	17,000	-7,000
5	India		11,500	14,500	-3,000
6	Rest of		NIL	87,000	-
7	Total world		407,500	248,500	159,000
8	Indian				14,500
9	World surplus as a % of Indian demand				1097%

245. The examination of the data submitted by the interested parties shows that there is significant capacity in excess of demand with the Korean and Chinese supplier. Further the Korean supplier increased its capacity from \*\*\*MT to \*\*\*MT in 2009-10 despite of the fact that it was operating at less than its capacity and the total demand in Korea is much less than the existing capacity. The excess unutilized capacity with foreign supplier is the reason for tapping or creating additional market for their product at price lower than the prevailing price of that additional market. This poses threat to the Domestic Industry in India.

246. The clause 6(d) of section 8(B) of the Custom Tariff Act, 1975 defines 'threat of Serious Injury' to mean a clear and imminent danger of serious injury. The examination of various parameters above also shows that the DI is affected by adverse condition since 2009-10 compared to preceding year and the same further deteriorated in 2010-11. The applicant industry has lost on account of production, capacity utilization, Increase inventory, Sales realization, Profit, ROCE in 2010-11 compared to 2009-10. The marginal growth in sale is much less compare to increase in domestic demand. Further the exporters have huge unutilized capacities of the PUI. It is therefore observed that DI is also suffering from threat to serious injury.

### **Other Factor**

247. Export: Some of the interested parties have contended that the DI Exports more than 50% of production and the fall of export volume in export in 2010-11 could be the possible cause of injury to the domestic industry. The table below contains the landed price of import with ADD, Export Price and the domestic selling price.

**TABLE-17**

Financial Year	Landed price of import with ADD (Rs. Kg)	Export Price (Indexed)	Domestic Selling price (Indexed)
2005-06	229.73	100	100
2006-07	192.66	90	90
2007-08	147.02	79	82
2008-09	247.29	110	113
2009-10	192.59	93	103
2010-11(upto Dec.)	189.84	89	103

248. The data in table above shows that the export price of DI is always less than the Domestic selling price. The domestic industry has to export the goods despite of sound domestic demand at the price much higher than the export price. In view of this the export is not profitable option for the DI. The DI has to export to minimize losses. Hence it can not be said that the export is priority for DI. Further no evidence has been brought on record to show that DI has refused domestic supply for export by the User industry in India.

249. However, in the injury analysis, impact of export activities have been excluded. The factors such as domestic sales volumes, market share, domestic selling prices, profits, etc do not have anything to do with export performance. Further it has been seen that production net of exports shows decline in 2010-11 and further increase in production upto 2009-10 was much less than the increase in demand. Therefore, while conducting the injury analysis, adequate care has been taken to exclude the impact of export activities and hence, it is held that export performance was not a cause of injury to the domestic producers.

250. Demand of PX-13 and capacity of Indian producers to meet domestic demand: Some of the interested parties have claimed that the cause of injury to the DI was not increased import as the imports were necessitated to meet the gap between domestic supply and the domestic demand. The domestic industry has claimed that they have enough capacity to meet the domestic demand after excluding the duty free imports of PUI under Advance Licence scheme. They have contended that the major share of increase in demand is taken by increased imports and they

have to export the PUI at a price lower than the domestic selling price to minimize losses. The DI has submitted following data in support of their claim.

Capacity, Quantity in MT **TABLE-18**

Items	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
NOCIL Capacity	***	***	***	***	***	***	***	***	***
NOCIL New Capacities	***	***	***	***	***	***	***	***	***
Inventory/opening stock	***	***	***	***	***	***	***	***	***
MERCHEM Capacity	***	***	***	***	***	***	***	***	***
PMC Capacity	***	***	***	***	***	***	***	***	***
Lanxes Capacity	***	***	***	***	***	***	***	***	***
Duty Free Import	1734	1916	1867	1761	3069	2373	2741	3289	3947
Total availability	11568	11689	14236	14158	15867	15848	19228	28419	38831
Demand	7424	8753	11095	10053	14572	15691	18123	22110	26974
Surplus/Shortfall	4144	2936	3141	4105	1295	157	1105	6309	11857

Source:- Submission of applicants.

251. The DI has submitted the figures in above table on the basis of their expansion plan at Dahej which has been submitted with the adjustment plan; maximum inventory as on date supported by Cost accountant certificate; capacity of other Indian producer as per market source and Tyre export data for calculating duty free import of PUI under Advance License scheme. The applicant submitted supporting documents/certificates including transaction wise data of Tyre export, sourced from Export-Import databank of Department of Commerce, for calculation of import of PX-13 under ALS. Further the applicant submitted that they have no sale for Deemed Export as is evident from their ER-1 of production.

252. The above submission of applicant in support of their demand supply gap was placed in public file as per Rule 6(7) of Safeguard Rules 1997 for comments if any by other interested parties. The User/ Importers contended that if the import under ALS is excluded for assessing demand supply gap than the same should also be excluded from the assessment of increased imports. The user industry did not question the correctness of duty free import quantity of PUI submitted by applicant. The User industry requested to ascertain actual capacity of Lanxes and whether they are manufacturing PUI and not to make finding on import data of intermediate i.e. 4 ADPA. The same has been ascertained from the Central Excise.

253. It is seen from the submission above that there is no demand-supply gap if imports under ALS is deducted from domestic demand. Further, if as per the claim of User Industry, the given figure of Import under ALS is deducted from total imports, the year wise import will be 2005-06=2343MT; 2006-07=3736MT;

2007-08=4993MT, 2008-09=3845MT; 2009-10=7021MT and 2010-11= 8736MT. It shows increase in import even after deduction of duty free import under ALS.

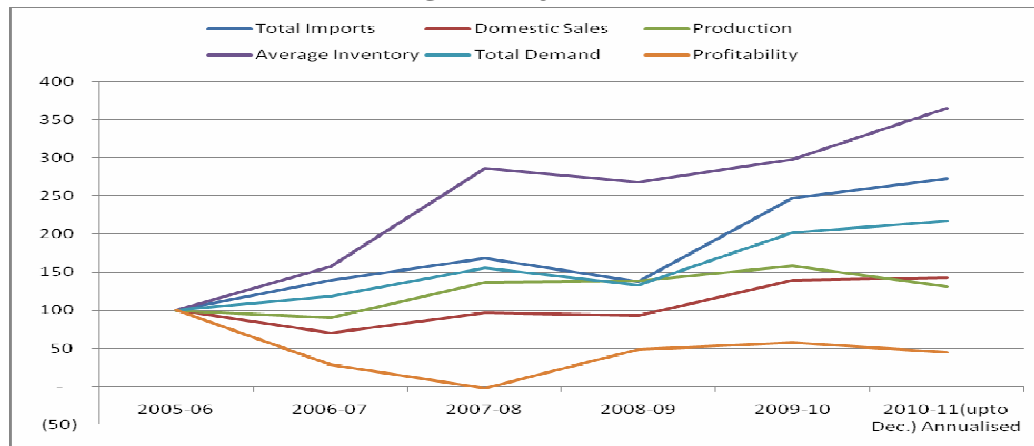
254. Though the DI claims that the Export of Tyres are under Advance Licence Scheme, transaction wise export data of Tyre submitted by them does not contain the export promotion scheme under which the export has taken place. Further the ALS holder has the choice to import raw material duty free or procure the same from domestic market under Advance Release Order. It may not be correct to exclude the submitted data of import under ALS to determine overall demand. However, once the Safeguard duty is imposed the duty free import under ALS shall have no competition with the domestic sale.
255. The Capacity with all Indian producers was \*\*\*MT, \*\*\*MT, \*\*\*MT, and \*\*\*MT against the domestic demand of 7424 MT, 8753 MT, 11590 MT and 9864MT in 2005-06, 06-07, 07-08 and 2008-09 respectively. The applicant domestic Industry have achieved capacity more than \*\*\*% and other Indian Industry have achieved even \*\*\*% and above utilization. From the above it is clear that the available capacity with Indian Industry was more than domestic demand between 2005-06 to 2008-09. However the import increased in this period and the DI has to export the goods at price below the domestic sale price.
256. The capacity with Indian industries in F.Y. 2009-10 and 2010-11 (upto Dec. annualized) was \*\*\*MT and \*\*\*MT. The domestic demand in above mentioned years were 15011 MT and 16117 MT. The available capacity with Indian industry was less than domestic demand in the above mentioned two years. However the domestic demand suddenly rose by 45% in 2009-10 whereas the average yearly rise in demand is 22% per year only. The DI and other producers have achieved more than \*\*% of utilization and are capable to produce almost equal to the capacity. But the DI failed to achieve capacity due to import at low advantageous price which has taken major share of the domestic demand. In the same period, due to increased imports the average inventory of the applicant rose to \*\*\*MT and \*\*\*MT. Further in 2009-10 the share of import in domestic demand has increased from 55.77% to 69.02% compared to preceding year 2008-09. The DI was not able to sell in domestic market and forced to export the PUI at a price less than the domestic selling price.
257. In a situation where there is alleged demand supply gap in country the domestic industry would not have resorted to significant export that too at a price lower than the domestic sale price. The domestic industry is unable to sell its product in domestic market due to increased import. No evidence/allegation has been brought on record that consumer demanded material from DI and supplies were not made.
258. The domestic industry has significant unutilized capacities and the utilization has gone down to \*\*\*% in 2010-11 despite of high demand. The DI is facing increased average inventory from \*\*\*MT in 2008-09, \*\*\*MT in 2009-10 and \*\*\*MT in 2010-11. In the event of demand supply gap the DI would not have faced such situation. The fact that domestic industry has to export at price less than domestic sale price shows that the increase in import is not due to demand supply gap.

259. The Indian industry has sufficient capacity to meet the present domestic demand and the expansion plan which are under advance stage of implementation is sufficient to meet the future domestic demand. The increase in import is not due to domestic demand-supply gap.
260. Imposition of Safeguard duty when anti-dumping duty is already in operation: The issue whether Safeguard Duty can be imposed when Anti dumping duty is already in place was examined. Section 9A of the Customs Tariff Act, 1975 deals with imposition of Anti dumping Duty not exceeding the margin of dumping. Section 8B deals with imposition of Safeguard duty in certain circumstances. This circumstances under which the two duties can be imposed are different. Further, the sub section (3) of Section 8B envisages imposition of a number of duties at the same time under the Customs Tariff Act, 1975 or under any other law for the time being in force. The sub section 3 reads as
- “the duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.”*
261. Accordingly, there is no bar imposed by law on imposition of Safeguard Duty when Anti dumping duty is already in place.
262. However there have been various submissions from interested parties, who have submitted against imposition of both antidumping and safeguard duty together. They have also submitted that imposition of ADD and Safeguard duties at the same time is not in public interest. The issue has been analysed. The antidumping duty is a trade remedy measure to counter and neutralise the ill effects of dumped imports through raising tariff barrier. Safeguard duty is a measure to protect the domestic industry from injurious effects of increased imports by raising tariff barrier. Both the duties have one function in common i.e. neutralising injurious effect of imports, besides other functions. Therefore it is imperative that the safeguard duty may be imposed and continued only when the existing trade remedies measures, in whatever form, are not able to protect the domestic industry. It is also implied that the multiple protection is available only to the extent it is necessary.
263. In the instant case it is a fact that imports increased with faster rate even after imposition of ADD in F.Y. 2008-09 . The increase in import at low price caused and threatened to cause serious injury.
264. The analysis done in earlier paragraphs show that the special relationship between Korean and Chinese exporter coupled with high demand of PUI in India at time when the demand went down in larger markets of USA, EU and China was responsible for increased imports. The existing tariff barrier, which included anti-dumping duty, was not sufficient enough to prevent permeation of imports in large quantity. Therefore, multiple trade remedy measures are justified to neutralize the injurious effects of imports. However, the prudence in use of multiple trade remedy measures requires that it is limited to the period and extent

which is necessary, so that the placing of burden of safeguard duty on end users is justified.

**Causal Link**

**GRAPH-8**



265. The performance of domestic industry shows that despite of increase in demand of the PUI the market share of DI has decreased and that of import has increased.

266. The difference between the landed price of import and the domestic selling price is significant and is increasing over the year since 2005-06.

**TABLE-19**

F.Y.	05-06	06-07	07-08	08-09	09-10	10-11 (upto Dec) Annualised
Price difference between import and Domestic sales (Indexed)	-100	648	2020	456	2114	2228
Volume of Import in MT	4077	5652	6860	5606	10090	11109

267. It is noted that the price difference and volume of import declined in 2008-09 (when ADD was imposed) .The price difference increased thereafter and imports surged further. The increase in import is in tandem with price difference between import price and domestic selling price.

268. The significant price difference caused price undercutting despite of ADD. Consequently even when sales of DI increased, it was far less than increase in demand. This caused decline in the market share of domestic industry. The decline in the market share of DI is therefore because of increase in imports.

269. Less than market increase in the sales volume of domestic industry resulted in production of domestic industry suffering adversely. The production started declining in 2010-11 which is further evidenced by production hour lost and

- increase in inventory. The adverse performance on account of production is due to increased imports.
270. The market share of DI decreased and imports increased. Consequently, inventories with domestic industry increased. Despite of increase in production the increase in inventory is because of increased imports.
271. The imports are significantly undercutting the prices of domestic industry. The DI is unable to regulate its prices in accordance with the changes in cost of production. The profitability of DI is not returning back to the earlier level despite of ADD which is due to increased imports.
272. The fall in capacity utilization, production, profit, profitability coincide with the increase in imports. It is the increased import at lower price which caused depression in prices in India leading to loss of profitability and profit. The increased import alone caused loss of market share. The increase in import is the cause of increase in inventory of the DI. The growth of demand in Indian market has been taken by the increased imports.
273. The increase in import is the cause of serious injury and threat to serious injury to the Domestic Industry.
274. Adjustment Plan: It has been argued that the domestic industry has not submitted viable adjustment plan to meet the international competition. The petitioner submitted adjustment plan with the application and subsequent written submissions (para 33 to 38 of the findings).
275. It is seen that Panel in Korea- Dairy case has rejected the view that Art. 5.1 imposes obligation to consider the adjustment plan (reference to be given).

*–We wish to make it clear that we do not interpret Article 5.1 as requiring the consideration of an adjustment plan by the authorities ... The Panel finds no specific requirement that an adjustment plan as such must be requested and considered in the text of the Agreement on Safeguards. Although there are references to industry adjustment in two of its provisions, nothing in the text of the Agreement on Safeguards suggests that consideration of a specific adjustment plan is required before a measure can be adopted. Rather, we believe that the question of adjustment, along with the question of preventing or remedying serious injury, must be a part of the authorities' reasoned explanation of the measure it has chosen to apply. Nonetheless, we note that examination of an adjustment plan, within the context of the application of a safeguard measure, would be strong evidence that the authorities considered whether the measure was*

*commensurate with the objective of preventing or remedying serious injury and facilitating adjustment.*□

276. The Rule 5(2) of Safeguard Rules 1997 requires submission of a statement on “efforts being taken or planned to be taken or both to make positive adjustment to import competition”. The WTO Agreement on Safeguard provides that a member shall apply safeguard measure only to the extent necessary to prevent or remedy serious injury and facilitate adjustment.
277. The purpose of definitive safeguard measure is to provide the domestic producers with a limited period of time in which to restructure so as to more effectively compete with the imports. In this regard attention is invited towards Section 8 B (4) of CTA 75 and Rule 16(2) of Safeguard Rules 1997 which prohibits any possible extension of measure if there is no evidence that the domestic producers are adjusting.
278. The restructuring plan submitted by the DI focuses on capacity expansion to cater the growing demand and cost reduction.
279. The petitioner has submitted that they are expanding the capacity of production to face fair competition from imports. The expanded capacity of DI along with the capacity of other Indian producers will be enough to meet the growing demand of the product along with imports. The applicant DI is expanding capacity by \*\*\*MT at a cost of Rs. \*\*\*Crores An amount of Rs.\*\*\*Crore has been committed as on 30.04.2011. Out of the said amount Rs. \*\*\*Crore has already been spent. The expansion work is likely to be submitted in March 2012 and production is likely to be started from April 2012.
280. The applicant has claimed that the expansion would result in minimum cost saving of Rs. \*\*\*/Kg. Further the DI is hopeful of cost reduction on account of overhead cost once it is able to sell more in the market.
281. The details of the restructuring plan were called. It is seen that the claim of DI is well supported by Chartered Engineer Certificate on expansion and expenditure for new plant and practicing Cost Accountant Certificate on the cost incurred and the claim of cost reduction. It is noted that the Adjustment plan of company is reasonable and feasible.
282. The adjustment plan has been taken into account for gradual liberalisation of duties.

#### **Public interest**

283. It has been contended by the interested parties that the safeguard measure on PUI is not in public interest. However evidence to substantiate the same was not submitted by any of the interested parties.
284. The Applicants have submitted that the share of PX-13 in the tyre industry ranges between 0.71% to 1.11% and on non tyre segment is 0.5%. The fact has not been disputed by the ATMA, representing Tyre manufacturer in the current

- investigation and All India Rubber Manufacturer Association (name to be checked).
285. Considering the above share and the insignificant cost of PX-13 it is noted that there will be no or very minimal impact of Safeguard duty on price of tyre and on the non tyre segment.
286. The applicant and one other domestic industry have undertaken expansion of their capacities and substantial progress has already been made as discussed in para 279 of this finding. The applicant alone will have an employment of more than \*\*\* persons. Further significant part of investment has come from financial institution. The employment and public finance are at risk if the Indian manufacturers are not given adequate protection from increased imports.
287. Further besides the applicant domestic industry, all other Indian producers are dependent on foreign producers for the penultimate intermediate 4ADPA for production of PUI. In the event of closing down of the applicant industry, there is no guarantee of timely getting 4ADPA at competitive price by other Indian producers. Hence the survival of applicant domestic producers is in the interest of the consumers. Further, the employment of more than \*\*\* persons presently working with the applicant is also at risk.
288. The safeguard duty which would enable domestic industry to survive in the face of competition offered by increased imports is also in long term public interest of buyers of PUI as well as buyers of products manufactured therefrom. It is therefore considered that imposition of safeguard duty on PUI will be in Public interest.

### **Developing Nation**

289. The percentage of imports from developing nations has also been examined. Except China who constitute 18.14% in 2009-10 and 15.09% in 2010-11 of total imports into India in F.Y. 09-10 and 2010-11 respectively, other developing nations individually have less than 3% of total imports in India. Therefore, the import of product under consideration originating from developing nations except China may not attract Safeguard Duty in terms of proviso to Section 8B of the Customs Tariff Act, 1975.
290. In view of the findings above, the final determination is that the increased imports of N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 or 6PPD) into India have caused serious injury and also threatened to cause serious injury to the domestic producers of N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 or 6PPD) . In arriving at the amount of safeguard duty which would be adequate to prevent serious injury and threat of serious injury to the domestic industry and to facilitate positive adjustment, weighted average cost of sales at reasonable return on employed capital and average landed cost of import (taking basic customs duty, cess) have been considered. The Antidumping duty on the PUI has also been considered while arriving at the amount of Safeguard duty. Further, the calculated safeguard duty has been moderated downward to allow imports to maintain

competition in domestic market in the interest of end users and consumers. The public interest has also been considered in detail.

291. Considering the need to progressively liberalise the safeguard duty in order to facilitate positive adjustment by the domestic industry , it is recommended that safeguard duty be imposed on imports of N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 or 6PPD also known as 6C, Pilflex 13, Sirantox 4020, Anti-oxidant 4020, Kumhonax 13, Vulconax 4020) falling under subheading 3810, 3812, as well as under 2921, 2925, 2934 and 2942 (at six digit levels) of the Customs Tariff Act 1975 at the rates specified below on ad-valorem basis for a period of two years being the minimum requirement to protect the domestic industry from serious injury and threat to serious injury

Sl. No.	Period	Safeguard Duty
1	First Year	30% minus Antidumping Duty Payable
2	Second Year	25% minus Antidumping Duty Payable

292. As the imports from developing nations except China do not exceed 3% individually, the import of product under consideration originating from developing nations except China may not attract Safeguard Duty in terms of proviso to Section 8B(1) of the Customs Tariff Act, 1975.

Sd/  
(I.D.Majumder)  
Director General (Safeguards)  
[F.NO.D22011/32/2010 ]