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File No. 22/6/2019-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara Building, 4th Floor,
5 Parliament Street, New Delhi-110001

FINAL FINDINGS
Case No. (SG) 06/2019

Date: 30th September, 2021

Subject: Safeguard investigation concerning imports of "Isopropyl Alcohol" into India - Final Findings - Proceedings under Foreign Trade (Development and Regulation) Act, 1992 and the Safeguard Measures (Quantitative Restrictions) Rules, 2012- Reg.

A. Introduction

1. An application dated 28th August 2019 was filed before the Authorized Officer under Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter also referred to the "Act") read with the Safeguard Measures (Quantitative Restrictions) Rules, 2012 (hereinafter also referred to as the "Quantitative Restrictions Rules" or the "Rules") by Deepak Fertilisers and Petrochemicals Corporation Limited (hereinafter also referred to as the "applicant" or the "domestic industry") seeking imposition of safeguard measures in the form of quantitative restrictions on imports of "Isopropyl Alcohol" (hereinafter also referred to as the "product under consideration" or "PUC" or "subject goods" or "IPA") into India to protect the domestic industry of like or, directly competitive products from serious injury / threat of serious injury caused by their surge in imports. The applicant has claimed that on account of the surge in imports of the product under consideration the domestic industry has lost its market share and its production quantities and capacity utilisation have declined leading to consequent losses which have crippled the domestic industry. For this reason, the applicant had requested for imposition of Safeguard (Quantitative Restrictions) as a measure to mitigate its injury.

B. Due Procedure Followed by the Authorized Officer

2. On the basis of the aforesaid written application and having satisfied itself, relying on the prima facie evidence submitted by the applicant regarding increased imports causing serious injury to the domestic industry, a safeguard investigation against imports of the

product under consideration into India under the provisions of Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 and as per Rule 5 of the Safeguard Measure (Quantitative Restrictions) Rules, 2012 for determining the existence of serious injury or threat of serious injury, caused by the import of subject goods in such increased quantities, absolute or relative to domestic production and therefore the need for imposition of safeguard measures in the form of quantitative restrictions, was initiated vide Public Notice of Initiation 22/6/2019-DGTR dated 4th November 2019.

3. In accordance with sub-rules (2) and (3) of Rule 6 of the said Rules, a copy of the initiation notification dated 4th November 2019 and a copy of a non-confidential version (NCV) of the application filed by the domestic industry were forwarded to the Central Government in the Ministry of Commerce & Industry, Ministry of Finance, the Governments of major exporting countries through their Embassies in India, and the interested parties mentioned in the said application. Further, the questionnaire to be answered by the exporters / importers / domestic producers, as prescribed under Rule 6(4) of the said Rules, was forwarded to the known interested parties with a request to make their views known in writing within 30 days from the date of issue of the Public Notice of Initiation.

4. In response to the initiation notice and oral hearing, submissions and some questionnaire responses were received from the following interested parties:

1.	The Trade Representation of the Russian Federation in the Republic of India
2.	Brazilian Embassy
3.	Embassy of Spain
4.	Embassy of Mexico
5.	European Union Delegation to India
6.	Embassy of the Republic of Indonesia
7.	Taipei Economic and Cultural Centre in India
8.	Alkyl Amines Chemicals Limited
9.	Ineos Solvents
10.	Aurobindo Pharma Limited
11.	The Government of Korea
12.	Panreac Quimica
13.	ZhuHai Long Success Chemical Industry Co., Ltd.
14.	Kellin Chemicals (Zhangjiagang) Co., Ltd,
15.	LG Chem Ltd.,
16.	ISU Chemical Co., Ltd.
17.	Zhejiang Xinhua Chemcal Co., Ltd.
18.	Dezhou Detian Chemical Co., Ltd.

19.	i. Yancheng Super Chemical Technology Co., Ltd. ii. Shandong Dadi Supu Chemical Co., Ltd.
20.	Korea Petrochemical Industry Association
21.	China Petroleum and Chemical Industry Federation
22.	Nishigandha Polymers Private Limited
23.	LCY Chemical Corporation
24.	Taiwan Fieldrich Corporation
25.	Micro Labs Limited
26.	Shree Bankey Behari Lal Board Mills
27.	Trident Chempha Limited
28.	Anupam Rasayan India Limited
29.	Chemexcil
30.	Supriya Lifescience
31.	LCY Taiwan Company
32.	Bulk Drug Manufactures Association of India
33.	Signet Chemical Corporation Private Limited
34.	Sandeep Organics Private Limited

5. The Authorized Officer published the list of interested parties on the DGTR website. As per Trade Notice 01/2020 dated 10th April 2020, to enable access of all non-confidential version (NCV) submissions by all interested parties, the Authorized Officer suggested all interested parties to exchange the non-confidential version of their submissions with each other through email in view of the practical difficulties faced by them in accessing the public file due to COVID-I9 pandemic.

6. On request of the domestic industry and taking cognizance of the challenges arising out of COVID-19 pandemic, the time period available for completion of investigation was extended on five occasions, final extension being up to 30th September 2021 by the competent authority.

7. An oral hearing was held on 10th September 2020. In view of Covid-19 pandemic and consequent lockdown, the Public hearing was held through Digital Video Conferencing. Due to change of the Authorized Officer, a second oral hearing was necessitated which was held on 15th February, 2021 through Digital Video Conferencing.

8. In terms of sub rule (6) of rule 6 of the Rules, all the interested parties who participated in the oral hearing were requested to file written submission of the views presented orally. Copy of written submissions filed by an interested party was made available to all the other interested parties as was advised in the oral hearing and procedure mentioned above. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of any of the interested party.

9. The submissions made by all interested parties pursuant to the oral hearing or otherwise have been appropriately examined and addressed under the relevant paras. As many issues are repetitive, they have been collectively addressed at the concerned paras.

10. Authorized Officer requested DGCI&S for providing most recent data to analyse the post-POI trend in view of global covid-19 pandemic situation.

11. The recommendation of the Authorized Officer may be imposed by the Central Government i.e. Ministry of Commerce through a notification in the official gazette, under sub section (1) of Section 9A of the FTDR Act.

C. Written Submissions and Rejoinder Submissions made by the Interested parties

I. Domestic industry

12. The submissions made by the domestic industry are as follows:

i) The product under consideration is IPA, falling under tariff code 29051220.

ii) The domestic industry is producing like article to the imported goods.

iii) As the sole producer, the applicant constitutes 100% of the production.

iv) There has been a sudden, sharp and significant surge in imports. The imports have increased by 86% over the period, even though demand has increased by 31%.

v) Imports have also increased in relation to production and consumption.

vi) The surge in imports is on account import of unforeseen developments, due to the following

(a) The demand for phenol increased, leading to increased production of phenol, and its by-product acetone. This created a supply glut for acetone, and the prices of acetone fell sharply.

(b) The oversupply of acetone prompted increased capacity and production of IPA using acetone as a raw material, and created over-capacity of IPA.

(c) As price of acetone fell, the propylene-based IPA produced by the domestic industry became uncompetitive vis-à-vis the acetone-based IPA.

(d) Further, the downstream plants for the product under consideration suffered a shutdown during this period.

vii) The imports increased as a consequence of obligations incurred by India under the GATT provisions.

viii) Further, the producers in China PR, Singapore and Taiwan have targeted the Indian market, and the exports to India have increased at a much faster pace than the exports to other countries.

ix) India is the single largest market for exporters from China PR and Singapore and second largest for Korea RP and Taiwan.

x) The imports are undercutting the prices of the domestic industry and are priced significantly below the cost of sales of the domestic industry.

xi) The imports are entering the market at prices equivalent to the raw material cost of the domestic industry.

xii) The imports have had a suppressing effect on the prices of the domestic industry.

xiii) The imports have taken away the market share of the domestic industry and its sales have declined.

xiv) The increased imports have adversely impacted the production and capacity utilization of the domestic industry.

xv) The profits, cash profits and return on capital employed of the domestic industry have declined, and become negative.

xvi) The imports have made it impossible for the domestic industry to break-even.

xvii) Imports below variable cost would impact viability of the operations of the domestic industry, as the domestic industry would be forced to shut down its plant, to cut losses.

xviii) The profitability of the domestic industry has worsened in July-December, 2019.

xix) There is clear causal link between increased imports and injury suffered by the domestic industry.

xx) In order to positively adjust to the increased imports, the applicant is setting up an acetone-based plant having a capacity of 100,000 MT.

xxi) In order to set up the plant and stabilize operations, the applicant requires measures for a period of four years.

xxii) The production of IPA through acetone route would significantly reduce the cost of production, and allow the applicant to become more competitive.

xxiii) The imposition of safeguard measures is not against public interest, as IPA is majorly used in pharmaceuticals, where it constitutes only an extremely small share of the total consumption. Even if the applicant increases its prices to non-injurious price, in the event of imposition of measures, it would imply an average impact of 0.41% only.

xxiv) The rate of increase in imports is more when imports made by the applicant are excluded as imports made by other parties increased faster than the imports made by the applicant.

xxv) Market share of imports has increased whether or not imports made by the domestic industry are excluded.

xxvi) Market share of domestic industry declined both in respect of manufacturing and trading.

xxvii) In the recent period the import price of other importers was comparable or even lower than the import price of domestic industry. Lower price of imports has led to surge in imports.

xxviii) Earlier, domestic industry earned lower profits in trading than manufacturing. In the recent period, the domestic industry suffered losses in both manufacturing and trading.

xxix) The contribution margin has declined over the period. The domestic industry is not able to add the mark up on imports as other parties imported at a lower price.

xxx) Inventories of the domestic industry for both manufactured and traded products has increased.

xxxi) The demand for IPA increased temporarily in the COVID lockdown. Post that, the demand has come down to the level in 2018-19, thus, the demand for quota restrictions should be considered in the same region as that in 2018-19.

xxxii) Ethanol is preferred over IPA as an ingredient for sanitizers. The price of IPA was regulated for use of sanitizers only when sanitizers were an essential commodity, that is, till July 2020.

xxxiii) In case the Authorized Officer considers recent period, future period and outlook should also be considered. The ICIS-LOR states that the price of IPA will decline further, acetone price will become less than propylene price and propylene-based IPA will become less profitable as compared to acetone-based IPA.

xxxiv) Deepak Phenolics Limited, being a domestic producer of like goods, has participated as an interested party and the information submitted by it cannot be disregarded.

xxxv) The domestic industry has adhered to all timelines prescribed by the Authorized Officer nad had duly circulated the non-confidential version of the domestic producers' questionnaire.

xxxvi) Domestic industry has provided data for 6 months post period of investigation, that is, till December 2020. More recent data cannot be considered as it is impacted by the temporary effects of COVID-19.

xxxvii) Exporters and users have not argued that the domestic product is different from the imported product. Though there has been no change in the product, the market share of the domestic industry has dropped from 45% to 32% as the imports have increased. This shows that the domestic and imported products are competing in the same market and are comparable.

xxxviii) Contrary to claim of the interested parties, domestic industry has neither requested for selective application of safeguard measures nor is such application envisaged under the law.

xxxix) Safeguard measures will not ban imports and thus, would not lead to monopolistic situation in India.

xl) As the interested parties which made submission in the previous hearing have participated in the present hearing, it is unlikely that any interested party was

impaired to make submissions because of the Chinese New Year holiday at the time of the second hearing.

xli) Contrary to claims in this regard, the domestic industry has provided the information available regarding the names of all major producers.

xlii) Sandeep Organics Private Limited has not established itself as an interested party as it has not filed importer's questionnaire response.

xliii) Capacity already commercialized by Deepak Phenolics and capacity that is now being added are required to be considered while determining the quota that should be fixed. The company has already commercialized 30,000 MT and is now working on commercializing another 30,000 MT.

II. Deepak Phenolics Limited

13. Deepak Phenolics Limited, which started production post the investigation period, supported the petition filed by the applicant and submitted as under:

(i) There is a recent, sudden, sharp and significant surge in imports as a result of unforeseen developments and effect of obligations incurred under GATT.

(ii) DPL has commenced production through acetone-route in April 2020 and is setting up another plant, which is expected to commence commercial production in 2021.

(iii) Acetone-based IPA is the more cost-effective route as compared to propylene-based IPA.

(iv) The imposition of safeguard measures is in public interest, in as much as it is no longer the preferred input for sanitizers and is majorly used in pharmaceuticals, where the costs on account of IPA is insignificant.

III. Embassy of Spain

14. The written submissions of the Embassy of Spain are summarized below.

(i) Safeguard is not appropriate in the current circumstances as the injury to the petitioner is mainly from China PR, which have increased. Had imports from China PR remained same, the total imports would have declined and there would have been no legal grounds for the initiation of safeguard investigation.

(ii) The situation can be addressed better by using anti-dumping or anti-subsidy measures.

(iii) IPA exported by Spanish company ITW is not a like product to the domestic goods, as it has different physical characteristics and cannot be used interchangeably with domestic product. ITW exports only pharmaceutical grade IPA which is processed in India and re-exported to Europe and America.

(iv) The product produced by the petitioner is not accepted by European standards. Thus, pharmaceutical grade IPA should be excluded from the scope of the investigation.

(v) Other factors are injuring the domestic industry, such as increase in total costs over the injury period. Investments made by the petitioner to increase its production capacity seem to have been passed over.

(vi) The petitioner had identified imposition of tariffs by USA against China PR as unforeseen developments. However, no such tariffs are applicable on IPA now.

(vii) Due to COVID-19, the global demand for sanitizers and disinfectants will remain high and is expected to grow till 2024. Safeguard measures are not advisable at the time of shortage of disinfectants.

(viii) Imposition of safeguard measures are against public interest as IPA is in the list of essential commodities.

(ix) The petitioner has entered the sanitizer business changing its focus from supplier of IPA to supplier of sanitizers.

IV. The Embassy of Brazil

15. The Article 9.1 of the WTO Agreement on Safeguards (AS) states that "safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned".

16. Estimates based on Indian official trade statistics indicate that Brazilian exports of IPA were nil during the last five years. Brazilian exports represented, therefore, less than 3% of the total imports of India. If all developing countries under this condition represented, together, less than 9% of total imports of the product concerned, it will be mandatory that Brazil be excluded from any provisional or final duty that may be applied.

17. Brazil is certain that India is aware of the high standards that should be applied in a safeguard investigation and is confident that India will take forward the fulfilment of its obligation to effectively exclude Brazil from any eventual measures on isopropyl alcohol.

V. The Trade Representation of the Russian Federation in the Republic of India

18. The Russian Trade Representation stated that Russia should be excluded from the scope of proposed measures as (a) the volume of imports is low, (b) producers in Russia do not have surplus capacities, and (c) there is no threat of material injury from Russia.

VI. Taipei Economic and Cultural Centre, Taiwan

19. In the notice of initiation issued by the Authorized Officer, the Authorized Officer has considered three year and three months period from April 2016 to June 2019 as the Period of Investigation, but it has also specifically considered last six months period of the Period of Investigation from January 2019 to June 2019 as the 'most recent period.'

20. Petitioner has provided import data and information regarding economic parameters on a yearly basis starting from April 2016 till June 2019. However, the Petitioner should also provide separately the import data and the data regarding its performance on economic parameters for the most recent period of six months identified by the Authorized Officer in the notice of initiation. Without the submission of this data separately by the Petitioner, we cannot comment regarding the increase in imports and consequent serious injury to the domestic industry in the 'most recent period'.

21. Petitioner compared the 15-month period (from April 2018 to June 2019) with other 12-month period and reached the conclusion that the imports have increased very significantly. We believe this comparison is misleading because it compared the import volume by different basis. Hence, we recommend the Authorized Officer to compare the import volume by 12-month basis.

22. Majority of imports are from China PR. The primary claim of the Petitioner is also that there has been significant increase in imports from China PR because of certain unforeseen developments such as oversupply of raw material acetone and diversion of exports by China PR to India due to restrictions in the European Union and the United States. In these circumstances, the appropriate remedy for the Petitioner is not the imposition of safeguard measures against all countries but to request for initiation of an anti-dumping investigation.

23. There is no increase in volume of imports from Taiwan during the entire period of investigation. Imports from Taiwan in the year 2016-17 was 12,195 MT. Imports from Taiwan increased to 15,381 MT. However, imports from Taiwan have remained at the same level in 2018-19 and in fact slightly declined to 15,217 MT as compared to the year 2017-18.

24. The demand of Isopropyl Alcohol has increased during the period of investigation. There is no commensurate increase in the capacity of the domestic industry. Imports will be necessary because Domestic industry cannot meet the demand of Isopropyl Alcohol in India. Given the current circumstances, demand of Isopropyl Alcohol can only be expected to increase given its disinfectant properties and application in pharmaceutical

industry for synthesis of Active Pharmaceutical Ingredients, drug formulation process, hand sanitizers etc.

25. Besides, petitioner has claimed that import price of Isopropyl Alcohol has not increased commensurately with increase in cost of sales of the domestic industry. Accordingly, the petition has also requested the Authorized Officer to recommend tariff restrictions based on volume of imports for the last three years. Moreover, if injury is caused to the domestic industry due to low priced imports, then imposition of specific limit on quantity pursuant to the present investigation will not be an appropriate measure for remedying for serious injury to the domestic industry and for facilitating its positive adjustment. A tariff-rate quota (TRQ) would have been the most suitable form of measure.

VII. Directorate General of Foreign Trade, Government of Indonesia

26. Likewise, the Government of Indonesia also submitted that Indonesia should be excluded from scope of proposed measures as there are no imports from it during the investigation period and it is a developing country.

VIII. EUROPEAN COMMISSION

27. **The submissions made by the European Commission are as follows –**

(i) The Indian authorities need to provide more details about the nature of the increase of imports, rather than declaring "prima facie" that there has been a significant increase in imports between April-December 2018 and January-June 2019.

(ii) The use of two different periods does not allow for an objective analysis. Furthermore, the increase of imports needs to be based on import volumes and not value

(iii) The main actor behind the increase of imports is China, while imports from other origins remain stable or decrease. In this regard, the Commission would like to reiterate, that due to its very restrictive nature the safeguard ("SFG") instrument is to be used exceptionally, given that safeguards affect all imports, irrespective of their origin, and especially because – contrary to anti-dumping and anti-subsidy – they target fair imports.

(iv) It has not been demonstrated that the increase of imports was the result of an unforeseen development in terms of Article XIX of the GATT.

(v) The Commission, therefore, requests the investigating authorities to verify thoroughly the information provided by the complainant, for example, the complainant should clarify the disproportional increase of costs during the POI.

(vi) On the basis of the information available, it does not seem that the domestic industry is suffering from any actual or imminent serious injury, caused by increased imports.

IX. The Government of Republic of Korea

28. The Government of Korea has stated as follows in their written submissions.

(vii) The initiation is deficient as it does not contain a statement under Rule 5(2) (c) regarding whether application has been filed to Authorized Officer, Safeguards for imposition of safeguard duty and details of progressive liberalization.

(viii) The Quantitative Restrictions Rules require the Authorized Officer to refer complain to the relevant authority, in case it finds that injury is due to dumping or subsidization.

(ix) The petitioner has not provided details of its imports in the non-confidential version, as required under Trade Notice 10/2018.

(x) The principal business of the domestic industry is trading and the alleged surge in imports is self-inflicted, which has not been disclosed by it.

(xi) The petitioner disclosed that it imported IPA for the first time only in the oral hearing.

(xii) Following the principles of *juri ex injuria non oritur* i.e. no person can claim any right arising out of his own wrong doing, and *nullus commodum capere potest de injuria sua propria* i.e. no person can take advantage of his own wrong doing, the petitioner cannot be allowed to claim remedy against increased caused by itself.

(xiii) An assessment of increase in imports should be made after excluding the imports by the petitioner as these imports cannot be the cause of injury.

(xiv) Since the volume of exports from Korea has decreased and such exports are not a substantial cause of injury, they should be excluded from scope of proposed measures pursuant to India-Korea CEPA.

(xv) Exports from Korea RP should be seen after excluding imports made by the petitioner. It would be seen that the other imports from Korea account for a negligible share of the total imports.

(xvi) Although the import prices have increased consistently over the past four years, there has been a consistent decline in the profitability of the domestic industry.

(xvii) Losses to the domestic industry resulted from an inefficient production process based on costlier input.

(xviii) Several other factors including sharp fall in the prices of solvents, inconsistent policies of USA and dumping of IPA from China have affected the performance of the domestic industry.

(xix) If safeguard measures are imposed, the quota should not be below the average of imports in the last three years and the same should be liberalized considering the growing demand for IPA.

(xx) Global surplus of acetone, declining prices of acetone, increased capacities in China PR, and limited demand in China PR do not qualify as unforeseen developments.

(xxi) The domestic industry has not adduced evidence to indicating global excess capacity of IPA.

(xxii) As laid down by the WTO Panel in India — Iron and Steel Products, the petitioner must demonstrate unforeseen developments for Korea RP, if it considers that imports from Korea RP are a substantial cause of injury. However, in the present case, the petitioner has relied on generic global developments or developments relating to China PR.

(xxiii) The petitioner has relied upon ICIS reports for the unforeseen development. However, in the case of Dye Stuff Manufacturers Association of India V. Government of India, it was held by the CESTAT that data derived from journals questions do not constitute facts and only official publications can be accepted as a source of best information.

(xxiv) The ICIS reports cannot be treated as confidential as the petitioner cannot claim confidentiality on behalf of any other party and The Copyright Act, 1957 states reproduction of any work for the purpose of judicial proceeding does not consist infringement of copyright.

(xxv) The Authorized Officer is requested to take into consideration the current selling prices and profitability of the domestic industry to gauge whether protection is still required in the changed circumstances.

(xxvi) The fact that the Petitioner's profitability in trading declined is not relevant to determination of serious injury to the domestic industry. However, it is pertinent to note that despite reduced profitability, the Petitioner decided to sell the imports at a loss and at prices which were undercutting rather than focussing on selling its own production.

(xxvii) There does not exists a proper machinery to monitor the imports and provide real time update to the stakeholders regarding the remaining level of quota. In such a situation, the goods already in transit to India would either be turned away at the port, denied clearance or destroyed as prohibited items which would cause huge losses to the exporters.

(xxviii) Rule 9(ii) of the SG (QR) Rule mandates that the quantity of imports must not be reduced below the level of a recent period which shall be the average of import in the last three representative years for which statistics are available. Therefore, since import data up to December 2020 is available, it is submitted that the same must be taken into consideration by the Authorized Officer as per Rule 9(ii) while fixing the quota if safeguard measures are considered necessary by the Authorized Officer

(xxix) Considering the present situation, imposition of safeguard measures on IPA would not be in public interest, as it would lead to a shortfall of IPA in the country

and increase its prices. It must be considered that India had notified masks and sanitizers as essential commodities till June 30, 2020.

X. LG chem Ltd, ISU Chemical Co., Ltd through Korea Petrochemical Industry Association

29. The Association submitted as under in its preliminary submissions and post-hearing written submissions.

(i) The applicant has not provided substantive evidence to justify initiation of the investigation.

(ii) The applicant has exaggerated the increase in imports and deliberately invented injury.

(iii) The causal link between increase in imports and injury has not been demonstrated.

(iv) The applicant has tried to mislead the Authorized Officer by not disclosing the fact that it has imported the subject goods.

(v) The applicant has claimed ICIS reports confidential, which is violation of para (iv) of Trade Notice 1/2013. They are available on ICIS website and cannot be claimed confidential on the basis of commercial restrictions.

(vi) The applicant has provided data for the most recent period, in the paper book just before the oral hearing. However, since the applicant has not filed a revised petition, the respondents are unable to give comments.

(vii) Since DPL has filed a response on 3rd January 2020 though it was not the part of the petition, the response filed should be rejected.

(viii) As DPL is not yet producing the subject goods, it should not be a part of the investigation because injury suffered by it cannot be determined.

(ix) Despite having imported significant quantities, the applicant has not filed response to Importers' Questionnaire, in terms of Trade Notice 6/2018.

(x) Before proceeding with the examination, the Authorized Officer should examine the purpose of imports, whether imports were made regularly or due to special circumstances, whether imports were made to supplement product range or for R&D purposes and the volume of imports.

(xi) The applicant has requested time of four years to set up a new plant, without providing an alternative to the users. The applicant cannot fulfil demand in India and the regular supply of IPA would be cut if safeguard measures are imposed.

(xii) The adjustment plan is not viable as it assumes that acetone route is cost effective and 30% cheaper than propylene route. However, the price of acetone fluctuates significantly. If the price of acetone is not low at the end of four years, the adjustment plan will not materialise.

(xiii) In absence of a viable adjustment plan the Authorized Officer has not imposed safeguard measures in investigations related to Phthalic Anhydride, Cold Rolled Flat Products of Stainless Steel of 400 Series, Not Alloyed Ingot of Unwrought Aluminium and Flexible Slabstock Polyol.

(xiv) The applicant has imported 70% to 90% of the total exports by LG Chem. Thus, the applicant has caused injury to itself.

(xv) In terms of India-Korea CEPA, since imports from Korea RP are not a substantial cause of injury, they must be excluded from the proposed safeguard measure.

(xvi) The imports from Korea RP are not causing serious injury to the domestic industry, as they have declined and thus, they should be excluded.

(xvii) The imports from Korea RP are contributing to stable supply of the product as the applicant cannot supply the demand.

(xviii) The applicant has imported subject goods from China as well, which have not been reported to the Authorized Officer. Thus, the injury to the domestic industry is self-inflicted.

(xix) The demand for IPA has grown due to COVID-19 and is forecasted to increase even more, whereas the capacity of the domestic producer is constant. The imposition of safeguard measures would cut the sources of supply.

(xx) As there is only one producer in the domestic market, there is likelihood that it would dominate the market and would create barriers for market entry.

(xxi) The applicant is asking for protection for its own inefficiencies.

(xxii) Acetone based IPA has become expensive whereas propylene-based IPA has become cheaper.

(xxiii) As noted in the findings in the case of Methyl Acetoacetate, the applicant is obligated to establish that imposition of safeguard measures will be in public interest. This aspect has not been addressed in the petition and the initiation notification.

(xxiv) If DGTR decides to recommend Quantitative Restrictions Measures, it shall be based on the average of imports in the last three years and impact of increase in demand every year in the Indian market.

(xxv) The Capacity of the petitioner remained constant since 2016-17 i.e., 70,200 MT. And, in order to fulfil and maintain their client base, the petitioner has consistently been importing IPA from China PR and Korea RP. The petitioner is not able to meet the demand in the normal circumstances, it therefore, cannot be expected from them to fulfil the rising demand in case of such pandemic.

(xxvi) If the quantitative restriction is imposed immediately it will hamper the industry as they will be forced to buy the product at higher prices.

(xxvii) The imports from Korea RP has declined during the injury period. Also, the petition clearly focuses on the imports from China PR and states that imports from China PR is majorly causing injury to the domestic industry.

(xxviii) The adjustment plan of the petitioner does not appear viable anymore, as the prices of Acetone have increased more than 2.5 times.

(xxix) In view of the COVID pandemic, market research forecasts the global demand of IPA to reach 522,000 TPA during 2020-2024, therefore, the adjustment plan of the domestic industry cannot be relied upon and will not be in the public interest.

(xxx) The domestic industry has imported the PUC from 100 MT during the base year to 128 MT (Indexed) between January-June 2019. If the domestic industry is importing the subject goods at a significant amount from all the producers of countries involved and selling in the domestic market at a profitable margin, how can they claim injury when they are taking maximum benefit from it.

(xxxi) Imports from Korea RP have declined during the injury period, on the contrary, demand of subject goods has increased. Thus, injury to the domestic industry cannot be attributed to the imports from Korea RP.

XI. China Petroleum and Chemical Industry Federation

30. The China Petroleum and Chemical Industry Federation submitted as under during the course of the investigation

(i) There is no substantive evidence to prove the existence of conditions for initiation of the safeguard investigation.

(ii) The petitioner has exaggerated the increased imports and deliberately invented injury to domestic industry.

(iii) The petitioner has not provided the data for the most recent period i.e. January 2019 to June 2019.

(iv) The petitioner has not established a causal link between alleged increase in imports and alleged injury.

(v) More than 50% imports from China PR have been made by DFPCL, which has not been disclosed in the non-confidential version of the petition or the initiation notification.

(vi) The applicant used to be the monopoly controller of Indian IPA industry and used to set price of IPA in India, as it commanded both domestic IPA and imported IPA. During 2018-19, demand for IPA has increased and other importers have entered the market.

(vii) DFPCL imported IPA to re-export to foreign markets, this has not been provided in the petition.

(viii) Imports from China PR are not causing injury to the domestic industry but are filing the demand-supply gap in India.

(ix) The petitioner is importing 100% of its production and the injury claimed is at best self-inflicted injury.

(x) If quantitative restriction measures are imposed in respect of China PR, they should be based on average import in the last three years and the adequate impact of increase in demand of IPA every year in India.

(xi) The petitioner has claimed excessive confidentiality with regard to ICIS reports regarding the prices of acetone, increasing viability of acetone-based IPA and excessive capacity of IPA, which is in violation of trade notices issued by the Authorized Officer.

(xii) The petitioner has imported significant quantity from China PR, but failed to fill importer's questionnaire.

(xiii) A plan that will come into effect after four years cannot be termed as a viable adjustment plan.

(xiv) The adjustment plan is based on the assumption that the production of subject goods through acetone route is cost efficient, but the prices of acetone have been fluctuating significantly and thus, the said plan will not materialize.

(xv) The petitioner imported a significant quantity of IPA from China PR any injury to the domestic industry is self-inflicted.

(xvi) The imports from China PR are not causing injury to the domestic industry but contributing to stable supply of product under consideration to the downstream industry, as the petitioner alone is not able to fulfil the demand.

(xvii) The petitioner was enjoying the benefit of being the sole producer and Importer. However, once other players entered the market, the petitioner has come before the Authorized Officer and requested protection which is, in turn, taking undue advantage of trade remedies available in India.

(xviii) The petitioner has under-reported its sales to show fabricated injury and has not reported the trading sales of imports made by them.

(xix) The purpose of imports should be examined, whether done to supplement product range or research or regular imports or imports to meet special circumstances

(xx) The imposition of measures would not be in public interest as the petitioner, being the sole producer, would dominate the market and create barriers to market entry, which is harmful to competitive environment and healthy development of the industry in India.

(xxi) Considering demand-supply gap, safeguard measures will further unnecessarily cut the source of regular supply of the subject goods and the end users will have to pay the extra price for the product which is now available at a low cost.

(xxii) Any measures recommended should be based on average of imports in last three years and considering the increase in demand for IPA in the Indian market.

(xxiii) CPCIF and its producers/exporters hereby submits that as per safeguard investigation rules applicant is required to submit questionnaire response as per the format prescribed after initiation notification issued by the DGTR. However, in the present case not only the petitioner i.e. Deepak Fertilizers and Petrochemicals Corporation Ltd but also Deepak Phenolics Limited (DPL) has submitted the questionnaire response and written submission with the DGTR as on 3rd January 2020 and 16th September 2020 respectively though it was not the part of petition. Hence, we request the Authorized Officer to reject the submissions of the DPL.

(xxiv) The petitioner is requesting for four years long time to set up a new acetone-based plant without providing an alternative for the user industry. The petitioner is at present not able to fulfil the demand of the Indian industry and the imposition of the safeguards measures (if any) would further unnecessarily cut the source of regular supply of the subject goods for them which will cause negative impacts on the public interests of India. The end-users/ importers will have to pay the extra price for the product which was available at low cost due to the technology used by the foreign producers. Imposition of any quantitative restrictive measures will impact the public interest adversely. Thus, the adjustment plan provided by the petitioner cannot be termed as a viable adjustment plan. The adjustment plan is based on an assumption that production of subject goods by acetone route is cost effective and 30% cheaper than propylene-based model.

XII. Alkyl Amines Chemicals Limited

31. The respondent has submitted as under, in its preliminary submissions and post hearing submissions.

(i) Since the main grievance to the petitioner is the cheap imports from China, the appropriate remedy in such a case is anti-dumping duty. The contention that the term dumping has been used in the generic sense, is merely an afterthought.

(ii) Petitioner has alleged that there exists dumping of subject goods from China PR inasmuch as there are cheap imports at large volume from China PR. Such being the case, appropriate remedy is not safeguard but anti-dumping proceedings. For the said reason, the present investigation needs to be terminated immediately.

(iii) Rule 5(2) i.e. contents of application to be filed by domestic industry requires it to be supported by evidence of (i) increased imports (ii) serious injury or threat of serious injury (iii) causal link between increased imports and serious injury as well as provide statement on (a) efforts being taken or planned to be

taken to positively adjust; and (b) whether application for initiation has also been submitted to Authorized Officer Safeguards under S.8B of Customs Tariff Act, 1975. However, (a) the application does not contain any such statement that no application has been made to Authorized Officer Safeguard, (b) application has mere conjecture regarding adjustment plan and does not detail progressive liberalization adequate to facilitate adjustment (c) Other factors leading to increase in imports such as Petitioner itself importing significantly have not been stated in the application (d) Petitioner has also not mentioned itself in list of major importers, and (e) No data for most recent period between July'19 to Sep'19 has been presented though investigation was initiated in November,2019. Such information is critical vis-à-vis requirement of "adequacy and accuracy" of application under Rule 5 and ought to have been observed as they are mandatory.

(iv) The notice of initiation nowhere mentions that the Petitioner imported the subject goods. Either the Authorized Officer was not informed by the Petitioner about significant imports made by it or Authorized Officer, despite being aware, did not disclose the same in its initiation notice. In case of former, there exists material non-disclosure of essential facts, which has significantly impeded and impacted the investigation. In case of latter, the investigation itself is void ab-initio as prima-facie evidence makes it clear that domestic industry itself was the biggest importer and thus, could not have sought protection for its own wrong doing.

(v) Since mandatory requirement of Rule 5 has not been satisfied, the initiation notice is bad in law. Once the initiation is rendered bad in law, any subsequent steps taken pursuant to such initiation is also bad in law as per Hon'ble Supreme Court in Chairman-Cum-M.D., Coal India & Ors vs Ananta Saha & Ors [(2011) 5 SCC 142.

(vi) Article 4.2(b) AoS provides that determination regarding whether increased imports have caused or are threatening serious injury shall be made only if investigation demonstrates existence of causal link between increased imports and serious injury. Injury due to the factors other than increased imports should not be attributed to increased imports. As explained the Appellate Body in US – Wheat Gluten, US – Line Pipe and US – Steel Safeguard, the first element i.e. increased imports must have induced the second element serious injury. In other words, there must be a cause-and-effect relationship between the increased imports and serious injury or threat thereof. In the present investigation injury to the domestic industry is self-inflicted.

(vii) While import prices have increased consistently over past four years, profitability of domestic industry has declined which suggests other causes of injury severing the causal link with that of any alleged increase in imports.

(viii) Information in petition indicates losses to domestic industry resulted from inefficient production process based on costlier input-propylene as opposed to

Acetone (30% cost differential) resulting in ever increasing cost of sales causing injury. Exporters and other similarly placed interested parties should not be penalized due to inefficiencies of domestic industry.

(ix) Petitioner has suppressed additional facts causing injury such as (i) sharp fall in prices of solvents, (ii) inconsistent policies of USA, and (iii) dumping of IPA from China have affected the company's performance. Since this is an admitted position by the Petitioner, the appropriate remedy is Anti-Dumping Duty and not Safeguard (Quantitative Restriction) Rules.

(x) Safeguard restrictions are no fault measures proceeding on the assumption that increased imports under fair trading circumstances have resulted in serious injury and must be applied with are and circumspection. SG (QR) Rules provides an inbuilt safeguard against misdirected complaints under Rule 8(b) which obligates the Authorized Officer to ensure that injury due to dumping not be attributed to increased imports. The Authorized Officer must refer the complaint for an anti-dumping investigation as the domestic industry itself considers dumped imports from China as the principal reason for injury.

(xi) Though Petitioner has claimed that capacity utilization declined and it faced abnormal shutdowns due to increased imports only, corporate presentation of Petitioner for Q1 2019-20 mentions "...production volumes were also temporarily impacted as plant was shut down for non-availability of propylene; primarily driven by annual maintenance shutdown at suppliers' end. Corporate presentation for Q3, 2018-19 states that "Production volumes of IPA and Acids were impacted primarily on account of raw water supply cuts by MIDC and IPA plant shutdown." Petitioner has omitted to mention plant shutdowns and non-availability of raw materials as other factors which is hiding facts highly relevant to the investigation.

(xii) Upon comparing landed price of imports with Petitioner's cost and prices, it appears that imports of subject goods did not restrict Petitioner from increasing their selling price. Increase in landed value of imports has been higher than increase in selling price of the domestic industry. This implies that Petitioner could have increased its selling price proportionately. However, Petitioner failed to undertake any steps. Hence, claim that Petitioner was unable to increase prices due to cheaper imports is incorrect.

(xiii) In past investigations conducted by the Authorized Officer under Section 8B of the Customs Tariff Act, viz. Safeguard investigation concerning imports of Bare Elastomeric Filament Yarn (finding dated: 29th September, 2014); Safeguard investigation concerning imports of Cold Rolled Flat Products of Stainless Steel of 400 series – Final Findings dated 23rd March, 2015; Safeguard investigation concerning imports of 'Not Alloyed Ingots of Unwrought Aluminium' into India-Final Findings dated 7th October, 2014, the Authorized Officer terminated the investigation as there was no injury to the domestic industry

(xiv) The Authorized Officer has determined POI as April 16 to June 19 and January 19 to June 19 as the most recent period. As the investigation was initiated more than 10 months ago and the more than more than 15 months elapsed between POI and current period, during the intervening period, world economy received a major setback in COVID-19. Since IPA is an essential commodity to combat the disease, there has been an increase in demand as well as prices due to limited supply. As prices have increased, the Authorized Officer should take the most recent import data into consideration and determine whether imports are still entering India under such conditions so as to cause serious injury to the domestic industry as well as examine current selling prices and profitability of Petitioner to gauge whether protection is still required.

(xv) The Application omits to disclose a crucial fact i.e. domestic industry itself imports the subject goods into India, contributing significantly towards the 'surge' in imports. At Question II at Section V of the Petition, the Petitioner claimed that imports are the only reason causing injury to domestic industry. Further, in statement of compliance with Trade Notice, domestic industry has not provided data vis-à-vis imports which should have been provided as a % of total imports into India in the Range of ±5%.

(xvi) The Petitioner admitted to this fact for the very first time during the oral hearing i.e. nearly 10 months post initiation. The Petitioner's predominant business is trading which is 63.17% of its total revenue. Thus, the Petitioner is itself responsible for the alleged surge in imports and is clearly 'self-inflicted'.

(xvii) The principles of *juri ex injuria non oritur* i.e. no person can claim any right arising out of his own wrong doing, and nullus commodum capere potest de injuria sua propria i.e. no person can take advantage of his own wrong doing, must be applied.

(xviii) Assessment of whether imports are in increased quantities should be made after exclusion of imports made by Petitioner which cannot be considered to have caused injury to it. Both quantity as well as value of imports must be segregated and excluded before examining whether (i) imports have increased as per Agreement of Safeguards; and (ii) whether increased imports have caused injury to domestic industry.

(xix) the Petitioner itself is the single largest importer of subject goods for past 5 years. Such being the case, the Petitioner was fully aware of the fact that increase in imports of subject goods was in fact caused by it alone. This fact in itself further negates Petitioner's submission that the increase in imports was an unforeseen development. A company, which consistently imports almost 50% of total imports every year for the last 5 years cannot claim that imports are causing injury to it.

(xx) The point of time at developments had to be unforeseen is the time at which the relevant tariff concessions were negotiated, i.e., the time at which the member concerned acceded to the WTO. There must be a "logical connection"

between "unforeseen developments" and increase in imports causing serious injury. An increase in imports in itself does not constitute unforeseen developments. Examples of unforeseen developments considered by the Authorized Officer in the initiation notice at para 7, viz., global surplus of Acetone, declining prices of Acetone, increased capacities in China PR, and limited demand for the subject goods in China do not qualify as unforeseen developments.

(xxi) Insofar as the claimed unforeseen developments are themselves concerned, the Petitioner considers the worldwide reduction in prices of acetone, which led to the propylene-based plants producing IPA becoming uncompetitive, is an unforeseen development. Since petitioner is sole domestic producer in India based on the propylene method, this led to increase in cheaper imports of subject goods based on the acetone method. In this regard, the Report of the Panel in Argentina – Definitive Safeguard Measure On Imports Of Preserved Peaches is relevant as the WTO Panel adjudicated whether events similar to those cited in the present investigation could constitute unforeseen developments and it was held that for such developments to be considered unforeseen, it must be demonstrated why it did not foresee the same at the time of incurring its obligations. Thus, domestic industry must demonstrate as a matter of fact that Acetone based method of producing the subject goods becoming cheaper than the propylene based method, which led to the latter process becoming uncompetitive, was not foreseen at the time India incurred its obligations under the GATT. To this end, domestic industry was required to lead some evidence to establish parity between cost of production based on either process at the relevant point of time India incurred its obligations under the GATT.

(xxii) All information furnished by the Petitioner concerning (i) fall in prices of Acetone; (Annexure 3.3); (ii) increased viability of Acetone based IPA (Annexure 3.4); (iii) excess capacities of IPA (Annexure 3.5), are ICIS reports, which have been claimed as confidential. In Dye Stuff Manufacturers Association of India Versus Govt. Of India, it was held that (i) data derived from journals question do not constitute 'facts" are irrelevant and cannot be relied upon as evidence in an investigation; and (ii) only official publications can be accepted as a source of "best information". Therefore, information contained in Annexures 3.3 – 3.5 must be rejected and not be relied upon while determining existence of unforeseen circumstances.

(xxiii) With respect to contention that world is suffering from oversupply of Acetone, petitioner has merely relied upon a generic article by a Chinese company, whose credibility is unknown, to claim that there is increased capacities and limited demand for IPA in China. Online posts of such companies cannot be considered as credible evidence. Similarly, Annexures 3.7 and 3.8 are also to be discarded as they are in the nature of news reports.

(xxiv) Increase or decrease in prices of key inputs cannot be termed as unforeseen development. Volatility in prices is not an unusual phenomenon in an open market, especially with respect to crude derivatives such as Acetone. The term 'unforeseen developments' would lose its relevance if decrease in prices is termed as unforeseen. Claim of decrease in Acetone prices and cheaper IPA is contradicted by data in the petition which demonstrates a sharp increase in import prices.

(xxv) domestic industry has failed to lead any positive and direct evidence indicating excess global capacity of IPA. Alleged global surplus of Acetone does not, ipso-facto, lead to a conclusion of surplus of IPA as it cannot be assumed that surplus production of Acetone would be utilized in the production of only IPA as it is also used to manufacture other chemicals including Isophorone, Diacetone, Methyl Methacrylate, Bisphenol, etc.

(xxvi) That un-competitiveness of propylene-based plants vis-à-vis acetone-based plants is an unforeseen event is completely baseless as companies across the world moved to a more efficient technology while Petitioner did not act in time. Even IPA production units elsewhere must have taken considerable period of time to set up and become commercially viable. If Petitioner chose to ignore changing market dynamics and study best manufacturing practices before setting up its plant, then the same is not 'unforeseen developments' but rather, lack of foresight.

(xxvii) Unforeseen developments have been sought to be justified through evidence in the form of ICIS reports which have been claimed as confidential by the domestic industry by citing the reason that it contains "third party information which the petitioner is not authorized to disclose". Information contained in such reports cannot be treated as confidential as it would not constitute business proprietary information pertaining to the domestic industry. domestic industry also cannot claim confidentiality upon information on behalf of any other party. No authorization is required for reproduction of copyrighted work in course of judicial proceedings as per Section 52 of the Copyright Act, 1957. The confidentiality claim has circumscribed the ability of interested parties to analyze whether the reports are reliable and substantiate the claim of domestic industry. The Authorized Officer must either direct Petitioner to disclose Annexures 3.3 to 3.5 or discard the same from consideration in terms of Rule 7(3) of the SG (QR) Rules.

(xxviii) The Authorized Officer must direct Petitioner to disclose its share in imports during POI as a whole as well as on annual basis as the basis of requesting safeguard measures is an increase in imports under conditions that cause serious injury. Therefore, interested parties must be informed about quantum of imports made by Petitioner and prices at which they were made to gauge whether Petitioner itself was responsible for increase in imports and alleged price suppression and depression. The share of the petitioners as a range in

percentage terms must be provided and also indicate price undercutting by such imports.

(xxix) Neither the SG (QR) Rules provide any machinery provision, nor any such other machinery provision exists under Indian law which can monitor imports and alert relevant stakeholders once respective quotas for any country is about to be extinguished, similar to those in EU and the US.

(xxx) S.9A of FTDR Act only allows for imposition of quantitative restriction without any provision for clearance of imports which exceed quantity allocated to a country. In absence of a provision for allowing clearance after imposition of tariffs on imports exceeding the quota, subject goods already in transit to India would either be turned away from port, denied clearance into India or destroyed as a prohibited item as opposed to being allowed clearance after payment of safeguard duty. Quantitative restrictions must not be imposed unless machinery provision to implement the quotas are formulated.

(xxxi) The world economy received a major setback with COVID-19 and as IPA is an essential commodity for sanitary products, there was an upward push in demand as well as prices. In safeguard investigations, thumb-rule is to consider most recent data available while examining imports and economic parameters of domestic industry. If latest trends provided by Respondent are examined, import prices have increased by 115% between end of POI and current prevailing price during July-2020. Similarly, imports prices have increased 87% between March 2020 and July 2020. Increasing trend in import prices by more than 100% during past year indicates that most recent trends must be examined. Since import data is obtained from market sources, Authorized Officer is requested to verify said figures from DGCI&S import data.

(xxxii) Both AoS as well as Safeguards (QR) Rules require Authorized Officer to examine whether imposition of safeguard measure would be in public interest or not. The term 'public interest' is a much wider term and covers in its ambit the general social welfare taking into account the larger community interest including that of users of subject article and not merely interests of domestic industry. Safeguard measures are not meant to provide automatic protection to domestic industry merely because it is suffering injury or is uncompetitive. Interests of industrial users and consumers are more vital and need to be taken into account.

(xxxiii) Imposition of quantitative restrictions would adversely impact the downstream market, without any significant gain to the Petitioner. The PUC has several significant uses and is a key input in various critical pharmaceutical industries. Uses include (i) manufacturing of Glyphosate (Herbicide), (ii) Manufacturing of key intermediate like Sodium Isopropoxide and Lithium Diisopropylamide which are extensively used in synthesis of many life saving drugs like statins, anti retrovirals etc.(iii) Manufacturing of Diisopropylamine used in manufacturing of Statins like Atorvastatins which is used for lowering

cholesterol in cardiac treatment. (iv) Isopropyl Alcohol swabs and swipes are used for wound cleaning due to its antiseptic properties. (v) Used as an excipient in many pharmaceutical drugs such as Amoxicillin, Montelucast, Levetiracetam, Fluoxetine Hydrochloride and Omeprazole. (vi) IPA is the most environmentally friendly solvent used for crystallization in many lifesaving drugs in pharmaceuticals and agrochemical -formulations, (vii) Used in cosmetics, electronics and mosquito repellent due to its disinfectant properties.

(xxxiv) There isn't sufficient domestic capacity in India to meet the ever-growing demand. Quantitative restrictions would not benefit domestic industry as it is admittedly inefficient producer of subject goods and has limited capacity, while the end-users will directly get impacted. In fact, it appears to be a ploy on the part of the petitioner to curb import competition and increase their prices and margins.

(xxxv) Any restriction on volume of imports of subject goods, coupled with absence of domestic alternatives, would be detrimental to downstream critical industries as well as ultimate consumers, including patients who require affordable and unrestricted supply of such pharmaceutical products. User industry cannot be punished for importing the subject goods in the absence of domestic alternatives.

(xxxvi) Respondents are users of subject goods, which is used in manufacture of Mono Isopropyl Amines (MIPA). Recently, on 12th February 2018, the DGTR recommended anti- dumping duty on MIPA for a period of 5 years, which was imposed vide Customs Notification No. 14/2018-Cus (ADD), dt. 21-03-2018. If the Authorized Officer decides to recommend application of quantitative restrictions on the subject goods, then the entire purpose of ADD imposed on MIPA would be rendered futile as availability of key input of MIPA, that is, IPA would be restricted and would also result in increase in raw material prices. As a result, recommendation of Authorized Officer in present case would automatically counteract recommendation of Authorized Officer in another anti-dumping investigation relating to the downstream product and render the imposition of anti-dumping duty otiose. The entire MIPA industry would again become uneconomical and loss-making entity.

(xxxvii) Capacity available with domestic industry is not sufficient to cater to demand in India and it has claimed that expansion will require a further 4 years. The Indian demand stood at approximately 2,16,494MT in 18-19 whereas capacity available with domestic industry currently is only 70,200MT. Demand increased exponentially pursuant to COVID 19. Therefore, quantitative restrictions would result in a severe shortfall in availability of sanitizers and disinfectants required to protect against and prevent the spread of the contagion which has major consequences on public health. Shortfall in availability of IPA would lead to increase in price which would make cost of production of

downstream articles prohibitively expensive and inaccessible to the general public.

(xxxviii) India notified order under EC Act to declare sanitizers as essential commodities till June 30, 2020 and maximum ceilings for prices at which sanitizers can be sold were prescribed.

(xxxix) Petitioner claimed that there is a sudden, sharp, and significant increase in imports, both in absolute as well as in relative terms and which establishes a need for quantitative measures to curtail the surge. Petitioner stated in its written submissions that the domestic industry struggled to retain its customers and the domestic industry was forced to curtail its own production and import the product itself for trading. This was necessary to ensure that the domestic industry did not lose its customers, with whom it had built long-lasting relationships. Furthermore, the domestic industry was forced to sell its own production at loss, to retain its market. It is, therefore, evident that the imports are being imported under such conditions as to cause serious injury to the domestic industry. Therefore, the domestic industry has admitted to the fact that it has imported the subject goods. Question II at Section V of application format is not restricted to a disclosure that imports have been made but also places a substantive obligation on the Petitioner to provide data of such imports made by it as a percentage (%) within the Range of ±5% of total imports in to India. The Petitioner also failed to provide such data in written submissions. Non-compliance a substantive requirement is immediate grounds for termination as it circumscribes parties from offer its comments on information which is significant.

(xl) Petitioners have claimed that as it struggled to retain customers, it was forced to curtail its own production and import the product itself for trading to ensure that it not lose its customers and that it was forced to sell its own production at loss, to retain its market and as such, imports are being imported under such conditions as to cause serious injury to the domestic industry.

(xli) As Petitioner has itself admitted that it has imported the goods in high quantities, injury purportedly suffered is self-inflicted. Petitioner cannot complain of price suppression and depression by imports at undercutting prices when such cheap prices imports have been made by Petitioner itself and sold to user industry at lower prices. Though Petitioner may have not made profits on its own production, it must have made profits while trading imports made by it. Consequently, alleged market share lost to imports was actually lost to its own import sales in domestic market. Any loss in market share of Petitioner must be examined after including import sales made by it in the domestic market. Similarly, loss in profits of Petitioner must be determined only after adding profits from sales of imports by Petitioner in domestic market. Petitioner cannot claim injury due to self-perpetuated circumstances.

(xlii) Claim of Petitioner that it would be unviable for domestic industry to survive and is likely to lead to a situation where there is no domestic production as Petitioner is sole producer is incorrect as DPL has commenced production of IPA in April. The domestic industry in India will continue to survive as DPL is producing using Acetone method which has been admitted by both Petitioner as well as DPL of being the cheaper and more competitive route of production. On the other hand, since Petitioner is already engaged in imports to hold on to market share, Petitioner cam cease production and continue import sales to hold on to its customer base.

(xliii) Any injury caused to the Petitioner has to be examined after including the imports made by the Petitioner itself. Therefore, loss in market share of the Petitioner must be examined after including the import sales made by the Petitioner in the domestic market. Any loss in profits share by the Petitioner must be determined only after adding the profits made from sales of imports by the Petitioner in the domestic market. If Petitioner does not show serious injury after inclusion of such import sales to its economic parameters, then neither determination of serious injury to domestic industry of like article, nor a causal link between serious injury as a consequence of increase in imports can be established.

(xliv) The Petitioner itself considers dumped imports from one specific country to be the principal reason for injury. Accordingly, remedy claimed should be restricted to imports from that country alone and the proper remedy against injury due to dumping is the imposition of anti-dumping duties. However, as Petitioner is aware that it would be disqualified as domestic industry under Rule 2(b) of the AD Rules 1995, it has not resorted to an anti-dumping investigation and approached the Authorized Officer Safeguard.

(xlv) The Petitioner stated in its written submissions that "While the domestic industry had been earning adequate returns during the earlier periods, the return on investment of the domestic industry has become negative in the period, January to June 2019" which demonstrates that (i) that the domestic industry was profitable prior to 2019 as it was earning adequate returns during the earlier periods, and (ii) that it has suffered from serious injury only in the period between January – June 2019 as its return on investment became negative. This is the period during which it faced the abnormal plant shutdowns due to non-availability of propylene and raw water supply cuts by MIDC. The Authorized Officer must examine whether a causal nexus still exists between serious injury and imports in view of the changed circumstances during the present investigation due to the COVID-19 pandemic as well as due to plant shutdowns.

(xlvi) The Authorized Officer should call for the most recent data available from Petitioner to examine whether it is now performing better and has ceased to suffer injury on its own production of the like article. The Authorized Officer

may also call for data from DPL which has also participated in the present investigation. If the combined economic parameters of both DPL and the Petitioner do not show any injury in the most recent period, the Authorized Officer must terminate the investigation.

(xlvii) A mere board resolution to setup an Acetone based IPA pant cannot amount to a concrete adjustment plan. Since more than 10 months have passed since the initiation of the investigation and the Petitioner had submitted the said adjustment plan back in November itself, the Authorized Officer must require the Petitioner to demonstrate steps taken by it towards its adjustment plan during the period between November 2019 and September 2020.

(xlviii) The Petitioner has claimed that actual impact of any price increase on the downstream product is going to be negligible even if it sells at its non-injurious price. In this regard, the data provided by the Petitioner deserve to be rejected as firstly, neither any evidence which would substantiate the said data has been provided, nor the source of the data been mentioned. In the absence of verifiable evidence or the source thereof, they cannot be considered within the realm of judicially cognizable facts. Petitioner has also not mentioned period to which said data pertains to and has simply claimed it as the 'most recent period'. Therefore, it cannot be ascertained whether the abovesaid data relates to 2019 or 2020.

(xlix) Unless the Petitioner provides credible evidence in support of the claim regarding the proportion of consumption of IPA for post March 2020, the same must be rejected.

(l) Considering that it is an admitted position by Petitioner that bulk consumption is in the pharmaceutical sector, imposing quantitative restrictions which have the potential of curtailing production of essential life-saving drugs would have an adverse impact on not only India but other countries which are dependent on exports of medicines from India during the present pandemic where the world is facing a health crisis.

(li) Curtailing supply will allow Petitioner to increase its prices beyond the NIP. If quantitative restrictions are imposed, users would be compelled to source IPA from the Petitioner notwithstanding unreasonably high prices charged by it in view of the increased Indian demand due to the present pandemic.

(lii) Considering that the Petitioner has stated that it needed four years to commence production, any measure should not be levied beyond a period of 3 years as more than 10 months have lapsed since initiation of investigation which Petitioner ought to have utilised to implement its adjustment plan.

(liii) DPL has not stated that it is suffering from serious injury due to imports of IPA, nor claimed a threat thereof. This is because DPL has set up Acetone based plant. It is implicit that they are competitive and therefore, not suffering from serious injury. It seems DPL and Petitioner intend to profiteer by

imposing quantitative restrictions in order to leverage the surge in demand due to COVID-19.

(liv) Regarding unforeseen circumstances, DPL has not provided any material whatsoever in support of such claims and neither has it informed the interested parties of the source of information on the basis of which it has claimed the existence of such circumstances. Therefore, the claims made by DPL are merely in the realm of surmises and conjectures and not based on any evidence.

(lv) The allegations of increase in production of Acetone which led to oversupply and consequent reduction of prices in IPA relate to the period after 2016-17. As the commissioning of an IPA plant takes 4 years as claimed by the Petitioner, the factum that propylene-based method was costlier was clearly foreseen by DPL before occurrence of unforeseen circumstances complained of which happened at a much later date.

(lvi) As DPL has itself claimed that it will expand its capacity further by April 2021 and in the absence of any serious injury or threat thereof, DPL is not entitled to seek protection of safeguard measures.

(lvii) Claim of DPL that IPA is no longer a preferred input for hand sanitiser is not borne out from any facts or evidence on record and is in the realm of conjecture. Insofar as the allegation of DPL that IPA has been taken out from the list of essential commodities is concerned, as availability of hand sanitisers went down and prices became exorbitant, they were included into the list of essential commodities to 'smoothen the sale and availability of these items' and to 'carry out operations against orders speculators etc. and those involved in over pricing, blackmarketing etc.' which would 'enhance the availability of both the items to the general people at reasonable prices or under MRP' as per the statement issued by the Ministry of Consumer Affairs regarding their inclusion as an essential commodity. Govt. of India was compelled to include IPA into the list of essential commodities since 'prices of the alcohol used in manufacturing the hand sanitizers have been exorbitantly increased by the producers of such alcohol' so that it would 'help the manufacturers of hand sanitizers to keep prices of their and product at reasonable and within the reach of the common people'. Govt. of India had itself observed that prices of IPA were exorbitantly increased by the producers of such alcohol which compelled it to declare the same as an essential commodity.

(lviii) Fact that the order declaring IPA had the same cut-off date as that for hand sanitizers alongwith statement that this would empower Govt to ensure its availability at reasonable prices indicates that Govt. of India sought to regulate the same till supply caught up with demand.

(lix) Since quantitative restrictions on IPA would be imposed on basis of average of import in the last three representative years, it would create shortage in supply against increased demand due to COVID-19. As Petitioner is also largest importer of PUC into India and therefore controls majority of supply of

IPA in India, limiting availability of IPA would allow Petitioner to dictate prices and increase them to exorbitant levels again as it did in March, 2020 since IPA is no longer in the list of Essential Commodities. Consequently, this would raise the cost of sanitation products manufactured from IPA.

(lx) Petitioner has claimed that it is the sole producer of the subject goods. However, Deepak Phenolics Ltd. has commenced production of the like article in April 2020.

(lxi) The petitioner is one of the largest importers of IPA in India and the injury suffered by the petitioner is self-inflicted.

(lxii) The petitioner has admitted that it imports IPA to maintain its leadership position, to ensure a higher market share in the domestic market.

(lxiii) The petitioner has claimed that the imports were made because it had to retain the customers. However, the petitioner has been importing significant quantities since last five years.

(lxiv) The initiation notification does not mention that the petitioner imported IPA, which implies either that the petitioner did not disclose this fact to the Authorized Officer, or that the Authorized Officer failed to disclose it in the initiation notification.

(lxv) Imposition of quantitative restrictions would further bolster the real intent of the petitioner to control the market.

(lxvi) As per the annual report of the petitioner, it has suffered injury due to other factors such as (a) fall in prices of solvents, (b) inconsistent policies of USA, (c) dumping of IPA from China and (d) overall slow-down in fertilizer industry. As noted by the Appellate Body, there must be a nexus between increased imports and injury suffered.

(lxvii) The petitioner has not submitted meaningful summary of the shutdowns claimed. However, the quarterly report of the petitioner reveals that it suffered a shutdown due to non-availability of raw material and water, which shows that the claims made by the petitioner are false.

(lxviii) The petitioner has not demonstrated existence of unforeseen developments inasmuch as:

a) It has not indicated what circumstances or developments existed at the time of negotiations, which led to increase in imports of subject article, as required by Panel Report in Dominican Republic – Safeguard Measures, and Appellate Body Reports in Argentina – Footwear (EC), Korea – Dairy and US – Fur Felt Hats, adopted 22 October 1951

b) The petitioner has relied upon a generic article by a Chinese company, whose credibility is unknown. Further, the petitioner has relied upon news articles.

c) Change in prices of key input cannot be termed as unforeseen development.

d) Global surplus of acetone does not mean global surplus of IPA. As acetone is used in various chemicals, it cannot be said that the entire excess of acetone will be used to manufacture IPA and then this IPA will be exported to India.

e) It is not an unforeseeable event that the world moved to a more efficient technology. Thus, the in-competitiveness of propylene-based plant cannot be termed as unforeseen development.

f) As noted by the Panel **in Argentine – Definitive Safeguard Measures on Imports of Preserved Peaches**, the petitioner must demonstrate that acetone-based method becoming cheaper than propylene-based method was not foreseen at the time India incurred its obligations under GATT.

(lxix) The petitioner has not shown that the increase in imports is an effect of obligations incurred under GATT.

(lxx) The initiation is bad in law because the petitioner has not provided basic evidences i.e. the Existence of unforeseen developments or effect of obligations which resulted in increased imports, proper adjustment plan, details of progressive liberalization statement mentioning whether an application has also been submitted to Authorized Officer of Safeguards, information for factors that may attributing to increase in imports, such as imports by the petitioner himself, import segregation methodology, data for most recent period – July '19 to September '19, and petitioner has not mentioned itself in the list of importers.

(lxxi) As held in Chairman-cum-M.D., Coal India & Ors V. Ananta Saha & Ors., if initiation is not in consonance with the law subsequent proceedings would not sanctify the same.

(lxxii) Although the import prices have increased over the last 4 years, there has been a consistent decline in the profitability of the domestic industry, which highlights the absence of causal link.

(lxxiii) Import prices did not restrict the petitioner from increasing its price as the increase in landed price is more than increase in selling price.

(lxxiv) The increase in cost of sales of the petitioner is due to inefficient technology based on production on IPA through propylene route.

(lxxv) In safeguard investigation regarding imports of bare elastomeric filament yarn, cold rolled flat products of stainless steel of 400 series, not alloyed ingots of unwrought aluminium, the measures were not recommended due to lack of injury and causal link.

(lxxvi) Imposition of quantitative measures would adversely impact the downstream market, without any significant gain to the petitioner, which is admittedly

inefficient. IPA has several uses and is a key input in various pharmaceutical products which will suffer as the capacity in India is not sufficient to fulfil the demand. It is only a trick to curb import competition and enable the petitioner to increase its prices and margins while having a buffer period to undertake expansion.

(lxxvii) As there is a demand supply gap in the country, quantitative restrictions with absence of domestic alternatives would be detrimental to the consumers of IPA.

(lxxviii) If quantitative restrictions are applied on IPA, the anti-dumping duty recently imposed against imports of Mono Isopropyl Amines would be rendered futile, as the key raw material would be restricted and would be available at increased prices.

(lxxix) Despite being an inefficient producer, the petitioner has not provided a proper adjustment plan, and only made vague and generic statements. In the Safeguard investigation into imports of High Density Fibre Board, the Authorized Officer terminated the investigation due to absence of suitable adjustment plan.

(lxxx) In the absence of an adjustment plan, it is impossible to link the quantity of quantitative restriction with the intended level of adjustment to be made by the domestic industry.

(lxxxi) There is no proper machinery to monitor the imports and provide real time update to the importer regarding the remaining level of restrictions. In such a situation, if the goods are not cleared due to quota restrictions in India, the only recourse would be to destroy those. In this regard, reference may be had to the import monitoring systems established by the European Commission in EU and the Customs and Border Patrol in the US for the purpose of tracking the allocated quotas.

(lxxxii) The Authorized Officer should consider the most recent data for examination of trends. Since initiation, the situation has changed due to COVID-19 and the demand for IPA and its prices have increased.

(lxxxiii) The petitioner has claimed excessive confidentiality with regard to (a) the projected timeline for setting up the plant, (b) government approval for setting up the plant, (c) details of plant shutdown, (d) DGCI&S import data, (e) adjustment plan, (f) actual figures of total sales, even when the same is available in the annual report, (g) actual capital employed, demand, inventory levels and capacity utilisation.

(lxxxiv) The domestic industry has alleged that reduction in customs duty rate pursuant to WTO obligations was the reason behind increase in imports under such conditions so as to cause serious injury to the domestic industry. However, despite the said statement, the domestic industry has failed to demonstrate that the reduction in customs duty from 10% as mentioned in Schedule I to an

effective duty rate of 7.5% vide Notification No.12/2012 Customs dated 17th March, 2012 and subsequently by Notification No. 50/2017 – Customs dated 30th June, 2017 was as a result of obligations undertaken by India under the GATT.

XIII. Submissions by Trident Group (Tamim)

32. The submissions made by Trident Group (Tamim) are as follows:

(i) The applicant themselves are the major importer and had imported to cater the increased demand since local capacity inadequate. Domestic Production had been stagnant for last 7 years at above 100% and imports is the only way to augment availability of IPA

(ii) Applicant is driving down the imported prices and working with his co manufacturers to control prices. Applicant had worked closely with a Korean Manufacturer and a Singapore manufacturer to closely control the market dynamics. In-fact applicant was also having a contract for import of Chinese IPA to west Coast. Price of imports are determined more on a floating basis, based mostly on the deals done by the applicant and domestic prices fixed by the applicant and any lower price is only a reflection of applicant's deal and domestic pricing being declared by the applicant in a continuous growing market.

(iii) Applicant is the Dominant player and a major importer. Inability to add capacities had been the cause of declining market share in the increasing market. Applicant had reached 100% capacity utilisation in 2012 and till now fresh capacity additions have not happened. Hence loss of market share cannot be blamed on anyone else.

(iv) Applicant is the Dominant player and hence is the cause of such a Scenario. Production is lower owing to Issues other than imports as declared by applicants. Quantity imported by applicant had gone up significantly and hence increase in the total imports is only to meet the growing demand.

(v) Factors impacting production as declared by applicant, were "Water issues, one-time technical issue, raw water supply cut by MIDC.

(vi) Feedstock pricing is the reason for applicant's difficulties. However, the cyclical nature of the commodities is playing out in the marketplace. As we speak Propylene route is cheaper than Acetone route and hence applicant's appeal for quantity restriction is unwarranted.

(vii) Globally New Capacities for IPA had been based on Acetone since 2011 and Applicant seems oblivious to the threat and had planned Propylene based capacities in 2017. Now after the application for QR, applicant seems to have announced capacity addition by Acetone route. However already capacity additions through Acetone route already planned and implemented in in India by Deepak Nitrite. Applicant had not been serious about the capacity additions for the last so many years since reaching 100% capacity utilization

(viii) Applicant's loss is on account of the technological changes and use of costly feedstock and not due to any other factor related to increased imports. Increase in imports only to service increased demand and the applicant themselves had been

a major importer and should not have any reason to complain. As a matter of academic interest, Indian Acetone producer had exported Acetone to China and the Acetone prices in China are higher than Acetone prices in India. This only indicates that feedstock Acetone price in India is cheaper than in China.

XIV. Aurobindo Pharma Limited represented by ELP

33. Aurobindo Pharma Limited, as an importer of the product under consideration, submitted as under in its preliminary submissions and post hearing arguments.

(i) The petitioner is the largest importer of IPA and has not disclosed this fact to the Authorized Officer. The fact has been concealed by writing "not applicable" at clause 35 of the confidentiality statement and by not providing its own name in list of known importers.

(ii) The Investigation has been initiated without verification by the Authorized Officer of the accuracy and adequacy of claims and evidence as required by Rule 5 (3) of the Safeguard Quantitative Restrictions Rules ("Safeguard QR Rules").

(iii) The Domestic Producer-cum-Importer is the largest importer of the PUC in India. The Authorized Officer has failed to raise any questions to the Domestic Producer-cum-Importer regarding such imports and therefore the initiation violates Rule 5(3) of the Safeguard QR Rules and must be terminated.

(iv) The Domestic Producer-cum-Importer has deliberately concealed information regarding its own imports of the PUC in the Petition.

(v) A domestic producer who itself is the largest importer of a product cannot be allowed to bring a safeguard action. Such imports break the causal link between increase in imports and injury. Allowing this would permit domestic industry to abuse the system.

(vi) The present investigation, which is based on the misrepresentation and concealment of facts by the Domestic Producer-cum-Importer, must hence be terminated forthwith.

(vii) The Domestic Producer-cum-Importer's explanation of its own imports is a complete fabrication and cannot be accepted. As per market intelligence, the Domestic Producer-cum-Importer has been importing the product since 2012 for trading purposes and the same is not a result of a dire situation as the Domestic Producer-cum-Importer has sought to portray.

(viii) By the Domestic Producer-cum-Importer's own admission, in its annual reports, its trading business in IPA is an entirely strategic initiative, with an aim to control the supply of IPA.

(ix) Domestic Producer-cum-Importer has exclusive import arrangements with at least two major foreign suppliers. Domestic Producer-cum-Importer is seeking

further quantitative restrictions on imports, such that it may effectively control the supply of IPA in the Indian market and kill competition.

(x) The Petitioner has failed to follow the format prescribed in the Form appended to the Safeguard QR Rules.

(xi) The Authorized Officer has selected January 2019 to June 2019 as the most recent period, however the Domestic Producer-cum-Importer has not submitted any updated data for such period.

(xii) The import data for January 2019 to March 2019 is equal to the import data for FY 2018-19. Clearly this is erroneous, and the entire injury table may be impacted by this error.

(xiii) The Domestic Producer-cum-Importer has claimed as confidential all the reports relied upon to claim the existence of "unforeseen circumstances".

(xiv) Domestic Producer-cum-Importer has misrepresented the situation of an alleged "surge in imports" having made no efforts to make any adjustments accounting for the share of its own imports in such alleged "surge in imports".

(xv) Any assessment of the quantum of imports of IPA into India must necessarily account for imports made by the Domestic Producer-cum-Importer in order to assess the true picture of imports into the country which are in the range of 35% to upwards of 50% in different parts of the injury period.

(xvi) After taking these into account, it is clear there is no such sharp, sudden and significant increase in imports.

(xvii) Fluctuation in raw material prices is cyclical in nature and cannot be termed and unforeseen event. Moreover, present prices of Propylene are much lower than Acetone, therefore the circumstances alleged by the Domestic Producer-cum-Importer no longer exist.

(xviii) A safeguard measure cannot be imposed based on possible import substitution due to plant shutdowns in one single country (China). If the Domestic Producer-cum-Importer is aggrieved by imports from China, it would be more appropriate to refer their complaint for anti-dumping or countervailing duties against China and not an application for safeguard measures.

(xix) Argument by Deepak Phenolics that it is having higher costs due to setting up a new plant cannot be accepted as this has no bearing on a safeguard measure which is an emergency action and not a tool for protection.

(xx) The Domestic Producer-cum-Importer cannot claim to have suffered a serious injury from increased imports, as it itself has been importing the PUC for trading purposes. Any alleged injury is therefore, self-inflicted.

(xxi) Should the Authorized Officer find it necessary to conduct an analysis into injury parameters further, it must consider the impact of imports made by the Domestic Producer-cum-Importer itself on the present situation and as exclude

such imports from the volume of imports that are finally considered in its analysis and also exclude the effects of such imports while assessing price injury.

(xxii) Performance of the Domestic Producer-cum-Importer has been impacted by factors other than imports, including, hike in raw material prices, non-availability of propylene driven by annual maintenance shutdown at suppliers' end, IPA plant shutdowns, raw water supply cuts by MIDC, etc. all of which are detailed in its annual reports.

(xxiii) Raw material price fluctuations are a common occurrence and not an unforeseen circumstance.

(xxiv) The applicant's adjustment plan is hence based on a false premise that Acetone based manufacturing is 30 percent cheaper than the propylene route and cannot hence be considered viable.

(xxv) The Domestic Producer-cum-Importer has been talking of capacity expansion since 2017 but this has been to no avail till date. Therefore, the ability of the Domestic Producer-cum-Importer to raise capacity to a level that is in line with the demand of IPA in the country is questionable.

(xxvi) Any imposition of quantitative restrictions will be contrary to public interest and the interests of the user industry as well as the general public in India.

(xxvii) Imports have been necessitated due to an acute gap in demand and supply of 70,000 MT capacity as against over 200,000 MT demand in the current year. The Domestic Producer-cum-Importer itself on a number of occasions has acknowledged the need for imports.

(xxviii) Production Linked Incentive (PLI) Scheme for promotion of domestic manufacturing of critical Key Starting Materials (KSMs)/ Drug Intermediates (DIs) and Active Pharmaceutical Ingredients (APIs) In India" has been approved by the Government of India on 20 March, 2020. As a result of such scheme, there is a rise in investment and new companies in the pharmaceutical sector is expected. Accordingly, the demand of IPA will also substantially increase. In such circumstances the imposition of a quantitative restriction, will be a major hindrance for such projects and existing users.

(xxix) IPA constitutes a key ingredient in the production of hand sanitizers. As a result of the COVID-19 pandemic, Indian demand for IPA for use in hand sanitizer is expected to grow anywhere between 40,000-60,000 MT per year in addition to existing demand of IPA at approximately 200,000 MT per year. This increase in demand cannot be met by existing capacities in India, the same requires imports.

(xxx) 80 percent of IPA in India is used by the Pharmaceutical Industry largely for producing generic drugs which are highly price sensitive. IPA contributes around 7-10 percent of the cost of producing such drugs. In light of the present increases in prices of IPA, this contribution is going to rise exponentially. If on

top of such price increases, quantitative restrictions are imposed, it will make procurement of IPA difficult as well as expensive thereby impacting cost effectiveness of the domestic generic drug producers, and their competitiveness and share in the global market. Quantitative restrictions would not only affect price but also cause shortages.

(xxxi) Claim of the Domestic Producer-cum-Importer that the Pharmaceutical industry uses only 0.34 percent of IPA per kg of pharmaceutical product is entirely baseless and not substantiated with any valid source. Consumption of IPA or any solvent in the production of a pharmaceutical product is entirely dependent on the production "process" and the "recipe", which varies from one product to another. This can range anywhere from 1% to 25% (or more) consumption of IPA per product and it cannot be generalized.

(xxxii) The Pharmaceutical industry is a key export and forex earning industry. Bulk drugs and dug formulations together, accounted for INR 62,245 crores of exports in FY 2019-20. In contrast, Domestic Producer-cum-Importer's revenue from IPA sales account for less than 1% (i.e. 0.65%) of total export sales that will be impacted if the quantitative restriction is imposed.

(xxxiii) Pharmaceutical sector has given employment to approximately 2.86 million people whose livelihoods will be affected.

(xxxiv) Access to affordable drugs is imperative in the general public interest and specifically in the present pandemic. Therefore, quantitative restrictions would be against public interest.

(xxxv) The Domestic Producer-cum-Importers have identified excess capacity and supply in China, as a result of the US-China Trade War and domestic Chinese regulations, as one of the unforeseen developments. The Importer would highlight that the Domestic Producer-cum-Importer has only provided evidence of alleged excess capacities in China and no other countries. A safeguard measure cannot be imposed based on possible import substitution due to excess capacities in one single country.

(xxxvi) Should the Authorized Officer still find it necessary to conduct an investigation further, it is submitted that it must consider the impact of imports made by the Domestic Producer-cum- Importer itself on the present situation of the domestic industry, as a contributing factor to any alleged injury it is suffering, as well as exclude such imports from the volume of imports that are finally considered in its analysis and also exclude the effects of such imports while assessing price injury.

(xxxvii) With respect to cost of production of the Domestic Producer-cum-Importer, while the Domestic Producer-cum-Importer has presented information demonstrating a steady increase in their cost of production for the POI. The Importer submits that the same cannot be attributed to increase in imports. As stated earlier, the Domestic Producer-cum-Importer employs an admittedly less

cost-effective method of production using a raw material for which it has not only faced shortages in supply but whose price has admittedly remained volatile.

(xxxviii) The Importer submits that the Domestic Producer-cum-Importer has misrepresented the situation of an alleged "surge in imports" having made no efforts to make any adjustments accounting for the share of its own imports in such alleged "surge in imports".

(xxxix) The Domestic Producer-cum-Importer has averred that it is the sole producer of the subject goods accounting for 100 percent of the production of the PUC in India. However, since the commercialization of the IPA plant commissioned by Deepak Phenolics, such averment is no longer correct.

(xl) The Domestic Producer-cum-Importer has alleged that the market share of imports has increased whether or not imports made by domestic industry are excluded. As stated previously, imports have been necessitated due to increasing demand and the inability of the Domestic Producer-cum-Importer to meet this demand and increase its capacity

XV. Ineos Solvents

34. While Ineos Solvents filed preliminary submissions, it did not participate in the oral hearing or file any submissions thereafter. The submissions filed are summarized below.

(i) Imports are necessary to meet the demand-supply gap.

(ii) If quantitative restrictions are applied, they should not be blanket restriction, but it should be applied depending on country of origin.

(iii) There should be no quantitative restrictions for imports from Germany as they do not possess a threat of injury to the domestic industry.

XVI. Sandeep Organics Private Limited

35. The aforesaid importer submitted as under with regard to the scope of product under consideration and surge in imports.

(i) The price and usage of IPA depends on purity and packaging and the imported goods have different purity and packaging.

(ii) The petitioner manufactures only Benzene free IPA and hence, only imports of benzene free IPA should be considered.

(iii) Imported IPA also includes recovered, recycled and distilled, which is cheaper.

(iv) The petitioner has not shared non-confidential data.

(v) CIF prices of IPA have doubled, and the local prices have increased by 2.5 times. The demand for IPA has increased.

(vi) There is no surge in imports of phenol or acetone even though their prices fell. Thus, there is no reason for surge in import of IPA.

(vii) The petitioner initially imported IPA as there was demand-supply gap and the price was increasing due to COVID-19, and later applied for safeguard measures.

D. EXAMINATION & FINDINGS OF THE DIRECTOR GENERAL

36. Based on the submissions made and evidence presented by all the interested parties, I have examined concerns on all aspects and record my final findings as under:

I. Applicable Legal Provisions

37. Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 provides for the imposition of safeguard measures in the form of quantitative restrictions if goods are imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry.

38. The Safeguard Measures (Quantitative Restrictions) Rules, 2012 have been notified under powers conferred by Section 9A(3) to provide for the manner in which goods, the import of which shall be subject to quantitative restrictions, may be identified and the manner in which serious injury or threat of serious injury due to surge in imports in relation to such goods may be determined.

39. The investigation has been conducted in accordance with the said provisions of the Act and the Rules and the final findings are recorded through this notification.

II. Product Under Consideration (PUC)

40. At the stage of initiation, the product under consideration was defined as under.

"The product concerned is "Isopropyl Alcohol" (IPA), which is also known as Isopropanol. IPA is a compound with the chemical formula CH3CHOHCH3 and can be produced using Acetone or Propylene. It is a colorless, flammable liquid and is used in production of a variety of industrial and household chemicals, bulk drugs and drug formulations, antiseptics, disinfectants, and detergents etc. The product under consideration consists of 99.8% of IPA, 0.1% of water and 0.1% impurities. The subject products are classifiable under the tariff heading 2905, under code 2905 12 20, in the First Schedule to the Customs Tariff Act, 1975. It is clarified that the said HS code is indicative only and the product description shall prevail in all circumstances."

41. One of the importers, namely Sandeep Organics Limited, has submitted that there is a need for modification of the product scope as there is a difference in the purity and packaging of the imported goods and the domestic goods and the price and usage of IPA depends on such purity and packaging. It has also been contended that the domestic industry manufactures only benzene free IPA. Further, the importer submitted that the imported goods include recovered, recycled and distilled IPA which is cheaper. However, the interested party has not demonstrated any material difference in the specifications, purity or packaging of the imported and the domestic product. The domestic industry has claimed that both the imported and the domestic IPA are available in standard bulk packing and in drums and there exists no difference on account of packaging. The domestic industry has also clarified that IPA manufactured using propylene is benzene free, whereas the IPA manufactured using acetone is not benzene free. Since acetone-based IPA is identical to propylene-based IPA, barring the raw material used, the imported and domestic product cannot be treated as different products on this account. It is also noted that the exporters or consumers of the product have not claimed any difference between the imported goods and the domestic goods. Thus, it is noted that the need for modification of product scope has not been substantiated.

42. It has also been claimed that the Spanish producer ITW has exported pharmaceutical grade IPA, which is processed and re-exported to Europe. It has been stated that the product produced by the domestic industry is not acceptable under the European Standards, and thus, there is a need for exclusion of such pharmaceutical grade. However, the domestic industry has furnished sales invoices showing exports of pharmaceutical grades to Europe and their REACH certificate showing that the IPA produced by it is accepted under the REACH regulations. Therefore, no modification is warranted to the scope of the product under consideration on this account.

43. In view of the aforesaid, the Authorized Officer finds that there is no need for modification to the scope of the product, as defined in the initiation notification.

44. Further, on the basis of the information on record, the Authorized Officer holds that there is no known difference in the subject goods produced by the domestic industry and the imported goods. They are comparable in terms of physical characteristics, manufacturing process, functions and uses, product specifications, distribution and marketing, and tariff classifications of the goods. The goods produced by the domestic industry are also technically and commercially identical to the product being imported. The consumers have used and are using the two interchangeably. The Authorized Officer holds that the product manufactured by the applicant constitutes like article to the subject goods being imported into India from the subject country in terms of Rule 2(e) of the Rules.

III. Scope and Standing of domestic industry

45. Clause (b) of sub-section (4) of Section 9A of the Act defines domestic industry, as follows:

> *"(b) domestic industry means the producers of goods (including producers of agricultural goods)—*
> *(i) as a whole of the like goods or directly competitive goods in India; or*
> *(ii) whose collective output of the like goods or directly competitive goods in India constitutes a major share of the total production of the said goods in India;"*

46. The present application has been filed *by M/s Deepak Fertilisers and Petrochemicals Corporation Limited (DFPCL)*, as the sole producer of the product under consideration in India during the period of investigation having a propylene-based IPA's existing capacity of 70,200 MT. Another producer, *M/s Deepak Phenolics Limited* (DPL) which has set up a plant for production of the subject goods post the period of investigation has supported the application. DPL has commenced production in April, 2020 with an acetone-based IPA production capacity of 30,000 MT which has been extended by another acetone-based firm capacity addition of 30,000 MT during 2021 (as per ICIS-LOR report), thereby making the total capacity of DPL to be 60,000 MT. The relevant extract of the said ICIS-LOR report had been shared by the domestic industry with all the interested parties Further, the Authorized Officer has duly verified the capacity addition of more than 30,000 MT from the evidence provided in respect of DPL in this regard. Hence, such existing capacities of DFPCL and DPL have been duly considered for adequately addressing the possibility of any demand-supply gap.

47. A number of interested parties have submitted that the applicant has imported significant quantities of the product under consideration and thus, cannot maintain an application for imposition of safeguard measures. The interested parties have also submitted that the initiation is bad in law, as the applicant has imported the subject goods and this fact has not been noted in the Initiation Notification. The interested parties have also asked the Authorized Officer to examine the reasons for imports. The applicant has submitted that it had provided all relevant information, as prescribed by the Authorized Officer. The application proforma does not require this information in the application. However, a domestic producer is required to provide relevant information upon initiation of investigation. The applicant has filed this information through the prescribed questionnaire. The applicant submitted that the definition of the domestic industry under the safeguard law does not prevent a domestic producer from filing application if such domestic producer has imported the product.

48. The Authorized Officer notes that there is no exclusion of a domestic producer who has imported the product under the law. As per Section 9A sub-section 4(b) of the FTDR Act, which defines the term *'domestic industry'*, no distinction has been made for a producer who indulges in the imports of subject goods. Further, the format prescribed for filing application for safeguard measures does not require the applicant to provide information with regard to imports made by it. The Director-General has instead

prescribed this requirement for the submission of Information on imports in the Questionnaire for Domestic Producers that is issued post the initiation of an investigation. The applicant has filed the said questionnaire response and has provided the relevant information. The Authorized Officer thus considers that all requirements in this regard have been duly complied by the applicant. Though the imports made by the domestic industry shall be considered while examining the surge in imports of the subject goods, so as to remove any self-inflicted injury caused to the domestic industry.

49. The applicant has explained that it had imported the product to continue to cater to its customers, beyond its own capacity. However, as the price of imports declined, it became unviable for the applicant to sell its own production. The Authorized Officer notes that, there was a demand-supply gap in the country and thus the imports were inevitable. The volume of imports in the past was only to the extent of the existing demand-supply gap which has now surpassed this gap.

50. In view of the arguments of the interested parties, the Authorized Officer examined the volume and price of imports by the applicant and other importers over the relevant period. The domestic industry has submitted that (a) there has been demand-supply gap in the product for past some time, (b) since the product is in the nature of a solvent for the consumers, the consumers prefer to source the entire requirement from a single source. Therefore, the domestic industry has been historically importing the product largely from non-Chinese sources in bulk, storing the same and then selling the same to the consumers, along with its own production. Further, the domestic industry has been selling this imported product after recovering its overhead costs and a marginal profit thereon. This activity was being undertaken by the domestic industry for past several years.

51. The applicant submitted that the capacity and production of phenol increased over the period due to a strong demand for phenol. As production of phenol increased, the production of acetone also increased, as acetone is a co-product of phenol. This created an oversupply of acetone in the market and led to significant decline in the prices of acetone. The decline in prices of the acetone led to significant decline in the prices of IPA leading to surge in imports over the period. Further, the domestic industry has contended that the influx in imports of Phenol based IPA has made it commercially unviable for them to compete with the imported products.

52. This overall surge in and the lower price of imports forced the domestic industry to sell the imported material at a lower price so much so that the domestic industry was not able to recover even its cost of production. It is thus seen that (a) in the beginning, the price at which the domestic industry imported the product was lower than the price at which other importers were importing. However, in the recent period, the price at which the domestic industry imported the product was higher than the price at which other importers imported, (b) the share of imports by the domestic industry in total imports has declined over the period of investigation, (c) the volume of imports by the domestic

industry was in similar region over the entire period, (d) volume of imports, excluding imports made by the domestic industry, have increased significantly.

53. Thus, the imports made by the domestic industry were to meet special circumstances of demand-supply gap. However, when this gap was surpassed due to glut of acetone-based IPA and with propylene-based IPA costlier than the former, the domestic industry was forced to import the acetone-based IPA also (in addition to propylene-based IPA), as it became unviable for the applicant to sell its own production.

Particulars	Units	2016-17	2017-18	Apr-Dec-18 Annual	Jan-Jun -19 Annual	July-Dec 19 Annual
Import volumes	MT	85,348	97,533	1,21,422	1,58,736	1,29,165
Trend		100	114	142	186	151
Imports by domestic industry	MT	***	***	***	***	***
Trend		100	105	116	128	99
Imports by Others	MT	31,529	40,967	58,883	89,875	75,802
Trend		100	130	187	285	240
Share in imports:						
Domestic industry	%	***	***	***	***	***
Trend		100	92	82	69	66
Other Importers	%	37%	42%	48%	57%	59%
Trend		100	114	131	153	159
Profit/Loss Earned by domestic industry:						
Trading	₹/MT	***	***	***	***	***
Trend		100	(55)	(35)	(410)	(66)
Manufacturing	₹/MT	***	***	***	***	***
Trend		100	58	(12)	(74)	(129)

54. The Authorized Officer also considers the fact that imports by the domestic producer does not disentitle such domestic producer from seeking Quantitative Restrictions. In fact, any such Quantitative Restrictions would equally apply and impact even the applicant domestic producer. The Quantitative Restrictions shall get applied on non-discriminatory basis on all suppliers and would impact all imports equally.

55. Considering the information on record, facts of the case and legal position, the Authorized Officer holds that *Deepak Fertilisers and Petrochemicals Corporation Limited* constitutes domestic industry in terms of the provisions of Foreign Trade (Development and Regulation) Act, 1992 referred hereinabove.

IV. Period of Investigation

56. The Foreign Trade (Development and Regulation) Act, 1992 and the said Rules as well as the WTO Agreement on Safeguards and Article XIX of GATT neither define nor provide any guidance regarding the period of investigation. However, it is evident that the investigation period should be adequately long and sufficiently recent in time to allow reasonable conclusions to be drawn on the basis of various relevant factors such as domestic market conditions, performance of domestic industry etc., as to whether or not the increased imports are indeed causing serious injury or threatening to cause serious injury to the domestic industry and therefore justify the need for imposition of Safeguard measures. On this basis, in the present case, it was considered reasonable to consider the period for present investigation as April 2016 to June 2019. Further, the surge in imports and the most recent period for the purpose has been considered as January 2019 – June 2019.

57. It has been the practice of the Directorate to consider the period subsequent to the investigation period considered in the initiation for the final determination. The Authorized Officer has therefore considered the period up to Dec., 2019 for the purpose of final determination. The Period thereafter has been impacted by the Covid Pandemic. The interested parties have also drawn the attention of the Authorized Officer to the high price of the product in the recent period, and particularly after onset of the current COVID pandemic. While the Authorized Officer notes that the period after December 2019 is an abnormal period and it would not be appropriate to consider it for the present determination, in view of the arguments of the interested parties, the Authorized Officer has called information for the most recent period and examined the same separately in order to ascertain whether there is any development/change in the situation which no longer justifies invoking safeguard measure.

V. Source of Information

58. At the time of initiation, the domestic industry submitted transaction-wise import data for the product under consideration, which has been sourced from Directorate General of Commercial Intelligence & Statistics (DGCI&S), for the period from 2016-17 till June, 2019. The domestic industry has provided its injury data for the period from 2016-17 and up to June 2019. Thereafter, domestic industry provided its own data as well as import data procured from DGCI&S for the subsequent period up to Dec., 2019. The Authorized Officer has obtained relevant DGCI&S data and has considered the same for the present determination.

VI. Confidentiality of Information Submitted

59. The interested parties have provided some information on confidential basis and have requested that it be treated as confidential. The interested parties have provided a non-

confidential version (NCV) of the information provided on confidential basis, as required under Rule 7 of the Rules. Further, the interested parties have submitted reasons justifying their claim of confidentiality of this information.

60. Under Rule 7 of the Rules, an interested party may provide information on confidential basis and may choose not to disclose such information to other interested parties participating in the investigations. A party may claim such information confidential which is by nature confidential, or disclosure of which may cause prejudice to the party disclosing such information and give undue advantage to the competitors. An interested party filing an information on confidential basis is however required to provide a non-confidential summary of the information filed on confidential basis.

61. The domestic industry submitted information on confidential basis and has submitted reasons for claiming confidentiality. Further, the domestic industry has furnished a non-confidential summary of the information filed on confidential basis.

62. Some interested parties have claimed that the applicant has claimed excessive confidentiality by not providing copies of the ICIS report. The applicant justified the same and contended that such reports are proprietary documents of ICIS, and accordingly, the applicant is not authorized to disclose the same. The interested parties have also questioned the confidentiality claims of the applicant with regard to capital employed, inventory, government approvals, and imports. However, such information is business proprietary information of the applicant. Further, the applicant has provided a non-confidential summary of the relevant injury information. The Authorized Officer considers that the confidentiality claimed by the interested parties is appropriate.

VII. Nature and Quantum of Import

63. Under the provisions of Section 9A of the Act, safeguard measures may be imposed where a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry. As per Rule 2(c) of the Quantitative Restrictions Rules, "increased quantity" includes increase in import whether in absolute terms or relative to domestic production.

a. Increase in absolute terms

64. The volume of imports over the period is as under.

Particulars	Units	2016-17	2017-18	Apr-Dec -18 Annual	Jan-Jun - 19 Annual	July-Dec 19 Annual
Import volumes including domestic industry	MT	85,348	97,533	1,21,422	1,58,736	1,29,165

Trend	Indexed	100	114	142	186	151
Imports by domestic industry	MT	***	***	***	***	***
Trend	Indexed	100	105	116	128	99
Imports by Others	MT	31,529	40,967	58,883	89,875	75,802
Trend	Indexed	100	130	187	285	240
Demand in India	MT	***	***	***	***	***
Trend	Indexed	100	109	117	135	122

65. The product is being imported into India from various countries, with major quantities being imported from China PR, Korea RP, Singapore and Taiwan. It is noted that the total volume of imports of the product under consideration have increased from 85,348 MT in 2016-17 to 1,58,736 MT in Jan-Jun, 19 (Annl.), implying an increase of 86% over the period, while the demand for the product increased by 35%. After excluding the domestic industry-imports, the volume of imports of the product under consideration have increased from 31,529 MT in 2016-17 to 89,875 MT in Jan-Jun, 19 (Annl.), implying an increase of 185% over the period. Further, the imports have also increased at an increasing rate, when compared on a year-on-year basis. Thus, there has clearly been a surge in imports during the present investigation period.

66. In view of the arguments of the interested parties with regard to imports by domestic industry, the Authorized Officer examined imports after excluding imports by the domestic industry. It is seen that if imports by the domestic industry are excluded, the imports have increased at a much faster pace.

67. The interested parties have claimed that the imports have increased only on account of existence of demand-supply gap in the country. The Authorized Officer therefore examined the volume of imports and demand in the country. However, had the increase in imports been only to the extent of the excess demand, the domestic industry would have been able to maintain its capacity utilization. In the present case, the capacity utilization of the domestic industry has declined, which demonstrates that the increased imports surpass the demand-supply gap in the country.

68. The domestic industry has been a historical importer due to demand-supply gap and keeping in view the nature of the product concerned and the requirement of the users to have certainty in regular supply at reasonable prices from the domestic industry. The traditional business model of the domestic industry, which was to supplement demand-supply gap by not reducing the production, got adversely impacted by the aggressive pricing policy of foreign producers.

Particulars	Unit	2016-17	2017-18	Apr-Dec -18 Annual	Jan-Jun - 19 Annual	July-Dec -19 Annual
Total Imports	MT	85,348	97,533	1,21,422	1,58,736	1,29,165
Trend	Indexed	100	114	142	186	151
Non-domestic industry Imports	MT	***	***	***	***	***
Trend	Indexed	100	130	187	285	240
Total Demand	MT	***	***	***	***	***
Trend	Indexed	100	109	117	135	122
Capacity of domestic industry	MT	***	***	***	***	***
Trend	Indexed	100	100	100	100	100
Gap (demand-capacity)	MT	***	***	***	***	***
Trend	Indexed	100	117	131	164	140
Imports in excess of Demand-capacity gap	MT	***	***	***	***	***
Trend	Indexed	100	(249)	1,538	2,970	1,595

b. Relative terms

69. The Authorized Officer examined the volume of imports in relation to Indian production over the period. It is seen that the imports have increased significantly in relation to domestic production and consumption.

Particulars	Units	2016-17	2017-18	Apr-Dec -18 Annual	Jan-Jun - 19 Annual	July-Dec 19 Annual
Import volumes	MT	85,348	97,533	1,21,422	1,58,736	1,29,165
Trend	Indexed	100	114	142	186	151
Imports by domestic industry	MT	***	***	***	***	***
Trend	Indexed	100	105	116	128	99
Imports by Others	MT	31,529	40,967	58,883	89,875	75,802
Trend	Indexed	100	130	187	285	240
Demand in India	MT	***	***	***	***	***
Trend	Indexed	100	109	117	135	122
Indian production	MT	***	***	***	***	***
Trend	Indexed	100	100	86	74	85

Particulars	Units	2016-17	2017-18	Apr-Dec -18 Annual	Jan-Jun - 19 Annual	July-Dec 19 Annual
Imports in relation to production:						
Production	%	***	***	***	***	***
Trend	Indexed	100	114	165	250	179
Consumption	%	***	***	***	***	***
Trend	Indexed	100	105	121	138	124

VIII. Unforeseen Developments

70. Article XIX of GATT obligates the investigating authorities to examine "unforeseen developments" that led to the increase in imports and the consequent serious injury to the domestic industry. In view of this requirement, this Directorate has consistently been examining the issue of "unforeseen developments" in its investigations. Further, Rule 9(1) Quantitative Restrictions Rules also provides that increased imports must be as a result of unforeseen developments as under:

> *"The Authorised Officer shall, within eight months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether, as a result of unforeseen developments the increased imports of the goods under investigation has caused or threatened to cause serious injury to the domestic industry, and a causal link exists between the increased imports and serious injury or threat of serious injury"*

71. The Authorized Officer examined the unforeseen developments or circumstances that have led to the sharp increase in the imports of the product under consideration during the period of investigation.

72. The Appellate Body of WTO in Argentina–Footwear (EC) defined "unforeseen developments" as relating to developments that are "unexpected". The Appellate Body also distinguished the term from "unforeseeable", that is, "unpredictable" or "incapable of being foreseen, foretold or anticipated". Further, the Appellate Body examined the requirement relating to "effect of obligations incurred" and concluded that the phrase simply means that it must be demonstrated that the importing member incurred obligations under the GATT. The relevant portion of the findings of the Appellate Body are reproduced below.

> *"91. To determine the meaning of the clause – "as a result of unforeseen developments and of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions ... " – in sub-paragraph (a) of Article XIX:1, we must examine these words in their ordinary meaning, in their context and in light of the object and purpose of Article*

XIX. We look first to the ordinary meaning of these words. As to the meaning of "unforeseen developments", we note that the dictionary definition of "unforeseen", particularly as it relates to the word "developments", is synonymous with "unexpected". "Unforeseeable", on the other hand, is defined in the dictionaries as meaning "unpredictable" or "incapable of being foreseen, foretold or anticipated". Thus, it seems to us that the ordinary meaning of the phrase "as a result of 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". With respect to the phrase "of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions ... ", we believe that this phrase simply means that it must be demonstrated, as a matter of fact, that the importing Member has incurred obligations under the GATT 1994, including tariff concessions. Here, we note that the Schedules annexed to the GATT 1994 are made an integral part of Part I of that Agreement, pursuant to paragraph 7 of Article II of the GATT 1994. Therefore, any concession or commitment in a Member's Schedule is subject to the obligations contained in Article II of the GATT 1994."

73. Similarly, the Appellate Body of WTO in Korea-Dairy case held that unforeseen developments are developments, not foreseen or expected when member incurred that obligation. The Appellate Body also recognized that unforeseen developments are circumstances, which must be demonstrated as a matter of fact. Further, the Panel in US-Steel Safeguards concluded that the confluence of several events can unite to form the basis of an unforeseen development. The Appellate Body, in the same case, also noted that increased imports must be an outcome of unforeseen developments that is, it is the unforeseen developments that resulted in increased imports. The relevant extract of the findings of the Appellate Body are given below.

"315. Turning to the term "as a result of" that is also found in Article XIX:1(a), we note that the ordinary meaning of "result" is, as defined in the dictionary, "an effect, issue, or outcome from some action, process or design". The increased imports to which this provision refers must therefore be an "effect, or outcome" of the "unforeseen developments". Put differently, the "unforeseen developments" must "result" in increased imports of the product ("such product") that is subject to a safeguard measure."

74. It is thus evident that the increase in imports must be on account of developments that were unforeseen or unexpected. Further, the development must have been unforeseen at the time of incurring the obligations that is, accession to WTO, resolving to abide by the commitments under various WTO Agreements, and providing tariff concessions.

75. The domestic industry submitted that the unforeseen development leading to increase in imports was the non-competitiveness of propylene-based IPA versus acetone-based IPA, resulting in the latter becoming cheaper. The applicant has also relied upon the decline in domestic demand in China PR due to shut down of downstream plants and imposition of tariffs by USA against the downstream products. The following is noted considered with regard to unforeseen developments:

Obligations incurred under WTO

76. Article XIX of GATT requires that the increased imports must be an effect of obligations incurred under the GATT. The Appellate Body has, in Argentina – Footwear, clarified the requirement that it must be demonstrated, as a matter of fact, that the importing Member has incurred obligations under the GATT, including tariff concessions. It is noted that the present duty on the product under consideration is only 7.5% while the bound rate of customs duty on the product is 40%. It is thus clear that India incurred obligations under GATT in the form of tariff concessions.

Decline in prices of acetone leading to decline in IPA prices

77. The information provided by the domestic industry shows that the demand for Bisphenol-A and Polycarbonates increased significantly. As a result, the demand for phenol increased. This led to an increase in the phenol production and phenol prices. Since acetone is generated as a co-product in production of phenol, the increased production of phenol created a supply glut for acetone. In the absence of a commensurate increase in the demand for acetone, the prices for acetone crashed. Resultantly, some new acetone-based IPA plants were started by foreign producers. Further, the applicant submitted that capacity and production of phenol increased over the period due to a strong demand for phenol leading to a sharp, sudden, and significant rise in global consumption of phenol by about 14,45,000 MT from 2016 to 2019.

78. IPA can be produced through two routes – acetone and propylene. The domestic industry produces IPA using propylene as a raw material. The domestic industry submitted that the foreign producers are now producing IPA using acetone route. It is seen that during the POI, the prices of acetone started declining from 2017 whereas the prices of propylene increased in 2018 and 2019 vis-à-vis 2017. As production of phenol increased, the production of acetone also increased, as acetone is a co-product of phenol. This created an oversupply of acetone in the market and led to significant decline in the prices of acetone. The decline in prices of the acetone led to significant decline in the prices of IPA leading to surge in imports over the period. However, since propylene prices were increasing when acetone prices were declining, cost of production of acetone-based IPA (imported product) declined, whereas cost of production of propylene-based IPA (like product) increased. It is seen that IPA import prices declined sharply, leading to surge in imports over the period. This forced the producers manufacturing propylene-based IPA to reduce their prices, even when their costs were not declining. Thus, the domestic industry has contended that the influx in imports of

acetone-based IPA has made its product (propylene-based IPA) commercially unviable to compete with the imported products.

Surplus and increased capacities with foreign producers

79. The domestic industry submitted that the foreign producers have invested and built-up fresh capacities of IPA. Further, share of acetone-based IPA has increased from 9% in 2010 to 27% in 2018. However, since global demand did not increase proportionately, this has resulted in surplus capacities for IPA. The domestic industry submitted that the global capacity utilizations for the product declined to 62% in 2018, with certain producers in North-East Asia recording even lower capacity utilizations at 52%.

Increased supply of acetone-based IPA at lower prices

80. The domestic industry submitted that acetone-based IPA was available at significantly lower prices. The domestic industry further submitted that with the decline in prices of acetone, increased share of imports was made at a price even below the variable cost of the domestic industry, resulting in increase in imports.

81. Interested parties submitted that the domestic industry is claiming protection due to its own inefficiencies. The Authorized Officer however notes that safeguard measures are imposed to protect the domestic industry and to facilitate positive adjustment. The domestic industry submitted that propylene-based IPA costs became unviable with the decline in the IPA price due to decline in acetone prices.

82. The interested parties have submitted that fluctuations in prices of raw materials cannot be considered as unforeseen developments. The Authorized Officer however notes that the Appellate Body distinguished the phrase "unforeseen" from "unforeseeable" and noted that the term "unforeseen developments" means that the developments which led to a product being imported in increased quantities must have been "unexpected". As against this, the term "unforeseeable" implies "incapable of being foreseen, foretold or anticipated". In the present case, while the fluctuations of prices are not unforeseeable, the sudden non-competitiveness of production using one raw material, versus the other raw material, was certainly unexpected and thus unforeseen.

Reduced demand for the product under consideration in China PR

83. The applicant has submitted that the demand for the product has declined in China as a result of shutdown of downstream plants due to environmental concerns and as an impact of the tariff escalations by USA against imports from China.

84. Having analyzed the above, the Authorized Officer notes that the increase in imports is as a result of the oversupply of acetone, and resultant decline in prices leading to decline in the IPA prices. The decline in IPA prices led to surge in imports of the product. The developments were clearly unforeseen and led to surge in imports. The Authorized Officer holds that the increase in imports was on account of unforeseen developments.

It is concluded that the increase in imports during the recent period is an outcome of the unforeseen developments and of the effect of obligations incurred by India under the GATT, in terms of Article XIX thereof.

IX. Serious Injury and/or Threat of Serious Injury

85. The Authorized Officer is required to examine whether the increased imports of the product have caused or are threatening to cause serious injury to the domestic industry of like or directly competitive products. As per Section 9A(3) of the Act, serious injury means an injury causing significant overall impairment in the situation of a domestic industry, while threat of serious injury means a clear and imminent danger of serious injury. Rule 8(a) of the Quantitative Restrictions Rules provides as under with regard to determination of injury

> "*The Authorised Officer shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the following principles, namely:-*
> *(a) in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Authorised Officer shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the goods concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment;*"

86. In this regard, the Appellate Body, in the case of Argentina - Footwear (EC), discussed the relationship between the definition of "serious injury" in Article 4.1(a) and the requirement of an evaluation of "all relevant factors" in Article 4.2(a)

> "*139. In our view, it is only when the overall position of the domestic industry is evaluated, in 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 that industry. Although Article 4.2(a) technically requires that certain listed factors must be evaluated, and that all other relevant factors must be evaluated, that provision does not specify what such an evaluation must demonstrate. Obviously, any such evaluation will be different for 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 declines in sales, 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, 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 whether the competent authorities in a particular case have evaluated all the listed factors and any other relevant factors, we believe that it is essential for a panel to take the definition of "serious injury" in Article 4.1(a) of the Agreement on Safeguards into account in its review of any determination of "serious injury"."

87. Further the Panel in US – Wheat Gluten, in a finding upheld by the Appellate Body, elaborated on the meaning of the term "serious injury":

> "*We do not consider that a negative trend in every single factor examined is necessary in order for an industry to be in a position of significant overall impairment. Rather, it is the totality of the trends, and their interaction, which must be taken into account in a serious injury determination. Thus, such upturns in a number of factors would not necessarily preclude a determination of serious injury. It is for the investigating authorities to assess and weigh the evidence before them, and to give an adequate, reasoned and reasonable explanation of how the facts support the determination made.*"

88. In view of the aforesaid legal principles, the parameters relating to injury have been analyzed hereinbelow.

i) Assessment of demand/consumption

89. The Authorized Officer has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of Indian Producers and imports from all sources. It is seen that the demand for the product under consideration has shown significant increase over the period. Further, imports of the product increased at a pace faster than the increase in demand.

Particulars	Units	2016-17	2017-18	Apr-Dec -18 Annual	Jan-Jun - 19 Annual	July-Dec 19 Annual
Import volumes	MT	85,348	97,533	1,21,422	1,58,736	1,29,165
Trend	Indexed	100	114	142	186	151
Imports by domestic industry	MT	***	***	***	***	***
Trend	Indexed	100	105	116	128	99
Imports by Others	MT	31,529	40,967	58,883	89,875	75,802

Trend	Indexed	100	130	187	285	240
Sales by domestic industry	MT	***	***	***	***	***
Trend	Indexed	100	103	86	73	86
Demand in India	MT	***	***	***	***	***
Trend	Indexed	100	109	117	135	122

ii) Share of domestic industry

90. The share of the imports and domestic industry were as below. It is seen that the market share of the imports have increased significantly. As a result, market share of the domestic industry fell sharply.

Particulars	Units	2016-17	2017-18	Apr-Dec - 18 annual	Jan-Jun - 19 annual	July-Dec 19 annual
		Annual	Annual	Annual	Annual	Annual
Market share excluding domestic industry imports:						
Imports	%	31%	36%	50%	64%	56%
Trend	Indexed	100	116	159	205	179
Domestic industry	%	***	***	***	***	***
Trend	Indexed	100	93	73	52	64
Total	%	100%	100%	100%	100%	100%
Market share including domestic industry imports:						
Imports	%	55%	58%	67%	76%	68%
Trend	Indexed	100	105	121	138	124
Domestic industry's trading	%	***	***	***	***	***
Other importers	%	20%	24%	32%	43%	40%
Trend	Indexed	100	119	159	211	197
Total imports	%	55%	58%	67%	76%	68%
Trend	Indexed	100	105	121	138	124
Domestic industry	%	***	***	***	***	***
Trend	Indexed	100	94	74	54	70
Total for all	%	100%	100%	100%	100%	100%

91. The market share of the domestic industry has been determined by considering both manufacturing and trading. It is seen that the market share of the domestic industry shows a decline whether or not trading is included.

iii) Domestic Sales

92. The domestic sales of the domestic industry were as follows. It is seen that domestic sales of the domestic industry declined significantly over the period. The decline in sales is despite increase in demand and unutilised capacities with the domestic industry.

Particulars	Units	2016-17	2017-18	Apr-Dec -18 Annual	Jan-Jun - 19 Annual	July-Dec 19 Annual
Domestic sales	MT	***	***	***	***	***
Trend	Indexed	100	103	86	73	86
Export sales	MT	***	***	***	***	***
Trend	Indexed	100	143	121	39	48

iv) Production

93. The level of production over the period changed as under. It is seen that the production of the domestic industry declined significantly in the recent period. The decline in production is despite increase in demand for the product.

94. The production by the domestic industry reduced and ratio of imports to production by the domestic industry also increase indicating the change in business model under the distress of surge.

Particulars	Units	2016-17	2017-18	Apr-Dec -18 Annual	Jan-Jun - 19 Annual	July-Dec 19 Annual
Production	MT	***	***	***	***	***
Trend	Indexed	100	100	86	74	85

v) Capacity utilisation

95. It is seen that the capacity utilisation of the domestic industry declined significantly in the recent period with the increase in imports in the Country.

Particulars	Units	2016-17	2017-18	Apr-Dec-18 Annual	Jan-Jun-19 Annual	Jul-Dec-19 Annual
Installed capacity	MT	***	***	***	***	***
Trend	Indexed	100	100	100	100	100
Production	MT	***	***	***	***	***
Trend	Indexed	100	100	86	74	85
Capacity utilization	%	***	***	***	***	***

Trend	Indexed	100	100	86	74	85

vi) Employment

96. It is seen that the employment with the domestic industry has not got materially impacted.

Particulars	Units	2016-17	2017-18	Apr-Dec-18 Annual	Jan-Jun-19 Annual	July-Dec-19 Annual
No. of employees	Nos	***	***	***	***	***
Wages	Rs in Lacs	999	1,243	1,289	1,240	1,084

vii) Productivity

97. The productivity per employee and per day declined over the injury period, following the decline in production of the domestic industry.

Particulars	Units	2016-17	2017-18	Apr-Dec-18 Annual	Jan-Jun-19 Annual	July-Dec-19 Annual
No. of employees	Nos	***	***	***	***	***
Trend	Indexed	100	98	109	109	109
Wages	Rs in Lacs	***	***	***	***	***
Trend	Indexed	100	124	129	124	109

viii) Profit / loss

98. The profit / loss of the domestic industry over the period was as under. It is seen that the profits of the domestic industry declined sharply over the injury period. Further, the domestic industry started suffering financial losses in the recent period with the surge in imports.

99. The injury on amount of trading is noted to be significantly lower than form the injury on account of manufacturing and the shift towards import is one to control the injury to be maximum possible extent therefore the imports by domestic industry can't be construed as self-inflicted.

Particulars	Units	2016-17	2017-18	Apr-Dec-18 Annual	Jan-Jun-19 Annual	Jul-Dec-19 Annual
Profit/loss	**Rs/MT**					
Own Production	Rs/MT	***	***	(***)	(***)	(***)

Particulars	Units	2016-17	2017-18	Apr-Dec-18 Annual	Jan-Jun-19 Annual	Jul-Dec-19 Annual
Trend	Indexed	100	58	(12)	(74)	(129)
Trading	Rs/MT	***	(***)	(***)	(***)	(***)
Trend	Indexed	100	(55)	(35)	(410)	(66)
Total profit/loss	**Rs in Lacs**					
Own Production	Rs in Lacs	***	***	(***)	(***)	(***)
Trend	Indexed	100	60	(10)	(54)	(87)
Trading	Rs in Lacs	***	(***)	(***)	(***)	(***)
Trend	Indexed	100	(57)	(43)	(514)	(82)

ix) Inventory

100. The inventory position of the domestic industry over the period was as below. It is seen that the inventories with the domestic industry declined in 2017-18. The inventories have however increased significantly in the recent period with the surge in imports.

Particulars	Units	2016-17	2017-18	Apr-Dec-18 Annual	Jan-Jun-19 Annual	Jul-Dec-19 Annual
Own production	MT	***	***	***	***	***
Trend	Indexed	100	88	41	95	154
Opening	MT	***	***	***	***	***
Trend	Indexed	100	262	57	92	254
Closing	MT	***	***	***	***	***
Trend	Indexed	100	22	35	97	116
Trading	MT	***	***	***	***	***
Trend	Indexed	100	224	341	473	506
Opening	MT	***	***	***	***	***
Trend	Indexed	100	327	630	825	1,193
Closing	MT	***	***	***	***	***
Trend	Indexed	100	193	252	365	296

x) Price undercutting

101. The level of price undercutting has been noted as below. It is seen that the imports have been undercutting the domestic price throughout the injury period. However, the price undercutting has increased significantly in the recent period.

Particulars	Unit	2016-17	2017-18	Apr-Dec, 18 Annual	Jan-Jun, 19 Annual	July-Dec 19 Annual
Landed value	₹/MT	58,499	67,088	73,803	63,220	52,361
Trend	Indexed	100	115	126	108	90
Net sales realisation	₹/MT	***	***	***	***	***
Trend	Indexed	100	111	120	111	94
Price undercutting	₹/MT	***	***	***	***	***
Price undercutting	Indexed	100	66	38	157	151
Price undercutting	%	***	***	***	***	***
Price undercutting	Range	1-10%	1-10%	1-10%	5-15%	10-15%

102. It is thus seen that the performance of the domestic industry has deteriorated in both volume and price parameters i.e. in respect of production, capacity utilisation, domestic sales, inventories, market share and profits. The domestic industry has suffered serious injury.

X. Recent performance post investigation period

103. It has been the practice of the Directorate to consider the period subsequent to the investigation period considered in the initiation for the final determination. The Authorized Officer has therefore considered the period up to Dec.2019 for the purpose of final determination. The Period thereafter has been impacted by the COVID pandemic. The interested parties have also drawn the attention of the Authorized Officer to the high price of the product in the recent period, and particularly after onset of the current COVID pandemic. While the Authorized Officer notes that the period after December 2019 is an abnormal period and it would not be appropriate to consider it for the present determination, in view of the arguments of the interested parties, the Authorized Officer has called information for the most recent period and examined the same separately in order to ascertain whether there is any development/change in the situation which no longer justifies invoking safeguard measure.

104. An examination of the performance of the domestic industry post investigation period shows as under:

a. An analysis of the imports into India (excluding imports by domestic industry), demand and market share of various parties shows that the imports have declined in subsequent period, barring July, 2021. However, the volume of imports continues to remain at increased levels as compared to the earlier periods of 2016-17 and 2017-

18. The trend is the same both in absolute terms and in relation to production and consumption in India. Further, share of domestic industry continued to decline in respect of both manufacturing and trading.

	Period	Imports into India (MT)			Demand (MT)	Market share (%)			
						Imports		Indian Industry	
		By domestic industry .	By others	Total		Excluding domestic industry.	Domestic industry	DFPCL	DPL
1	2016-17	***	31,529	85,348	***	20%	***	***	***
2	2017-18	***	40,967	97,533	***	24%	***	***	***
3	Apr'18-Dec'18	***	44,162	91,066	***	32%	***	***	***
4	Jan'19-Jun'19	***	44,937	79,368	***	43%	***	***	***
5	Jul'19-Dec'19	***	37,901	64,583	***	40%	***	***	***
6	Jan'20-Jun'20	***	31,876	56,194	***	33%	***	***	***
7	Jul'20-Dec'20	***	78,709	1,05,176	***	54%	***	***	***
8	Jan'21-Mar'21	***	28,236	33,232	***	56%	***	***	***
9	Apr'21-June'21	***	22,175	28,255	***	49%	***	***	***
10	Jul'-21	***	14,539	17,840	***	54%	***	***	***

b. The production, capacity utilization and sales of the domestic industry have continued to remain at lower level as compared to 2016-17, and 2017-18. Profitability of the domestic industry improved significantly after March, 2020, and the domestic industry earned significant profits in April-June, 2020. Profitability however declined significantly thereafter and the domestic industry has once again started suffering financial losses in the most recent period from July, 2021 onwards. The domestic industry has submitted that the acetone prices have once again declined very significantly, which has led to decline in the prices of IPA. The domestic industry provided forecasts for the next few years, as drawn by ICIS, which shows that the prices of acetone and IPA are likely to remain low, whereas the prices of propylene are going to remain firm, thus leading to adverse profitability of propylene-based IPA.

c. As regards high profits in some period, the domestic industry has submitted that as far as use of IPA for making hand sanitizers is concerned, (a) its prices were regulated by Govt. and therefore remained low as per Govt. directive, (b) use of IPA as hand sanitizers is already significantly eliminated, (c) demand for IPA has already declined to the past levels, after remaining high just for one quarter (July-Sept., 2020). The current demand is already at the levels of 2019, (d) the price increase of IPA was more in pharma sector where IPA is used as a solvent (and not as a raw material), and forms a very insignificant proportion in the total costs of a pharma producer.

SN	Period	Production MT (Index)	Production	Capacity Utilisation % Index	Capacity Utilisation %	Sales (MT) Index	Sales	Profit/Loss Rs. Lakhs Indexed	Profit/Loss (₹/Lacs)	Profit/Loss (₹/MT) Indexed	Profit/Loss (₹/MT)
1	2016-17	100	***	100	***	100	***	100	***	100	***
2	2017-18	100	***	100	***	103	***	60	***	58	***
3	Apr'18-Dec'18	86	***	86	***	86	***	-11	(***)	-16	(***)
4	Jan'19-Jun'19	74	***	74	***	73	***	-54	(***)	-147	(***)
5	Jul'19-Dec'19	85	***	85	***	86	***	-86	(***)	-201	(***)
6	Jan'20-Jun'20	113	***	113	***	118	***	155	***	303	***
7	Jul'20-Dec'20	116	***	82	***	115	***	151	***	380	***
8	Jan'21-Mar'21	89	***	62	***	98	***	34	***	214	***
9	Apr'21-June 21	102	***	72	***	97	***	87	***	427	***
10	Jul-21	138	***	97	***	160	***	-53	(***)	-542	(***)

105. The Authorized Officer considers that the Panel, in US — Steel Safeguards, referring to the earlier findings in US – Line Pipes noted that it is not necessary that imports are increasing up to the end of the period of investigation or immediately preceding the determination. Where there is a decrease in imports at the end of the period of investigation, the Panel observed that the finding would depend on whether a previous increase nevertheless results in the product still 'being imported in such increased quantities.'

> *"10.162 As regards the question of how recently the imports must have increased, the Panel notes, 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.*

10.163 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.

10.164 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, 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.

10.165 The Panel believes that, in their investigation whether imports have increased in the recent period, and whether increased imports are causing serious injury to the domestic producers of like or directly competitive domestic products, competent authorities are required to consider the trends in imports over the period of investigation, as suggested by Article 4.2(a). While Article 4.2(a) requires the evaluation of the "rate and amount of the increase in imports ... in absolute and relative terms", the Panel sees no basis for the argument that this rate must always accelerate or that the rate must always be positive at each point in time during the period of investigation."

106. The findings of the Panel were upheld by the Appellate Body, which noted as below.

"367. 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.'"

107. In the present case, the imports have been imported in increased quantities at the end of the period of investigation. Subsequently, while the volume of imports dipped compared to the immediately preceding six-months, the product continued to be imported in "increased quantities".

XI. Causal Link

108. The WTO Panel stated as follows in Korea-Dairy for determining "causation" :

"In performing its causal link assessment, it is our view that the national authority needs to analyse and determine whether developments in the industry, considered by the national authority to demonstrate serious injury, have been caused by the increased imports. In its causation assessment, the national authority is obliged to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. In addition, if the national authority has identified factors other than increased imports which have caused injury to the domestic industry, it shall ensure that any injury caused by such factors is not considered to have been caused by the increased imports. To establish a causal link, Korea has to demonstrate that the injury to its domestic industry results from increased imports. In other words, Korea has to demonstrate that the imports of SMPP cause injury to the domestic industry producing milk powder and raw milk. In addition, having analyzed the situation of the domestic industry, the Korean authority has the obligation not to attribute to the increased imports any injury caused by other factors."

109. In the case of US – Wheat Gluten, the Appellate Body noted as below with regard to the requirement of causal link

"67. We begin our reasoning with the first sentence of Article 4.2(b). That sentence provides that a determination "shall not be made unless [the] investigation demonstrates ... the existence of the causal link between increased imports ... and serious injury or threat thereof." (emphasis added) Thus, the requirement for a determination, under Article 4.2(a), is that "the causal link" exists. The word "causal" means "relating to a cause or causes", while the word "cause", in turn, denotes a relationship between, at least, two elements, whereby the first element has, in some way, "brought about", "produced" or "induced" the existence of the second element. The word "link" indicates simply that increased imports have played a part in, or contributed to, bringing about serious injury so that there is a causal "connection" or "nexus" between these two elements. Taking these words together, the term "the causal link" denotes, in our view, a relationship of cause and effect such that increased imports contribute to "bringing about", "producing" or "inducing" the serious injury. Although that contribution must be sufficiently clear as to establish the existence of "the causal link" required, the language in the first sentence of Article 4.2(b) does not suggest that increased imports be the sole cause of the serious injury, or that "other factors" causing injury must be excluded from the determination of serious injury. To the contrary, the language of Article 4.2(b), as a whole, suggests that "the causal link" between increased imports and serious injury may exist, even though other factors are also contributing, "at the same time", to

the situation of the domestic industry."

110. Keeping in account the aforesaid jurisprudence, the Authorized Officer has examined whether there is a causal link between imports and serious injury or threat of serious injury being faced by the domestic industry. The Authorized Officer notes as follows in this regard.

(i) There has been a significant increase in imports during the investigation period. Resultantly, whereas the market share of imports has increased, market share of the domestic industry has declined.

(ii) The market share of the domestic industry declined. At the same time, sales of the domestic industry. The decline in the sales of the domestic industry was a result of increase in imports.

(iii) The production and capacity utilisation of the domestic industry declined as a result of decline in the sales volumes of the domestic industry.

(iv) Imports were undercutting the domestic industry prices. Resultantly, the performance of the domestic industry deteriorated in respect of profits to such an extent that the domestic industry suffered significant financial losses.

111. Some interested parties have submitted that there is no causal link as the landed price has increased over the period, while the profitability of the domestic industry has declined. It is however, seen the imports were undercutting the domestic prices and the domestic industry was facing price suppression. As a result, the domestic industry has also not been able to increase its prices, in keeping with the trends of cost, leading to a decline in profitability.

112. The interested parties submitted that the injury to the domestic industry is self-inflicted, as the applicant has itself imported the goods. It is however seen that if the imports made by the applicant are excluded, the imports have shown a higher degree of increase. Further, the domestic industry has imported the product at a price higher than others. It is also clarified that the Authorized Officer has considered profits of the domestic industry only out of manufacturing operations. The Authorized Officer has not considered trading operations. It is however seen that the domestic industry has suffered losses even in trading operations.

113. Interested parties has submitted that the plant of the domestic industry was shut down during the investigation period due to shortage of raw material and water scarcity. It is however seen that the domestic industry has suffered shutdowns in every period, due to various reasons. Of these, a significant portion of the plant shut down during the most recent period was attributable to the imports. Further, it is seen that if the production lost due to shutdown is added to the production, it is seen that trends of production and capacity utilization of the domestic industry still shows the same trend. It is thus seen that decline in production and capacity utilization is not attributable to the shutdowns.

Particulars	Unit	2016-17	2017-18	Apr-Dec-18	Jan-Jun-19	Jul-Dec-19
Shutdown due to market	Days	***	***	***	***	***
Other shutdowns	Days	***	***	***	***	***
Total	Days	***	***	***	***	***
Trend	Indexed	100	57	114	148	162

Particulars	Unit	2016-17	2017-18	Apr-Dec, 18 (Annl.)	Jan-Jun, 19 (Annl.)	July-Dec 19 annual
Installed capacity	MT	***	***	***	***	***
Trend	Indexed	100	100	100	100	100
Production (adjusted)	MT	***	***	***	***	***
Trend	Indexed	100	97	89	75	88
Capacity utilization	%	***	***	***	***	***
Trend	Indexed	100	97	89	75	88

114. The interested parties have relied upon various observation in the annual report of the applicant regarding unprecedent raw material price hike across all sectors, major supplier constraints, acute water shortages, severe financial debt market crisis, fall in prices of solvents, inconsistent policies of USA against Iran, dumping of IPA from China and overall slow-down in fertilizer industry. It is noted that some of these observations, pertaining to debt market, fertilizer market, price of other solvents, policies of USA, etc. are not related to the product under consideration, and, thus, are not relevant to the present investigation. The effect of shortage of raw material and water shortages and consequent shutdowns has already been considered hereinabove. As far as dumping of the product from China is considered, the same has been examined under the relevant section of this finding. It is therefore noted that, injury suffered is on account of increased imports and no material has been placed by the other interested parties to controvert such finding.

115. The DGTR concludes as follows

(i) The imports increased significantly, both in absolute terms as well as in relation to production and consumption.

(ii) The surge in imports resulted in domestic industry losing its sales volumes and market to imports, resulting in a decline in the market share of the domestic industry, while the market share of the imports increased.

(iii) As the domestic industry faced a decline in sales and market share, it was also forced to curtail its production.

(iv) The decline in production impacted the capacity utilization of the domestic industry.

(v) The imports are undercutting the prices of the domestic industry. The imports are priced significantly below the cost of sales of the domestic industry.

(vi) The influx of low-priced imports forced the domestic industry to compromise on its profitability, as it was not able to increase its prices in line with its cost.

(vii) The profitability of the domestic industry deteriorated over the injury period. The domestic industry suffered significant losses since Apr-Dec. 2018, extent of which increased in the most recent period.

116. Thus, an evaluation of all relevant factors of an objective and quantifiable nature having a bearing on determining the causal link between serious injury to the domestic industry and surge in imports shows that the increased imports have caused serious injury to the domestic industry.

XII. Imports from Individual Countries

117. Interested parties have claimed that Korea should be excluded from the scope of measures as the imports from Korea are not a substantial cause of injury and imports from Korea have declined. It is noted that imports from Korea, a developed country constitute 17% of total imports and thus constitute a significant share of the imports. Further, the price of imports from Korea is comparable to the price of imports from other countries, including China as depicted in the Table below. The safeguard investigations are in respect of imports into India from all sources and are required to be invoked in respect of all imports on non-discriminatory basis, barring the exemptions granted under the law for the developing countries.

118. It has been submitted that if the imports made by the applicant are excluded, the remaining imports from Korea would be negligible. The DGTR has examined the same and found as under.

Imports from	Unit	2016-17	2017-18	Apr-Dec-18 (Annl.)	Jan-Jun-19 (Annl.)	Jul-Dec-19 Annual
China PR	Rs./MT	55,912	63,009	67,891	58,244	47,642
Trend	Indexed	100	113	121	104	85
Korea RP	Rs./MT	53,372	62,688	68,983	58,687	49,312
Trend	Indexed	100	117	129	110	92
Other countries	Rs./MT	54,454	61,875	68,137	58,660	51,089

Trend	Indexed	100	114	125	108	94

119. It is thus seen that if the imports by the applicant are excluded, the remaining imports from Korea RP have shown an increase not only in relation to imports into India, but also in relation to imports from Korea. The share of such imports in the total imports is quite significant. Further, while imports from Korea by other parties were quite low earlier, the same increased significantly in Apr-Dec. 2018 and constituted majority in most recent period. Therefore, it is seen that the imports from Korea RP are not primarily by the applicant and constitute a significant portion of imports into India.

120. The interested parties have submitted that the applicant has not demonstrated that the unforeseen developments leading to increased imports relates to Korea. In this regard, it is noted that the safeguard law does not provide that examination of unforeseen developments should be determined individual with each country. Rather, the unforeseen developments are required to be seen with regard to the totality of imports into India. In any case, the Korean producers/exporters have not established that their pricing behaviour was insulted by the unforeseen developments identified in the present case.

XIII. Adjustment Plan

121. The WTO Agreement on Safeguards requires an adjustment plan by the domestic industry. In this regard, the Agreement on Safeguards provides as follows:

> *"Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets"*

122. Article 5.1 of the Agreement on Safeguards provides that a Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Article 7.1 of the Agreement on Safeguards mandates a WTO member country to apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. Article 7.4 mandates that in order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. The provisions are *pari materia* with Rule 9(1), Rule 10, Rule 13 and Rule 4(d)(ii) of the Quantitative Restrictions Rules. In addition, Rule 5(2) of the Rules provides as under:

> *"(2) The application referred to in sub-rule (1) shall be made in Form appended to these rules and be supported with-*
>
> ...
>
> *(b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to increase in competition due to imports"*

123. The requirement with regard to adjustment plan has been explained by the Panel in Korea– Dairy Products as under.

> *"7.108 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, as the European Communities asserts. 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."*

124. In the present case, the applicant has submitted that, to adjust with the unforeseen developments resulting in increased imports, it is in the process of setting up an acetone-based plant. The applicant has provided relevant information with regard to setting up an acetone-based propylene plant in the country. It is noted that the adjustment plan undertaken by the applicant is appropriate and sufficient for the present purposes. Further, contrary to the claims of the interested parties, the adjustment plan drawn by the applicant is not vague and generic. Since the imports increased due to acetone-based IPA becoming more competitive than propylene-based IPA, and the applicant already has a propylene-based IPA plant, it is reasonable that the applicant now seeks to adjust positively by setting up an acetone-based plant, which would result in a situation where the applicant would be having both acetone-based and propylene-based plant.

125. The interested parties have submitted that the viability of the adjustment plan depends on acetone being cheaper raw material and if the prices of acetone are not low at the end of 4 years, the adjustment plan will not materialize. However, the ICIS reports provided by the applicant shows acetone is preferred feedstock vis-à-vis propylene and the recent new plants are acetone based. The applicant has provided evidence showing that almost all recent expansions, barring capacity expansion by LG Chem in 2019, are acetone-based. The recent capacity additions, which use acetone as a raw material, total to at least 7 lakh MT. This suggests that acetone-based IPA is being considered more viable, vis-à-vis, propylene-based IPA by those producers who are setting up further capacities. In any case, the applicant would have plants with both the feedstocks, and would thus likely be more competitive on long term basis, as compared to any producer having only one feedstock-based plant.

126. With regard to the findings relied upon by the applicant and other interested parties, the Authorized Officer notes that any decision with regard to appropriateness of adjustment plan has to be determined on a case-to-case basis. The facts of the cases relied upon by various parties being different, the observations in those cases are not applicable to the present case.

127. The interested parties have argued that in the absence of an adjustment plan, it is impossible to link the quantity of quantitative restrictions with the intended level of adjustment to be made by the domestic industry. It is noted that the level of quantitative restrictions would be based on the volume of imports during past three representative years. Further, while the capacity of the applicant would increase pursuant to its setting up an acetone-based plant with a proposed firm capacity addition of 1,00,000 MT by year 2024 (based on ICIS-LOR report), thereby increasing its capability to service the demand in India. Further, the safeguard measures are required to be liberalized over the period.

128. Therefore, in view of the aforesaid and the adjustment plan submitted by the domestic industry, the adjustment plan submitted is appropriate to facilitate positive adjustment to the increased imports. Further, the adjustment plant implementation during the course of the measures would be suitably evaluated, either on DGTR's own initiative or on receipt of an application in this regard.

XIV. Public Interest

129. Article 3.1 of the Agreement on Safeguards states as follows:

> *"A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law."*

130. In view of the aforesaid, there is a need to examine whether imposition of safeguard measures shall be in public interest. Though Article 3.1 also does not provide any guidance on the manner of evaluation, the public interest evaluation, *inter alia*, requires evaluating impact of a safeguard measures comprehensively on various stakeholders, and taking a balanced view keeping in view competing interests of different interested parties.

131. With regard to the impact of the measures, the applicant has provided information that establishes that the impact of any price increase on the final product will be insignificant as is seen from the following. It is however noted that the present investigation is a quantitative restriction and no duty is proposed to be imposed as a result of the present investigations. The proposed measure would only regulate the volumes. However, imports would continue to be made and would continue to have price benchmarking effect in the market. The DGTR has fixed the Quota after considering the growth rate in demand during the period from Apr-2016 to June-2021 (63 months) and taking it up to September 2021 by enhancing the average threshold by an additional appropriate factor of growth and has also maintained the same for progressive liberalisation.

Segment	**Estimated Consumption**	**Unit**	**Average Retail Price**	**Consumption of IPA**	**Impact of Duty on sale price**	**Impact of Duty on sale price %**
	MT per annum		**Rs. Per unit**	**Kg / unit**		
Pharma	73%	kg	1,000	***	***	0.42%
Sanitizer	3%	Lt	500	***	***	1.45%
Others	24%	kg	500	***	***	0.22%
Average	100%		867		***	0.41%

132. It is seen that the data on record shows that imports are undercutting the prices of the domestic industry, have suppressed and depressed the domestic prices, sales, and consequently market share, production & capacity utilisation of the domestic industry have declined significantly, leading to significant financial losses. The data provided by the applicant shows that a significant portion of imports were at a price below the variable cost of the domestic industry. Thus, if no measures are imposed, it may not be viable for the domestic industry to continue operations. Therefore, the imposition of measures would not be against public interest, as they are necessary to ensure viability of the operations of the domestic industry.

133. Impact on hand sanitisers – Use of IPA in production of hand sanitisers has been noted. Therefore, possible impact of safeguard measures on production and price of hand sanitisers was examined. Following are relevant in this regard

(i) India had notified masks and sanitizers as essential commodities till June 30, 2020. However, it has been removed from the list of essential commodities since then.

(ii) The price of IPA sold for hand sanitisers was regulated by the Govt., which ensured that the suppliers of IPA sell IPA at these regulated prices. Therefore,

price at which IPA was sold for production of hand sanitisers has not impacted cost of production of hand sanitisers.

(iii) The domestic industry submitted that only a small proportion of IPA is consumed in production of hand sanitisers.

(iv) The Government has already relaxed the restrictions imposed on exports on sanitizers.

(v) The applicant has submitted that demand for sanitizers has already started declining.

(vi) The interested parties have also claimed that 80% of the consumption of IPA is in the pharmaceutical sector, and thus, the consumption in sanitizers is low.

134. Therefore, it is found that imposition of safeguard measures would not impact the cost and price of hand sanitisers. Imposition of safeguard measures would not be against public interest on this account.

135. Impact on pharmaceutical industry – The interested parties have contended that imposition of safeguard measures will impact the pharmaceutical industry, as 80% IPA is used in this industry. The parties have claimed that IPA contributes 7 to 10% of cost of production. The domestic industry contended that costs on account of IPA constitutes much lesser share. However, even considering a share of 7 to 10% of cost, the impact of the measures cannot be considered as significant, even if the price of product increase to some extent due to these measures. However, since no duty is proposed to be imposed, it would not be appropriate to consider that the measure would increase the prices of the product significantly.

136. Interested parties have submitted that the imposition of quantitative restrictions would put the applicant in a monopoly position. It has also been contended that the applicant has enjoyed a monopolistic position in the past as well, by itself importing the product under consideration. However, it is seen that the performance of the domestic industry has deteriorated on account of a number of parameters, which could not have been a case, had the domestic industry been in a monopolistic position. Further, even post imposition of measures, the competition between imports, the applicant and other domestic producer, Deepak Phenolics Limited shall remain. The measure would not result in any additional duty on imports and the QR measure has been further recommended by evaluating the Quota with the growth rate of demand during the period from Apr-2016 to June-2021 (63 months) and taking it up to September 2021 by enhancing the average threshold by an additional appropriate factor of growth.

137. Moreover, quantum of measures has been determined having regard to the present and future demand. Further, to ensure that no demand-supply gap is created, the capacities of the applicant and Deepak Phenolics Limited have been correlated with such future demand. Therefore, the measure would ensure continued availability of the product, while protecting the domestic industry from further injury.

138. Considering the submissions of the interested parties and information & evidence on record, the Authorized Officer considers that imposition of safeguard measure shall not be against public interest. Further, if the measures is not invoked, it will not allow the domestic industry to enhance its capacities and continue its operations. The impact of such measures on the downstream industry is much less than the impact of non-imposition of measures on the domestic industry and the Country.

XV. Submissions Regarding Anti-Dumping Duty Being the Appropriate Remedy

139. Some interested parties have claimed that as the injury to domestic industry is on account of surge in low priced imports from China and, therefore suitable remedy in the present case would have been anti-dumping duty and not safeguard action. They have also relied upon the observations in the annual report of the applicant, wherein it has stated that it suffered due to dumping of the product from China PR. Accordingly, the interested parties have requested for termination of the present investigation in terms of Rule 8(b) of the Quantitative Restrictions Rules.

140. In this regard, it is noted that anti-dumping measures can only be invoked against unfair imports, where the exporter engages in price discrimination. In the present case, the domestic industry has itself conceded that the price of imports is low due to cheaper raw material being used by the exporters. The cost estimates provided by the domestic industry for an acetone-based plant further show that it is not dumping but cost difference between acetone based and propylene-based plant that has led to reduction in the prices and consequently increase in imports. The cost of the domestic industry is higher due to its own non-competitiveness because of propylene-based IPA. Since the price of imports is low due to lower production costs using acetone, low prices of imports cannot be attributed to dumping.

141. The contention of the opposing parties that the observations by the applicant in its annual report should be the guiding factor. It is noted that as the applicant is not the competent authority to determine whether there is dumping, nor the use of the word "dumping" should necessarily imply reference to price difference between normal value and export price. Reference to dumping can be in the context of surging import volumes as well. Further, contrary to the submissions of the interested parties, the applicant is aggrieved not only by imports from China PR, but also other countries. The applicant has referred to the conditions in China PR. The same could be on account of the fact that imports from China PR alone account for 63% of the total imports. However, the data on record shows the import price from other countries is also comparable. The import price from other countries have also moved in tandem with the import price from China PR. Thus, injury to the domestic industry is not limited to imports from China only.

Imports from	Unit	2016-17	2017-18	Apr-Dec, 18	Jan-Jun, 19
China PR	Rs./MT	55,912	63,009	67,891	58,244

Other countries	Rs./MT	54,197	62,096	68,449	58,662
Total	Rs./MT	54,328	62,275	68,196	58,399

XVI. Developing Nations

142. Proviso to Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992 provides that quantitative restrictions shall not be imposed on goods originating from a developing country so long as its share of imports does not exceed 3% of the total imports of that goods or, where the article is originating from more than one developing country, then, so long as the aggregate of the imports from all such developing countries, each with less than 3% import share taken together, does not exceed 9% of the total imports of those goods. Further, Notification No. GSR 59 (E) bearing File No. 01/92/180/106/AM-11/PC-VI/PRA dated 31.01.2013 specified the developing countries for the purposes of Section 9A of the FTDR Act. This notification was based on the Notification issued by Department of Revenue. However, the Authorized Officer has noted that the list of developing countries has been subsequently revised by the Department of Revenue vide Notification No.19/2016-Custom (NT), dated 5th February, 2016.

143. Amongst the list of developing countries, imports from China PR account for more than 3%. The share of other developing country is individually less than 3% of the total imports, and the collective share of the developing countries which account for less than 3%, does not exceed 9% of the total imports of the product under consideration into India. Therefore, the import of the product under consideration originating from developing countries except from China PR, should not be subjected to levy of proposed Quantitative Restrictions in terms of proviso to Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992.

XVII. Operational Aspects for Imposition of Measures

144. A major concern raised during the course of the investigation is that India does not have the necessary operational provisions for monitoring of quantitative restrictions. The importers have expressed apprehensions that if the goods are not cleared due to quota restrictions in India, the only recourse would be to destroy such imports. Keeping in view the Safeguard (QR) rules, the DGTR is recommending quota allocation on a country specific basis. The imports would be permitted through the EDI ports only to facilitate electronic/real-time monitoring of quota. The quota would be monitored on quarterly basis. The total imports allowed in any quarter shall not exceed the total of that quarter and the next quarter. Any unutilised quota for a quarter shall be added to next quarter. Further, any excessively utilised quota for a quarter shall be deducted from the quota for the next quarter. This would ensure that the exporters and the associated importers would be able to regulate the volumes smoothly. Thus, allocation of quota in

such a manner would ensure that importers and exporters do not suffer any undue hardships. In case, the countries with specific quota exhaust their specific quotas, such countries may use the available residual quota. If necessary, further modalities for governing such Quantitative Restrictions may be notified, in accordance with relevant legal provisions.

XVIII. Conclusion

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

(i) There has been a significant increase in imports of the product under consideration in absolute terms as well as in relation to Indian production over the entire period of investigation.

(ii) The surge during the POI of April 2016 to June 2019 with most recent period of January 2019 to June 2019 is still noted to be continuing even till June 2021. The demand has also seen an upward trend and the imports of the domestic industry. coming down as proportion of total imports and also as proportion of their production.

(iii) The imports are undercutting the domestic prices. The domestic industry's sales even post original POI continues to face price undercutting by the imports made by non-domestic industry entities.

(iv) With no ban in safeguard rules on imports by domestic industry, there is no policy infirmity in providing the benefit to the domestic industry whose core business and focus remains as manufacturing.

(v) The domestic industry has suffered serious injury, as established by significant deterioration in its overall performance, in respect of parameters such as market share, production, sales, capacity utilisation, and profitability, which have sharply declined in the most recent period. The domestic industry is suffering significant losses during the recent period. The data till December 2019 was called from all the interested parties, however since almost 18 months have elapse there after the Authorized Officer has also examined the imports till June 2021 and the demand trend.

(vi) The Indian Industry has seen addition of two new capacities. Therefore, the protection being sought is by manufacturing industry and not by manufacturer turned trader.

(vii) The surge in imports has caused significant overall impairment in the performance of the domestic industry by way of decline in import price and consequent increase in import volumes during the investigation period, establishing causal link between surge in imports and serious injury to the domestic industry.

(viii) The imports of the product increased. The increased imports are a result of unforeseen developments and of the effect of obligations incurred by India under

the GATT. Surge is continuing even now. Further, surge is more conspicuous as domestic industry's share is removed from the total imports. The domestic industry has been historical importer due to demand and supply gap and keeping in view the nature of the product concerned and as per the requirement of the users to consolidate the domestic industry. The traditional business model of the domestic industry which was to supplement demand and supply by not reducing the production got adversely impacted by the aggressive pricing policy of the foreign producers.

(ix) The Authorized Officer notes that imports even during the calendar years 2020 and first half of calendar year 2021 are at increased levels as compared to the earlier POI i.e. 2016-17 to 30/06/2019, thereby indicating the continuance of the established surge in the period 01/01/2019 to 30/6/2019 mentioned as the 'most recent period'. This continued increased level of imports is noticed both in respect of total imports and even after excluding imports by domestic industry.

(x) While undertaking the public interest examination, it is noted that continued increase of import in IPA since 2020 and 2021 is also on account of its requirements in manufacture of hand sanitiser, in view COVID pandemic, besides the unforeseen development as elucidated in the foregoing paras, which have not disappeared in 2020 or 2021. The issue of necessity of IPA *inter-alia* alcohols used for manufacturing of hand sanitizer during the COVID pandemic was also appreciated in the order issued under Essential Commodities Act, 1955 in March 2020.

(xi) Keeping in view the likely threat of COVID pandemic, the demand of IPA have been computed separately for the POI period of 39 months (from 01.04.2016 to 30.06.2019) and post POI period of 24 months (from 01.07.2019 to 30.06.2021). The growth of demand has been computed on the basis of the above two demands. For considering the demand till September 2021, the annual demand of 24 months has been projected on 30th September 2021. The domestic capacity of IPA since April 2020 has increased from 70,200 MT to 1,00,200 MT annually by addition of new capacity by another producer i.e. DPL.

(xii) Based on the domestic availability of IPA and projected demand, global import quota has been determined and apportioned amongst the exporting countries in accordance with Rule 9(1) of the Safeguard Measures (Quantitative Restriction) Rules. The quota has been progressively liberalised on the basis of the growth rate in demand as stated in the foregoing para.

(xiii) Imposition of safeguard measures, in the form of quantitative restrictions, would be in public interest. It will prevent serious injury to the domestic industry, while having an insignificant and bearable impact on the downstream industry as the demand of the subject goods would continue to be met by way of imports.

(xiv) The Authorized Officer also notes that the global pandemic situation of COVID may still pose a challenge in future and IPA being one of the key ingredients for the preparation of an alcohol-based hand sanitizer. The Public interest needs to be

kept in mind for such an eventuality. The Authorized Officer notes the amendment in schedule made by the Essential Commodities Order, 2020 (Central Order No. S.O. 1087(E), dated 13th March 2020), issued under the Essential Commodities Act, 1955 (Act No.10 of 1955) to include certain masks and hand sanitizers as essential commodities. Furthermore, the Ingredients and Prices of the Ingredients as Raw Materials of Essential Commodities Order, 2020 (Central Order No. S.O. 1169(E) dated 19th March 2020), declared "the raw material used in manufacturing as essential commodity shall be treated as essential commodity". These Orders were in force up to 30th June 2020. Section 18A of the Foreign Trade (Development and Regulation) Act, 1992 (Act. No. 22 of 1992) stipulates that *"the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."* Therefore, this Act does not bar the application of other laws which are in force for the time being. The Authorized Officer, therefore, keeping in view the eventuality of a future COVID pandemic and provisions of the FTDR Act, 1992, notes that the Central Government could consider taking appropriate action inter-alia keeping the applicability of the recommended Quantitative Restriction measure concerning IPA on hold in the event of any other Act imposing or directing a measure in public interest to secure public health and safety arising out of any contingency.

XIX. Recommendations

146. In view of the aforementioned analysis, it is concluded that;

(i) The product under consideration viz. "Isopropyl Alcohol" is being imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the domestic industry manufacturing like or directly competitive products.

(ii) The existing circumstances justify the imposition of a Quantitative Restrictions in order to protect the domestic industry from further serious injury, which otherwise may be difficult to repair.

147. Accordingly, the recommendations are as follows:

(i) The imports of the product under consideration are regulated and permitted not beyond the levels mentioned below for the developing countries whose quantum of exports is more than 3% during the most recent period or for the developed countries as mentioned in the Table below. This quantum has been derived in terms of Rule 9(1) of the Safeguard Measures (Quantitative Restriction) Rules, based on an average of imports in the three representative years during the POI. The Authorized Officer is also prescribing a residual quantity for countries not specifically tabulated below. Further, keeping in view the Covid Pandemic and

the demand growth during the period from Apr-2016 to June-2021 (63 months) and taking it up to September 2021 by enhancing the average threshold by an additional appropriate factor of growth.

(ii) The Directorate General of Foreign Trade (DGFT) had issued a Notification no. GSR 59(E) bearing file no. 01/92/180/106/AM-11/PC-VI/PRA dated 31st January 2013 wherein it had notified a list of developing countries under Section 9A(4)(a) of the FTDR Act, 1992. This notification was based on the Notification issued by Department of Revenue. However, the Authorized Officer has noted that the list of developing countries has been subsequently revised by the Department of Revenue vide Notification No.19/2016-Custom (NT), dated 5th February, 2016. As the imports from the developing countries listed in the said Notification No. 19/2016-Custom (NT), dated 5th February, 2016, other than China PR do not exceed 3% individually and 9% collectively, the imports of "Isopropyl Alcohol" originating from such developing countries (other than China PR) will not attract Quantitative Restrictions in terms of Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992.

(iii) The imports would be permitted through the EDI ports only to facilitate electronic/ real-time monitoring of Quota. The quota would be monitored on quarterly basis. The total imports allowed in any quarter shall not exceed the total of that quarter and the next quarter. Any unutilised quota for a quarter shall be added to next quarter. Further, any excessively utilised quota for a quarter shall be deducted from the quota for the next quarter. This would ensure that the exporters and the associated importers would be able to regulate the volumes smoothly. Thus, allocation of quota in such a manner would ensure that users, importers and exporters do not suffer any undue hardships. In case, the countries with specific quota exhaust their allocated quotas, such countries may use the available residual quota. If necessary, further modalities for governing such Quantitative Restrictions may be notified, in accordance with relevant legal provisions.

(iv) The Authorized Officer in consonance with Rule 9(1)(iv) of the Safeguard Measures (Quantitative Restriction) Rules, also recommends progressive liberalization of the Quantitative Restrictions in the next year to adequately facilitate positive adjustment. Accordingly, it is recommended that the quantitative restriction be imposed on the imports of the subject goods into India in quantity (MT) as specified in the Table below.

(v) Accordingly, the Authorized Officer, in accordance with Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992, recommends imposition of quantitative restrictions on the imports of the subject goods for a period of two years from the date of the notification under the FTDR Act.

Country-wise quotas (in MT)

Country ↓	QR Quota							
Quarter →	**1st**	**2nd**	**3rd**	**4th**	**5th**	**6th**	**7th**	**8th**
CHINA PR	9,356	9,356	9,356	9,356	9,924	9,924	10,526	10,526
GERMANY	1,995	1,995	1,995	1,995	2,116	2,116	2,244	2,244
JAPAN	1,411	1,411	1,411	1,411	1,496	1,496	1,587	1,587
KOREA RP	5,929	5,929	5,929	5,929	6,290	6,290	6,672	6,672
NETHERLAND	2,283	2,283	2,283	2,283	2,421	2,421	2,568	2,568
SINGAPORE	2,515	2,515	2,515	2,515	2,668	2,668	2,830	2,830
TAIWAN	4,050	4,050	4,050	4,050	4,296	4,296	4,557	4,557
U S A	2,087	2,087	2,087	2,087	2,214	2,214	2,348	2,348
Other Countries	669	669	669	669	710	710	753	753
Grand Total	**30,294**	**30,294**	**30,294**	**30,294**	**32,134**	**32,134**	**34,085**	**34,085**

(Anant Swarup)
Authorized Officer