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**F. No. 22/7/2019-DGTR
Government of India
Department of Commerce
Ministry of Commerce & Industry
Directorate General of Trade Remedies
Jeevan Tara Building, 5, Parliament Street, New Delhi**

NOTIFICATION

FINAL FINDINGS

Case No: SG-07/2019

Dated 22.10.2020

Subject: Final findings of Bilateral Safeguard Investigation concerning imports of “Polybutadiene Rubber” from Korea RP under India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017.

A. BACKGROUND OF THE CASE

1. Having regard to the Article 2.22 of the Comprehensive Economic Cooperation Agreement between the Government of the Republic of India and the Government of Korea (hereinafter referred to as “CEPA”) and India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 (hereinafter referred to as the “Rules” or “Bilateral Safeguard Rules”) thereof, M/s Reliance Industries Limited (hereinafter referred to as the “Applicant”) filed an application before the Director General of Trade Remedies (hereinafter referred to as the “Director General” or “Authority”) in accordance with CEPA and Bilateral Safeguard Rules for initiation of bilateral safeguard investigation concerning increased imports of Polybutadiene Rubber (hereinafter referred to as the “product under consideration” or “PUC” or “subject goods”) from Korea RP (hereinafter referred to as “subject country”)
2. The Director General, on the basis of prima facie evidence submitted by the Applicant, issued notification number SG-07/2019 dated 7th November 2019, published in the Gazette of India, initiating the investigation in accordance with the Rules.
3. The request made by the domestic industry for imposition of provisional safeguard measures was examined. It was provisionally determined that critical circumstances existed which warranted imposition of provisional bilateral safeguard measures. Preliminary findings were issued vide Notification No. 22/7/2019-DGTR dated 12th May 2020, recommending imposition of provisional safeguard measures on the imports of subject goods originating in or exported from Korea RP. The Central Government

vide Notification No. 31/2020-Customs dated 13th July 2020 imposed safeguard measures by eliminating the concessions given under the CEPA and increased the rate of custom duty to 10% on imports of subject goods originating in or exported from Korea for a period of 200 days.

B. PROCEDURE

4. The procedure described below has been followed with regard to the investigation-
 - a. The Director General sent a copy of the initiation notification dated 7th November, 2019 to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, Government of Korea through Embassy of Republic of Korea in India, the known producers and exporters in the subject country and known importers and other interested parties as mentioned in the application, in accordance with Rule 5(2) of the said Rules.
 - b. Copy of the non-confidential version of the application filed by the Applicant was made available to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, Government of Korea through Embassy of Republic of Korea in India and the known producers and exporters in the subject country in accordance with Rule 5(3) of the Rules.
 - c. The Director General forwarded a copy of the public notice initiating bilateral safeguard investigation to the following known producers / exporters in the subject country and provided them an opportunity to file response to questionnaire in the form and manner prescribed and make their views known in writing within thirty days in accordance with the Rules 5(4) of the Rules:
 - i. Kumho Petrochemicals Ltd.
 - ii. LG Chem Ltd.
 - d. In response to the questionnaire issued, both the producers/exporters filed exporter's questionnaire responses.
 - e. The Director General sent Importer Questionnaires to the following known importers / users of subject goods in India calling for necessary information in accordance with Rule 5(5) of the Rules:
 - i. J K Tyres Industries Ltd
 - ii. Apollo Tyres Ltd
 - iii. MRF Ltd
 - iv. CEAT Limited
 - v. Birla Tyres
 - vi. Balkrishna Industries Ltd
 - vii. Goodyear India Limited
 - viii. Continental India Ltd
 - ix. Yokohama India Private Limited
 - x. Metro Tires Limited
 - xi. Ralson India Limited
 - xii. Treads direct Limited
 - xiii. Indag Rubbers Limited

- f. In response to the questionnaire issued, the following importers have filed importer questionnaire response:
- i. TVS Srichakra Limited
 - ii. Apollo Tyres Limited
 - iii. MRF Limited
 - iv. CEAT Limited
 - v. JK Tyre Limited
- g. The Director General also sent questionnaire to the domestic industry. The domestic industry filed its questionnaire response.
- h. The following interested parties filed submissions responding to the initiation notification:
- i. Korea Petrochemical Industry Association
 - ii. Government of Korea
 - iii. All India Rubbers Industries Association
 - iv. Automotive Tyre Manufacturers Association (ATMA)
- i. Post issuance of the preliminary finding, comments were filed by the following interested parties:
- i. Government of Korea
 - ii. Automotive Tyre Manufacturers Association (ATMA)
 - iii. Supreme Petrochem Limited
- j. After issuance of the preliminary findings, the Director General held an oral hearing on 20th August 2020 in terms of Rule 5(6) of the Rules, where opportunity was provided to all interested parties to present their views. Thereafter, all the interested parties were given opportunity to present their views in writing. Copy of the non-confidential version of written submissions filed by interested parties pursuant to the oral hearing were made available to other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.
- k. Written submissions and rejoinders post oral hearing were filed by the following interested parties:
- i. Government of Korea
 - ii. Korea Petrochemical Industry Association
 - iii. Automotive Tyre Manufacturers Association (ATMA)
 - iv. Supreme Petrochem Limited
 - v. All India Rubbers Industries Association – The association filed submission after the deadline. The submission has however been taken note of and considered in the present findings.
- l. The Director General made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- m. The Government of Korea availed the opportunity of consultations, which were held on 21st September, 2020. Concerns raised by the Government of Korea have been examined and addressed. Further, concerns raised by GOK were raised through written submissions earlier also, which have been duly considered and appropriately addressed in the present findings.

- n. The submissions made by the interested parties during the course of investigation, wherever found relevant, have been addressed by the Director General in this final findings.

C. Submissions made by the applicant and other interested parties

C.1 Product under consideration

5. The submissions made by the applicant in respect of product under consideration are as follows: -
 - a. There are 5 types of Polybutadiene Rubber out of which Titanium and Lithium grades are not made by the domestic industry. Titanium grade of Polybutadiene Rubber has inferior quality and has become obsolete. Lithium Grade is used in plastic modification. The scope of product under consideration therefore does not cover these two grades.
 - b. A type/grade of the product can be excluded from the scope of investigation only when it is being imported and the domestic industry does not have the capacity of producing the particular grade. The domestic industry has the capacity to produce Neodymium grade and the same fact was verified by the Authority in the antidumping investigation and accordingly Neodymium Grade (Ndbr) had been included in the scope of product under consideration.

6. The submissions made by other interested parties in respect of product under consideration are as follows: -
 - a. Domestic industry does not produce Neodymium Grade (Ndbr) which has major imports from Korea RP. Even if produced, the product won't meet or pass industrial users quality certification. This product is limited in use for end-user, especially global tyre manufacturers.
 - b. Ndbr grade is neither substitutable nor like article to other Polybutadiene Rubber grades as it has applications in high performance tyres.
 - c. Domestic industry only once manufactured batch of Ndbr grade which was rejected by the user industry. Domestic industry never approached the user industry for sale of this grade.
 - d. Imposition of provisional duties on Lithium and Titanium grade PBR should be revoked.
 - e. Non-mentioning of correct grades in the recommendation para has led to an unintended imposition of 10% custom duty on Polybutadiene Rubber of all grades. Authority is requested for amendment for exclusion of titanium and grades of PBR.

C.2 Domestic industry

7. The applicant has contended that it is the sole producer of the subject goods in India.

8. No submission has been made by other interested parties in respect of scope of the domestic industry.

C.3 Confidentiality

9. The submissions made by the applicant in respect of confidentiality are as follows: -
 - a. The adjustment plan is highly confidential and its disclosure would cause prejudice to its interest.
 - b. Parameters on which interested parties have sought disclosure are not even a part of the safeguard application.
10. The submissions made by other interested parties in respect of confidentiality are as follows: -
 - a. The non-confidential version of the application fails to meet the standards laid down in Trade notice no. 10/2018 dated 7th September 2018, which is applicable for all trade remedy investigations. The application does not allow for a reasonable understanding of the allegations contained therein.

C.4 Miscellaneous submissions

11. The submissions made by the applicant in respect of other miscellaneous issues are as follows: -
 - a. The period selected in the application is sufficiently long to allow conclusions to be drawn regarding the existence of increased imports and injury thereof.
 - b. The period under consideration should include period of no concessions, period of tariff reductions and period of post-tariff elimination to ascertain whether the injury to the domestic industry is as a result of duty concessions.
 - c. With regard to adjustment plans, the domestic industry has submitted that it is taking measures to reduce costs. The domestic industry has given an adjustment plan which includes action on catalyst & chemicals cost reduction, conversion cost reduction, improvement in process efficiency, improvement in consumption norms, reduction in transportation costs, improvement in turnaround of stocks, etc. Since domestic industry competes with imports on the basis of landed price of imports at the premises of the customer, the company shall become competitive vis-à-vis Korean imports in a period of four years.
 - d. In the anti-dumping investigation, imports from Korea RP were at undumped prices due to which the investigation was terminated against Korea.
 - e. It was admitted by other interested parties in the anti-dumping investigation that decrease in landed value of goods from Korea RP was completely reflective of Free Trade Agreement concessions.
 - f. Measures for a minimum period of 4 years will allow the domestic industry to put its adjustment plan into full effect.
 - g. Quarterly data was submitted in annualized form in order to ensure proper comparison with previous data.

- h. It has not been established how initiation would have been different had information about adjustment plan been filed earlier.
 - i. Article XIX provides that reason for increase in imports in a general safeguard investigation has to be unforeseen developments including tariff concessions.
 - j. If GOK had issues with regard to intimation sent to them or about the notice of initiation, they should have raised this concern in its preliminary submissions and not at this stage of investigation.
12. The submissions made by other interested parties in respect of other miscellaneous factors are as follows: -
- a. The Applicant must share revised data based on the period as determined by the Director General i.e. April 2015 to June 2019.
 - b. The adjustment plan is excessively confidential and does not satisfy the requirement of submission at the pre-initiation stage.
 - c. The investigation must be terminated on the ground that Applicant has not submitted any adjustment plan as is mandatorily required to be provided under Article 2.23 (g) of the Korea – India CEPA and Rule 4(2) b of the Rules.
 - d. Rule 4(2) (b) of the Bilateral Safeguard Rules requires the petitioner to compulsorily file adjustment plan. In the absence of adjustment plan, duty imposition was not recommended by the Director General in general safeguard investigations relating to Phthalic Anhydride (PAN), Cold Rolled Flat Products, Not Alloyed Ingots of Unwrought Aluminium and Flexible Slabstock Polyol.
 - e. Article XIX of GATT 1994 requires unforeseen developments which could have led to increase in imports which the Applicant has failed to address in the petition. Further, increase in imports cannot be held as unforeseen developments as held by panel in Argentina – Preserved Peaches case.
 - f. The current circumstances of the Indian domestic industry do not qualify for critical circumstances requiring imposition of provisional safeguard measures as per Article 2.24 of Korea – India CEPA.
 - g. The data provided by the Applicant in the petition does not contain any data for period April - June 2019.
 - h. The presentation of data from 2007-08 for indexation has led to inaccurate representation of developments in the domestic market.
 - i. The Applicant has not brought forward sufficient evidence to prove the conditions for initiation of the bilateral safeguard investigation. Conditions laid down in Article 2.22 are not satisfied.
 - j. The preliminary findings are based on data from Q1 and Q2 of FY 2019- 20. The domestic industry had shared only the annualized figures for the said period through questionnaire response.
 - k. The applicant has not filed any updated application for the revised period of investigation.
 - l. As required under Rule 5(1) (c), the Director General has not stated summary statement of facts in the initiation notification on which the allegation of serious injury or threat of serious injury was based.

- m. As per Appellate Body Report in Argentina Footwear and US – Steel Safeguard, trend of imports is required to be considered for the entire period.
- n. Inclusion of data for quarter 3 and quarter 4 of 2019-20 would be incorrect as the period is neither a part of period of investigation or initiation notification.
- o. Importer questionnaire response of JK Tyre and ATMA has not been considered by the Director General which is violation of due process and has in some cases been a ground for reconsideration or setting aside of judgement/order.
- p. Director General in past had recommended duties only for 1-2 years which were subject to review.
- q. Domestic industry has not been able to establish a prima facie evidence of critical circumstances.
- r. Examination of critical circumstances must be based on data for quarter 3-4 of 2018-19.
- s. It is inappropriate to invoke preliminary safeguard measure after significant passage of time.

C.5 Increased imports from Korea RP

13. The submissions made by the applicant in respect of increased imports from Korea RP are as follows: -
- a. The imports of the product under consideration show significant increase over the period with increase in duty concession.
 - b. In the last 12 years, the imports have increased by around 1093 times due to the concessions given under CEPA. Further, with custom duty becoming zero, the imports have doubled in the last 3 years.
 - c. The share of the subject imports in the demand has increased from 4% to 24% while that of the domestic industry has declined from 73% to 55%.
 - d. The volume of imports has increased more in the quarter 1 and quarter 2 of the 2019-20.
 - e. Volume of imports have continued to remain significantly high even in the 3rd and the 4th Quarter of 2019-20.
 - f. Concessions have been granted to imports from other countries as well. However, imports from other countries have not seen a similar increase.
 - g. Imports in relation to production and consumption have increased by 424% and 404% as compared to 2007-08.
 - h. In order to examine whether the imports have increased as a result of tariff concession, it is necessary to observe the trend of the volume of imports during pre-duty reduction phase, duty reduction phase and post- duty elimination phase.
 - i. Imports from other countries have increased in line with the demand but increase in imports from Korea RP is over and above the demand in India.
 - j. Transaction-wise data has been provided to ascertain the volume of imports.
 - k. Data for the period of investigation was filed with the domestic industry questionnaire response.
 - l. Merely because there is inadvertent reference to customs duty from some other country, it does not follow that the conclusion drawn by the Director General is

incorrect. The Director General had provided rate of duties in the preliminary finding.

14. The submissions made by other interested parties in respect of increased imports from Korea RP are as follows: -
- a. The domestic industry does not have the ability to meet the domestic demand. The imports from Korea RP have increased with the increase in demand.
 - b. The alleged increase in imports is not a result of the reduction or elimination of the duties under the Korea-India CEPA.
 - c. There has been no recent, sudden, sharp, and significant increase in Korean imports of PBR into India
 - d. Any alleged increased imports of PBR have not caused serious injury or threat thereof
 - e. The rate of increase in imports from ASEAN countries is higher than rate of imports from the subject country.
 - f. The major reason contributing towards the increase in the imports should be the reduction or elimination of tariffs on that article pursuant to the CEPA. However, in the present investigation, the same is missing.
 - g. There has been a consistent decline in the rate of custom duty since 2010 but the imports from subject country did not increase at the same rate. Further, the increase in imports is due to increase in demand.
 - h. The imports from other countries have increased at a faster rate as compared to imports from Korea RP.
 - i. There has been an increase in imports from ASEAN countries sharper as compared to subject imports.
 - j. As per Article 3.1 of the Agreement on Safeguards, there must be a reasoned and adequate explanation which demonstrates the connection between the reduction of the duty and the alleged increase in imports. Director General should identify and provide a reasoned explanation and demonstration of the same.
 - k. There is no sudden, significant or sharp increase in the imports as per the language of Article 2.1 of the Agreement on Safeguards.
 - l. As per Article 2.22 of CEPA, the increase in imports should be a substantial cause of injury. However, the imports have also increased due to demand and supply gap.
 - m. The domestic industry does not have the ability to meet the domestic demand. The imports from Korea RP have increased with the increase in demand.
 - n. Volume of imports in 2013-14 was 45,509 MT when duty was reduced to 5.86% and when duty was reduced to 0% in 2018-19 the imports were 48,658 which shows that there is no co-relation in imports and duty.
 - o. Decrease in duties was accompanied by the increase in domestic demand, as there is demand-supply gap in India. Domestic industry can cater only 65% of the demand.
 - p. Volume of imports in the petition filed in the previous anti-dumping investigation and current Bilateral Safeguard are different. Domestic industry is misleading the Authority.

- q. Director General must perform a quantitative assessment of causation in order to ascertain various other causes which contributed to increase in imports.

C.6 Injury

15. The submissions made by the applicant in respect of injury are as follows: -
- a. The demand for the subject goods has increased over the period with a slight decline in 2008-09.
 - b. The Korean producers are price setters in the market and the domestic industry and imports from other countries are forced to follow the pattern of the pricing set by them.
 - c. The domestic industry is unable to increase the selling prices to the extent of the cost of sales. The present low prices are only because of the low prices of the subject country imports.
 - d. The industry has been suffering financial losses since 2014-15.
 - e. The adverse volume impact on the performance of the domestic industry can be seen from the fact that the industry has not been able to sell the product in the domestic market and been forced to focus on less profitable exports.
 - f. The inventory of the domestic industry has risen.
 - g. Had there been no duty concessions, the landed value would have been higher and the domestic industry would have earned profits.
 - h. Korean producers were already enjoying benefits of huge capacities and low freight cost. Concessions have completely handed over the Indian market to them.
 - i. The domestic industry envisaged to sell its expanded capacity in the domestic market but was forced to undertake exports with much lower profitability.
 - j. Healthy production of the domestic industry is in view of the production and pricing policy followed by the company. However, domestic sales as a percentage of production is steeply falling and have continued to remain impacted in the 3rd and 4th quarter of 2019-20.
 - k. Domestic industry is forced to face either inventory pile up or look for consumers in the international market to dispose of its production.
 - l. Decline in market share of the domestic industry continued even in 3rd and 4th quarter of 2019-20.
 - m. Imports were made in India from 22 countries in the year 2019- 20 but their collective share is less than the share of Korea RP.
 - n. The capacity utilization of the domestic industry is required to be seen with the demand in the country.
 - o. If Global producers are suffering because of creation of capacities beyond their domestic demand, it is their problem and domestic industry cannot suffer because of higher capacities created by the global producer.
 - p. Continuous losses suffered by the domestic industry is itself a sufficient reason why the duty concession should be removed.

- q. Continuous losses suffered by the sole producer puts availability of the domestically produced subject goods into question in the long run and may lead to the users being completely at the mercy of exporters particularly from Korea.
 - r. Landed price was lower than cost of production of the domestic industry for all the periods except year 2017-18 and April 2019 – June 2019.
 - s. The argument that domestic industry benchmarks its prices 10% above import price proves that imports are benchmarking the prices.
 - t. The domestic industry is suffering continuous losses and is losing market opportunities. Therefore, there is no basis in the contention that there is improvement in performance of domestic industry.
 - u. The domestic industry has transferred the raw material at market price and therefore there is no basis to deduct profit on captive inputs to arrive at fair price.
16. The submissions made by other interested parties in respect of injury are as follows: -
- a. In the Anti-Dumping investigation on the subject imports, the Authority had concluded that the injury caused was not due to dumping. Therefore, with improved performance, there can be no serious injury now.
 - b. There is no serious injury or threat of serious injury as defined by the section 8B(6)(c) and (d) of the Act and the Article 4.1 (a) of Agreement on Safeguards. In fact, the performance of the domestic industry has improved.
 - c. The Director General had not recommended duty in Non-Alloyed Ingots of Unwrought Aluminium, Cold Rolled Flat Products of Stainless Steel of 400 series, Bare Elastomeric Filament Yarn where the performance of industry had improved. The same fate should follow in the present case.
 - d. The performance of the domestic industry has improved with the reduction in the custom duties.
 - e. Data in the preliminary findings which shows that reduction in duties led to the corresponding significant injury to the domestic industry pertains to the applicable rate of customs duty from ASEAN Countries and not Korea RP. The prices of the product are set in accordance with the prices of butadiene. Therefore, the fall in prices cannot be attributed to import price.
 - f. Korea's recent export of polybutadiene rubber to India from January to September 2019 has decreased by 13%.
 - g. The market share of the domestic industry is not growing due to the inability of the domestic industry to provide a reasonable alternative to the imported goods and its low capacity to fulfil the demand.
 - h. The economic performance of the domestic industry has seen a positive growth. All relevant parameters such as market share, production, productivity, capacity utilization, sales, profits and losses and employment have shown a positive trend.
 - i. The performance of the domestic industry has improved. In the recent anti-dumping investigation on the subject goods, the Authority had concluded that the injury was not due to dumping. Therefore, the Applicant could not have suffered injury in the current investigation when its performance improved.
 - j. The capacity utilization of the DI is much higher than the global capacity utilization rate (which is at 76% in the recent period).

- k. According to the annual report of the domestic industry, it has achieved highest ever production in PBR during the FY 2019-2020.
- l. Performance of the domestic industry improved in term of loss per unit, cash losses, profit before interest and tax and return on investment.
- m. Domestic demand decreased by 5% in 2019-20 despite which domestic industry was able to maintain its market share.
- n. Landed prices of imports from Korea RP were not below the selling price of the domestic industry in the year 2017- 18 and Q1 2019-20 which shows that it was not a reason of price injury to the domestic industry.
- o. Domestic industry enters into an annual procurement plan with its buyers in which it charges a 10% mark-up on the prices of the subject goods.
- p. The Authority has in past terminated investigations wherein economic parameters depicted improvement and injury to the domestic industry was not established due to alleged imports.
- q. If low prices were the determining factor for the imports from Korea, imports would not have reduced even when the domestic industry expanded its capacity.
- r. Imports from other countries such as Malaysia, Saudi Arabia, Germany, China and Italy could be sold despite the prices from these countries being higher than Korean prices but the domestic industry is alleging that it could not sell.
- s. Domestic Industry losses actually reduced in 2017-18 when the maximum applicable tariff concessions were accorded to imports from Korea RP.
- t. Imports from ASEAN countries should not be grouped together in the price undercutting analysis.
- u. Domestic industry started facing injury in the 2014-15 but the imports from Korea declined in these years.
- v. Mere reference to the current landed price compared to the period when there were no concessions does not show that if concessions were removed the domestic industry would be able to sell at higher prices.
- w. The domestic industry had to undertake exports because of its inferior quality.
- x. Around 84-95% of the production of the domestic industry was sold in the domestic market; and therefore, the claim that it was forced to exports is wrong.
- y. Net selling price is not relevant for examining price injury to the domestic industry and instead it should the cost of production and the fair selling price which should be considered. Fair selling price was considered relevant by the Authority in various safeguard investigation in past.

C.7 Causal Link

17. The submissions made by the applicant in respect of causal link are as follows: -
 - a. Imports from ASEAN countries are much lower in volume as compared to imports from Korea RP and the share is quite low to have any impact on the performance of the domestic industry.
 - b. The landed price of imports from ASEAN countries is above the landed price of imports from Korea and therefore cannot be a cause of injury.

- c. Capacity is lower than the demand, therefore, fall in demand cannot be a cause of injury.
 - d. The domestic industry has procured the raw material captively and therefore fluctuations in global prices would not have impacted its cost.
 - e. Fluctuation in butadiene prices justifies removal of concessions in order to allow domestic industry to adjust prices.
 - f. Domestic industry's depreciation and interest cost has declined therefore injury cannot be due to other factors.
 - g. Respondents have raised baseless issues with regard to injury to the domestic industry and no concrete evidence has been provided by them.
 - h. Collective share of imports from the 5 countries (Malaysia, Saudi Arabia, Germany, China and Italy) are less than 1/3rd of the imports from Korea RP alone. Korean imports have benchmarked the prices due to which other imports are also suffering.
 - i. It is not necessary that the imports may have an immediate and proportionate impact on the performance of the domestic industry.
 - j. Any analysis with regard to concessions given under the ASEAN agreement is required to be seen for all the countries under ASEAN as a whole.
 - k. Authority had never concluded in the past that the cause of injury to the domestic industry was the raw material prices.
18. The submissions made by other interested parties in respect of causal link are as follows:
- a. In compliance with the Article 4.2(b) of the Agreement and Rule 7 of the Rules, the Director General is required to examine causal link between the increase in imports and injury and do the non-attribution analysis.
 - b. Korean imports of PBR have not alone constituted a substantial cause of serious injury to the domestic industry
 - c. The increased cost is due to the Applicant transferring the raw material at costs higher than the actual cost.
 - d. There is absence of causal link in the investigation. The Authority should examine causal link and perform non attribution analysis.
 - e. Domestic industry in post oral hearing submission of the anti-dumping investigation had stated that injury to the domestic industry was solely on account of dumping of product under consideration from the subject countries and there was no other factor causing injury to the domestic industry.
 - f. The fluctuation in the domestic selling price of the domestic industry is solely due to the massive fluctuation in Butadiene prices globally.
 - g. Imports from Singapore, UAE and USA are at prices lower than Korean landed value.
 - h. Imports from Singapore enjoyed 15.2% market share in 2018-19. Applicants have not provided reason on why significant imports from Singapore do not dictate prices.
 - i. Domestic industry is suffering from other internal issues such as losses due to fluctuation of raw material prices, increase in depreciation of capital investments,

- high loan balances and the balance sheet being skewed due to heavy capital investments made by the domestic industry in the petro-chemical sector.
- j. Authority has to first distinguish the effects caused by different factors and then attribute the injurious effects caused by increased imports in question on one hand and by other factors on the other.
 - k. The authority mentioned in the previous anti-dumping investigation that there is no causal link between the imports from subject countries and injury to the domestic industry when parameters of injury during 2015-16 were rather worse.
 - l. Injury was found to have been caused as a result of raw material costs in the anti-dumping investigation.
 - m. Merely because the imports from ASEAN countries were lower than Korean imports, it does not imply that they cannot cause injury.

C.8 Public interest

- 19. The submissions made by the applicant in respect of causal link are as follows: -
 - a. Measures will only remove the unfair advantage gained by the Korean producers due to tariff concessions.
 - b. Restoration of duties back to most favoured nation rate of duty will allow competition to flourish in the domestic market.
 - c. Imports will still continue to be made from all sources including Korea RP and the domestic industry would be forced to compete with the imports.
 - d. Public interest is not confined to consumer industry alone and covers in its ambit the domestic industry of product under consideration as well.
 - e. Impact on the prices of tyres is insignificant in case duties from Korea RP are restored to MFN level.
 - f. Argument that withdrawal of duty concession will create barrier for imports is a figment of imagination of interested parties.

- 20. The submissions made by other interested parties in respect of causal link are as follows:
 - a. Since the Applicant is the only producer of the subject goods, the imposition of the duty will not be in public interest. The Applicant would create dominant position for itself in the market and create barriers for new entrants.
 - b. In past public interest has been examined and investigations have been terminated where imposition of Safeguard Duty was not in the public interest. The domestic industry would abuse its dominant position in the market.
 - c. Imposition of safeguard measures would significantly drive up the prices and cause shortages of essential supplies required by the downstream industry – this includes the domestic tyre manufacturing industry and other end-users.
 - d. Concessions given under the CEPA were granted after considering public interest by respective countries and therefore cannot be considered to give unfair advantage.
 - e. Tyre industry is a major part of Indian economy and duties of 10% would hamper its competitiveness.

D. EXAMINATION BY THE DIRECTOR GENERAL

21. The information made available by the interested parties in their submissions, have been considered by the Authority for the purpose of the present findings...Further, the Authority notes that different interested parties have advanced similar arguments, albeit in different manner and language. The Authority has examined and addressed the submissions in the present findings. The examination herein below in respect of increase in subject imports, serious injury and causal link ipso facto deals with the submission of applicants and other interested parties.

Further, the Authority notes as follows with regard to contentions advanced by the interested parties:

- a. As regards imports from other ASEAN countries, it is seen that the volume of imports in absolute terms from individual countries is low and landed price of imports from these countries is higher than the landed priced of imports from Korea.
- b. The interested parties have contended that the volume of imports has not increased with increase in tariff concession. The Director General, therefore, examined imports of the product under consideration before tariff concession, during the period of tariff concession and post-elimination of tariff. Relevant information is contained in the application. It is seen that as the concession increased, the volume of imports from Korea increased. The application shows that the imports increased from 4,452 MT in (2007-08) to 42,768 MT in (July-Sep.19 (A)) in absolute terms, from 16% (2007-08) to 54% (July-Sept19) in relation to imports and from **% to **% in relation to consumption over the same period. It is noted that with the increase in tariff concession, the Korean imports increased. .
- c. As regards reference to the anti-dumping investigation, the Director General notes that it has no bearing on the present investigation. It is seen that in the anti-dumping investigation, the Authority had noted that there was injury to the domestic industry, but it was not on account of dumped imports from subject countries. The Director General, therefore, notes that injury is not attributable to dumped import but on account of tariff concessions granted to imports from Korea RP under India-Korea CEPA. As regards the contention that the price of product is set by raw material price, it is noted that the profitability of the domestic industry has undergone drastic changes over the period since the duty concession started and this would not have been possible had the price of the product been governed solely by the raw material prices.
- d. With regard to the contention that the Director General must find injury solely due to present imports, it is noted that the rule does not state that the sole cause of injury to the domestic industry should be subject imports only. It is noted that contrary to the claim made by some interested parties, the CEPA provides that such imports alone should constitute a substantial cause of serious injury or threat thereof to domestic industry producing like or directly competitive good, not the sole cause of serious injury or threat thereof. Further, footnote to the Agreement

provides that a determination that an originating good is being imported as a result of the reduction or elimination of a customs duty provided for under this Agreement shall be made only if such reduction or elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. The passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination.

- e. It is further noted that in order to determine whether and to what extent duty concessions have caused injury to the domestic industry, the Director General has additionally considered the data for longer period by considering the volume of imports and performance of the domestic industry prior to duty concession period, during tariff reduction/elimination period and during post tariff elimination period.

.It is noted that the financial situation of domestic industry has materially deteriorated as the tariff concession increased. Whereas the domestic industry was earlier earning profits when the product was not subject to tariff concessions, the domestic industry is now suffering financial losses with the tariff concessions granted to Korean exports.

- f. As regards the issue raised by some interested parties about the domestic industry not increasing capacities with rising demand, it is noted that the present petition merely seeks redressal of the adverse price effect on the domestic industry on account of tariff concessions.

- g. As regards adjustment plan, the Director General notes that the domestic industry has given an adjustment plan post-initiation of investigation. It is noted that at the stage of initiation, only such information, as is relevant for initiation, is required to be considered. Thus, while Rule 4(2)(b) provides for information on adjustment plan, it does not require the Director General to consider adjustment plan before initiating the investigation. Further, even though the application proforma requires information on adjustment plan, it is noted that the said information is of no utility at the stage of initiation. Further, information on adjustment plan would still not have been of relevance, if safeguard measures is imposed for a period not exceeding one year. Thus, information on adjustment plan was not critical for a decision on initiation. The said information is relevant at the time of final determination, and not at the stage of initiation. The domestic industry in any case has given an adjustment plan, after initiation of investigation.

- h. The Director General notes that the application contains data for the period April, 2007 to March, 2019. Further, while responding to initiation, the applicant has provided data for the period up to Sept, 2019. Thus, the interested parties had access to the relevant information and an opportunity to comment on the information for the period from April, 2007 to Sept., 2019. The Director General has considered the period from April, 2015 to Sept, 2019 for the purpose of examining increased imports and serious injury to the domestic industry. However, since the interested parties have contended that the Director General is required to consider whether the increase in import is as a result of tariff concessions under the Agreement and are consequently causing injury, the

Director General has suitably referenced the data for longer period i.e. since April, 2007 as contained in the petition. The period July-September 2019 has also been added considering that this is a safeguard investigation and the Director General in the past has added data for subsequent period, post-initiation of investigation. However, considering the date of initiation, data for the subsequent period (October 2019 – March 2020) has not been considered for the present purposes.

Year	Korea Imports	Production	Sales	Market share		Profit/loss	ROI	Price Under-cutting
				Domestic industry	Korea			
	MT	MT - trend	MT - trend	% - trend	% - trend	Rs. Lacs - trend	% - trend	% - Range
2007-08	4,452	100	100	100	100	100	100	0-10%
2008-09	4,437	97	89	101	125	135	135	(10-0)%
2009-10	10,945	98	102	82	225	100	112	15-25%
2010-11	9,528	102	102	84	200	219	350	10-20%
2011-12	17,000	106	103	74	300	42	54	10-20%
2012-13	21,675	104	102	77	400	163	404	(10-0)
2013-14	45,509	109	103	68	725	44	51	(10-0)%
2014-15	34,755	136	134	85	525	-70	-26	(20-0)%
2015-16	23,876	151	145	86	350	-87	-30	2.5% - 12.5%
2016-17	26,459	157	147	84	350	-58	-18	15-25%
2017-18	46,344	153	145	77	600	-5	-2	2.5% - 12.5%
2018-19	48,658	164	146	75	600	-29	-9	2.5% - 12.5%
Q1 2019-20	12,316	175	144	74	600	24	8	5%-15%
Q2 2019-20	10,692	173	127	75	600	-42	-13	5%-15%

- i. The Director General notes that the present investigation is a bilateral safeguard investigation initiated under India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 read with India-Korea Comprehensive Economic Partnership Agreement. Considering the arguments of the interested parties, the Director General has examined whether increased imports are a result of tariff concessions under the agreement and for this purpose, the Director General has considered imports of the product from April, 2007 to Sep., 2019. It is seen that volume of imports has increased in absolute terms and in relation to production and consumption as the tariff concessions have increased.
- j. As regards the contention that imports have increased due to demand supply gap, the Director General notes that imports are inevitable in a situation where the demand for the product is higher than the capacities available in the country. The purpose of the present investigation is not to ban or restrict the imports. However,

- in a situation where the demand for the product is higher than capacities in India, and there are significant imports into the country, the domestic industry prices get impacted by the landed price of imports. The landed price of Korean imports is lower than not only the selling price of domestic industry but also import price from several countries. The share of imports from Korea was more than 50% of total imports from 2017-18 showing dominant position gained by Korean imports volume.
- k. As regards the contention in respect of unforeseen development, it is noted that the requirement of unforeseen development in terms of Article XIX of GATT is for global safeguard measures only and it is not applicable for bilateral safeguard investigation. For initiation of bilateral safeguard investigation, the increased import has to be on account of reduction/ concession in tariff.
 - l. As regards the volatility in the prices of raw materials, it is noted that it is a global factor and not peculiar to Indian market only. The fluctuation in the prices would have affected the Korean producers as well. In a market free from competition with Korean low prices, had there been a fluctuation in the price of the raw material, the domestic industry would have adjusted its prices accordingly. But the domestic industry was prevented from adjusting its prices because of the presence of low-priced imports from Korea. There is significantly positive price undercutting and profitability of the domestic industry has significantly changed, which implies that the domestic industry has not been able to align its prices with raw material changes.
 - m. The Director General notes that the purpose of the present investigation, the measure proposed is required to be considered in right perspective. A concession was earlier given to imports from Korea, in a phased manner, under the trade agreement. The trade agreement provides for invoking safeguard measures and withdrawal of duty concession under certain conditions specified in the agreement. Thus, the objective of the present investigation is not to impose any additional tariff on the Korean imports. The purpose is to only consider whether or not the concession given earlier is required to be withdrawn, and if so, duration thereof. Besides, withdrawal of concession would in no way restrict or prohibit imports into India, either from Korea or from other countries. In any case, there are significant imports from other countries and therefore the availability of the material will not be restricted in any manner.
 - n. The Director General notes that imports are inevitable in a situation where the demand for the product is higher than the capacities available in the country. The purpose of the present investigation is not to ban or restrict the imports. However, in a situation where the demand for the product is higher than capacities in India, and there are significant imports into the country, the domestic industry prices get impacted by the landed price of imports. Thus, it is not import volume per se, but the price of imports that is the concern of the domestic industry. It is noted that the landed price of Korean imports by and large became lower than the landed price of non-Korean imports and selling price of the domestic industry. Thus, the domestic industry has been forced to align its prices to the Korean prices and was

not able to fully align its prices to the changes in the raw material prices, leading to injury to the domestic industry.

- o. It is further noted that in order to determine whether and to what extent duty concessions have caused injury to the domestic industry, the Director General has additionally considered the data for longer period by considering the volume of imports and performance of the domestic industry prior to duty concession period, during tariff reduction/elimination period and during post tariff elimination period. The table above shows the factual position. There is significant increase in imports, both in absolute terms and in relation to production and consumption. While price undercutting was earlier negative, the same has progressively become positive as the duty concession has increased. Further, performance of the domestic industry has declined in the terms of market share and profits over the period. Further, in the most recent period, with further increase in imports, the performance of the domestic industry has declined in terms of production, capacity utilization, domestic sales volume and profit/loss. Thus, performance of domestic industry has shown deterioration with the primary cause being imports from Korea.
- p. As regard the contention that data in the preliminary findings showing that reduction in duties led to significant injury to the domestic industry pertained to the applicable rate of customs duty from ASEAN Countries and not Korea RP, the Director General notes that in the preliminary finding customs duty applicable to Korea was considered for the injury examination. However in the table, reference to customs duty applicable to ASEAN Countries was inadvertently mentioned, which has now been corrected in this finding.
- q. As regard to contention that volume of imports in the petition filed in the previous anti-dumping investigation and current Bilateral Safeguard are different, the Director General notes that volume of imports was considered based on DGCI&S data in the final finding concerning anti-dumping investigation. The Director General further notes that there is no difference in import volume considered in the present investigation.

E.1 Product under consideration

- 22. The product under consideration in the present investigation is "Polybutadiene Rubber" classified under HS Code 40022000. Polybutadiene Rubber (also referred to as PBR) is a synthetic rubber that is a polymer formed from the polymerization of the monomer 1,3-butadiene. It is used in the manufacture of tyres mainly and is also used as an additive to improve the mechanical strength of plastics such as polystyrene and acrylonitrile butadiene styrene.
- 23. The product is produced in 5 grades which can be differentiated on the basis of the catalyst used in production. The grades may be identified as: Neodymium, Cobalt, Nickel, Titanium and Lithium. The Applicant has stated that it does not produce two grades, i.e., Titanium and Lithium grades. With regards to the claim of the interested

parties that Neodymium grade should be excluded from the scope of investigation, it is noted that the domestic industry has produced and sold Neodymium grade and thus there is no merit in the claim for exclusion of Neodymium grade. The Authority in the previous anti-dumping investigation had also examined this aspect and did not exclude the Neodymium grade from the scope of product under consideration.

One of the interested parties has sought exclusion of titanium and lithium grades from the scope of PUC. It is clarified that those grades were already excluded from the scope of the product under consideration at the stage of the preliminary findings.

24. On the basis of information on record, the scope of product under consideration has been kept as "Polybutadiene Rubber", classified under HS Code 40022000, of Neodymium, Cobalt and Nickel grades, excluding titanium and lithium grades.

E.2 Domestic industry

25. The Rule 2(b) of Bilateral Safeguard Measures Rules, 2017 states as follows: -

"domestic industry" means the producers -

(i) as a whole of the like or directly competitive goods operating in the territory of India; or

(ii) whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

26. It is seen that the Applicant is the only producer of the subject goods in the country. Therefore, the requirement of standing under the Rules is satisfied and the Applicant is considered as domestic industry in terms of Rule 2(b) of the Rules.

E.3 Period of investigation

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

28. The domestic industry provided data for the period upto March 2020. However, the Director General has already added data for the period up to September, 2019, and the same was made available to the interested parties by the domestic industry as well as through preliminary findings. Further, the investigation was initiated in October, 2019. Hence, it will not be appropriate to consider data for the period after initiation. There are no factors which justify consideration of data for the subsequent period. Therefore, the data for the period after September, 2019 has not been considered in the present determination. Further, since the interested parties have raised concerns whether imports have increased as a result of concessions and whether the performance of the

domestic industry has deteriorated due to duty concessions, the Director General has also considered the data for the period from 2007-08. The Director General also notes that this data was part of the application.

E.4 Confidentiality

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

E.5 Customs Duty under Comprehensive Economic Partnership Agreement

30. The rate of custom duty on the imports of Polybutadiene Rubber after considering the concessions under the Comprehensive Economic Partnership Agreement (CEPA) is as follows: -

SN	Custom Notification	Date of Notification	Rate
1	No.- 152/ 2009-Customs	31st Dec 2009	10.94%
2	No.- 137/ 2010-Customs	31st Dec 2010	9.38%
3	No.- 123/ 2011-Customs	31st Dec 2011	7.81%
4	No.- 066/ 2012-Customs	31st Dec 2012	6.25%
5	No.- 054/ 2013-Customs	31st Dec 2013	4.69%
6	No.- 035/ 2014-Customs	31st Dec 2014	3.13%
7	No.- 060/ 2015-Customs	31st Dec 2015	1.56%
8	No.- 066/ 2016-Customs	31st Dec 2016	0.00%

SN	Year	Customs duty %
1	2007-08	10.00%
2	2008-09	10.00%
3	2009-10	10.24%
4	2010-11	10.55%
5	2011-12	8.99%
6	2012-13	7.42%
7	2013-14	5.86%
8	2014-15	4.30%

9	2015-16	2.74%
10	2016-17	1.17%
11	2017-18	0.00%
12	2018-19	0.00%
13	Apr'19-Jun'19	0.00%
14	Jul'19-Sep'19	0.00%

E.6 Source of information

31. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide details of imports of subject goods. The Director General has relied upon the DGCI&S data for computation of the volume and value of imports for the required analysis. Information since 2007-08 provided in the application filed by the domestic industry has also been considered, wherever relevant and necessary.

E.7 Increased imports from Korea RP

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

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

33. The said Rules require an examination whether imports of the product under consideration increased in such quantities in absolute or relative terms so as to constitute "increased imports". The Director General examined the imports, in both absolute terms and in relation to imports into India, production and consumption in India. Analysis of increased imports of the product under consideration has been conducted having regard to the said Rules and CEPA Rules.

i. Imports from Korea RP in absolute terms:

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

SN	Year	Import volume	Trend	Customs duty
		MT	Index	
1	2015-16	23,876	100	2.74%
2	2016-17	26,459	111	1.17%
3	2017-18	46,344	194	0.00%
4	2018-19	48,658	204	0.00%

5	Apr'19-Jun'19	12,316	206	0.00%
6	Jul'19-Sep'19	10,692	179	0.00%

35. It is seen that imports of the product under consideration have increased significantly in absolute terms over the period. With total elimination of tariff in 2017-18, Korean imports increased by 75% in absolute terms in the year and have remained at similar levels thereafter.

ii. Imports in relation to total imports in India

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

SN	Year	Imports in MT			Share in imports	
		Korea RP	Other countries	Total imports	Korea RP	Other countries
1	2015-16	23,876	39,702	63,578	38%	62%
2	2016-17	26,459	45,247	71,706	37%	63%
3	2017-18	46,344	38,744	85,088	54%	46%
4	2018-19	48,658	41,976	90,634	54%	46%
5	Apr'19-Jun'19	12,316	11,240	23,556	52%	48%
6	Jul'19-Sep'19	10,692	9,281	19,973	54%	46%

37. It is seen that share of imports of the product under consideration from Korea increased over the period with the increasing tariff concession, whereas the share of other countries declined. With total elimination of tariff, Korean imports have started commanding majority share in imports of the subject goods into India. Even when imports are being reported from a number of other countries, their share collectively is lower than the share of Korea alone.

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

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

SN	Particulars	Korea imports	Production	Demand	Imports in relation to	
					Production	Consumption
		MT	MT - trend	MT-trend	%- trend	%- trend
1	2015-16	23,876	100	100	100	100
2	2016-17	26,459	104	106	106	105
3	2017-18	46,344	101	112	191	173
4	2018-19	48,658	109	116	187	175

5	Apr'19-Jun'19	12,316	116	117	178	176
6	Jul'19-Sep'19	10,692	115	102	156	176

39. It is seen that imports from Korea increased significantly in relation to production and consumption in India with increase in duty concession.
40. It is thus noted that the imports of subject goods have increased significantly in absolute terms, as well as in relation to imports in India, Indian production and consumption in India. It is also seen that the imports increased significantly in 2017-18 with the full concessions given to the Korean exports.

E.8 Injury

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

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

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

42. Thus, increase in imports should be such which causes a significant overall impairment in the position of a domestic industry.
43. Rule 7 of the Rules further provides as follows:

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

(a) the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by increased imports of the originating good, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment; and

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

44. It is noted that evaluation of the listed parameters needs to take into account peculiarities of different industries and situations. The Director General has therefore examined the fact of presence or otherwise of serious injury to the domestic industry, having regard to the facts of the present case and the situation of the industry. In

analyzing serious injury, all factors mentioned in the Rules as well as other factors which are relevant for determination of serious injury, have been considered. The determination of serious injury thus is based on evaluation of the overall position of the domestic industry, in light of all the relevant factors having a bearing on the situation of that industry.

a. Increase in imports in absolute and relative terms

45. As noted above, imports of subject goods have increased significantly in absolute terms as well as in relation to production and consumption in India. It is also seen that the imports increased significantly in 2017-18 with the full concessions given to the Korean exports.

b. Capacity, Production, Capacity Utilization and Domestic Sales

46. The details of capacity, capacity utilization, domestic sales and export sales are as follows-

SN	Years	Capacity	Production	Capacity Utilisation	Domestic sales	Export
		MT - trend	MT - trend	% - trend	MT - trend	MT - trend
1	2015-16	100	100	100	100	100
2	2016-17	100	104	104	102	77
3	2017-18	100	101	101	100	103
4	2018-19	100	109	109	101	203
5	Apr'19-Jun'19	100	116	463	99	266
6	Jul'19-Sep'19	100	115	459	88	397

47. It is seen that: -

- a. The production of the domestic industry has increased over the injury period. Consequently, the capacity utilisation has also improved. However, with the increase in imports in 2017-18, the production declined. Production increased thereafter.
- b. The domestic sales of the domestic industry increased in line with the production in 2016-17. However, with full duty concession in 2017-18 and consequent increase in Korean imports, the domestic sales declined with the decline in production and thereafter couldn't keep pace with the increase in production, despite increase in Indian consumption/demand. Further, the domestic industry has made corresponding increase in its export sales. The domestic industry has claimed that the increase in exports is on account of absence of demand for its product in the domestic market, as it has not been able to sell its entire production in the domestic market post-elimination of import duty.

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

48. The movement of market share is as follows:

SN	Particulars	Share in Demand% - trend			
		Domestic industry	Other Countries	Korean imports	Total
1	2015-16	100	100	100	100%
2	2016-17	96	108	105	100%
3	2017-18	89	87	173	100%
4	2018-19	87	91	175	100%
5	Apr'19-Jun'19	85	97	176	100%
6	Jul'19-Sep'19	86	92	176	100%

49. It is seen that whereas market share of domestic industry declined, that of Korean imports increased significantly. Further, with significant increase in market share of Korea in 2017-18, share of both domestic industry and other foreign countries declined.

d. **Employment and Productivity**

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

SN	Year	No. of Employees	Productivity per day	Productivity per employee
		Trend - Nos.	Trend - MT/Day	Trend - MT/Nos.
1	2015-16	100	100	100
2	2016-17	97	104	107
3	2017-18	92	102	111
4	2018-19	89	109	122
5	Apr'19-Jun'19	89	116	130
6	Jul'19-Sep'19	89	115	129

51. The number of employees have reduced after elimination of import duty. The applicant has however, submitted that performance on these accounts are dependent on a number of other parameters and is not directly linked to import competition.

e. **Inventory**

52. The data on inventory shows as follows-

SN	Particulars	Opening stock Trend (MT)	Closing Stock Trend (MT)	Average stock Trend (MT)
1	2015-16	100	100	100
2	2016-17	52	122	76
3	2017-18	63	68	65
4	2018-19	35	45	38
5	Q1-2019-20	23	74	40
6	Q2-2019-20	38	121	66

53. It is seen that the domestic industry was earlier holding high level of inventories. The level of inventories declined till March, 2019. However, inventories increased once again thereafter.

f. Profit/loss

54. The data on profits shows is as follows-

SN	Year	Profit/(loss)		ROI
		Total (Rs. lacs) - trend	Per unit (Rs./MT) - trend	% - trend
1	2015-16	-100	-100	-100
2	2016-17	-67	-65	-59
3	2017-18	-6	-6	-6
4	2018-19	-33	-33	-29
5	Apr'19-Jun'19	28	28	26
6	Jul'19-Sep'19	-49	-55	-44

55. It is seen that the domestic industry is suffering significant financial losses in the product under consideration. The domestic industry submitted that it was earlier in profits in respect of the product under consideration when the product was not having duty concessions. However, with the duty concessions given under CEPA, the profitability of the domestic industry got eroded significantly and the domestic industry is suffering high losses. In view of the argument of interested parties, the Director General has considered the information on profit/loss provided in the application since 2007-08 along with applicable customs duty. It is observed that the domestic industry was earlier in profits when there was no or low concession and the domestic industry has now been suffering financial losses when Korean imports have full concessions, as shown below:

SN	Year	Customs duty on imports from Korea %	Profit/loss Rs./MT – trend
1	2007-08	10.00%	100
2	2008-09	10.00%	151
3	2009-10	10.24%	98
4	2010-11	10.55%	216
5	2011-12	8.99%	41
6	2012-13	7.42%	159
7	2013-14	5.86%	43
8	2014-15	4.30%	-52
9	2015-16	2.74%	-60
10	2016-17	1.17%	-39
11	2017-18	0.00%	-3
12	2018-19	0.00%	-20
13	Apr'19-Jun'19	0.00%	17
14	Jul'19-Sep'19	0.00%	-33

g. Price undercutting

56. It was examined whether the imports from Korea were undercutting the prices of the domestic industry and whether these imports were becoming benchmark for all other suppliers in the market. For the purpose, the landed price of imports from various countries viz. Korea, Japan, ASEAN & other countries were compared with each other and with the selling price of domestic industry. The Director General also examined whether the effect of Korean imports is to depress prices or prevent price increases which otherwise would have occurred in normal course. The impact on the prices of the domestic industry on account of Korean imports has been examined with reference to the price undercutting, price suppression and depression.

SN	Year	Landed Price				Domestic Selling Price
		Korea RP	ASEAN countries	Japan	Other Countries	
		Rs/MT	Rs/MT	Rs/MT	Rs/MT	Rs/MT
1	2015-16	89,939	87,099	83,903	89,590	100
2	2016-17	1,14,176	1,21,863	99,444	1,08,450	145
3	2017-18	1,28,169	1,32,194	1,65,028	1,35,062	141

4	2018-19	1,33,118	1,34,850	1,35,202	1,36,999	150
5	Apr'19-Jun'19	1,08,887	1,09,597	1,22,086	1,20,920	124
6	Jul'19-Sep'19	1,08,909	1,10,581	1,16,364	1,16,611	123
7	April to Sept.,19	1,08,897	1,10,024	1,18,620	1,18,921	124

SN	Year	Landed Price- Indexed				Domestic Selling Price
		Korea RP	ASEAN Countries	Japan	Other countries	
1	2015-16	100	97	93	100	100
2	2016-17	100	107	87	95	145
3	2017-18	100	103	129	105	141
4	2018-19	100	101	102	103	150
5	Apr'19-Jun'19	100	101	112	111	124
6	Jul'19-Sep'19	100	102	107	107	123

57. It is seen that whereas earlier it were import price from rest of the world which were lower than or equal to the import price from Korea, from 2017-18, when the Korean exports received full duty concession benefits, it was Korean prices which were lower than the import price from rest of the world. Further, the landed price of imports from Korea RP has been lower than the selling price of the domestic industry, thus establishing that the domestic industry and other suppliers in the market have been forced to benchmark its prices with the import prices from Korea RP.
58. Landed price of imports from Korea RP are lower than the selling price of the domestic industry, thus undercutting the domestic prices.

SN	Year	Selling Price	Landed price	Price Undercutting	Price Undercutting
		Rs/MT - Trend	Rs/MT	Rs/MT	% - Range
1	2015-16	100	89,939	***	2.5% - 12.5%
2	2016-17	145	1,14,176	***	15-25%
3	2017-18	141	1,28,169	***	2.5% - 12.5%
4	2018-19	150	1,33,118	***	2.5% - 12.5%
5	Apr'19-Jun'19	124	1,08,887	***	5%-15%
6	Jul'19-Sep'19	123	1,08,909	***	5%-15%

59. The table below shows the comparison of cost of production, selling price of the domestic industry with the landed price of imports from Korea RP.

SN	Year	Cost of Sales	Selling Price	Landed Price Korea
		Rs/MT	Rs/MT	Rs/MT
1	2015-16	100	100	89,939
2	2016-17	132	145	1,14,176
3	2017-18	119	141	1,28,169
4	2018-19	131	150	1,33,118
5	Apr'19-Jun'19	99	124	1,08,887
6	Jul'19-Sep'19	112	123	1,08,909

60. It is seen that the prices offered by the Korean producers were below not only the selling price of the domestic industry, but also the cost of production of the domestic industry except in the year 2017-18 and Apr19-Jun19 quarter.

E. CONCLUSION ON INJURY

61. It is concluded that the imports of the product under consideration have increased significantly in absolute terms, in relation to total imports in India as also in relation to the Indian production and consumption. As a result of significant increase in imports from Korea RP, and as the duty concession increased, the performance of the domestic industry has deteriorated as seen in sales, market share, profit, ROI and rising less profitable exports. Considering the performance of the domestic producer in respect of various parameters, it is concluded that the domestic industry has suffered serious injury as a result of duty concessions granted to Korean imports leading to increased imports of the product under consideration from Korea at low prices.

F. CAUSAL LINK

62. A comprehensive evaluation of performance of the domestic industry, as brought out hereinabove, demonstrates that domestic industry has suffered serious injury. It was examined whether the injury to the domestic industry is due to duty concessions and consequent increase in imports from Korea RP. Further, in view of the arguments of the interested parties that the Director General is required to examine whether the claimed injury is on account of duty concessions or some other factors, the Director General also considered the performance of the domestic industry over longer period, including the period when there was no duty concession. Relevant information on this account is contained in the application filed by the domestic industry, which is also accessible to the interested party through access to the public version of the application.

- a. It was examined whether any other factor could have caused serious injury to the domestic industry. The Director General considered various known parameters and parameters brought by the interested parties and concluded that the reported

injury to the domestic industry is not due to possible existence of other factors operating at the same time.

- b. The imports of product under consideration have increased significantly with increase in tariff concessions to the Korean imports and the eventual elimination of customs duty.
 - c. With full duty concessions, the landed price of Korean import is lower than the landed price of imports from rest of the world and selling price of the domestic industry. It was the Korean prices which were benchmarking the prices of the product in the market.
 - d. While the production and capacity utilization of the domestic industry has increased, the domestic sales of the domestic industry have not increased with the rising imports as a consequence of duty concessions. While the domestic sales earlier stagnated, the same declined in most recent period. Further, rising exports at less favourable prices are a result of increase in imports in India.
63. It is thus evident that injury to the domestic industry has been caused by increased Korean imports and there exists a causal link between increased imports of subject goods from Korea and serious injury to the domestic industry.

G. ADJUSTMENT PLAN

64. The Applicant has provided details of the adjustment plan during the course of the investigation. The Applicant has stated that it shall take measures towards reducing costs on a number of counts. It has identified action plan directed at catalyst & chemicals cost reduction, conversion cost reduction, improvement in process efficiency, improvement in consumption norms, reduction in transportation costs, improvement in turnaround of stocks, etc. The Director General notes that the Applicant has drawn an adjustment plan to become import competitive.

H. PUBLIC INTEREST

65. Interested parties have contended that imposition of safeguard measures would severely prejudice the public interest, as a number of end user industries would be impacted. It has also been argued that the imposition of safeguard measures would drive up the prices and create a shortage of supply and this would be against consumer interest. Concerns have also been raised about the demand and supply gap in the country. It has been also contended that the applicant would create a dominant position as it is the sole producer.
66. The Director General notes that the present measures are not directed towards imposing any additional duty but only towards withdrawal of concession given earlier, that too in respect of imports from Korea alone. Imports from all other sources are totally unaffected by the proposed measures.

67. As regards concerns of inadequate domestic capacity to cater to the demand, it is noted that imports from Korea in any case shall continue to be available at MFN rate of customs duty even after imposition of proposed measure. Further, imports from all other sources shall also remain accessible.
68. The Director General notes that none of the interested parties have provided any verifiable evidence and information on how invoking present bilateral measures will lead to unbearable adverse impact. The interested parties have only made assertions that the product is an intermediate product and the imposition of duties will have an impact on the user industry. But these parties have not presented any relevant data. Against this, the domestic industry has worked out the impact of imposition of proposed safeguard measures on the prices of tyres, It is seen that the impact on the final prices of tyres is quite insignificant.

I. CONCLUSION AND RECOMMENDATION

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

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

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

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

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

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

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

70. After examining the above, it is concluded that
- a. Imports of the product from Korea have increased and constitute “increased imports” within the meaning of the Rules and Korea-India CEPA.
 - b. The increased imports have caused serious injury to the domestic industry,

- c. There exists a causal link between the increased imports of the originating good due to the reduction or elimination of custom duty under the Korea-India CEPA and serious injury to the domestic industry.

71. It is thus considered appropriate to recommend bilateral safeguard measure in terms of Rule 10 of India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017. Accordingly, the Director General recommends increasing the rate of customs duty on imports of subject goods (Polybutadiene Rubber), excluding its titanium and lithium grades, originating in Korea RP to the level of Most Favoured Nation applied rate of customs duty on the subject goods as on the date of application of Bilateral safeguard measure or Most Favoured Nation applied rate of customs duty on the subject goods as on the day immediately preceding the date of entry into force of India-Korea CEPA, whichever is less. The measure is recommended for a period of two years as per table below from the date of issue of the notification of imposition of provisional safeguard measure by the Central Government vide Notification No.31/2020-Customs dated 13th July, 2020.

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

72. Subject to the above, the Preliminary Finding notified vide notification dated 12th May, 2020 is hereby confirmed.



(B.B. Swain)

Special Secretary & Director General