

**DIRECTORATE GENERAL OF SAFEGUARDS  
CUSTOMS AND CENTRAL EXCISE  
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BHAI VIR SINGH MARG, GOLE MARKET  
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**NOTIFICATION**

New Delhi, 13.01.2015

**Subject:- Safeguard investigation concerning imports of Flexible Slabstock Polyol (FSP) –Final findings under Rule 11 of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997**

G S R D-22011/4/2014/ dated 13.01.2015 having regard to the Customs Tariff Act, 1975 and Rule 11 of the Customs Tariff (Identification and Assessment of Safeguards Duty), Rules, 1997 thereof;

**A. Procedure**

1. An application was filed under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 [hereinafter referred to as “Safeguard Rules”] by M/s. Manali Petrochemicals Ltd, Chennai through their consultant M/S APJ-SLG Law Offices for imposition of Safeguard Duty on imports of Flexible Slabstock Polyol of molecular weight 3000 to 4000 (hereinafter referred to as PUC) into India to protect the domestic producers of PUC against serious injury/threat of serious injury caused by the increased imports of PUC into India. The Notice of Initiation of safeguard investigation concerning imports of PUC into India was issued on 22<sup>nd</sup> May, 2014 and was published in the Gazette of India Extraordinary.

2. A copy of the Notice of Initiation dated 22<sup>nd</sup> May, 2014 along with copy of non-confidential version of the application filed by the Domestic Industry were forwarded to the Central Government, in the Ministry of Commerce and other ministries concerned, Governments of exporting countries through their Embassies/ High Commission in New Delhi and all known interested parties listed below in accordance with Rule 6(2) and 6(3) of the Customs Tariff (Identification and Assessment of Safeguards Duty) Rules, 1997:

**I. Domestic Producers**

- A) M/s. Manali Petrochemicals Ltd, Chennai

**II. Importers/Users**

1. Aagosh Poly Foam Pvt. Ltd 40, Industrial Area, Phase –II, Chandigarh.
2. Arvind International Ltd. 15, Ganesh Chandra Avenue, 2nd Floor, Calcutta.
3. Banmore Foam Pvt. Ltd. 106/107, Industrial Area, Banmore, Dist. Morena (MP)
4. Cozy Foams Pvt. Ltd. Plot 17, Survey NO 820/IP, Village-Mahim, Chantupada, Palghar Thana
5. D P Foam Pvt. Ltd. A 38-40, Industrial Estate, Sedarapet, Pondicherry – 605101
6. Dura Foam Inds Pvt. Ltd. 123, Industrial Estate, Piparia, Dadra Nagar, Haveli
7. Diana Foams Pvt. Ltd. Industrial Estate, Rairangpur, Orissa – 757043
8. Devi Polyurethane Pvt. Ltd. Gate No. 391/A Gonedumala, Taligatpuri, Nasik-Bomaby Highway, Dist-Nasik
9. Inkay Foam Pvt. Ltd. Village-Khekra, Tehsil-Baghpat, Delhi-Baghpat Road, Dist- Meerut (UP)
10. Feather Foam Enterprises Pvt. Ltd. A-10, Sector VIII, Noida – 201301 (UP)
11. Foam Home (India) Pvt. Ltd. H-30/2 MIDC Talao, Maharashtra
12. Feather Foam Enterprises Pvt. Ltd. Plot No. 257, Umarkui, Saily, Silvassa.
13. Joy Foam Pvt. Ltd. 30 & 35, Sidco Industrial Estate, Ranipet.
14. Juhi Foam Pvt. Ltd. Village-DHSU Majra, Dist-Ropar, Kharar. (P.B.) – 140031
15. Kurlon Ltd. Plot No. 88 B, Sector-Chandka Industrial Estate, Bhubneshwar – 751031
16. Kamal Foam B-110 & 111, Pipdic Industrial Estate, Mettupalayam, Pondicherry – 605009
17. M.R. Foams Plot 67, IDA Mellapur, Hyderabad.
18. Multiwyn foams Pvt. Ltd. 38, Camac Street, Calcutta- 700016
19. Modern Foam Udyog, Village-Kakka, Ludhiana, Punjab Ropar
20. NL Foam Industries, Shed A 2, 3 & 4, GIDC, Vatva Industrial Estate, Ahmedabad.
21. Natson Foam Mfg. Pvt. Ltd. Block No. 218/1 TK Kalol, Dist. Mehsana, Village-Nondoli.
22. Panama Poly Products Pvt. Ltd. Site-1, Bulandshahar Area, B-8, UPSIDC Industrial Area, Ghaziabad (UP)

23. Pallavi Foam Inds Pvt. Ltd. Village-Habibpur, Dist. Ghaziabad, Noida Dadri Road (UP)
24. Poly Foam, Plot No. 3, Survey NO 820/IP, Village-Mahim Palghar, Dist. Thana (Chantupada)
25. Prabhat Polyurethane P. Ltd. Pipdic Industrial Estate, 42, 4<sup>th</sup> Cross Street, Sidarapet, Pondicherry
26. Pratap Polyurethane P Ltd. 530, Marshall House, 33/ a, N.S. Road, Calcutta-700001
27. P.U. Faom Pvt. Ltd. 96, Mukhtarab Babu Street, Calcutta- 700007
28. Raj Leather Cloth Inds Pvt. Ltd. 20<sup>th</sup> M.S. G.T. Karnal Road, vill-Badkhalsa, Dist. Sonepet, (Haryana)
29. Sheela Foam Pvt. Ltd. Plot No. 37/ 2Site No. 4, Ghaziabad, Sahibabad, UP-20101
30. SSF Industries Ltd. Shivalay Market, Ashok Rajpath, Patna-800004
31. Sheela Foam Pvt. Ltd. Unit II, A-10, Sector 8, Noida (UP)
32. Tirupati Foam Ltd. Plot No. 1023, Mehsans Highway, Village- Rajpur, Kalol Talukakadi, Dist. Mehsana
33. Tirupati Foam Ltd. Plot No. 4-A, Block No. 65, Village- Khatraj, Post-Vadsar, Taluk Kalol.
34. U Foam Pvt. Ltd. B-15, 16 Industrial Estate, SanatNagar, Hyderabad-500018
35. M/s. Surya Foam, Sedarapet Main Road, Sedarapet, Pondicherry.
36. M/s. Aparna Polyproducts Ltd., 452, Ganapati Plaza, M.I. Road, Jaipur 302 001 (Rajasthan)
37. M/s. Soft Foam Industries Pvt. Ltd. Survey No.3852, Medchal Indl. Area, R.R. District , 501 401 (AP)
38. M/s. Madras Polymoulds 28, C & D Krishnaswamy Avenue, Mylapore, Chennai-4
39. M/s. J J Foams Pvt. Ltd. B-12/2, Site-IV, Sahibabad Indl. Area, Sahibabad (Dist. 66668bad) U P
40. M/s. M H Polymers Pvt. Ltd. B 15, Site B, Suraj Pur Indl. Area, Tehsil, Dadri Dist. Ghaziabad (UP)
41. M/s Shree Malani Foams (P) ltd, Ideal Towers, survey No 115, Akbar Road, Tadbund, Secunderabad-500009.
42. M/s Allied Foams Private Ltd, D 32, Mahendru Enclave, GT Karnal Road, Delhi-110033
43. M/s Natson Foam Manufacturers (Pvt) Ltd, 5, Panchayat Bhawan, Bhadra, Ahmedabad-380001
44. M/s Chemie Products (Pvt) Ltd, 902, GD-ITL Towers, B-08, Netaji Subhash Place, N Delhi-110034
45. M/s Tirupati Foam Ltd, Tirupati House, Nr Topaz Restaurant, University Road, Ambawadi, Ahmedabad-380015
46. M/s Sheela Foam Pvt Ltd, C-55, Preet Vihar, Vikas Marg, Delhi-110092
47. M/s Banmore Foam (P) Ltd, 105-106, Industrial Area, Banmore-476444 (MP)
48. M/s Bharat Foam Udyog Pvt Ltd, 15/4, Mathura Road, Faridabad-121003
49. M/s Pyarelal Foams (P) Ltd, Koyyamarakkadu, Kanjikode, Palakkad-678621 (Kerala)
50. M/s Pyarelal Coir Products (P) Ltd, 1501/A, Ram Gali, Bhagirath Palace, Delhi-110006
51. M/s P U Foams Pvt Ltd, Dakhin Rajyadharpur, Delhi Road (Near Power House), Serampore, Hooghly (WB)
52. M/s Moka Business Pvt Ltd, C-42, Sudershanpura Industrial Area, Bais Godown, Jaipur-302006
53. M/s Dow Chemical International Pvt Ltd, 1<sup>st</sup> floor, Block B, 02 Godrej Business District, LBS Marg, Vikhroli(W), Mumbai-400079
54. M/s Bayer MaterialScience Pvt Ltd, Plot 1A, Udyog Kendra, Sector Ecotech III, Greater Noida- 201306
55. M/s Diana Foams (Pvt) Ltd, Rairangpur, Mayurbhanj, Orissa
56. M/s Flexipol Foams Pvt Ltd, E-1162, Bhiwadi Industrial Area, Phase IV, Bhiwadi(Rajasthan)
57. M/s Springwell Mattresses Pvt. Ltd., A-49, Mangol Puri Industrial Area, Phase-II, Delhi-34
58. Polyurethane Association of India, Mr. K. Ramamurthy , Secretary, 6/6 Poes Road, 1<sup>st</sup> Street, Chennai 600018

### III. Exporters

1. S K Oxichemical Co Ltd. 23-10, Yoido Dong, Yongdungpo-GU, Seoul, South Korea 180-0101
2. Bayer Polyurethanes Taiwan Ltd. 2F290 Chung Hsiao E Rd, Sec 4, Taipei, Taiwan.
3. Zhejiang Sanhuan Chemical Company Ltd., No.1007. jiu Ling Xi Road, Yongkang Zhejiang, 321300. P.R. China
4. Dow Quimica SA, Rua Alexander Dumas, 1671 P.O. Box 9037, 010065 – 970, Sao Paulo, Brazil
5. Shell Chemicals, Shell Eastern Petroleum (PTE) Ltd.

- Singapore -239 920
6. Blue Diamond Australia Pty Ltd. Acn 00 3068344, P.O. Box. 349, Collaroy, Nsw 2097, Australia
7. Sanyo Chemicals, Japan
8. Bayer Polyurethane Asia (PTE) Ltd. 152 Beach Road, 37-00 Gateway East Singapore 189721
9. Bayer Polyurethane Asia (PTE) Ltd., Bayer Faser GmbH, Wolff Walsrode, Ag. Germany
10. Repsol Quimica. Sa, Paseo De La Castellana, 280, E-28046 Madrid, Spain
11. Toyota Tsusho Corporation, 2-3-13 Konan, Minato-Ku, Tokyo (Japan)
12. M/s Shell Eastern Petroleum (Pte) Ltd, Singapore
13. M/s Shell Eastern Trading (Pte) Ltd, Singapore
14. M/s Dow Europe GMBH
15. M/s Dow Chemical Pacific (Singapore) PTE Ltd
16. M/s Bayer (South East Asia) Pte Ltd, 63, Chulia Street, 14<sup>th</sup> Floor, OCBC Centre East, Singapore 049514
17. M/s IRPC Polyol Co.Ltd., 555/2, Energy Complex, Building -B, 7<sup>th</sup> Floor, Vibhavadi Rangsit Road, Chatuchark, Bangkok10900, Thailand.

#### **IV. Exporting Nations**

1. M/s European Union, Delegation to India, 65, Golf Links, New Delhi-110003
2. Embassy of Japan representing Govt of Japan, 50G, Shantipath, Chanakyapuri, New Delhi-110021
3. Embassy of Russia, Shantipath, Chanakyapuri, New-Delhi – 110021
4. Embassy of Mexico,C-8, Benito Juarez Marg, Anand Niketan, New Delhi, 110021.
5. Embassy of USA, Shantipath, New Delhi,
6. The High Commission of The Republic of Singapore, E-6, Chandragupta Marg, Chanakyapuri, New Delhi
7. Embassy of South Korea, 9, Chandragupta marg, Chanakyapuri, New Delhi.
8. The Royal Thai Embassy, 13-1/3, Vasant Vihar, New Delhi
9. Taipei Economic and Cultural Centre in India, 34, Pashimi Marg, Vasant Vihar, New Delhi.
10. Embassy of Netherland, 6/50F, Shantipath, Chanakyapuri, New Delhi.
11. Embassy of China, 50-D, Shantipath, Chanakyapuri, New Delhi, 110021
12. Embassy of Australia, 1/50-G, Shantipath, Chanakyapuri, New Delhi, 110021
13. Embassy of Republic of Indonesia, 50-A, Kautilya Marg, Chanakyapuri, New Delhi, 110021
14. Trade Representation of the Russian Federation In the Republic of India Block-50-E, Nyaya Marg, Chanakyapuri, New-Delhi – 110021

6. The information presented by the applicants was verified by on-site visits to the plants of the domestic producers to the extent considered necessary. The non confidential version of

verification report is kept in the public file.

7. All the views expressed by the interested parties have been taken into account in making appropriate determination. The non confidential information received or acquired has been kept in the public file. Many interested parties/importers/exporting nations also filed post initiation submissions.

8. A public hearing was held on 29.09.2014, notice for which was sent on 15.9.2014. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 by 10.10.2014. Copy of written submissions filed by interested parties was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties by 17.10.2014.

9. All the views expressed by the interested parties and other domestic producers either in the written submissions or in the rejoinders and response to the domestic industry submissions were examined and have been taken into account in making appropriate determination.

## **B. Views of Domestic industry and interested parties filed post notice of initiation:-**

### **I) Views of Domestic Industry**

a. The applicant constitutes domestic industry as per Customs Tariff Act' 75 as they are the only producer of PUC in India and thus they have the standing to file the present petition. They constitute the major proportion in the total Indian production of DOP.

b. A comprehensive evaluation of parameters such as production capacity, production, capacity utilization, employment, productivity, cash flow, return on capital employed, captive use, stocks, consumption, sales, market share, price, undercutting and profitability of the period from 2010-11 up to 2013-14 demonstrates serious injury or significant impairment of the Indian producer of subject goods.

c. The Indian producer's market share fell from 39% in 2010-11 to 19% in the POI. From the import levels of 2010-11, the imports increased drastically, due to the commissioning of export-oriented capacities in various countries. This demonstrates the increasing market penetration of imports.

d. There has been a fall in the sales volume of the domestic industry during the POI as compared to the base year. This is a clear indication that a major portion of the market share of the domestic industry has been taken away by imports.

e. The profitability of the Domestic Industry has also declined substantially during the POI as compared to the base year i.e., 2010-11. The profitability of the Domestic Industry in 2010-11 has changed into losses during the 2013-14. As compared to 2010-11 Domestic Industry incurred losses of \*\*\*\* Lacs. The profit/MT of the domestic industry has also declined by about 571% during the same period.

f. The capacity utilization of the Domestic Industry has also declined substantially by 34.60% during the injury investigation period. It is important to note that during the same period the demand has increase by 76%.

g. In sum, there is a direct correlation between the increase in imports at lower prices and serious injury suffered by the domestic industry and the increase in imports has had injurious effects in terms of pressure on prices and a reduction in volume sold by the domestic industry.

### **II). Views of Exporting Nations**

#### **(a). Russian Federation**

The Ministry of Industry and Trade of the Russian Federation submitted that during the period of investigation from 2010 to 2013 the import of goods falling under sub-heading 39072010 of the Customs Tariff Act 1975 and importing from the Russian Federation to India did not exceed three percent, in accordance with the Safeguard Provisions under the Customs Tariff Act, 1975 (Section 8B) and the Article 9 of the WTO Safeguards Agreement the Russian Federation should be excluded from the list of countries under investigation.

### **(III). Views of Exporters**

- (a) M/s Shell Eastern Petroleum (Pte) Limited and M/s Shell Eastern Trading (Pte) Limited have filed preliminary submissions through M/s Lakshmi Kumaran & Sridharan Attorneys as under:-**

(i). PRELIMINARY OBJECTIONS

1. Initiation of the present investigation is bad in law as both India-ASEAN FTA and the India- Singapore CECA provide for specific guidelines to be followed in cases of safeguard investigations initiated under the two agreements respectively.
2. The Applicant is a serial user of trade remedy proceedings has applied for anti-dumping duties against almost all the major countries that have exported the subject goods into India and have in the course of last 14 years tried to smoke out all the imports of subject goods from various countries.
3. The Applicant had also approached the Directorate General of Antidumping seeking protection in the form of Antidumping Duty as recently as in 2013. The domestic industry itself has accepted that it suffered injury because of dumping, assuming if there was one, therefore there is also for that reason no substance in the present safeguard petition.
4. The Applicant has claimed in the petition that it is the sole producer of the like article in India. However, Respondents would like to submit that M/s. Expanded Polymer Systems might also qualify as a producer of the like article in India. They have not been communicated by the Applicant anywhere in the petition and the Authority should appropriately terminate this investigation for want of completeness of petition
5. The petition filed by the Applicant and the initiation notice issued by the DG (Safeguards) are based upon completely different sources of import statistics.
6. MS-Excel version of raw and sorted import statistics be provided to analyse the trend of the imports of the subject goods into India during the injury analysis period.
7. That there is double entry of imports as when the subject products are imported into India, they are first stored in customs bonded warehouses by filing a warehousing Bill of Entry and then removed in small quantities, by filing a Bill of Entry for home consumption over a period of time. However, in the import statistics both the transactions are separately reported resulting in double counting.
8. Annualisation of 9 months import statistics may not be a correct way to determine actual import figures for 2013-14 in the facts of the present case.
9. As per market intelligence, it is understood that the Applicant in fact offers discounts to their customers. The Respondents request the Authority to verify this fact.
10. The petition is also deficient as it contains a number of unwarranted confidentiality claims. The Applicant has not provided the indexed version of the above injury and costing data.
11. In the present investigation, the Applicant has neither provided any statement of reasons nor appropriately summarized any of the evidence referenced. The Applicant has also not offered an explanation as to why or how the release of said information would prejudice the legitimate commercial interests of the Applicant.
12. The applicant has also not disclosed the methodology followed for determination of fair market price.

II. SUBSTANTIVE SUBMISSIONS

- a) Compliance with Article XIX of the GATT 1994
- b)** Two-fold obligation on the Authority: (i) to identify the developments that were unforeseen and, (ii) establish link as to how those unforeseen developments led to increase of imports. *Neither the Applicant nor the Authority have identified any unforeseen developments*
- c) Two fold obligation on the Authority: (i) to identify the specific obligation including tariff concessions incurred by India concerning the subject product under GATT and, (ii) to establish that specific obligation's link with increase of imports of the subject product in India.
- d) In the present case, the imports are not recent, sudden, sharp and significant, because of which the threshold criteria itself is not met.
- e) The DG (Safeguards) itself in its finding in Linear Alkyl Benzene (LAB) found that the requirements under Section 8B(1) remained unsatisfied even though the imports continued to increase in absolute terms over the period under review.
- f) In the present case, there have been no increases in the period of injury comprising of 2010-11, 2011-12 and 2012-13 and as far as the data in the initiation notice is concerned, there is only a slight increase in imports in 2013-14 in 2013-14.
- g) There is no suddenness of increase in imports, nor it is very sharp; it is simply a gradual increase. Thus, it is concluded that there is no sudden, recent, sharp and significant increase in imports and such contention by the Applicant is to be rejected.
- h) No credible evidence whatsoever to make out a case of serious injury or causation:

- i) Feedstock unavailability has negatively impacted production and sales.
- j) The Applicant procures propylene from CPCL, who is the sole supplier of propylene to the Applicant. Such quantity is also limited by way of a maximum amount beyond which CPCL does not supply any more propylene. Therefore, with such a cap on supply of propylene by CPCL to the Applicant, it can only manufacture a certain amount of the propylene Oxide (PO) and use PO in manufacture of subject product and not more.
- k) The Respondents submit that the veracity of the capacity provided by the Applicant is in doubt. The Authority is requested to investigate and clarify the contradictory data provided by the Applicant.
- l) There are two reasons for reduction in capacity utilization:
  - i. Lack of availability of feedstock Propylene Oxide (PO) as highlighted above which would lead to non-utilization of capacity and a reduction in capacity utilization;
  - ii. Increase in capacity of the Applicant by 36% which would also obviously lead to a reduction in the capacity utilization.
- m) Any reduction in capacity utilization is also attributable to the lack of availability of the feedstock (PO) for the manufacture of the subject product. The Applicant, in Annual Report 2010-11, has admitted that the reduction in capacity utilization is due to shortage of PO. They are taking steps to install an import terminal at Ennore Port to import 'PO' in bulk to improve availability of 'PO'.
- n) It is also noted that such bulk storage may still be in progress and not yet been completed. The same is admitted by the Applicant in Annual Report 2012-13 on page 179 of the petition.
- o) The profitability figures provided in the anti-dumping petition are at odds with the figures provided by the Applicant in the subject investigation.
- p) The Applicant was able to sell, as a percentage of its production, 101% in 2010-11, 99% in 2011-12, 96% in 2012-13 and 98% in POI. Therefore, there are no issues to the Applicant as far as proportion of sales and production is concerned; it is the non-availability of the feedstock (PO) that has resulted in reduced profitability.
- 17 Price undercutting, depression and suppression data has not been indicated even in indexed form in the NCV of the petition filed by the Applicant.
- 18 Applicant cannot cater to the demand even in the case of 100% capacity utilization. The users in India will necessarily have to import at least 66% of the required demand, and, in particular if they do not want to be dependent on a sole supplier, invest in sustainable relationships abroad to secure longer term supplies.
- 19 The Applicant wishes to increase capacity in order to cater to the demand, the same cannot be carried out as per the Applicant's own admission that the moratorium in the Manali area denies any scope of capacity additions.
- 20 In the Annual Report 2012-13 the Applicant has stated that the availability of bio mass fuel for the Captive Power Plant (CPP) had become scarce, which forced the Applicant to operate the CPP at lower loads.
- 21 From the above, it is clear that the restrictions with regard to consumption of power coupled with a reduction in the captive power generation exerted tremendous pressure on the Applicant which in turn triggered the drop in production.
- 22 That any "serious injury" that may have been sustained by the Applicant is due to a number of other factors such as:
  - i. Lack of feedstock availability;
  - ii. Consequent reduction in production and sales;
  - iii. Dependence on sole supplier Chennai Petroleum Corporation Ltd of propylene in India to the Applicant; and
  - iv. Inability of the Applicant to supply the required quantity of the subject product.
- 22. None of the reasons are in any way linked to import volume of the subject product. Therefore, the causation analysis fails in the present investigation and the same is liable to be terminated.
- 23. The applicants have submitted an unworkable adjustment plan.
- 24. Further debottlenecking is not possible as the Applicant has stated in the Annual Report 2010-11, provided on page 103 of the petition that the Applicant has already completed such an exercise and admittedly, it has not helped the Applicant overcome its injury.

25. It is also submitted that the Applicant's plan of reducing fixed cost per servicing is erroneous and liable to be rejected. In any event, the Applicant's plan to reduce fixed costs will have an effect of less than 1% on the final costs.
- 27 Capacity utilization cannot be increased as feedstock is not available:
- 28 The Applicant has also stated that it plans to increase captive propylene oxide production capacity; however, the same is ineffectual without adequate supply of the raw material, which is propylene.
- 29 Bulk Transportation of PO will have a very minimal impact.
- 30 The DG (Safeguards) in the safeguard investigation concerning imports of Methyl Acetoacetate vide Final Findings dated 8th October 2013 rejected the adjustment plan provided by the domestic industry observing that it did not contain concrete time-bound plan for positive adjustments and was merely a proposal which it intended to implement in the future. The same situation is applicable in the facts presented by the Applicant in the subject investigation.

**b) M/s Dow Europe GMBH-**

1. The present Application has been filed with malafide intention besides being deficient and lacking material particulars and accordingly the applicable rules and treaty obligation mandates immediate termination.
2. As far as Dow is concerned and based on the data submitted in the Importers Questionnaire it is quite clear that there is no surge of imports at all. Imports from Dow Europe have significantly reduced as is evident from the confidential data.
3. The applicant is a habitual user of trade remedies and has been the beneficiary of safeguard and anti dumping duties since 1998.
4. The anti dumping investigations have been initiated at the behest of MPL since 2001. It is quite clear that this is a case of an inefficient industry which relies on a protectionist regime to survive against competition with regard to the subject goods. This is impermissible in law and therefore it was incumbent upon the Directorate General of Safeguards ['DG'] to take note of this very publicly available information and reject the Application.
5. There is excessive confidentiality in the Application.
6. Gap between demand and supply necessitating exports. Even at cent percent capacity utilisation, MPL will not be able to cater to the demand for the subject goods in India.
7. Imports not substantial to warrant initiation of Safeguard Investigation or imposition of duty:
8. More significant, as far as Dow is concerned and based on the data submitted in the Importers Questionnaire it is quite clear that there is no surge of imports at all.
9. The profitability of MPL has increased during the period of Investigation (2010-14).
10. Based on the Annual reports / balance sheet of the domestic Industry, it is very clear that the gross margin has significantly increased during the POI from 2010-11 to 2013-14. This also clearly justifies an improvement in their profits over the years and not suffering from any financial losses.
11. Based on the annual report / balance sheet of the domestic company it appears that they have increased their polyol capacity from 33000 MT to 50000 MT but clearly mentioned in all their reports is the fact that the polyol installed capacity is grade dependent. Therefore the installed capacity of 25000 MT cannot be taken as only for flexible slab polyol (FSP).
12. It is well established that safeguard and anti dumping duties cannot be used to cover the inefficiencies of the domestic industries and certainly the benefit cannot be used to reward the shareholders. The domestic industry has increased the dividend payout from Rs.0.38 / share (FV :Rs.5) in 2010 to as high as Rs. 0.6/ share in 2012.
13. The claim by the domestic Industry that the Propylene Oxide [PO] cost increased during POI but polyol price did not increase due to imports is misrepresentation of facts.
14. MPL has always been uncompetitive as their installed capacity and actual output is not large enough to achieve economics of scale of operations and meet market demands. Therefore in order to cover up the inefficiency the domestic industry has always looked for support using extreme emergency measures like safe guard and antidumping duty for past 15 years.
15. This is also confirmed by the fact that the per capita consumption of flexible slab foam is lowest in the region.
16. Petitioner have already filed for a Anti Dumping petition currently under review and it would be grossly unfair to the industry to have multiple forms of protection at the same time to render the downstream industry potentially totally uncompetitive.

17. No causal link between imports and injury. As demonstrated above any alleged injury to the domestic industry is on account of its own costing inefficiencies, import of raw materials at high costs, inability to cater to the market among other reasons.

**(IV). Views of Importers/ Users**

**a) M/s Springfeel Polyurethane Foams Private Limited**

- a. The installed capacity of M/s.Manali Petrochemicas Limited (WPC in short) for the production of flexible slabstock polyol is much less than the demand for the same from various polyurethane foam (PUP in short), situated across India.
- b. MPL is also exporting slabstock polyol to other countries. It can be observed from copies of records available with Customs that the price at which we are importing is very much in line with the prices at which MPL is exporting during the same period of time and that these prices are in line with the international prices in force for the countries in this geographical region.
- c. MPL has a shared production capacity for the manufacturing of the various intermediaries and commodity products that they offer. This kind of shared production capacity implies that a reduction in the production of slabstock polyol does not mean that they have been under utilising their installed capacities. It simply means that they have producing some other product (for example DPG).
- d. A study of their published Balance Sheet and Profit & Loss account for the years 2010-11, 2011-12, 2012-13 an 2013 -14 show profits and have in fact declared dividends to their shareholders.
- e. It is most respectfully pleaded that, The application for Safe Guard Duty made by MPL be dismissed ,
- f. That market dynamics decide the pricing of flexible slabstock polyol,
- g. As manufacturer of flexible slabstock foam we are not over burdened by the unjustified levy of additional duties on the import of polyol.

**b) M/s Tirupati Foam Ltd**

- a. *We* are one of the major producers of Foam using the subjected Polyol.
- b. *We* strongly oppose the imposition of Safeguard duty on subjected Polyol, as this would lead to huge loss to our Company, Industry and Consumers.
- c. We are forced to import Polyol, not because it is cheaper to import but because the Domestic Supplier namely Manali Petrochemicals Limited is unable to provide us sufficient quantity.
- d. Their supplies are inconsistent and during peak season, we have to suffer if we depend upon the local source only.
- e. We state that the quality of imported Polyol is better than the quality of Polyol supplied by Manali Petro,
- f. It was noticed that the figure of Imports given in petition are different from the ones, used for initiation. The import data is based on custom tariff heading 39072010, which covers all types of Polyols, including those with Molecular weight of less than 3000 as well as more than 4000. On the other hand lot of subject Polyol is imported under Tariff heading 39072090, which is not included in the import data. As the whole initiation is based on wrong import data, the initiation proceedings must be dropped forthwith.

**(c) M/s Sheela Foam Pvt. Limited through M/s TLC Legal**

A. Initiation Notification is at variance with the application filed by domestic Industry as in the present case, the information furnished by the domestic industry was neither adequate nor accurate for purpose of initiation. The Authority has accordingly rejected such evidence and opted to proceed based on DGCIS data, not contained in the application and obtained by the Authority. There are glaring discrepancies between the information furnished by the applicants and that used by the Authority for the purpose of initiation.

B. From the above, it appears that the applicant has furnished incorrect information and for this reason itself, the application was liable to be rejected, as the information contained in the application is neither accurate nor adequate.

C. Information obtained from DGCIS not appropriate for It is submitted that many items falling outside the scope of subject goods i.e., are also being imported under the above heading. Similarly there are Polyols having molecular weight between 3000 — 4000, imported under 39072090.

D. In view of fact that, there is no authentic data to show the exact imports and surge if any, in the imports, the requirement of Section 8B of the Customs Tariff Act read with the AoS are not met.

Compliance of Article XIX of the GATT — Two-fold obligation on the Authority: (i) to identify the developments that were unforeseen and, (ii) establish link as to how those unforeseen developments led to increase of imports. The same has not been established.

E. Compliance of Article XIX of the GATT — Two fold obligations on the Authority: (i) to identify the specific obligation including tariff concessions incurred by India concerning the subject goods under GATT and, (ii) to establish that specific obligation's link with increase of imports of the subject product in India. The same has not been established.

F. India along with other countries agreed to lower the Customs Duties on imports and provided a maximum rate more than which it will not charge Basic Customs Duty. The maximum rate that is agreed is known as "Bound Rate" and that is the rate for which only India has incurred an obligation. Any further reduction in Customs Duties below that Bound Rate is not in terms of any obligation incurred by India. The Bound Rate is 40% and present Customs Duty Rate on import of the subject goods is 7.5% as per Customs Tariff of India 2013-14. Therefore, any increase in import due to reduction of Customs Duty below 40% cannot be attributable to the obligation and tariff concession incurred by India in 1994.

G. No surge in imports: The facts of the present case indicate that there is no cogent evidence on record to show, there is an increase in imports, let alone surge in imports.

G. Incorrect or false information given in application relating to profitability The profit on sales have been increasing continuously since the last two years. It is further requested that the cost of production used by the applicant for determination of profit may be disclosed. The applicant must be called upon atleast to disclose, the basis of allocation of common costs, between subject goods and other products manufactured by the applicant.

H. Unviable adjustment plan. The application gives very sketchy details of the adjustment plan of the domestic producers. It is stated that the levels of capacity utilization would be increased. It is not disclosed however, what structural changes will be made to improve capacity utilization. The plan indicates that, injury, if any is on account of the inefficiencies of the domestic producer.

I. No causal link between fall in profits and imports. This is evident from the fact that there is a consistent decline in the profitability of the Petitioner whether or not imports increase or decrease. Furthermore, any increase in imports over the past few years has been very gradual and not sudden nor significant. In fact even the production and capacity utilization have remained more or less the same in 2012-2013 and 2013-14 indicating a lack of causality between the imports and the injury claimed by the applicants.

J. In the present investigation, there exist other factors as well apart from imports of subject goods coming into India, which may be a cause of injury to the Petitioner.

a) The domestic industry is unable to supply subject goods of adequate quality and consistency. Often the material supplied cannot be used for further production due to inconsistency in quality.

b) The installed capacity of the domestic industry is 25,000 MT, which is about a 1/3 of the total demand in India. The domestic industry is not even able to meet the requirements of one unit, such as the present respondent, and consequently imports become a necessity. The demand supply gap is so significant that this is not a fit case for a safeguard action.

c) Most of the users industry are located in North India, whereas the, manufacturing facility of the Domestic Industry is in South India. The logistic costs for inland transportation are very high and, therefore, the injury is on account of the poor selection of location by the applicant for setting up its unit.

d) The domestic industry is unable to achieve high levels of capacity utilization, not for a lack of demand, but on account of supply side constraints.

e) It is abundantly clear that one of the biggest reasons for rise in imports from these countries is due to Indian Government's own initiative to boost trade with ASEAN countries and according them concessional rates of duties. In para 81 of *Gul Ahmed Textile Mills Ltd v Council of European Union* (OJ C 331, 12.11.2011), EC Court annulled anti-dumping duty imposed on imports of Cotton Type Bed Linen on the ground that the European Commission failed to examine the scheme of generalized tariff preferences on the increase in import of the goods and subsequent injury to the Domestic Industry in EU.

K. Excessive confidentiality claimed.

L. Imposition of safeguard measure not in public interest.

**(d)M/s Allied Foams Private Ltd.**

In this connection we submit as below:

1. Dealings with Manali Petrochemicals Ltd: We don't have a good experience of dealing with the Company. They are not able to meet their supply commitment especially during peak season. The quality of Polyol supplied by

them is inferior to imported material because it is not BO (Ethylene oxide) capped, whereas the imported material is.

2: In the interest of the PU Foam Industry we request you to reject Manali Petrochemical's appeal for imposing of Safeguard duty on imported Polyol. In case, your office requires any further clarification or information, we would be too glad to provide the same.

**(e) M/s M.H. Polymers**

1 We oppose the imposition of Safeguard duty on subjected Polyol for following reasons.

- This would lead to huge loss to our Company Industry and Consumers.
- Domestic Supplier namely Manali Petrochemicals Limited is unable to provide us sufficient quantity.
- The supplies from Manali Petrochemicals are inconsistent and during peak season, we suffer a lot if we depend upon the local source only
- the quality of imported Polyol is better than the quality of Polyol supplied by Manali Petro.

**(C) Submissions filed post public hearing:-**

The Public hearing in this case was held on 29.9.2014. The domestic industry as well as many interested parties have filed submissions and rejoinders as under:-

**I) Domestic Industry :**

1. The Domestic industry has reiterated its standing to file the safeguards application on the grounds that they are the only producers commercially producing the goods and the that the representative of Expanded Polymers clarified during the course of the public hearing that they had produced some 6 MT during the POI. The user industry also confirmed in their presentation made during the course of public hearing that the applicant is the only producer of subject goods in the market. Further, the fact remains that M/s Manali Petrochemicals would still constitute a major share of the total production of the said article in India and will, therefore, fully satisfy the requirements of standing in term of Section 8B (6)(b).

2. The submissions have been made by the aforesaid interested parties after the prescribed time limits and therefore the submissions made with regard to adequacy and accuracy of the information contained in the application and the issues relating to the initiation ought not to be taken on record and the same are required to be rejected.

3. That the Domestic Industry has fulfilled the requirements of Rule 5(1) and (2) concerning the tests of sufficiency, adequacy & accuracy of evidence as obligated by the Rules.

4. The product under consideration in the present application is "Flexible Slabstock Polyol molecular weight 3000-4000. The main uses are in upholstery, mattresses, pillows, bolsters, transport seating and packaging. The product under consideration is imported and traded under different brand names. It may also be noted that these brands are owned by producer/exporters. Further, the technical specification of these brands can be observed from their respective exporter websites. None of the exporters has disputed the fact that the mentioned brands are not related to subject goods.

5. That the Domestic Industry is entitled to the protection of safeguard duties if there are "increased" imports in the country during the period of investigation. In the instant case, it can be seen that the imports have increased substantially and are at a considerably high and elevated level during the period of investigation.

6. That the DG is obliged to analyze the following factors to determine the serious injury to the domestic industry:

- a. Rate and amount of increase imports in absolute and relative terms,
- b. Share of Domestic market taken by imports,
- c. Changes in level of sales,
- d. Production,
- e. Productivity,
- f. Capacity utilization,
- g. Profit/losses,

7. The imports relative to the production of the DI have increased from 100 indexed points in 2010-11 to 282 indexed points in 2013-14. Similarly, imports in relation to the sales increased from 100 indexed points in 2010-11 to 291 indexed points in 2013-14 and imports in relation to the demand increased from 100 indexed points in 2010-11 to 134 indexed points in 2013-14. From the above, it is may be clearly seen that imports have increased in absolute as well as relative terms.

8. The share of imports in the consumption or demand has increased from 60.87% in 2010-11 to 81.93% in 2013-14. It is clear that the increased imports has taken up the share of the domestic industry and if the same trend continues there will be threat to the survival of the domestic industry in the coming years.

9. That from 2010-11 to 2011-12 the sales of DI have increased and decreased sharply thereafter. This decreased sale is both absolute terms and relative to consumption.

10 The domestic industry submits that it has not gained from the growth in the domestic demand and its domestic production has fallen significantly. that from 2010-11 to 2011-12. The production of the DI has increased and thereafter decreased sharply. This fall in production has adversely hit the DI.

11. Productivity followed the same trends as of production, as productivity is measured by the production divided by number of days and if production will decline the productivity will also decline in the same ratio.

12. The capacity utilization has declined from 90% in the base year i.e., 2010-11 to 55% in POI i.e., 2013-14. The reduction in capacity utilization is directly linked to reduction in sales and production due to increase in imports.

13. The profitability of domestic industry has got fully eroded in 2011-12 and thereafter they incurred heavy losses.

14. All the relevant parameters show a decline in the financial position of the domestic industry. In view of the above, unless duties are imposed, the domestic industry would not be able to survive. Serious injury has been caused, as is evident from the above analysis. Further worsening in the condition of domestic industry is imminent.

15. The imports are currently at high levels and increasing.

16. The subject goods continue to be imported in large volumes since 2011-12. The domestic industry witnesses a declining market share and is facing huge losses. The very survival of the petitioner is at stake and the threat of further serious injury is imminent. Causal link between the imports and the serious injury suffered by the domestic industry

17. There is a direct correlation between the increased imports and serious injury caused to domestic industry. The imports were at their highest in 2012-13 and 2013-2014 and domestic industry suffered injury most in these two years. The market share, profitability, return on investment, domestic production of domestic industry declined significantly during this period. The condition of the petitioner has worsened considerably during the period when the imports were at high levels.

18. The above analysis clearly proves that the performance of the domestic industry has worsened in the POI. It is also important to note that the domestic industry is struggling to survive in the market as there is significant price undercutting, price underselling and price suppression from the imports. As stated earlier, profits of domestic industry have also declined drastically in the POI. This clearly indicates that serious injury has been caused and threat of further injury is imminent. The causal link between the imports and injury is also established.

19. There are no other factors which can be attributed to the injury to the domestic industry. The same is further, established by the fact that the demand for subject goods has been increasing consistently over the last three years. There is about 76% increase in demand over the base year and yet the domestic industry has not been able to increase its production, capacity utilization, sales or profits commensurate to this growth in the market.

20. It may also be noted that the interested parties during the public hearing have placed reliance on statements made in the annual reports of various years and have attempted to stretch that issue to the POI in support of their claim that there is no causal link established in the facts of the present case. This issue was subject matter of dispute in several other cases and it has been consistently held that no reliance can be placed on statements made in annual reports. This approach is based on the sound legal premise that what is under investigation is not the company but the product under consideration. The performance of the Domestic Industry has to be judged for the product under consideration alone in terms of the provisions of law.

21. The claim that there is shortage of electricity in Tamil Nadu has been presented in a very generalized manner without giving any evidence to even suggest that the Domestic Industry also suffered on this account. Further, the domestic industry submits that it has three sources of power supply namely, self-generated power (captive power plant), power from 15 State Electricity Board and Diesel Generator set. This gives enough flexibility to the Domestic Industry to ensure that their production does not suffer on account of any shortage in any particular source of power supply. Therefore, the submission of the interested parties that the domestic industry's production may have suffered on account of power is totally irrelevant and needs to be rejected.

22. In relation to Non Availability of Raw material i.e. Propylene Oxide (PO), it is submitted that the domestic industry has made adequate supply PO for its requirements. The domestic industry is producing PO in-house and also importing the same as and when required. They have also made PO storage facility at ETTL which allows them to import large quantities and use it as per their requirement. In view of the aforesaid, it is submitted that issues relating to availability of key raw material i.e., PO is devoid of any merit and therefore, need to be rejected.

23. The claim of the interested parties regarding certain restrictions in Manali area with regard to increase in capacities, etc., (where the domestic industry's plant is situated) is wrong and hence denied. In this context, it is submitted that the applicant has a total 50000MT capacity of Polyol, which can be directly used for the production of the subject goods. Thus, there is no effect of the restriction on the fact that the Domestic Industry has enough capacity to produce the subject goods and that the effect of dumped imports on the performance of the Domestic

Industry, does not get diluted due to certain restrictions in the past. In any case, even the moratorium with regard to increase in capacities was lifted with effect from September 2013. In view of the aforesaid, the issue relating to capacity needs to be rejected.

24. There are also no changes in the pattern of consumption, to suggest that injury is being caused by such factors. Further, demand has also increased therefore, same cannot be said to cause injury to DI.

25. Without prejudice to the above, it is submitted that in any case, it is not necessary that the imports should be the sole cause for injury, provided it can be shown that, it is one of the factors causing injury.

26. From the above, it is clear that there are no other circumstances or factors which are causing injury to the domestic industry.

27. Domestic industry in its application has provided the detailed restructuring plan.

28. In addition to above, it is submitted that the storage facility of PO commissioned at Ennore Tank Terminal Pvt. Ltd. (ETTPL) has started working and domestic industry has already received trial parcels of Propylene Oxide. Moreover, the engineering activity for conversion of ECH (Epichlorohydrin) to PO is under advance stages.

29. In relation to increase in its existing capacity through debottlenecking, it is submitted that due to R&D efforts, DI will be able to debottleneck its existing facilities and will be able to reduce its cost.

30. It is also important to note that the restrictions in Manali area for expansion of capacity removed with effect from September 2013 and domestic industry has already applied for Ministry of Environment and Forests (MOEF) clearance for adding to its capacity.

31. In view of the above, it is submitted that domestic industry has very concrete and reliable restructuring plan.

32. While there is no express obligation/requirement on the Director General (Safeguards) to analyze unforeseen circumstances in terms of the Indian laws, we understand that the DG may still prefer to analyze the "unforeseen developments". In any case, it may be noted that even in the GATT or the WTO Agreement on Safeguards, there are no specific guidelines or methodology that should be followed for analyzing unforeseen developments. However, the Domestic Industry has indeed given the grounds for unforeseen circumstances at other places in the application.

33. The Appellate Body decision in the Argentina-Footwear case (WT/DS121/AB/R dated 14 December 1999) held that the phrase "Unforeseen Developments" means the developments which were unexpected. The Appellate Body in Korea- Dairy case (WT/DS98/AB/R dated 14 December 1999) held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.

34. It may be appreciated that the Domestic Industry did not anticipate nor could it have predicted that the prices of the subject goods will reduce significantly despite the increase in raw material prices world-wide. These reductions in prices led to sudden increase in imports of subject goods in India as can be seen from the import statistics. The period of sudden decline in prices of subject goods and sudden increase in import quantity coincided with the period when Domestic Industry commenced its commercial production. Further, this price reduction of subject goods has also reduced the capability of Domestic Industry to negotiate better price with the customers.

35. Further, it is submitted that due to Indo-ASEAN FTA and Indo-Singapore CECA, major suppliers made special arrangements to avail benefit of this. It is also important to mention that more than 98% of the imports are coming from Singapore, which is inconceivable in this current open market. This sudden increase of material from one source and that too at non-remunerative prices is unforeseen by the domestic industry.

36. Moreover, the concessions which are being negotiated by the government takes into account particular levels of import volume and the prevailing price levels. If there are significant changes that the negotiators could not have anticipated at the time of negotiations, then certainly it is a case of unforeseen developments. Further, it is important to note that no government or negotiator would be able to anticipate that imports will predominantly come only from a major source after the FTA. The above are the unforeseen circumstances which neither the Domestic Industry nor the negotiators of Indo-ASEAN FTA and Indo-Singapore CECA foresee at the time of negotiation.

37. It is submitted that the major exporters (Shell companies, in particular) have not filed the questionnaire response. It may kindly be appreciated that without filing the prescribed questionnaire, it cannot be said that their participation in the investigation is with the intent to cooperate with the DG.

38. The exporters and importers have claimed blanket confidentiality even with regard to the quantity of exports/imports into India.

39. In view of the above, we request the Hon'ble Designated Authority to kindly issue the Final Findings as early as possible to address the serious injury to the Domestic Industry. Furthermore, we request the Authority to consider all our previous submissions as a part of these submissions which have not been repeated here for the sake of brevity.

**II). Views of Exporting Nations:-**

**1. High Commission of the Republic of Singapore-**

- i Singapore would like to underscore that while the WTO Agreements permit Members to take remedies, they also seek to ensure that these measures are not abused for protectionist purposes. Safeguard actions envisage domestic industries to make necessary structural adjustments with a view to enhancing competition in the market'.
- ii It is in this context that Singapore notes with concern that the petitioner, Manali Petrochemicals Ltd, has been a frequent applicant of anti-dumping action on Flexible Slabstock Polyols (FSP), including a recent case against Singapore that was terminated in 20112.
- iii In this present case, the company has concurrently applied for antidumping and safeguard measures on the same product. By concurrently claiming injury and seeking remedy through both measures, it appears that the complainant is merely seeking indiscriminate protection from import competition.
- iv Singapore contends that the facts of this case, as expounded in subparagraph (v) below, do not support any claim that the increase in imports is as a result of unforeseen developments, especially given the historical upward trend of imports into India and the proliferation of India's downstream industries utilising FSP.
- v Singapore would also like to add that if the petitioner is indeed the sole domestic producer of the product under consideration, as it claims to be, the DSGG must take into account commercial availability of the product under consideration within the Indian market. Several facts attest to the petitioner's inability to fulfil this:
- vi The long list of importers and users who have registered themselves as interested parties<sup>4</sup> to this case clearly indicate that there is a significant demand for this product that cannot be satisfied by this company alone.
- vii Even as anti-dumping measures were in force on imports of FSP from Singapore between 2002 and 2011, India still registered a more than 10-fold increase in imports of these products from Singapore.
- viii The nature of this product, which has multiple end-uses ranging from mattresses to transport seating when converted to polyurethane foam, can only mean that a safeguard action is likely to harm India's downstream producers. This, in turn, would have a negative impact on these producers' ability to build a competitive market share.

**(III). Views of Exporters**

**a) M/s Shell Eastern Petroleum (Pte) Limited., M/s Shell Eastern Trading (Pte) Limited and**

**b) M/s Bayer (South East Asia) Pte Ltd., submitted submissions, both through Lakshmikumaran & Sridharan, Advocates, 5, Link Road Jangpura Extension, New Delhi – 110014, India**

1. The Applicant in the public hearing conducted by DG (Safeguards) admitted that 98% of imports of the subject goods originate in Singapore. In such a situation, the imposition of a safeguard duty will not be appropriate as it will penalize imports from all other countries despite the fact that 98% of imports originate in only one country i.e. Singapore.
2. The Respondent submits that any issues arising out of imports of the subject goods from Singapore may be addressed in the anti-dumping investigation. In light of the above, the present safeguard investigation should be terminated.
3. India-ASEAN FTA and the India- Singapore CECA provide for specific guidelines to be followed in cases of safeguard investigations initiated under the two agreements respectively. Both the India-Singapore CECA and India-ASEAN FTA have distinct regimes for the imposition of bilateral safeguard measures, with additional mandatory requirements to be complied with.
4. The Applicant is a serial user of trade remedy proceedings, whereby one should question whether these proceedings are being abused by the Applicant. It has been involved in antidumping proceedings since 2001, in addition to safeguard proceedings in 1998.
5. Annex to Rule 8 the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (hereinafter referred as "Indian Safeguard Rules") rule puts onus on the DG (Safeguards) to refer complaint to the antidumping/anti subsidy authority to investigate the matter which is said to cause injury to the domestic industry which cannot be attributed to increased imports. It has been demonstrated in the present submission that injury (if

any) suffered by the Applicant is due to factors (*other than increased imports*). Therefore, DG (Safeguards) must terminate the present safeguard investigation.

6. The petition is also deficient as it contains a number of unwarranted confidentiality claims.

7. In the present investigation, the Applicant has neither provided any statement of reasons nor appropriately summarized any of the evidence referenced. The Applicant has also not offered an explanation as to why or how the release of said information would prejudice the legitimate commercial interests of the Applicant.

8. To the extent the Applicant's confidential information cannot be verified for relevance, accuracy and completeness, it should be disregarded. In the interests of natural justice, we respectfully submit that the DG (Safeguards) must direct the Applicant to provide a revised and proper NCV of its petition.

9. The Respondents request the DG (Safeguards) that the information indicated above, comprising of import data, product information, price details, manufacturing process etc., be provided to us so that meaningful comments may be made regarding the claims of the Applicant.

10. The Applicant has claimed in the petition that it is the sole producer of the like article in India. However, the Respondents would like to submit that M/s. Expanded Polymer Systems might also qualify as a producer of the like article in India. They have not been communicated by the Applicant anywhere in the petition.

11. The Authority is required to examine the quantity of the subject product which is or can be manufactured by M/s. Expanded Polymer Systems. Additionally, it is also submitted that such information should have been disclosed by the Applicant in the petition and the Authority should appropriately terminate this investigation for want of completeness of petition. The Respondents submit that the Authority is required to verify the standing of the Applicant in this case.

12. The DG (Safeguards) has initiated the present safeguard investigation relying upon the transaction wise DGCI&S data. The Applicant has relied upon the import data obtained from "The EximNet BBS". Further, it has been stated by the Applicant that the transaction wise DGCI&S data is also not available. Thus, the petition filed by the Applicant and the initiation notice issued by the DG (Safeguards) are based upon completely different sources of import statistics.

13. From paragraph 5 of Initiation Notice, it can be also observed that the DG (Safeguards) has verified the other safeguard injury parameters for the injury analysis period. However, the same have not been provided to the other interested parties for their comments. Further, the Respondents are also apprehensive that the petition filed by the Applicant has not been updated in terms of the DG (Safeguards) verified injury parameters. Therefore, in line with our earlier request dated 16<sup>th</sup> June 2014, we request the DG (Safeguards) to direct the Applicant to withdraw such petition, or in the alternative, instruct the Applicant to correct the petition based upon the DGCI&S data with any relevant substantiations and provide the same to other interested parties for their comments.

14. For a proper analysis of all the claims in the petition, it is requested that either the DG (Safeguards) or the Applicant shall provide the transaction-wise raw import data as well as sorted import data to interested parties in MS-Excel format. The DG (Safeguards) is also requested to direct the Applicant to provide an explanation as to how it has sorted data from the raw data. The above information is vital to analyse the trend of the imports of the subject goods into India during the injury analysis period.

15. The Respondents submit that there are numerous inconsistencies between the data submitted by the Applicant in its petition for imposition of anti-dumping duty, and the data provided in the Initiation Notification dated 22<sup>nd</sup> May 2014 communicating the initiation of safeguard investigation against the subject goods.

16. In the present investigation, the product under consideration only includes Flexible Slabstock Polyol of molecular weight 3000 to 4000. However, some import transactions also show that Flexible Slabstock Polyol of molecular weight 5000 has been included in the import statistics. The Respondents are apprehensive that there may

be many such transactions in the import statistics which would enlarge the import quantity significantly. The Respondents request the DG (Safeguards) to investigate the same.

17. It is submitted that MS-Excel version of import data is also relevant because there exists double counting and duplication of imports which has resulted in inflated volume of imports from Singapore. At the outset, this conflict is to be resolved before drawing any conclusions from such import data.

18. The Respondents contest the annualized figures arrived at by the authority for 2013-14 on the ground that such figures are inaccurate and liable to be rejected. It is noted that the annualized figures provided in the initiation notice are inflated and do not reflect the correct position.

19. At Page 28 of the NCV of the petition, in reply to Question No. xii in Section 3 to Questionnaire for domestic producers, the Applicant has submitted that they do not offer any discounts. As per market intelligence, it is understood that the Applicant in fact offers discounts to their customers. The Respondents request the Authority to verify this fact.

20. The applicant has also not disclosed the methodology followed for determination of fair market price.

21. It is submitted that the initiation notice as well as the petition are silent on the aspect of unforeseen developments that have led to increase of imports of the subject product into India.

22. Pursuant to its obligations under the GATT, India may not impose a safeguard duty unless it can be demonstrated to the satisfaction of DG (Safeguards) that supposed increased imports and consequential injury arise as a result of unforeseen developments and of the effect of obligations incurred by India under the GATT.

23. The DG (Safeguards) in prior investigations, has consistently examined the requirement of unforeseen developments. In fact, in China specific safeguards initiated by the DG (Safeguards) on Hot Rolled Flat products of Stainless Steel of 304, the DG (Safeguards) found that no unforeseen development existed in that case. The DG (Safeguards) accordingly recommended that no safeguard duty be imposed.

24. Therefore, the Applicant has to show how certain developments were unforeseeable when India incurred the obligations under GATT in 1994, which have led to the increase of imports in the period of investigation. If the Applicant fails to explain the same, the burden still remains on the Authority to carry out the above analysis. Failure to do so would render the subject investigation liable to be terminated.

25. It is submitted that neither the petition, nor the initiation notification for the subject investigation has identified any unforeseen developments that led to an increase in imports of the subject product.

26. The Respondents submit that Article XIX of the GATT 1994 places a two-fold obligation on the Authority with regard to the subject investigation. Firstly, it requires the Authority to identify the specific obligation including tariff concessions, incurred by the member country, India in this case, concerning the subject product under GATT. Secondly, it requires the Authority to establish a causal link between the aforesaid specific obligation and increase of imports of the subject product into India, thereby analysing the effect of the obligation that causes or threatens to cause serious injury to the domestic industry. Failure to do the same would render the subject investigation liable to be terminated.

27. Even if the Applicant fails to explain the same, it is submitted that the obligation remains on the Authority to analyse this issue and give a finding in this regard. Failure to do the same would render any finding by the Authority inadequate, unreasonable and non-compliant with the obligations under Article XIX of the GATT.

28. In light of the above submissions, the Authority may be pleased to terminate the subject investigation. It is submitted that termination of the subject investigation would restore the confidence of traders and governments of other countries in India's administrative and judicial procedures, thereby preserving the legitimate expectations of all parties concerned.

29. The Respondents submit that the increase in volume of imports may be attributed to the Comprehensive Economic Partnership Agreement ("CECA") presently in existence between India and Singapore. The tariff

concessions received by way of the India- Singapore CECA made it attractive for imports of the subject goods into India from Singapore.

30. The Respondents submit however that an increase in imports due to the tariff liberalization under the India-Singapore CECA cannot be considered to be an unforeseen development or an obligation under GATT. The timetable specifying the rate of reduction of anti-dumping duty was publicly available soon after the conclusion of the India-Singapore CECA in June 2005. Therefore, there is simply no way in which it could not have foreseen that the duty rates on the subject goods would be progressively reduced as per the timetable specified in India's schedule of commitment under that Agreement. An increase in imports due to the 0% duty under the India-Singapore CECA cannot be an unforeseen development or an obligation under GATT as per Article XIX of GATT. This issue is squarely covered by a recent WTO panel decision in DS 415-418 *Dominican Republic – Safeguard Measures* wherein the panel concluded that to the extent, the obligation in issue undertaken by Dominic Republic was that under a regional free trade agreement rather than that under the GATT, the requirements of Article XIX were not met. For this reason also, the above argument deserves to be rejected.

31. The position of law is quite clear on the fact that the increased imports must be *recent enough, sudden enough, sharp enough and significant enough*. In the present case, the imports are not recent, sudden, sharp and significant, because of which the threshold criteria itself is not met.

32. The applicant industry has presented no credible evidence to make out a case of serious injury. It has withheld crucial injury information on a number of factors. Furthermore, the facts presented in the application itself do not make out a case of serious injury.

33. It may also be noted that the Applicant has sold almost all the quantity of the subject goods that it has produced, given that sales as a percentage of production was 101% in 2010-11, 99% in 2011-12, 96% in 2012-13 and 98% in 2013-14. This establishes that the Applicant has no problem in selling the subjects; its issues lie in production.

34. As per the data provided by the Applicant, the production of the subject product by the Applicant has increased from 16510 MT in 2010-11 to 18381 MT in 2011-12, and undergone a slight decline with 13986 MT in 2012-13 and 13812 in 2013-14. The sales of the subject product by the Applicant increased from 16615 MT in 2010-11, to 18192 MT in 2011-12 and underwent a slight decrease with 13451 MT in 2012-13 and 13474 MT in 2013-14.

35. However, it is submitted that the reason for the decline in production and sales during 2012-13 and 2013-14 is not due to the volume of imports, but *the non-availability of feedstock for the production of the subject product*. It is noted that there is a severe shortage of Propylene Oxide (PO) which is the feedstock used for the manufacture of the subject product.

36. The Applicant procures propylene from CPCL, who is the sole supplier of propylene to the Applicant. Such quantity is also limited by way of a maximum amount beyond which CPCL does not supply any more propylene. Therefore, with such a cap on supply of propylene by CPCL to the Applicant, it can only manufacture a certain amount of the propylene Oxide (PO) and use PO in manufacture of subject product and not more.

37. At the outset, the Respondents submit that the veracity of the capacity provided by the Applicant is in doubt. The Authority is requested to investigate and clarify the contradictory data provided by the Applicant.

38. There are two reasons for reduction in capacity utilization:

1. Lack of availability of feedstock Propylene Oxide (PO) as highlighted above which would lead to non-utilization of capacity and a reduction in capacity utilization;
2. Increase in capacity of the Applicant by 36% which would also obviously lead to a reduction in the capacity utilization.

39. Any reduction in capacity utilization is attributable to the lack of availability of the feedstock (PO) for the manufacture of the subject product. The Applicant, in Annual Report 2010-11, has admitted that the reduction in capacity utilization is due to shortage of PO.

40. In the initiation notice, indexed figures relating to profitability have been indicated to be 100 indexed points in 2010-11, with a rapid and substantial increase to 324 indexed points in 2011-12 and a decline to (331) indexed points in 2012-13 and (559) indexed points in POI. Similarly, in the petition filed by the Applicant, the selling price has increased from 100 indexed points in 2010-11 to 115 indexed points in 2011-12, reduced to 110 in 2012-13 and again increased to 128 indexed points in 2013-14.

41. With regard to cost of sales, it increased from 100 indexed points in 2010-11 to 120 indexed points in 2011-12, reduced to 102 indexed points in 2012-13 and once again increased to 124 indexed points in 2013-14. It is not possible for profitability to triple when there is an increase in cost of sales, but plummet rapidly when cost of sales decreases. The trend reveals that the data relating to profits may not be accurate, and in light of the same, the Respondents request the DG (Safeguards) to investigate the same.

42. At the outset, the Respondents challenge the veracity of the profitability figures provided in the initiation notice. It is noted that the Applicant has filed an application for the imposition of anti-dumping duty on imports of the subject product. The profitability figures provided in the anti-dumping petition are at odds with the figures provided by the Applicant in the subject investigation.

43. The Respondents also wish to highlight that the above is further confirmed by the fact that the Applicant was able to sell, as a percentage of its production, 101% in 2010-11, 99% in 2011-12, 96% in 2012-13 and 98% in POI. Therefore, there are no issues to the Applicant as far as proportion of sales and production is concerned; it is the non-availability of the feedstock (PO) that has resulted in reduced profitability.

44. Price undercutting, depression and suppression data has not been indicated even in indexed form in the NCV of the petition filed by the Applicant. The Respondents cannot make any meaningful submissions on the same without any data.

45. On Page 179 of the petition containing the Annual Report 2012-13 of the Applicant, the Applicant has stated that the availability of bio mass fuel for the Captive Power Plant (CPP) had become scarce, which forced the Applicant to operate the CPP at lower loads. Thus, if any injury is proved to exist, it is a direct consequence of the production constraints experienced by the Applicant.

46. The Respondents submit that even if the Applicant wishes to increase capacity in order to cater to the demand, the same cannot be carried out as per the Applicant's own admission that the moratorium in the Manali area denies any scope of capacity additions. The Applicant has admitted this fact in its Annual Report 2012-13, provided on page 180 of the petition.

47. That even if the Applicant were to operate at 100% capacity utilization, at best, it will be able to cater to only about 34% of the market, because it only has installed capacity of 25000 MT while the total demand during 2013-14 was 74624 MT.

48. The Respondents submit that the Authority is also required to establish a causal link between such "increased imports" and "serious injury" to the Applicant, as per Section 8B of the Customs Tariff Act 1975 read with Rules 5 and 11 of the Indian Safeguard Rules. Without such a causal link, no safeguard duty can be imposed in the present investigation.

49. However, from the submissions of the Respondent above, it is clear that any "serious injury" that may have been sustained by the Applicant is due to a number of other factors such as:

1. Lack of feedstock availability;

2. Consequent reduction in production and sales;
3. Dependence on sole supplier Chennai Petroleum Corporation Ltd of propylene in India to the Applicant; and
4. Inability of the Applicant to supply the required quantity of the subject product.

None of the reasons are in any way linked to import volume of the subject product. Therefore, the causation analysis fails in the present investigation and the same is liable to be terminated.

50. An adjustment plan is an essential requirement in a safeguard investigation. While the adjustment plan has been claimed to be non-confidential by the Applicant, almost the entire details of adjustment plan have been kept confidential in the petition by the Applicant.

51. There are no details which have been indicated that can enable the Respondents to make any comments on the same. The Respondents cannot make any meaningful submissions on the adjustment plan without any information and it is requested that the Authority provide us with the details of the adjustment plan.

52. The Applicant has stated that it will take measures to increase capacity utilization due to de-bottlenecking of existing capacity. However, as per the admission of the Applicant, it has already completed such an exercise and admittedly, it has not helped the Applicant overcome its injury. Therefore, this portion of the adjustment plan, is redundant. The relevant extract is provided in Annual Report 2010-11, on page 103 of the petition.

53. In this regard, it is also submitted that the Applicant's plan of reducing fixed cost per MT is erroneous and liable to be rejected. In the table given in adjustment plan, the Applicant after making the above claim has listed utilities/consumables/labour costs, which are variable costs and not fixed costs. In any event, the Applicant's plan to reduce fixed costs will have an effect of less than 1% on the final costs.

54. The Applicant has stated it plans to achieve an increase in its capacity utilization levels. However, the Respondents have already established that the Applicant has a severe shortage of Propylene and PO, which the Applicant has not been able to overcome. Therefore, it is again redundant that the Applicant plans to achieve an increase in capacity utilization, as such an increase cannot be achieved without adequate supply of PO.

55. The Applicant has also stated that it plans to increase captive propylene oxide production capacity; however, the same is ineffectual without adequate supply of the raw material, which is propylene. Without adequate supply of raw material, the Applicant's plan of increasing captive propylene oxide capacity is a feeble attempt.

56. The Applicant has stated that it will implement bulk transportation of PO and improvement in logistics. The Respondents submit that this attempt will also affect only a marginal reduction in transportation cost and will not have any overall effect on the costs incurred by the Applicant.

57. The DG (Safeguards) in the safeguard investigation concerning imports of Methyl Acetoacetate vide Final Findings dated 8th October 2013 rejected the adjustment plan provided by the domestic industry observing that it did not contain concrete time-bound plan for positive adjustments and was merely a proposal which it intended to implement in the future. The same situation is applicable in the facts presented by the Applicant in the subject investigation.

58. It is also beyond doubt that the Applicant has been a user of anti-dumping and safeguard remedies for the past 16 years. Despite such protection having been provided to the Applicant, it has not been able to improve its performance, which establishes the fact that any injury suffered by it is due to its own intrinsic factors. For such

reason also, we request the DG (Safeguards) to reject the adjustment plan provided by the Applicant and terminate the investigation.

**c) M/s IRPC Polyol Co., Ltd., 555/2, Energy Complex, Building-B, 7<sup>th</sup> Floor, Vibhavadi Rangit Road, Chatuchak, Bangkok-10900, Thailand** submitted written submissions dated 24.9.2014 wherein they submitted that they had exported lower than 2% of the total import volume to India.

**d) M/s Dow Europe GMBH and M/s Dow Chemical International Pvt. Ltd submitted submissions through M/s Dua Associates, 202-206, Tolstoy House, Tolstoy Marg, New Delhi.**

1. The instant submissions are further to the preliminary submissions filed by DCIPL and Dow Europe submitted on 25 July 2014 and the power point presentation made on 29 September 2014.

2. The instant case is unique. It demonstrates how the sole producer of the subject goods has repeatedly sought trade remedy protection from the Directorate General of Anti Dumping ('DGAD') and from Directorate General, Safeguards ('DG') over the last 15 years.

3. It is submitted that the Annual Reports and Balance Sheet available for the period of investigation ('PoI') portrays a robust and profitable image of the company.

4. The data available clearly demonstrates that imports are necessitated due to the market demand and the fact that the Domestic Industry is able to only cater to a fraction of the domestic demand. Any decline in profitability, if at all is due to factors unrelated to imports such as suboptimal cost structures, dependence on imports for raw materials among other factors.

5. The condition precedent for imposition of safeguard duty is the importation of the PUC into India in such increased quantities and under such conditions. Reference may be made to applicable legal provisions in this regard,

6. The imports are neither sudden, nor sharp or significant enough to satisfy the condition set out in Article 2 of the Agreement on Safeguards. In fact, during the years 2011-12 and 2012-13 the imports actually have declined when comparing with the base year.

7. Further the growth in the imports is in response to the increase in the domestic demand of the PUC and the inability of the Domestic Industry to meet this demand. Any increase in imports is only in response to increased demand of the PUC.

8. It is quite clear that the increase in imports is line with increase in demand of FSP in India. The fact that DI can only satisfy only a fraction of the demand is important since imports will prevail even if Manali is producing PUC at cent percent capacity. The imports are neither sudden nor are they sharp. In fact in the years 11-12 and 12-13 imports have significantly declined.

9. Per Article 2 of the Agreement on Safeguards, imports of the PUC into India are required to cause 'serious injury' to the Domestic Industry. "Serious injury" means a significant overall impairment in the position of a domestic industry.

10. One of the parameters based on which the Domestic Industry has claimed serious injury is decline in capacity utilization. Domestic Industry has claimed a decrease in capacity utilization from 90% in base year to 55% in 2013-14 (annualized). This alleged decline in capacity utilization is not related to imports. Domestic Industry increased overall polyol capacity from 33000MT to 50,000MT. (page 103/127, DI Application, Annual Report). However expanding Polyol plant capacity does not serve the purpose without increase in Propylene Oxide capacity.

11. Domestic Industry claims installed capacity of 25,000MT for the PUC. However this capacity is not exclusive to the PUC. The reason for this is:

a. It is known that Polyol plants typically tend to be multi product swing capacities that can very easily switch from one grade to another literally on a day to day basis. This is true for the whole industry and every producer globally swings capacity to produce grades based on the market dynamics.

b. The allocation of cost in the case of such a multiproduct operation to one particular product amongst the total product mix has the potential to be distorted.

c. In the instant case, Domestic Industry has a shared production line. The declining capacity utilization for PUC is therefore a result of the business decision of Domestic Industry to utilize the plant for other polyols for more lucrative markets/ applications rather than the PUC. Therefore quite clearly decline in capacity

utilization is not related to imports and is squarely attributable to the business decisions of the Domestic Industry.

12. Another plausible reason for decline in capacity utilization is the capacity for the PUC could also have been diverted to the export market. The Domestic Industry in its Director's Report for 13-14 states: 'The export sales increased from 2.83 crores to 17.58 crores highest ever recorded'.

13. From the financials of the Domestic Industry, it can be seen that the Company's exports have surged 600% from 2.51 Crore in 2010-11 to 17.58 crore in 2013-14 which confirms the intent of domestic industry to focus more on export of high value specialty Polyol utilizing the same asset instead of producing commodity FSP for the domestic market .

14. Further the Domestic industry cannot achieve economies of scale as some of the overseas players. The reason for this is that economies of scale in the polyol industry can only be achieved if the installed capacity of the plant is between 200,000MT to 400,000MT (approx). The domestic industry's plant with overall polyol capacity of 50,000MT is bound to be cost ineffective and can only use obsolete technology. Further Domestic Industry is also dependent on Propylene Oxide imports which expose them to high cost of production.

15. Domestic industry claims severe depletion of profits. However the Annual Reports and balance sheet show year on year profit and growth notably even in the polyol sector. Though Domestic Industry has claimed decreasing production and sales of the PUC, the Domestic Industry has failed to state that they have utilized the facility to produce other grades of Polyol which is the main reason for increase in revenue of Polyol sales. Therefore domestic industry should not show the PUC in isolation but declare profitability segment wise (for the polyol segment). Only if the entire Polyol segment is suffering, can it be said that there is a substantial injury or loss to the Domestic Industry.

16. The statements made by the domestic industry in their annual reports for year 2013-14 regarding profitability are extracted below for ease of reference:

“Operational Highlights (page 2)

During the year under review the operations of the Company were better than the previous year in spite of cut-throat competition from overseas polyol suppliers.... The net profit for the year was higher by about 6% at Rs. 29.05 crore against the Rs. 27.32 crore in the previous year. Industry Structure and development (page 2) ...Indian Polyurethane industry's performance during 2007-2012 had been impressive with double digit growth, but the market has become stagnant in 2013 due to various factors like overall economic growth slowdown, impact of global economic crisis on Indian manufacturers, inflationary pressures, monsoon failure, etc. Some revival was seen during the year under review. “

17. The Annual report for year 2012-13 of the Domestic Industry highlights following points:

- This is a cyclical industry with peak and off peak periods.
- The market depends on growth /consumption pattern
- Domestic Industry itself achieved highest Sales in 2011-12 with a decline immediately next year, not due to imports but admittedly due to reduction in economic growth.
- WTO has scaled down global trade growth forecast to 3.30% in 2013 from 5.11% in 2011. Therefore the alleged lack of profitability is evidently not import related.

18. Even though the Domestic Industry claims steep decline in profitability. It has still rolled out yearly dividends for its shareholders as evident from its Annual Reports and Balance sheets. A company with such severe profitability decline is usually not in a position to roll out dividends in the manner in which the Domestic Industry has in the POI.

19. Domestic Industry claims decrease in production from 16,510 MT in 2010-11 to 13,811 MT in 2013-14.

However the reason for decrease in production is not related to imports but due to lack of raw materials:

- a. Domestic Industry has large dependence on Chennai Petrochemical Corporation Ltd (CPCL) sole supplier of propylene. CPCL itself has supply shortage issues as Domestic Industry acknowledges in its Annual Report 2010-11 at page 103 of the Application.
- b. Need to import Propylene Oxide. The import of Propylene Oxide is at a high cost and this makes the cost structure of the Domestic industry for the PUC sub optimal. The statements above are indicative of the fact that any decline in sales, production, profitability is inter-alia on account of lack of availability of key raw materials, Domestic Industry's business decisions and its sub- optimal cost structure.

20. The dip in Domestic Industry's market share is marginal of a single digit figure of 6% when comparing base year and current year. It may also be noted that even at cent percent production, Domestic Industry is only able to cater to a fraction of the domestic demand of the PUC, and therefore imports are necessary. Additionally, the product of the domestic industry suffers from the vices of erratic supplies, failure to meet timely commitments

to consumers and quality issues. Therefore loss of market shares is not an indicator of injury to the domestic industry.

21. The Domestic Industry was able to move a significant amount of stock comparing the years 2012-13 and the current year.

22. The Domestic Industry claims that employment has shown a declining trend during the POI, however, the decline has no correlation with the imports of the PUC. The decline in the number of employees could be due to multitude of factors unrelated to imports such as: It is well known that typically when there is upgrade of technology there might be reduction in people and in this case Domestic Industry has admittedly increased the overall polyol plant capacity during POI. Domestic Industry may have reduced people by reducing the number of employees on the pay roll and employing more contract labour. The Polyol plant has multi swing capacity and actual apportionment of employment for the PUC needs to be validated.

23. It is settled that both under WTO law and municipal law there is a requirement to establish a causal link between Imports of PUC and alleged serious injury to the Domestic Industry as per rules 5 and 11 of the Safeguard Rules and 8B (1) of the Customs Tariff Act, 1975 and Article 4 (b) of the Agreement on Safeguards.

24. Based on all that has been discussed above, it is a legal requirement for the Domestic Industry to establish on the basis of evidence that there is a causal link between increased imports and the serious injury to the DI. However based on the facts and figures available in the matter no causal link has been drawn between the imports of the PUC and the alleged serious injury to the Domestic Industry.

25. Alleged loss of market sales, production and profitability, capacity utilization even if correct, is based on other factors: Scarcity of PO and propylene the main raw material for the PUC is import dependent and therefore cost efficiencies are sub optimal leading to decline in profits, Admitted cyclical nature of the industry and general economic slowdown. Domestic Industry is a monopolist and therefore has no incentive to improve cost efficiencies. Imports are inevitable due to the huge demand-supply deficit. Even producing at cent percent capacity Domestic Industry is able to cater to 25%-30% of the domestic market. Admittedly DI also face issues of power shortage which effects profitability. In Annual Report of 13-14 Domestic Industry acknowledges 'the company went in for purchase of power through energy exchanges and third parties to meet the shortfall. These resulted in higher cost of power and consequently the profitability was also impacted'.

26. The Domestic Industry is a habitual protection seeker and has been the beneficiary of safeguard and anti dumping duties since 1998. It is obvious that the Domestic Industry relies on the imposition of anti dumping duties and safeguard duties to compete in the market. Both in Anti dumping and Safeguard jurisprudence, it is quite clear that imposition of duties is to create a level playing field for the Domestic Industry and not a means of supporting an inefficient domestic industry through an oppressive tax regime.

27. It is quite clear that this is a clear case of an inefficient industry which relies on a protectionist regime to survive against competition with regard to the subject goods. This is impermissible in law and therefore it was incumbent upon DG to take note of this very publicly available information and reject the Application of the Domestic Industry. Even the mere initiation of the instant investigation is bad in law.

28. From a perusal of the non-confidential version of the Application, it becomes quite clear that excessive confidentiality has been claimed by the Domestic Industry.

29. Such measures have adversely affected the end users and almost 47 companies have shut shop during the period as they were not competitive due to the domestic producer. On an average a foaming plant has 15-20 employees and over 900 people have lost their jobs due to imposition of anti dumping and safeguard duties.

30. Further, the price of polyol in India is the highest in the Asia pacific region and therefore imposition of safeguard duty on the PUC would make the product even more expensive and harmful for the downstream user industry.

31. It is therefore submitted that the Learned DG should take into account the larger public interest and decline the imposition of safeguard duty on the PUC. It is quite clear that no public interest would be served by imposition of safeguard duties in fact the same would lead to closure of user industries and consequent unemployment.

#### **(IV). Views of Importers/ Users**

**(a) M/s Sheela Foam Pvt. Ltd., submitted submissions through M/s TLC, LegalR-163, 2<sup>nd</sup> floor, Greater Kailash-1, New Delhi.**

1. Petition as well as the submissions made during the Public hearing are at variance with the Initiation notification  
a. In para 2 of the initiation notification, it is mentioned that the domestic industry has claimed to be the sole producer of the PUC in India. However at the time of Public hearing, the Applicant admitted to the existence of another producer of the PUC. Thus, the initiation is based on a faulty presumption that the Applicant is the sole producer of the subject goods, whereas admittedly there is another manufacturer of subject goods in India.

b. In para 3 of the initiation notification, it is stated that the PUC is classified under Customs sub-heading 39072010 and the imports under the said heading only has been considered. However, during the public hearing the Applicant contended that the PUC is being imported under heading 390720 90 also and relied on import data which included imports under both the headings.

c. In para 5 of the initiation notification, it is stated that the import data obtained from DGCIS has been considered. The applicant in their petition as well as during the public hearing has made submissions based on data procured by them from an alternate source and has not referred to DGCIS data considered by the authority. It may be noted that the data collected from the two sources have glaring discrepancies not only in quantity terms but also in rate. The two data show entirely different trend of increase in imports.

d. In para 7 (b) of the initiation notification it is stated that the Installed capacity of the Applicant currently is 25000MT. However, during the public hearing the Applicant has contended that it has a capacity of 50,000 MT.

e. In para 7 (c) of the initiation notification the data relating to Demand of PUC in Indian market and the market share of the DI and Imports have been given. The said data is at total variance with the data mentioned in the petition and with the submissions made at the time of Public hearing.

f. In the petition filed before the Anti-dumping authorities, the applicant has contended that its profitability has reduced by 20% in 2011-12 as compared to 2010-11. However, in the data submitted before the DG Safeguards, the applicant has claimed a 224% increase in their profitability in the same period. The relevant page of the Petition (NCV) filed by the Applicant before DG Anti-dumping is enclosed herewith and marked as Annexure-1.

2. From the above, it is clear that the data relied by the applicant in the Public hearing and in the petition are at huge variance with the data based on which the DG Safeguards has initiated the investigations. As the domestic industry itself is not in agreement with the data contained in the initiation, the initiation is liable to be terminated on this count only. Further, such discrepancy raises doubts on whether a detailed verification of the data submitted by the applicant has been carried out. In such circumstances, the initiation gets tainted with suspicion and should be terminated.

3. It has been contended by the applicant during Public hearing that the information contained in the petition need not be 100 percent accurate. In this regard, it is submitted that the Rule 5, of the Safeguard Duty Rules provides for the manner of initiation.

4. In terms of Rule 5 that the application must provide evidence of increased imports, serious injury to the domestic industry and causal link between the imports and the alleged injury. It further provides that the Authority shall not initiate an investigation, unless he examines the accuracy and adequacy of the evidence provided in the application.

5. In the present case, the information furnished by the domestic industry was neither adequate nor accurate for purpose of initiation. The Authority has accordingly rejected such evidence and opted to proceed with import data from DGCIS, not contained in the application and obtained by the Authority. There are glaring discrepancies between the information furnished by the applicants and that used by the Authority for the purpose of initiation.

6. Even if a view is taken that the investigations should be continued with, the domestic industry must be asked to amend the petition, as per the correct data, and thereafter fresh initiation should be done, if warranted and a Public hearing be held subsequently. Not doing so would be a gross violation of Principles of natural justice. Applicant enjoying benefit of various duties for past 16 years

7. Manali has got protection of duties against imports. At present also, along with the application for imposition of Safeguard duties, Manali has filed two other applications seeking imposition/ extension of Anti-dumping duties. What is surprising is that inspite of getting protection of duties for so long, Manali is still unable to adjust to the imports. It is not clear how safeguard duty for a further period of three years is going to help Manali adjust, if it could not do the same in past 16 years.

8. From the submissions made in the petition, it is not known whether the applicant proposes to increase its capacity or to improve on its levels of capacity utilization. The applicant has submitted in the petition that in the year 2013-14 they had an idle capacity of 45%. It is not clear how increasing the capacity is going to help Manali, if it is not in position to utilize its existing capacity. In any case, no information whatsoever has been submitted by the applicant as to how and by when it proposes to increase its capacity or levels of capacity utilization.

9. Further, a generic statement that the capacity would be increased by debottlenecking does not give any credence to the applicant's adjustment plan. Neither in petition nor in its submissions during Public hearing, has the Applicant mentioned any cogent measures that Manali plans to put in action to adjust with the imports.

10. At best, the game plan appears to be to increase the sales and production during currency of the Safeguard duty, thereby reducing its fixed costs. It is a natural corollary that once Safeguard duty is imposed, under the protection of the duty Manali's sales and production will increase. However, since Manali has no real plan to

adjust and bring itself / its product at competitive level as compared to the imports, once the duty is removed Manali's sales, production and capacity utilization will go back to original level.

11. The applicant has further contended that they plan to adjust by bringing improvements in bulk transportation and logistics of Propylene Oxide (raw material). It may be seen that the Adjustment plan submitted in 1998 before the DG Safeguards, was also to improve the logistics relating to the raw materials. It appears that since then the applicant was aware that the raw material transportation is a bottleneck for them, and adjustment on this account should have been done long back. However, evidently they have so far been unsuccessful in solving their raw material problem. It is not known what exceptional steps they plan to undertake to solve this problem in next 2 or 3 years.

12. Further, the applicant has contended that it plans to increase capacity of Propylene Oxide production facility. However, in their Financial Report for 2012-13, it is stated that bulk storage/handling facility for PO would become operational by Quarter 3 of 2012-13. Thus, since the increased capacity has already been put in place in 2012-13 only, it is not clear how this can be a part of adjustment plan. Safeguard duty is a protection given to a domestic industry to put its adjustment plan in action. As the proposed plan seems to be already in place, there is no requirement for imposition of duties.

13. Thus, it is not clear whether the applicant proposes to adjust by increasing capacity for PUC or for the raw material or by increasing its capacity utilization levels. In any case, increasing capacity is not going to help in reducing cost of production. No submission has been made as to how Manali plans to reduce its costs, making its sales in domestic market viable.

14. Further, the inability and unwillingness of the applicant to adjust to the imports is evident from the fact that they have not undertaken the necessary steps to compete with the imports, even after enjoying duties for past 16 years. Even the present adjustment plan appears to get higher level of sales, production and capacity utilization during the currency of the duty. Once the duty is removed, the applicant will again go back to its original position and might be filing another petition before the authority to provide further protection, at the cost of various other importers, who are also a part of Indian industry.

15. It is a settled law now that safeguard duties can be imposed only where it is shown that subject goods are imported into the country at such increased quantities as to cause or threaten to cause serious injury to domestic industry.

16. The DG Safeguards has initiated the investigations based on the import data obtained from DGCIS. From the data as available on record, it appears that the all imports of heading 3907 20 10 have been considered as imports of "subject goods". It was informed that transaction wise data has not been obtained.

17. It is submitted that many items falling outside the scope of subject goods i.e., are also being imported under the above heading. [ Poly (ether) alcohols of different types and having molecular weight less than 3000 or more than 4000 are also covered under this heading] . Additionally, subject goods are being imported under other sub headings. It is submitted that in order to determine the quantum of imports of subject goods, transaction wise information may be obtained from DGCIS and only transactions relating to subject goods, be considered for purposes of the investigation.

18. Thus, there is no cogent evidence on record to show, there is an increase in imports, let alone surge in imports. It has already been submitted in detail, that considering the product under consideration, the Authority has to examine the transaction wise information relating to the imports, before coming to any conclusion on the quantum and trends in imports.

19. In view of fact that, there is no authentic data to show the exact imports and surge if any, in the imports, the requirement of Section 8B of the Customs Tariff Act read with the AoS are not met. As the initiation is not based on information which is accurate and adequate for prima facie determination on the surge in imports, the same should be terminated.

20. During the Public hearing, the Applicant submitted that the Petition need not be 100% accurate. It is not clear how much accuracy would be considered to be adequate by the applicant.

21. The applicant has claimed in the petition that they are the "only producer of the subject goods in India". However, during the Public Hearing the applicant admitted that there is one other producer, i.e. M/s Expanded Polymer Systems, of the subject goods, but claimed that the other producer has not manufactured subject goods during the period of investigation. Not only has the petitioner given incorrect facts in the original petition, but continues to try and mislead the authority by making an incorrect statement that the other producer was not in operation during the POI.

22. In the initiation notification, period of investigation is defined to be 2010-11 to 2013-14. It is submitted that Expanded Polymer Systems was in operation during the period of investigation. We have purchased Exaflex 3056, (subject goods) against two invoices in February 2012 and three invoices in the month of June 2012. The

Serial No. of one of the invoices is 222, indicating that atleast 221 invoices for clearance of excisable goods had already been issued since April 2012.

23. We believe that other users such as M/s Kurlon Ltd., have also purchased the PUC from M/s Expanded Polymers during the period of investigation. A copy of invoices evidencing procurement of subject goods from M/s Expanded Polymer Systems are enclosed herewith as Confidential Annexure-2.

24. Secondly, during the Public Hearing, Manali claimed that their capacity is 50,000 MT. However, in the petition they have submitted their installed capacity to be 25,000 MT in 2013-14. If the claim of Manali is correct, is not clear why wrong information has been given in the petition. The initiation therefore also becomes illegal, as it is based on incorrect facts represented by Manali.

25. It is submitted that concealment of the existence of the other producer itself vitiates the investigations as:

- a. Standing of Manali may be affected,
- b. Expanded may not be suffering injury,
- c. Expanded's cost of production may be lower than that of Manali, thus evidencing Manali's inefficiencies
- d. The production and sales data of Expanded will affect various injury parameters such as Imports in relation to Total Indian Production, Total demand, Market share of Imports and domestic industry, etc.

26. The Authority may consider that in 2011-12, the selling price increased by 15% as compared to base year, whereas the cost of production increased by 20% as compared to base year. In such a scenario i.e., where the cost of production increased in a greater proportion as compared to the selling price, the profit can only decline. As per the petition, the profits have tripled in 2011-12 as compared to base year. This is an impossible situation. Similarly, in 2012-13 the selling price has increased by 10% as compared to base year, whereas there is a negligible increase in cost of production, the profit in 2012-13 should hence have been much greater than in the base year. The petition however, indicates a huge loss in 2012-13. It is submitted that clearly the figures provided in the petition are false and misleading. Such unreliable information appears to have been deliberately furnished by the applicants so as to avoid disclosure of the actual position and to prevent interested parties from making meaningful submissions on the claims made.

27. Fourthly, it may also be noted that the applicant has filed an application seeking imposition of anti-dumping duties on imports of PUC. In their application before the DGAD, they have submitted that their profitability has reduced by 20% in 2011-12 as compared to 2010-11. However, in the data submitted before the DG Safeguards, the applicant has claimed that their profitability has increased by 224% in 2011-12 as against 2010-11. It is astonishing how such a different figures be submitted before the two parallel authorities.

28. It is further submitted that the information furnished in the petition is also at stark variance from the audited balance sheet of the company. From the audited reports of Manali it appears that throughout the period of investigation, they have consistently earned huge profits. Manali has been consistently earning huge profits and has paid huge dividends to its shareholders.

29. Further, even if Manali's claim that it has incurred losses on the PUC is assumed to be true, in that case also, to achieve such levels of overall profit, it would have to earn inordinate profit on other products.

30. It is therefore requested that the cost of production used by the applicant for determination of profit may be disclosed. The applicant must be called upon atleast to disclose, the basis of allocation of common costs, between subject goods and other products manufactured by the applicant. Even if the cost of production is considered to be confidential, the basis of allocation of costs cannot be considered to be so. It is requested that such information may be made available to other interested parties forthwith.

31. Article XIX:1(a) of GATT 1994 requires that the increase in imports must be as a result of "unforeseen developments"(emphasis added). In particular, in the case at hand, any increase in imports of the subject goods occurred as a result of the grant of tariff concessions by India under the ASEAN India FTA (AIFTA). However, the grant of tariff concessions by India under the AIFTA is a concrete commitment undertaken by India under the above FTA and cannot be considered an "unforeseen development".

32. In the present case as there is divergence in data submitted and relied by applicant at the time of hearing and the initiation notification, in respect of almost all the injury parameters, we are not in a position to make any submission on injury allegedly being caused to the domestic industry. As the reliability of data is itself in doubt, on the aspect of imports, profitability, capacity, cost of production, market share, we are at loss in giving our submissions on this aspect. We request the Hon'ble Authority to terminate the present proceedings and ask the domestic industry to file a correct petition with accurate data, on the basis of which fresh investigations may be initiated.

33. In the present situation, since the proceedings are based on incorrect data, and the domestic industry itself is not accepting the data based on which initiation has been made, a proper opportunity has not been made

available to the other interested parties to put their views forward. The present proceedings are in gross violation of principles of natural justice and they should not be carried forward with.

34. Further, due to excessive confidentiality claimed by the Domestic industry, without providing any meaningful summarization or indexing of data, it is not possible for us to make submissions on the claims made by the domestic industry. We request the Authority to ask the domestic industry to disclose data which are not confidential in nature or at least provide meaningful summarization of the same.

35. At the outset, we submit that the data provided by the domestic industry does not fulfill the higher threshold of “serious injury” as required under the WTO Safeguards Agreement and the Indian Safeguard Rules.

36. In light of the above obligation, based on the application filed by the Petitioner, there does not seem to be any causal link between the imports of subject goods coming into India and decline in profitability of the Petitioner. This is evident from the fact that there is a consistent decline in the profitability of the Petitioner whether or not imports increase or decrease.

37. In 2012-2013 the imports are claimed to be 42026 which have increased to 54507 in 2013-14, i.e., an increase of 30%. Sales of domestic industry during this period have however, remained stagnant i.e., 13451 in 2012-13 and 13473 in 2013-14. In fact even the production and capacity utilization have remained more or less the same in 2012-2013 and 2013-14 indicating a lack of causality between the imports and the injury claimed by the applicants.

38. Article 5(2)(b) of AoS provides that factors other than increased imports which are causing injury to the domestic industry, shall not be attributed to increased imports. Similarly, Annexure to the Safeguard Rules require Authority not to attribute injury due to factors other than increased imports.

39. In the present investigation, there exist other factors as well apart from imports of subject goods coming into India, which may be a cause of injury to the Petitioner. These may be listed as follows:

a) Quality issues and inconsistency in supplies

b) Demand – Supply Gap

c) Locational disadvantage of DI-Most of the users industry are located in North India, whereas the, manufacturing facility of the Domestic Industry is in South India.

d) The domestic industry is unable to achieve high levels of capacity utilization, not for a lack of demand, but on account of supply side constraints. The domestic industry routinely suffers from a shortage of raw materials, as it does not have infrastructure to handle critical materials like propylene oxide.

e) Increase in imports due to ASEAN-India FTA

40. It is submitted that in para 81 of Gul Ahmed Textile Mills Ltd v Council of European Union (OJ C 331, 12.11.2011), EC Court annulled anti-dumping duty imposed on imports of Cotton Type Bed Linen on the ground that the European Commission failed to examine the scheme of generalized tariff preferences on the increase in import of the goods and subsequent injury to the Domestic Industry in EU. Consideration of other factors is similar to that under anti-dumping provisions. Thus, the above judgment of European Commission is relevant in this particular case. The FTA between India and ASEAN countries is thus a crucial factor in this respect. Under the treaty, various concessions pertaining to trade in goods, rules of origin, investment, etc. have been agreed on by the two nations. This crucial ‘other’ factor which may have caused injury to the Domestic Industry, must be analysed by the Authority.

41. The Article 3.1 of AoS provides that 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.

42. Further, imposition of 25% Safeguard duty will have a direct impact of 15% on the cost of Foam. These foams are used in manufacture of mattresses, pillow and other day to day products. The incidence of duty has to be borne by the importers, who will be forced to import irrespective of the duties, as the domestic industry does not have the required capacity to meet Indian demand. In such circumstances, the importer-manufacturers will be forced to raise their prices, passing on the burden of the duty to the ultimate customers.

43. Further, the user industry provides direct or indirect employment to more than 50000 people and levy of duties will result in imports of value added products. It is imperative to mention here that the user industry has been bearing the burden of duties, which are being enjoyed by Manali, for the last 16 years. During this period about 50 Foam manufacturers were forced to close shop. It is therefore, submitted that imposition of duty is not in Public interest.

44. We seek permission to rely on the various submissions made in our Preliminary submissions dated 26.06.2014, which are not being reproduced herewith for sake of brevity.

45. On the basis of the arguments submitted above, we respectfully request the Hon'ble DG Safeguards to terminate the present proceedings forthwith.

**(b) M/s Vitrag Foam Pvt. Ltd., Nr. Sabar Dairy, Godhoda, Talod road, Himatnagar-383001 submitted the presentation of M/s Sheela Foam Pvt. Ltd., as their submissions**

**(c) M/s Royal Synthetics submitted the presentation of M/s Sheela Foam Pvt. Ltd., as their submissions.**

**(d) M/s Springfeel Polyurethane Foams Private Ltd.,** submitted the following submissions-

- a. The installed capacity of M/s. Manali Petrochemicals Limited (WPC in short) for the production of flexible slabstock polyol is much less than the demand for the same from various polyurethane foam (PUP in short), situated across India.
- b. Price justification: MPL is also exporting slabstock polyol to other countries. It can be observed from copies of records available with Customs that the price at which we are importing is very much in line with the prices at which MPL is exporting during the same period of time and that these prices are in line with the international prices in force for the countries in this geographical region.
- c. MPL has claimed that their production and sales of slabstock Polyol have declined. It must be noted that MPL has a shared production capacity for the manufacturing of the various intermediaries and commodity products that they offer. This kind of shared production capacity implies that a reduction in the production of slabstock polyol does not mean that they have been under utilising their installed capacities. It simply means that they have producing some other product (for example DPG). This can be easily verified from the number of days of nil production and resultant plant shut down days effected by MPL.
- d. MPL has claimed in their application to your office that they are incurring losses. This is not correct. A study of their published Balance Sheet and Profit & Loss account for the years 2010-11, 2011-12, 2012-13 and 2013 -14 show profits and have in fact declared dividends to their shareholders.
- e. It is most respectfully pleaded that, The application for Safe Guard Duty made by MPL be dismissed ,
- f. That market dynamics decide the pricing of flexible slabstock polyol,
- g. As manufacturer of flexible slabstock foam we are not over burdened by the unjustified levy of additional duties on the import of polyol.

**(e) M/s Durapuf (Silvassa) Pvt. Ltd., 121/122/123, Piparia Ind. Estate, U.T. of Dadra - Nagar Haveli, Silvassa - 396 230. Via Vapi(W Rly.)** submitted the following submissions-

1. With reference & subject to above we would like to inform you that product under consideration (Polyol) produced by M/s Manrli Petrochemicals Ltd who is only one domestic producer and their total installed and production capacity cannot meet even 20/25 % of India's total demand/ consumption of Polyether Polyol.
2. Further please note that price level of all the international manufacturers from Japan/Korea/Germany/Singapore supply this Polyol at cheaper than M/s Manali petrochemicals Ltd. Hence consumers tend to import the same. We import above mention material as CIF basis from manufacturer/exporters and if we purchase locally from M/s Mernali Petrochemicals Ltd., we wilj have to pay 2% cst and transport charges which is extra.
3. As M/s Manali Petrochemicals Ltd is only one producer producing polyol in India, they may act as monopolistic supplier for pricing and supply of quantity to individual customer.
4. Further as P.U. foam manufacturer, we are paying indirect taxes such as custom duty, VAT, Excise, cst to Government. Due to initiation of safeguard duty our cost of product will be increased substantially & herree we fail to understand that to safeguard of only one manufacturer locally why Government wants to loose substantial revenue from approx. 80-100 P.U.Foam manufacturers in India.
5. we wish to draw your attention that many countries do not have any duty or lower rate of duty and they are taking advantage of higher prices prevailing locally hence we India is also losing precious foreign exchange by giving them higher price. Please note that still they are cheaper than M/s. Manali Petrochemical; Ltd. In the light of above facts we request you please do not consider imposing safeguard duty on polyether Polyol as mentioned in your above notification.

**(f) M/s Allied Foams Private Limited, D-32, Mehendru Enclave, Delhi-110033** submitted the following submissions-

1. The applicant was well aware of the fact that the other manufacturer e.i. Expanded Polymer Systems Pvt. Ltd. Exists. The MD of Manali and MD of Expanded have been on the executive board of IPUA for a number of years. So how can they claim that they were unaware of their existence, hence it amounts to a wilful concealment of the facts on their part.
2. Similarly the import Data they have relied on is not correct as was pointed out by sheela foams attorney in the public hearing. In the absence of correct Import Data no safeguard duty can be imposed.
3. The applicants production capacity has been the same for last 27 years that is around 15000 metric ton per annum
4. Manali and UB started there polyol plants with capacity of 7500 tons of polyol each .way back in 1987,
5. The import duty on polyol then was more than 100%
6. UB was purchased after a few years by Manali so there capacity became 15000 tons
7. After Mr Manmohan Singh became the finance minister and he started reducing the duties gradually in early nineties. The duty on polyol kept on reducing and ever since late nineties Manali has been approaching Govt. for safeguard duty or anti dumping duty and they have succeeded in getting one or the other measure , imposed.
8. They have admitted their production at 15000 tons till last five years.
9. From the above facts it is clear that that there has been no increase in Manali production from 1987 till 2009. As per them only.
10. Now they claim that they have increased their capacity to 25000 tons . as per the application with you.
11. During the course of their presentation their rep claimed their production capacity as 50000 per. Annum. Here again they themselves are making a contradictory statement .What is the truth?
12. Has their capacity really increased? Or are they just trying to create a fact out of nothing?
13. 22 years a company has not increased their production by even 1% and now all of a sudden they are claiming jumps of 66 to 333% increase in the production capacities. Are they to be belived on their face value?
14. Manali has enjoyed a virtual monopoly and made good profits when the duties on their competitive product from abroad are kept at high levels.even, with no increase in their production capacities.
15. Durring last 3 years even with zero duties on their competitive product. There are a no of small foam producers in different parts of India who consume 5 to 10 tons polyol per month. These people have no option but to buy from the local manufacture or an importer where they have to shell out more prices hence the local Mnufacterers have all most an assured market for what ever production they are capable of doing.
16. The company has been doing well and since the balance sheet over all is profit making their claim that this profit is from other business should be rejected .
17. During public hearing when some of the above anomalies in their application were pointed out then their lawyer. takes the plea that an application may not be 100% correct.
18. They may not be 100% correct but if it is proved that they are wilfully presenting misleading facts it should be taken differently. And their application needs to be rejected .on this cause itself.
19. The Flexible foam production has doubled during last 5 years there by increasing the demand for the polyol from 42000 tons to 84000 tons app.
20. With domestic production of polyol remaining the same the Flexible foam manufacturers have to rely on Imports. Hence the ratio of imports to domestic shows an increase.
21. With flexible foam having a double digit growth the gap in the demand and available local supply their share of the total market has to reduce As they have never tried to increase their production. Or improve their quality
22. Apart from this the quality of the product produced by both the local manufactures is much lower than the international standards .
23. As a matter of fact the imposition of safe guard duty should be only on equivalent materials and it can be said that what we (Local manufactures some traders) are importing is not manufactured by any of the two manufacturers. ( just as hypothetical example , there is a manufacture of leather shoes in India and no manufactures of PVC Shoes. Is the leather shoe manufacture entitled to get safeguards imposed on shoes as such covering the PVC Shoes as well or only leather shoes as such)
24. As said in my presentation the law under which the applicant is seeking protection as a local Manufacturers protects all the local manufacturers and there are around 100 manufacturers of flexible

P.U. and thousands furniture and bedding manufacturers. If safeguard measures are imposed. on the polyol ,thousands shall be hurt against the gain to only two polyol manufacturers.

25. I humbly request you to please consider all the above cited facts and reasons and reject this application and save thousands of local manufactures form injury. And saving crores of Indian consumers from an unjust price Increase.

**(f) M/s Springwel Mattresses Pvt. Ltd.,** submitted the following submissions-

- A) There is big difference in the Data of Imports as given by M/s Manali and given in Initiation Notice. This point was well represented by all the parties and even Manali accepted that there is huge gap in two sets of Import Data so no initiation should take place.
- B) There has been lot of variance in figures / information put forth by Manali in respect of not knowing about the other manufacturer M/s Expanded Foam, their own production capacity, increase in Demand of Polyol in the market.
- C) Manali has less production capacity and cannot meet the Market Demand which is around 84000 ton against their installed / increased capacity of only 25000 tons. Manali cannot meet market demand in any yardstick.
- D) Manali is in existence for so long but could not update / upgrade itself to meet the competition .
- E) It is well represented by number of Parties that Manali should not be allowed to continue protection on account of Safeguard / Anti dumping Duty as they have already enjoyed for number of years already.
- F) Manali should not be given Protection as it will cause Injury to number of Slab Stock Foam manufacturers, furniture and bedding manufacturers, and other small manufacturers who are using PU Foam in their products. We request you to please consider our strong objections to the application of Manali and reject the same in public interest.

**(g) M/s Tirupati Foam Ltd**

1. The Imports data used for initiation is different from the data submitted by the Manali Petrochemicals. In the data used by your good office, various kinds of Polyols, other than the subject Polyols are also included. The entire import of Customs tariff Heading 39072010 is treated as Polyol of MW 3000-4000, which is not correct. In the absence of correct data of import it can not be said that there is any surge in imports. Hence the correct import data may be called for and only if it is concluded that there is a surge in imports, which is causing injury to Manali Petrochemicals, fresh public hearing may be called.
2. We have o import Polyol as Manali is unable to supply us Polyol. Their capacity is not even 30% of the domestic demand of polyol.
3. we get Polyol from Manali, which is inferior in quality vis-a-vis imports, through rationing process.
4. it is not clear as to how Manali is injured and incurring losses, when they are making huge profits and the subject product is their major product, as stated stated in their own Board Report of 2013-14.
5. Any imposition of safeguard duty will seriously injure small manufacturers like us, who are forced to import, due to unavailability of Polyol with Manali.
6. Manali is enjoying protection for the last 16 years in the form of safeguard duty/ Anti-Dumping duty and they have no plans to increase their capacity and improve the quality of product.
7. we request you to consider our plight with sympathy and do not impose any safeguard duty which is totally unjustified and can cause closure of so many small units only to further enrich one large company.

**D. Rejoinder by Domestic industry and interested parties.**

**I. Domestic Industry.**

1. It is also submitted that we deny all the submissions made by the interested parties unless specifically accepted by us. The domestic industry also reiterates and relies on all the submissions made in the application, comments, written submissions and other submissions. The said submissions have not been repeated herein for the sake of

- brevity. Any fact or averment in the written submissions of interested parties mentioned above, which is not specifically admitted hereinafter may be treated as specifically denied.
2. It was argued by the interested parties that the domestic industry had already approached anti-dumping directorate and, therefore, there is no need of current safeguard investigation. It was also pointed out by the major exporters from Singapore that since 98% of imports of the subject goods originate in Singapore, there is no need to impose safeguard duties against all countries. In this context, it is submitted that the submission of the Opposite Parties is without any merit either in law or on facts. There is no bar whatsoever which prohibits simultaneous investigations for two different trade remedial measures. Further, there are several instances where parallel anti-dumping and safeguard invest have been carried out.
  3. In this context, it is submitted that Hon'ble DG in the case of Electrical Insulator had recommended safeguards duties under Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002. Simultaneously and anti-dumping investigation was also initiated by the Designated Authority against China only. Therefore, the argument of interested parties that DG should reject Safeguard investigation as Singapore will be taken care of by anti-dumping investigation measures, does not carry any weight.
  4. In addition to above, the DG in the cases of Rubber Chemicals, Caustic Soda, Carbon Black, Soda Ash, etc., has recommended for levy of safeguard duties in addition to the anti-dumping duty already in force. The Government of India accepted the recommendation and imposed safeguard duty along with the anti-dumping duties. Hence, it is wrong to say that both duties cannot be levied and therefore same to be rejected.
  5. Kind attention of the DG is also invited to the Final Findings in the case of N 1,3-dimethyl butyl-N' Phenylenediamine (PX-13 also known as 6PPD, Vulconox 4020 etc) [F.NO.D22011/32/2010 dated 6.6.2011] into India wherein the DG had categorically recorded that there is no bar imposed by law on imposition of Safeguard Duty when Anti dumping duty is already in place.
  6. From the above, it is clear that it is the stated position of the DG that there is no bar, either legally or logically, to recommend safeguard duties merely because of the existence of a parallel safeguard investigation. In view of the above, we request the DG to kindly reject the issues raised by the interested parties in terms of available jurisprudence on the subject and past practice of the Safeguard Directorate.
  7. It is submitted by the interested parties that the DG has initiated the Safeguard investigation despite the fact that 98% of the subject goods are coming from Singapore, a member country of ASEAN from which India had bilateral Free Trade Agreements and India-Singapore CECA. It was further contended that the purpose of these agreements is to increase the trade and any recommendation will be against the motive of the agreement. In this context, the domestic industry submits that in the recent investigation of Saturated Fatty Alcohols, DG has analyzed the issue of FTA's and the approach and conclusion is applicable to the current investigation also.
  8. Without prejudice to the above, it is also important to appreciate that the anti-dumping duty will be based on a different investigation period, whereas the present Safeguard duty is being proposed based on much more recent period.
  9. In view of the above, it is clear that the Hon'ble DG can initiate and recommend duties even if a particular country is covered under any FTAs or any other bilateral agreement.
  10. The interested parties in their written submissions stressed upon the habit of domestic industry about using trade measures. In their misplaced enthusiasm to create a bias, it was falsely stated that the domestic industry is enjoying the benefit of duties for last 16 years. In this context, it is submitted that the said allegation is wrong and contrary to the facts. It is further submitted that the interested parties have intentionally withheld the fact after 1998, the domestic industry has approached the DG (Safeguards) for the first time for protection against increased imports and too when there is significant sudden surge of imports.
  11. In relation to anti-dumping duties, it is submitted that it is due to the habitual dumping behavior of exporters from certain countries that the Domestic Industry is forced to approach the Designated Authority for redressal of their problems. The Hon'ble Designated Authority for Anti-dumping gives its findings only after following the due process of law and after proper analysis. It is a paradoxical situation that the exporters who are found to be indulging in dumping practices, are blaming the Domestic Industry. Therefore, the attempt of the exporters to blame domestic industry needs to be wholly rejected. Without prejudice, it is submitted that the interested parties have also not provided the correct information with regard to the various investigations conducted by the DGAD and the DG (Safeguards). It may be noted that there has been only one safeguard investigation and two anti-dumping investigations so far on the Product under Consideration.
  12. The DG may like to appreciate that domestic industry is always on the receiving end due to the dumping practices of exporters from Singapore, China, Indonesia, Korea, Taiwan, EU and USA. This is the only reason why Designated Authority recommended duties against these sources. Without prejudice to above, it is submitted that Domestic Industry has every right to take appropriate actions as available under the law to protect their interest.

13. The issue related to standing of the domestic industry is wrong and contrary to the legal position. In this context, it is submitted that as per the information available to the domestic industry they are the only producers, commercially producing the subject goods during the period of investigation. In any case, even assuming but not accepting that there are other producers producing the subject goods, M/s Manali Petrochemicals will account for a major proportion of the total domestic production in terms of Safeguard Rules.
14. Without prejudice to the above, it is submitted that except Sheela Foams all the importers and users acknowledged the fact that practically the applicant is the sole producer of the subject goods in India.
15. The representative of M/S Sheela Foams submitted that there are variations in the data/submissions made in the petition and during the public hearing by the Domestic Industry and the initiation notification. While pointing out the differences in the import data, the representative ignored the fact that the sources of import data are different.
16. In addition to above, they have alleged differences in installed capacity, number of domestic producers of subject goods, customs sub-headings, demand in the Indian market and profit & loss figures of anti-dumping petition and safeguards petition. In this context, it is submitted that the basic premise of the legal representative of M/s Sheela is wrong and without any legal or logical basis. Moreover, they have tried to quote issues and submissions which were never made by the domestic industry either in the petition, any of their submissions or in the public hearing. Nevertheless, we are offering our comments to the issues raised by them in the following paragraphs:
  - a. Installed Capacity: The domestic industry confirms that they have installed capacity of 50000MT for Polyol as a whole, which can be used 100% for producing the subject goods. However, as a matter of record, domestic industry has allocated 50% of their capacity for subject goods.
  - b. Chapter Heading: In relation to chapter heading, the Domestic Industry submits that the DG has used only 39072010 the code under which the subject goods are technically classifiable. Theoretically, all imports should come under this code only. However, it is a known fact that goods are classified headings other than the technically correct heading particularly when there is no duty implication. In the instant case, it is a matter of record that the subject goods are getting classified under Chapter Heading 39072090 also. The DG may like to appreciate that if both headings are taken in account, then the DGCI&S will also show the same growth trend as seen from the data used by applicant. In view of the above, DG should reject the submissions as they are devoid of any merit.
  - c. In relation to variation in demand and market share, it is submitted that all the parameters linked to import data will show variation as import data considered as the data used are from different sources.
  - d. The interested parties had argued that the figures submitted in anti-dumping and safeguards are different and same need to be checked. In this context, it is submitted that due to the difference in the methodology adopted by the authorities in anti-dumping and safeguard investigations, there might be slight variation in the figures. In any case, the safeguard investigations are independent investigations where the Hon'ble DG will carry out its own verification before arriving at the final recommendations.
17. All the issues related to adequacy and accuracy are explained in detailed in our written submissions dated 10.10.2014. Same are not repeated herein for the sake of brevity. However, the issue raised by representative of M/s Sheela selectively picked the words of the submissions of domestic industry without understanding and appreciating the law and available jurisprudence on the subject. We are surprised and shocked by the interpretation drawn by the legal representative of Sheela Foams during the public hearing and even in their written submissions. The domestic industry reiterated that Rule 5(3) of Safeguards only talks about the satisfaction of the DG on the available data for the purpose of initiation. In the instant case, there was sufficient evidence to justify the initiation of the investigation and, therefore, the contention of the interested parties is devoid of any merit.
18. Domestic industry further submits that in the instant case, no party has provided any evidence even to suggest that the information available with the DG (Safeguards) at the time of the initiation was not "sufficient" to justify the initiation of the investigation. In view of the aforesaid, it is requested that the submissions made by the interested parties should be rejected.
19. Contention of the interested parties is wrong and denied. In this context, it is submitted that as per the practice of the DG, soft copy (in excel format) of import data is not circulated to interested parties. However, if the DG feels that it should be given to all interested parties, we will have no issues to provide the soft copy provided the same practice is followed in all other cases also.

20. The interested parties in their submissions made detailed arguments about the increase in the imports. In this context, we had made our detailed submissions in relation to surge in imports dated 10.10.2014. The same are not repeated herein for the sake of brevity.
21. From the above, it is clear that the imports increased from 25849 MT in the year 2010-2011 to 61075 MT in 2013-14, which is an increase of 35226 MT within a period of three years. This is 2.36 times of imports in the base year or increase by 136% over the base year. It is respectfully submitted that this increase is certainly significant, sudden as well as sharp by any standards.
22. From the above, it is clear that imports have increased significantly in the period of investigation. The said increase in import can be termed as recent enough, sudden enough and sharp enough.
23. The contention raised by the interested parties in relation to double counting of import data is wrong and hence denied. The domestic industry submits that there is no double counting of imports into the country and vehemently denies the proposition that the imports through warehouses (CFS, ICDs) are counted twice in the import data. It is important to note that the importers have not given sufficient data in support of their claim but have merely made hollow contentions. Without prejudice, it is submitted that even if the apprehension of the interested parties is accepted, then also the Domestic Industry's case for increased imports and injury will not be affected at all. In view of the aforesaid, we request the Authority to kindly reject the submissions made by the interested parties.
24. The contention raised by the interested parties in relation to annualization of 9 month import data is wrong and hence denied. In this context, it is submitted that there are plethora of the cases wherein DG has adopted the same principle while initiating the investigation. However, we request the DG to kindly call for the actual import data from DG (Systems) of the Department of Revenue or the DGCI&S and set the controversy to rest.
25. Domestic Industry denies the fact that the current imports are coming in India because of demand and supply gap. In this context, it is submitted that the domestic industry is operating at 55% and 45% of its capacity is lying idle. It is also important to note that domestic industry has only allocated 50% of their total Polyol capacity of 50000 MT to subject goods. If needed, the Domestic Industry can divert remaining 25000MT to produce subject goods. This diversion will make capacity 50000 MT to produce subject goods. It may also be appreciated that domestic industry has constantly increased its capacity, keeping in view the demand of the subject goods and in future also, if needed, they will increase the same. Therefore, to say that imports are inevitable is wrong and same needs to be rejected.
26. It is also submitted that the Domestic Industry is forced to export its production (at comparatively lower prices) which can be easily made available for domestic consumption. The Domestic Industry has not refused to sell the subject goods to any customer and, therefore, the argument of demand-supply gap does not hold any water in the facts and circumstances of this case. In any case, the objective of a safeguard duty is not to block the imports but to address the specific problem being faced by the Domestic Industry on account of increased imports with a view to allow the Domestic Industry to take remedial measures. It may also be mentioned that similar arguments have been raised in the past before the DG, but have been consistently rejected. In this context, we draw your kind attention to the following decision of the Hon'ble DG wherein the DG had rejected the arguments of the Opposite Parties under identical circumstances:
- N 1,3-dimethyl butyl-N'Phenylenediamine (PX-13 also known as 6PPD, Vulconox4020 etc) Final Finding dated 6.6.2011.
27. Without prejudice to above, it is submitted that the other producer namely M/s Expanded Polymers who has a capacity to produce about 6000MT of the PUC which could not be utilized due to increased imports. The existing capacity of the applicant along with their extended capacity utilization and the capacity of Expanded Polymers, would be able to adequately meet the demand in the country. In any case, it cannot be anybody's case that safeguard measures cannot be taken if the Domestic Industry cannot meet the entire demand in the country.
28. In the context of injury parameters, it is submitted that we have made detailed submissions in our application as well as in our written submissions dated 10.10.2014 and therefore same are not repeated herein for the sake of brevity.
29. Some of the interested parties have argued that the Domestic Industry has not suffered injury. It is further argued that even if there is injury, the same cannot be attributed to increased imports. Assuming but not accepting that injury to the Domestic Industry could have been caused by factors other than "increased" imports also, it is submitted that there is enough jurisprudence available on the subject to establish that the scope of safeguards investigation is not restricted to the situation where Domestic Industry is suffering injury only because of increase in imports. In this context, the DG may like to appreciate the following:

30. The Appellate Body in *US — Wheat Gluten* concluded that the contribution by increased imports must be sufficiently clear so as to establish the existence of “the causal link” required, but rejected the Panel’s conclusion that the serious injury must be caused by the increased imports *alone* and that the increased imports had to be sufficient to cause “serious injury”.
31. In view of the above, it is clear that the Hon’ble DG only needs to analyze and conclude that the imports are causing injury to Domestic Industry and it is one of the grounds (and not necessarily the sole ground) which are affecting Domestic Industry’s performance. Without prejudice to above, it is submitted that the injury suffered by the Domestic Industry is primarily because of increase imports only.
32. Detailed information, data, and submissions have been made before the Designated Authority evidencing injury and consequent causal nexus between increased imports and injury. Unsubstantiated submissions are offered disputing such material information and evidence provided by the Domestic Industry. Clearly, they are required to be rejected.
33. Interested parties have placed reliance on statements made in the annual reports of various years and in support of their claim that there is no causal link established in the facts of the present case. At the very outset, it may be mentioned that the Annual Reports do not pertain to the specific period of investigation. In any case, it is undisputed that Domestic Industry is a multi-product company and its Annual Report is a reflection of its overall operations for all the products. In other words, the annual report is an overview of company’s performance and not a performance appraisal of specific products which may be under investigation. It has been consistently held that trade remedial measures have to analyze the performance qua the PUC and not in relation to the company as a whole. This approach is based on the sound legal premise that what is under investigation is not the company but the product under consideration. Hence, the performance of the Domestic Industry has to be judged for the product under consideration alone in terms of the provisions of law. The Annual Reports do not reflect the performance of the PUC but is a reflection of the performance of the company as a whole. Nevertheless, the domestic industry is providing reply to specific issues in the following paragraphs:

(i) Constraints in Production:

It is submitted by the interested parties that the Domestic Industry may have faced constraints in production possibly suffered due to electricity shortage issues in Tamil Nadu as well as shortage of bio mass fuel for captive power plant. In this context, it is submitted that the issues raised are wrong and hence denied. The claim that there is shortage of electricity in Tamil Nadu has been presented in a very generalized manner without giving any evidence to even suggest that the Domestic Industry also suffered on this account. Further, the domestic industry submits that it has three sources of power supply namely, self-generated power (captive power plant), power from State Electricity Board and Diesel Generator set. This gives enough flexibility to the Domestic Industry to ensure that their production does not suffer on account of any shortage in any particular source of power supply. Therefore, the submission of the interested parties that the domestic industry’s production may have suffered on account of power is totally irrelevant and needs to be rejected.

(ii) Non Availability of Raw material

In the relation to availability of Propylene Oxide (PO), it is submitted that the domestic industry has made adequate supply PO for its requirements. The domestic industry is producing PO in-house and also importing the same as and when required. They have also made PO storage facility at E TTL which allows them to import large quantities and use it as per their requirement. In view of the aforesaid, it is submitted that issues relating to availability of key raw material i.e., PO is devoid of any merit and therefore, needs to be rejected.

(iii) Inadequate Capacity of the Applicant

The claim of the interested parties regarding certain restrictions in Manali area with regard to increase in capacities, etc., (where the domestic industry’s plant is situated) is wrong and hence denied. In this context, it is submitted that the applicant has a total 50000MT capacity of Polyol, which can be directly used for the production of the subject goods. Thus, there is no effect of the restriction on the fact that the Domestic Industry has enough capacity to produce the subject goods and that the effect of dumped imports on the performance of the Domestic Industry, does not get diluted due to certain restrictions in the past. In any case, even the moratorium with regard to increase in capacities was lifted with effect from September 2013. In view of the aforesaid, the issue relating to capacity needs to be rejected.

34. Domestic industry has provided detailed restructuring plan in their application as well as in the written submissions filed on 10.10.2014. The same are not repeated herein for the sake of brevity and should be considered as part and parcel of the rejoinder submissions.
35. In addition to above, it is submitted that arguments raised by the interested parties in relation to the adjustment plan of the domestic industry are without any basis and should be rejected. The interested parties had not provided any hard facts to prove that adjustment plan is not workable or what are the flaws which will make adjustment plan unviable. They were based on assumptions and assertions rebutted the claims of domestic industry which needs to be rejected by the DG.
36. Some of the interested parties submitted that the domestic industry had relied on the same adjustment plan as given in the last safeguard investigation and after imposition of duties they have not taken any action to complete that plan. In this context, it is submitted that the allegation made by the interested parties is wrong and without any factual basis.
  - i. Applicant had entered pricing agreement with CPCL for higher quantity. Due to the agreement, now the prices are fixed based on International LPG price + Conversion cost.
  - ii. The propylene pricing was fixed on import parity price, considering FOB value of Japan.
  - iii. In case of any shutdown of the CPCL plant, applicant sourced propylene from Gail, HPCL Vizag, etc.
  - iv. From the years 1999-2000 / 2000-01, the PO capacity utilization was not affected due to non-availability of propylene.
  - v. Further, in order to enhance the PO capacity, the applicant had debottlenecked PO plant and increased the capacity of the plant from 24000 MTPA to 36000 MTPA.

In view of the above, it is clear that domestic industry has taken every necessary action to streamline PO plant and since 2000 there is no constraint in Propylene availability.

37. The domestic industry after imposition of safeguard duties constantly worked to reduce its energy consumption. It is clear that the Domestic Industry is serious about its adjustment plans and this time also they will deliver as per the schedule. The DG may like to appreciate that the PO storage facility at ETTPL was already made operational, which was provided as a part of adjustment plan. The domestic industry once again request the DG to kindly recommend the duties at earliest to safeguard the legitimate interest of the domestic industry.
38. Arguments have been made by the interested parties that there are no unforeseen circumstances which led to increase in imports and caused serious injury to Domestic Industry. In this context, it is submitted that the Domestic Industry in its non-confidential version of the petition had provided all the unforeseen circumstances which has resulted in increase in imports. In addition to this, we have also discussed the unforeseen circumstances in detail in our written submissions dated 10.10.2014.
39. Without prejudice, it is reiterated that while there is no express obligation/requirement on the Director General (Safeguards) to analyze unforeseen circumstances in terms of the Indian laws, we understand that the DG may still prefer to analyze the “unforeseen developments”. In any case, it may be noted that even in the GATT or the WTO Agreement on Safeguards, there are no specific guidelines or methodology that should be followed for analyzing unforeseen developments. Moreover, there is no specific question in the application format for the Domestic Industry or the domestic producers, wherein such information can be filed.
40. Before the specific case of the Domestic Industry is spelt out in the context of the “unforeseen developments”, it would be pertinent to refer to the Appellate Body decision in the Argentina-Footwear (EC case) held that the phrase “Unforeseen Developments” means the developments which were unexpected. ‘Unforeseen developments’ requires that the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been ‘unexpected’. The Appellate Body in Korea-Dairy case held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.
41. It may be appreciated that the Domestic Industry did not anticipate nor could it have predicted that the subject goods will come through Singapore only, despite the fact that Singapore accounts for only 2.87% of the total Global Polyol capacity [(based on the published information on Page 30, Table 10 (Global Polyol capacity by leading producers 2012-17 (Forecast)/ kt) of PU Magazine – Vol. II, No. 1- February/ March 2014]. This sudden increase of imports from one source where duties are reduced due to FTA’s is unforeseen by the domestic industry or cannot be foreseen by any negotiator also.
42. Concentration of Supply Chains: In this context, it is reiterated that the Domestic Industry did not anticipate that due to Indo-ASEAN FTA and Indo-Singapore CECA, major suppliers will make special and perhaps illegal

- arrangements to avail benefit of this. The DG would like to appreciate that now these major suppliers control the market as well as the supply chain. It is precisely for this reason that the major suppliers have come together to take undue benefit of the FTA. It is also for this reason that 98% of the imports are coming from Singapore, which is inconceivable in this current open market. This sudden increase of material from one source and that too at non-remunerative prices is unforeseen by the domestic industry.
43. The domestic industry could not have predicted that the prices of the subject goods will also reduce significantly despite the increase in raw material prices world-wide. These reductions in prices led to sudden increase in imports of subject goods in India as can be seen from the import statistics. The period of sudden decline in prices of subject goods and sudden increase in import quantity coincided with the period when Domestic Industry commenced its commercial production. Further, this price reduction of subject goods has also reduced the capability of Domestic Industry to negotiate better price with the customers.
44. Moreover, the concessions which are being negotiated by the government takes into account particular levels of import volume and the prevailing price levels. If there are significant changes that the negotiators could not have anticipated at the time of negotiations, then certainly it is a case of unforeseen developments. Further, it is important to note that no government or negotiator would be able to anticipate that imports will predominantly imports will come only from a major source after the FTA. The above are the unforeseen circumstances which neither the Domestic Industry nor the negotiators of Indo-ASEAN FTA and Indo-Singapore CECA foresee at the time of negotiation.
45. Thus, it can be seen that there were indeed unforeseen circumstances which Domestic Industry could not foresee.
46. It is reiterated that the issues raised by the interested parties during the course of the investigation are merely based on the conjectures and with the intention to create a bias. In this context, it is submitted that the quality of domestic industry products are at par with imported material. The same can be demonstrated by the quantity of material lifted by our major suppliers and their repeated purchase is proof of our quality. The same is attached as Annexure 1.
47. In addition to above, it is submitted that the colour of the foam depends on the chemistry of the inputs. Moreover, as shown by the importers that they are getting poor quality foams due to Manali product, is wrong and baseless. The yellow colour shown of the foams is due to the reaction that takes place as they the foam is kept in open for few days. In view of aforesaid, it is clear that colour of the mattress has nothing do with the quality of the subject goods. Moreover and without prejudice, it is settled jurisprudence that quality cannot be an issue in a safeguard investigation.
48. Availability of Major Raw Material for Producing Propylene Oxide: It is submitted by the various interested parties that the availability of major raw material i.e., Propylene was limited due to the fact that domestic industry is only procuring the PO from CPCL. This fact is not correct as they are also procuring the same from Gail, HPCL Vizag, etc. In view of the aforesaid, their arguments hold no water and therefore, needs to be rejected.
49. Price Undercutting, Depression and Suppression: The interested parties have made contradictory statements in relation to price undercutting, depression and suppression. On the one hand, they are alleging that there is no price undercutting, depression and suppression and on the other hand they are admitting that the imported material is cheaper and that is why they are procuring the same (page 1 of the written submissions filed by Dura Puf (Silvassa) Pvt. Ltd.). In view of the current facts, we request the Authority to kindly reject the submissions made by the interested parties. In any case, their contention with regard to the above parameters is factually incorrect as can be seen by the DG from the information available on record.
50. Capacity of the Domestic industry: The Domestic Industry submits that there are no contradictions with regard to their capacities. It is a matter of verifiable fact, that the Domestic Industry has installed Polyol capacity of 50000 MT. This capacity has been indicated in the Annual Report of the applicant also. However, considering the incessant pressure of imports, the Domestic Industry has been utilizing only 25000 MT for the production of the subject goods. As mentioned during the hearing as well as in the written submissions, the Domestic Industry has the capacity to meet the demand and there are no contradictions in their submissions at any stage of the investigations. Therefore, the arguments raised by the interested parties should be rejected.
51. Location Disadvantage: The arguments made by the interested parties that domestic industry is at disadvantage due to its location in south and majority of the foam manufacturers are at north is incorrect and needs to be rejected. The foam manufacturers are located in all parts of the India.
52. Excess Confidentiality: The claims made by the interested parties in relation to excess confidentiality are wrong and ought to be rejected. In this context, the domestic industry has claimed confidentiality only on the information which is business sensitive and disclosure of the same will give advantage to its competitors. In contrast, exporters and importers have claimed confidentiality even on the volume related information. Exporter Shell, who accounts for more than 90% of the imports, has not even filed the exporter questionnaire response while Bayer,

who accounts for around 4% of the imports, has filed exporter questionnaire response only with the written submissions. In view of thereof, we request the DG to kindly reject the arguments and compel the exporters to provide a proper confidential and non-confidential version of the questionnaire response in terms of the Trade Notice issued on the subject.

53. It is submitted by the interested parties that several foam manufacturers closed their operations and any safeguard duties will not be in the public interest. In this context, it is submitted that the interested parties have not given even an iota of evidence as to why some of the plants have closed down in the country. Such contentions ought to be rejected outright. Without prejudice, it is submitted that as per the market intelligence of the Domestic Industry, some of the foam producers have closed down their operations on account of the following fact:

- a. Intense competition from bigger players due to market concentration in their hands.
- b. Inconsistent Cash Flow and poor financial management.
- c. Lack of upgradation of technology.
- d. Taxation disputes including tax evasion cases.
- e. Acquisition of smaller facilities by bigger players
- f. Setting up of new facilities by several companies like Superfoam in Coimbatore and by Hindustan Petrofac at Sonipet, Kundli.

54. It is also submitted that M/s Sheela Foams, the major importer, has also expanded their facility in Pondicherry to avail tax benefit but subsequently closed it apparently after the tax incentive was over.

55. In view of the above, it is submitted that the closure of foam manufacturers cannot be attributed to the Polyol issues. Therefore, the issue raised with the mischievous intent, needs to be rejected.

56. Domestic Industry is selling its production in entire India from big cooperate houses to small foam manufacturers and to traders. It is important to note that besides some large importers who are themselves importing huge volumes, no other user industry has objected the imposition of Safeguard Duty. Imposition of Safeguard Duty will not only protect the legitimate interest of the Domestic Industry but will also be beneficial for the entire economy. The imposition of the proposed safeguard duty shall be in public interest for the reasons explained below. The effect of safeguard measures on public interest is commonly studied from the perspective of three different parties – the producers, the consumers and the general public at large.

- a. Producers' Interest: The imposition of safeguard duty on imports of subject goods would be in the interest of domestic industry of subject goods. The measure would prevent further injury and give time to utilize its capacities which could not be utilized due to the market share of domestic industry taken by the increased imports.
- b. Consumers' Interest: It would be in the interest of domestic consumers of subject goods to have an Indian domestic industry capable of competing with foreign producers. This is possible when the domestic industry is able to recover from the injury suffered due to the sudden increased imports. If the current situation is allowed to continue, the Indian domestic industry will face further injury giving foreign producers increased leverage as against domestic producers. Further if the domestic industry is allowed to suffer, it will eventually be wiped out and the consumers will be left at the mercy of the imported goods and will have to face many problems which, inter alia, include:
  - High inventory cost
  - Exchange fluctuations
  - Delivery time
  - Technical support
- c. Interest of the Public at Large: It is in the interest of the public at large to have a strong, competitive Indian domestic industry. This will not be possible if injury to the domestic industry as a result of increased imports is allowed to be continued. Moreover, the impact of duties on the public at large is negligible. The same can be seen from the table below:

Average Mattress Price in Retail (Pair)	Rs/Pair	6500
Cost of Mattress (Pair) [Foam cost Rs.300/KG + Rs. 700 Fabric cost/pair].	Rs/Pair	3100
Profit & Loss	Rs/Pair	3400
Profit & Loss (as % of Price)	%	52%
Weight per Pair of Mattress	KG	8

FSP	Rs/KG	140
Weight of FSP in Mattress @ .40/KG	KG	3.2
Total FSP Cost in Mattress	Rs/Pair	448
Additional Impact of Safeguard Duties @ 25%	Rs/Pair	112
Impact of Safeguard Duties @ 25% on Price	%	1.7%

- d. From the above table, it is clear that the impact of safeguards duty @ of 25 % on end consumer is hardly anything and forms 1.7% on final product. Consequently, the end consumer of subject goods will not face any significant increase in prices.
- e. The kind attention of the DG is invited to the recent decision of “Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel (other than cast iron and stainless steel) [F. No. D-22011/17/2012 dated 11.3.2014], wherein the DG has recorded that if the user industry is in the position to bear the impact of duties, then in that case imposition cannot be said to be against public interest.
- f. If the protection is not provided to the Domestic Industry at this stage, there is danger that Domestic Industry cannot sustain its business in long run and eventually decides to either close down operations as done by M/s Expanded Polymers. This closure will be more disastrous for the foam manufacturers as their continuous and reliable supply of raw material will be closed and they have to be totally dependent on the mercy of the exporters. Thus, it is a clear of protecting the long term public interest which will eventually be in the interest of the user industry as well.
57. In view of the above submissions, domestic industry submits that:
- The imports of subject goods have shown a recent, sharp, sudden and significant increase.
  - The increased imports of subject goods have caused serious injury or threat of serious injury to the domestic industry to the domestic industry, and
  - A causal link exists between the increased imports and market disruption or threat to market disruption.
  - In view of the aforesaid, the Domestic Industry implores that the DG (Safeguards) may kindly recommend appropriate duties at the earliest to mitigate the problems being faced by the Domestic Industry on account of significantly increased imports.

## II. Rejoinder by Exporters

### 1. DCIPL and Dow Europe.

- The instant rejoinder submissions are further to the preliminary submissions filed on 25 July 2014, power point presentations made on 29 September 2014 and the post hearing written submissions filed on 10 October 2014. DCIPL and Dow Europe refer to and rely upon the aforesaid submissions and the same are not being reiterated herein for the sake of brevity.
- Additionally, DCIPL and Dow Europe take this opportunity to submit the following limited rejoinder to the written submissions filed by the domestic industry:
- Domestic Industry’s claim that Expanded Polymers produced only 6 MT during POI is erroneous. It is submitted that Expanded Polymer at the time of public hearing held on 29 September 2014 informed that they had produced 800 MT in 2012-13 and 6 MT in 2013-14. Therefore, DI cannot claim that they are the sole producer of the subject goods during POI.
- The data submitted by DI in its written submissions is not in line with the Initiation Notification issued by DG, Safeguards. Therefore it is humbly requested that the data and facts submitted by the DI be strictly scrutinised and verified. This is important since the data furnished by DI purports to show increase in imports, whereas the data set out in the Initiation Notification does not show such increase in imports of the PUC, so as to trigger the imposition of a safeguard duty on the subject merchandise.
- Apropos paragraph 39, it is submitted that reliance on Annual Reports of the Company for the POI is not only warranted but necessary to gauge the true and real financial condition of the DI and more so in this case where the data given by the DI is not reliable. It is submitted that the Annual reports of the DI clearly mentions about the Product under consideration( PUC) in all the years and reliance on Annual Reports is warranted as it is the only

document which shows the reality of the DI . Had the information set out in the Annual Report of the company not been relevant, it would not be a requirement to furnish Annual Reports of the Domestic Industry as part of the Application by the DI seeking the imposition of Safeguard duty.

7. Apropos paragraph 39 (i) though DI has stated they have 3 sources of power , it is submitted that bio mass fuel is ineffective due to non-availability of wood and reliance on diesel power is also too costly which make these sources of power cost inefficient.

8. The Initiation Notification states that DI has capacity of 25,000 Mt for flexible slab Polyol but now DI seems to submit that 50,000MT capacity for polyol can be used for the production of the subject goods. It is submitted that the 50,000 MT is the overall capacity for the entire Polyol segment and as accepted by the DI during public hearing, the focus of DI would be on high margin products and their interest is to produce high molecular weight products and not the FSP. This is already substantiated by Dow in its earlier responses demonstrating how DI's revenue from Polyol has consistently increased during POI.

9. DI submits that it has adequate supply of Propylene Oxide (PO) and that it has made PO storage facility at ETTL which allows them to import large quantities. In this regard, it is submitted that DI fails to admit that PO facility was ready to receive bulk PO only by end of 2013 and till that time DI was constrained to import higher quantities of PO imports in isotanks which made DI's cost of production sub optimal.

10. Further, DI has nowhere provided a reason as to why they expanded their Polyol capacity before ensuring adequate measures to import PO which is the key raw material for the PUC. It is once again submitted that it is this inability of DI to import PO, during the POI, while having increased capacity for Polyol which is the key factor for their lower capacity utilization. We accordingly request the learned DG Safeguards to investigate this aspect.

11. In light of the previous submission and all that has been stated above, it is once again reiterated that no case for imposition of safeguard duty has been set out and the Learned D DG Safeguards should immediately terminate the instant investigation. Even otherwise, the case of DI deserves to be rejected due to inaccuracy of data, suppression misrepresentation of key data and essential information.

## **2. Rejoinder Bayer and Shell**

Detailed para-wise submissions of the Respondents to the written submissions filed by the Applicant are as follows.

- A) The contents of para 1 of the written submissions filed by the Applicant (hereinafter referred to as the "written submissions") are factual and require no rebuttal.
- B) With regard to the contents of paras 2 - 3 of the written submissions, the Respondents reiterate all previous submissions made on the issue of standing of the Applicant.
- C) The contents of para 4 -9 of the written submissions are denied. The Respondents have scrupulously adhered to all the time limits prescribed by the DGSG and have filed all comments within 40 days of the initiation notification. Furthermore, the Respondents have also made detailed submissions as to the numerous inaccuracies in the petition filed by the Applicant which are not being repeated here for the sake of brevity. It is also interesting to note that in para 6 the Applicant has stated that it is seeking protection from "dumped" goods. The Respondents submit that if the Applicant is seeking protection from dumped goods then the correct forum is the Directorate General of Anti-dumping & Allied Duties, and the present investigation must be terminated. Additionally, the Respondents clarify that despite repeated requests by way of letters and submissions dated 16<sup>th</sup> June 2014, 23<sup>rd</sup> June 2014, and 25<sup>th</sup> September 2014 and 10<sup>th</sup> October 2014, information and clarifications requested have not been provided to the Respondents.
- D) With regard to the contents of paras 10 – 12, the Respondents contend that the import statistics needs to be verified to ensure that it only contains import statistics pertaining to the product under consideration and not any other variants of such product.
- E) The contents of paras 13 – 17 are denied as being wrong and incorrect. The Respondents reiterate submissions made previously on the issue of allegedly increasing imports and additionally emphasizes on the following points:
  1. For a proper analysis of all the claims in the petition, it is requested that either the DGSG or the Applicant shall provide the transaction-wise raw import data as well as sorted import data to interested parties in MS-Excel format. The DGSG is also requested to direct the Applicant to provide an explanation as to how it has sorted data from the raw data.

2. The MS-Excel version of import data is relevant because there exists double counting and duplication of imports which has resulted in inflated volume of imports from Singapore. The Respondents wish to highlight that when the subject products are imported into India, they are first stored in customs bonded warehouses by filing a warehousing Bill of Entry and then removed in small quantities, by filing a Bill of Entry for home consumption over a period of time.
3. Even after repeated requests of the Respondents for providing the import data in MS-Excel format, neither the DGSG nor the applicant provided the same to the Respondents. Therefore, the Respondents procured the import data of Custom Tariff item 39072010 of Chapter 39 of the Custom Tariff from INTERNATIONAL BUSINESS INFORMATION SERVICES to analyse the volume of imports during the Period of Investigation. In order to arrive at the correct volume of imports of the subject goods, the following procedure has been adopted by the Respondents:
  - a) The scope of the product under consideration is Flexible Slabstock Polyol of molecular weight 3000 to 4000. Based upon the brand names of various manufacturers/exporters as provided by the domestic industry, the Respondents first identified the imports of Flexible Slabstock Polyol (of any molecular weight) from the raw data.
  - b) After that imports of Flexible Slabstock Polyol of other molecular weights (more than 4000 and less than 3000) were excluded.
  - c) Thereafter, the instances of double counting, wherever identifiable were removed from the import statistics.
  - d) After following the steps enumerated in points a, b and c above, the correct imports statistics for Flexible Slabstock Polyol of molecular weight 3000 to 4000 was arrived at.
  - e) It can be seen by the DGSG that there is no increase in imports during the POI if the correct import statistics are taken into account. Infact, the import volume is showing a declining trend.

<i>Year</i>	<i>Imports (MT)</i>
<i>2010-11</i>	<i>48,485</i>
<i>2011-12</i>	<i>22,133</i>
<i>2012-13</i>	<i>28,223</i>
<i>2013-14</i>	<i>34,727</i>
<i>Grand Total</i>	<i>133,568</i>

4. Detailed workings of import data in this regard are attached as Exhibit 1.
5. The Respondents request the DGSG to kindly go through the workings done by the respondents and let us know if DGSG has any issues in the working as submitted.
6. The Respondents also contest the annualized figures arrived at by the authority for 2013-14 on the ground that such figures are inaccurate and liable to be rejected. It is noted that the annualized figures provided in the initiation notice are inflated and do not reflect the correct position. The Respondents submit that to the best of their knowledge, BASF has stopped the sale of subject goods in Southeast Asia which would result in lower imports into India during the second half of 2013-14.

7. The import quantity given in the initiation notice and petition filed by the Applicant are contradictory and required to be investigated by the DGS.
  8. Even if there was an increase in imports, the Applicant has not identified any unforeseen development or the effect of an obligation under GATT 1994 which has caused such increase in imports, as per the mandatory requirement under Article XIX of GATT 1994. The Respondents reiterate their earlier submission that imports may be attributed to the Comprehensive Economic Partnership Agreement (“CECA”) presently in existence between India and Singapore, which has made it attractive for imports of the subject goods into India from Singapore. It may be noted that the import duty on the subject goods was reduced to 0% vide Notification No. 106/2011 dated 1<sup>st</sup> December 2011.
  9. The Respondents also additionally wish to clarify that India – Singapore CECA does not satisfy the requirement of an unforeseen development under Article XIX as the timetable specifying the rate of reduction of anti-dumping duty was publicly available soon after the conclusion of the India-Singapore CECA in June 2005. Therefore, there is simply no way in which it could not have foreseen that the duty rates on the subject goods would be progressively reduced as per the timetable specified in India’s schedule of commitment under that Agreement. An increase in imports due to the 0% duty under the India-Singapore CECA also cannot be an unforeseen development or an obligation under GATT as per Article XIX as held by the panel in DS 415-418 *Dominican Republic – Safeguard Measures* wherein the panel concluded that to the extent, the obligation in issue undertaken by Dominican Republic was that under a regional free trade agreement rather than that under the GATT, the requirements of Article XIX were not met.
- F) The contents of paras 18 – 35 are denied as wrong and incorrect. The Respondents have made detailed submissions on the issue of “serious injury” allegedly suffered by the Applicant and additionally reiterate the following contentions:
- i. At the outset, the Respondents submit that there are numerous inconsistencies between the data submitted by the Applicant in its petition for imposition of anti-dumping duty, and the data provided in the Initiation Notification dated 22<sup>nd</sup> May 2014 communicating the initiation of safeguard investigation against the subject goods.
  - ii. It may also be noted that the Applicant has sold almost all the quantity of the subject goods that it has produced, given that sales as a percentage of production was 101% in 2010-11, 99% in 2011-12, 96% in 2012-13 and 98% in 2013-14. This establishes that the Applicant has no problem in selling the subject goods; its issues lie in production.
  - iii. Furthermore, in the initiation notice, indexed figures relating to profitability have been indicated to be 100 indexed points in 2010-11, with a rapid and substantial increase to 324 indexed points in 2011-12 and a decline to (331) indexed points in 2012-13 and (559) indexed points in POI. Similarly, in the petition filed by the Applicant, the selling price has increased from 100 indexed points in 2010-11 to 115 indexed points in 2011-12, reduced to 110 in 2012-13 and again increased to 128 indexed points in 2013-14. With regard to cost of sales, it increased from 100 indexed points in 2010-11 to 120 indexed points in 2011-12, reduced to 102 indexed points in 2012-13 and once again increased to 124 indexed points in 2013-14.
  - iv. It can be seen that when the cost of sales increased by 20% and selling price increased by 15% in 2011-12, the Applicant’s profit tripled. However, in 2012-13 when the Applicant’s selling price decreased by 4.35% and cost of sales also decreased by 15%, the Applicant suddenly went into substantial losses at (331) indexed points. The trend of profitability from the above table reveals the data to be suspect. It is not possible for profitability to triple when there is an increase in cost of sales, but plummet rapidly when cost of sales decreases. The trend reveals that the data relating to profits may not be accurate, and in light of the same, the Respondents request the DG (Safeguards) to investigate the same.
  - v. In addition to the above, the market share of sales of the Applicant in proportion to total consumption has declined from 39% in 2010-11 to 28% in 2011-12, to 22% in 2012-13 and to 18% in POI. However, as highlighted above, because of the fact that the Applicant is unable to produce a sufficient quantity with

inadequate reserves of the feedstock (Propylene Oxide) required for the manufacture of the subject product.

- vi. Furthermore, it is submitted that even if the Applicant were to operate at 100% capacity utilization, at best, it will be able to cater to only about 34% of the market, because it only has installed capacity of 25000 MT while the total demand during 2013-14 was 74624 MT. Therefore, users in India will necessarily have to import at least 66% of the required demand, and if they do not want to be dependent on a sole supplier, invest in sustainable relationships abroad to secure longer term supplies.

G) The contents of paras 36 – 42 are denied as being wrong and incorrect. The Respondents reiterate all previous submissions made on the requirement to establish causal link between imports of the subject goods and alleged serious injury suffered by the Applicant. In addition to the above, the Respondents reiterate the following submissions:

- i. The Applicant has stated in para 39 that the arguments relating to inability of the Applicant to produce the subject goods had been made in a generalized manner without adequate proof. The Respondents submit that the Applicant's own Annual Reports had been provided as evidence in earlier submissions, and the Applicant cannot consider this as inadequate evidence.
- ii. Furthermore, the Applicant has made certain claims in para 39 that it has made arrangements to import PO and to otherwise produce PO. The Respondents see no difference in this situation than what was already being done by the Applicant. Nowhere has the Applicant clarified how it is going to procure Propylene which is the key raw material for producing PO and how the Applicant proposes to overcome the problem of global supply shortage of Propylene. Furthermore, the Applicant has stated that it has made PO storage facilities. It must be noted that such bulk storage may still be in progress and not yet been completed. The same is admitted by the Applicant in Annual Report 2012-13 on page 179 of the petition.
- iii. The Applicant has also claimed in para 39 that the moratorium in the Manali area has been lifted in September 2013. The Respondents requests the Applicant to supply some sort of evidence to substantiate this claim. In any case, any increase in capacity will not reduce the alleged injury being suffered by the Applicant due to the aforementioned issues with the procurement of raw material.
- iv. The Applicant has argued in paras 40 – 41 that imports need not be the sole factor to cause injury. In this regard, the Respondents submit that the decision cited by the Applicant only serves to emphasize that there must exist a causal link between the alleged "serious injury" sustained by the Applicant and imports of the subject goods. While imports need not be the sole cause of injury to the domestic industry, it must be the predominant cause of any injury suffered by the Applicant. In the present investigation, any injury sustained by the Applicant is due to its own inability to produce and not due to imports of the subject goods. This breaks the causal link between increased imports of the subject goods, and alleged "serious" injury" sustained by the Applicant.
- v. It is submitted that the reason for the decline in production and sales during 2012-13 and 2013-14 is not due to the volume of imports, but the non-availability of feedstock for the production of the subject product. It is noted that there is a severe shortage of Propylene Oxide (PO) which is the feedstock used for the manufacture of the subject product. PO is manufactured from Propylene.
- vi. Additionally, the reason for reduction in capacity utilization is due to the lack of availability of feedstock Propylene Oxide (PO) as highlighted above which would lead to non-utilization of capacity and a reduction in capacity utilization.
- vii. It is reiterated that as per the submission of the Respondents made above, the Applicant was not able to achieve profitability due to its inability to procure adequate amounts of feedstock (PO), and subsequent inability to manufacture and sell the subject product.
- viii. However, from the submissions of the Respondent above, it is clear that any "serious injury" that may have been sustained by the Applicant is due to a number of other factors such as lack of feedstock availability; consequent reduction in production and sales; dependence on sole supplier of propylene in India, Chennai Petroleum Corporation Ltd; and inability of the Applicant to supply the required quantity of the subject goods.

H) The contents of paras 43 – 47 are denied as being wrong and incorrect. The Respondents reiterate their earlier submissions on the non-viability of the adjustment plan provided by the Applicant. Furthermore, the Respondents

request the Applicant to provide cogent evidence to substantiate its claim that the storage facility of PO commissioned at Ennore Tank Terminal Pvt Ltd (ETTPL) has started working.

- I) The contents of paras 48-53 are denied as being wrong and incorrect. The Respondents reiterate all submissions made previously on the mandatory requirement on the Applicant as well as the DGSG to identify and analyze unforeseen developments and obligations under GATT 1994.
- J) The contents of para 54 are denied as being wrong and incorrect. The Respondents have submitted all the required information to the DGSG. Additionally, it may be noted that it is not mandatory to submit the Exporters Questionnaire Response in a safeguard investigation. If the DGSG requires any other information, the Respondents would be happy to provide the same.
- K) The contents of paras 55-56 are denied as being wrong and incorrect. The contents of paras 15-16 are denied as being wrong and incorrect. The Respondents have submitted all the required information to the DGSG, and the DGSG has accepted its claim of confidentiality. If the DGSG requires any other information, the Respondents would be happy to provide the same. Additionally, the petition filed by the Applicant is deficient as it contains a number of unwarranted confidentiality claims.
- L) The Respondents further request the DGSG to consider all previous submissions as part and parcel of these submissions which have not been repeated here for the sake of brevity.

**E. Findings of the Director General:**

- 1. I have carefully gone through the case records, the replies filed by the domestic producers, user/importers and exporting nations. Submissions made by the various parties and the issues arising there-from are dealt with at appropriate places in the findings below.
- 2. Section 8B of the Customs Tariff Act, 1975 deals with imposition of Safeguard Duty on imports into India on non discriminatory basis. Section 8B(1) provides for imposition of Safeguard Duty on the article if the article is being imported into India, in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to the Domestic Industry.
- 3. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provide the manner and principles governing investigation.
- 4. Accordingly, the investigation has been conducted in accordance with the said rules and the final findings are recorded through this notification.

**A. The product under investigation:**

- 5. The product under investigation is Flexible Slabstock Polyol (FSP) of molecular weight 3000 to 4000. It is a polyether and on reaction with catalysts and additives yields polyurethane foams used in upholstery, mattresses, pillows, bolsters, transport seating and packaging.
- 6. Flexible Slabstock Polyol (FSP) is classified under Customs Tariff Heading No. 39072010 and 39072090 under the Customs Tariff Act, 1975.
- 7. The product under investigation is Flexible Slabstock Polyol (FSP) of molecular weight 3000 to 4000. The interested parties have not raised any issue with regard to the product under investigation
- 8. Therefore, domestically produced Flexible Slabstock Polyol (FSP) of molecular weight 3000 to 4000 falls under the ambit of like or directly competitive product in all respects to the imported Flexible Slabstock Polyol (FSP) and that the domestically produced Flexible Slabstock Polyol (FSP) is a like article to the imported Flexible Slabstock Polyol (FSP) (hereinafter referred to as 'PUC') within the meaning of Rule 2(e) of Safeguard Duty Rules 1997.

**B. Domestic Industry:**

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

*(b) "Domestic industry" mean producers –*

*(i) as a whole of the like article or a directly competitive article in India; or*

*(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India*

10. The application has been filed by M/s. Manali Petrochemicals Ltd, Chennai through their consultant M/S APJ-SLG Law Offices for imposition of Safeguard Duty on imports of Flexible Slabstock Polyol of molecular weight 3000 to 4000 (hereinafter referred to as PUC) into India to protect the domestic producers of PUC against serious injury/threat of serious injury caused by the increased imports of PUC into India. The applicants claimed to be the

only producer of PUC. The information on record shows following volume of production of like or directly competitive article in the Country-

Description	Unit	2010-11	2011-12	2012-13	2013-14
Applicants	MT	16510	18381	13986	13811
Other Indian producers	MT	0	0	0	0
Total Indian production	MT	16510	18381	13986	13811
Share of applicants %		100 %	100 %	100 %	100 %

11. Further claim has been made by the interested parties against the applicants being the sole producer of PUC. They have named M/s Expanded Polymers Pvt. Ltd as another manufacturer of PUC. M/s Sheela Foams also provided details of 80 MT of PUC sold by M/s Expanded Polymers during 2011-12 and 2012-13. Accordingly, information was called from the jurisdictional Excise authorities who have provided the production clearance data in respect of PUC. From the perusal of data it is clear that M/s Expanded Polymers is only producing negligible quantity of PUC. After, assessing the information received from the Jurisdictional Excise authorities with the information available in r/o DI the following details emerge:-

Description	Unit	2010-11	2011-12	2012-13	2013-14
Applicants	MT	16510	18381	13986	13811
Other Indian producers	MT	533	2011	405	258
Total Indian production	MT	17043	20392	14391	14069
Share of applicants %		96.87 %	90.14 %	97.18 %	98.16 %

Therefore, it is held that the applicant represents the domestic industry (DI) within the meaning of Section 8B(6) (b) of the Customs Tariff Act 1975.

### C. Period of Investigation (POI):

12. The Customs Tariff Act, 1975, Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, Agreement on Safeguard and the relevant Article XIX of GATT do not specifically define what the Period of Investigation should be. From several case laws on safeguard measures, it is clear that neither the domestic laws on Safeguard nor Agreement on Safeguard and Article XIX of GATT provides specific guidelines on the period of investigation except the fact that the relevant investigation period should be sufficiently long to allow conclusion to be drawn on increased imports and serious injury.

13. The applicants in the instant case submitted import and injury data from 2010-11 to 2013-14. The Directorate conducted the verification of data pertaining to injury parameters to the extent possible, starting from 2010-11 upto 2013-14, and the Notice of Initiation was issued incorporating import and injury data from 2010-11 to 2013-14 (upto Dec-2013) on 22.5.2014.

14. Subsequently, the applicant submitted the import data for the period January' 2014 to March'2014. The additional information of 3 months was made available to all concerned and kept in the Public File as required under Rule 6(7) of Safeguard Rules 1997.

15. Considering that the period selected should be sufficiently long to allow conclusions to be drawn regarding existence of increased imports and to neutralize the effect of seasonal variation, data has been considered from F.Y. 2010-11 to 2013-14. In the notice of initiation, import data upto Dec 2013 had been considered. The import data has since been updated till March, 2014. The period has been taken from 2010-11 till 2013-14 for the purpose of the present investigations. The petition/Notice of Initiation contained data for the period up to Dec., 2013. The interested parties have argued that it would not be appropriate to annualize April-Dec., 2013. I therefore consider appropriate and necessary to use data for the period up to March, 2014.

### D. Source of data:

16. The import data from 2010-11 up to 2013-14 has been taken from DGCI&S in consonance with data already taken in Notice of Initiation. An objection was raised regarding the correctness of import data on the grounds that the tariff heading also contains PUC of specifications other than PUC of molecular weight 3000-4000 and that the data contains certain double entries for import. M/s Shell Eastern Petroleum (Pte) Ltd., / M/s Shell Eastern Trading (Pte) Ltd., and M/s Bayer (South East Asia) Pte Ltd., (both represented by M/s Lakshmi Kumaran & Sridharan, Advocates) also provided transaction wise data from IBIS and ISCECA No's detailing the double entries of import data. Accordingly, to verify the import data, Transaction wise data was called for from DGCI&S. The DI and the

interested parties also provided the brand names of the PUC to sort the transaction wise data to get the correct import figures of PUC. The transaction wise data was also checked for double entries. The data on various economic parameters submitted by the domestic industry in their petition till 2013-14 has been verified by this directorate to the extent possible and the verified data has been taken into consideration for injury analysis.

#### **E. Confidentiality of Information submitted**

17. The domestic industry has provided information on confidential basis and sought confidentiality on the information/data so submitted. The domestic industry provided non confidential version of all submission including the application for safeguard measure as per the provisions of Safeguard Rules, 1997 and Trade Notice No. SG/TN/1/97 dt. 06.09.1997.

18. Rule 7 of the Safeguards Rules and Article 3.2 of WTO Agreement on Safeguards provide for confidentiality. The applicants is not required to disclose such information which is confidential information of an individual company, disclosure of which can cause serious prejudice to the business interests of the company, which is not in public domain and which the applicants has not disclosed before public at large in the past. Accordingly confidentiality, as prayed for by domestic industry is granted.

#### **F. Increased Imports:**

19. Section 8B of Customs Tariff Act, 1975 deals with the power of the Central Government to impose Safeguard Duty and provides as follows:

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

20. Further, Rule 2(c) of Customs Tariff ((Identification and Assessment of Safeguard Duty) Rules, 1997 provides as follows

*"(c) 'Increased quantity' includes increase in imports whether in absolute terms or relative to domestic production"*

21. The rules require a determination of whether the product under consideration is imported into India in increased quantities as a basic prerequisite for the application of a safeguard measures. To determine whether imports of the product under consideration have "increased" "in such quantities" for purposes of applying a safeguard measure, the rules require an analysis of the rate and amount of the increase in imports, in absolute terms and in relation to domestic production and consumption, as has been held by the panel and later confirmed by the Appellate Body in Argentina –Footwear case<sup>1</sup> also.

22. In its evaluation of whether the investigation by the Argentine authorities *Appellate Body Reports on Argentina — Footwear (EC) WT/DS121/AB/R dated 14 December 1999* demonstrated the required increase in imports under Articles 2.1 and 4.2(a), the Panel in Argentina-Footwear case<sup>2</sup> stated the following:

*... the Agreement requires not just an increase (i.e., any increase) in imports, but an increase in "such...quantities" as to cause or threaten to cause serious injury. The Agreement provides no numerical guidance as to how this is to be judged, nor in our view could it do so. But this does not mean that this requirement is meaningless. To the contrary, we believe that it means that the increase in imports must be judged in its full context, in particular with regard to its "rate and amount" as required by Article 4.2(a). Thus, considering the changes in import levels over the entire period of investigation, as discussed above, seems unavoidable when making a determination of whether there has been an increase in imports "in such quantities" in the sense of Article 2.1. (emphasis added)*

23. With regard to the nature of the increase in imports, the Appellate Body in Argentina—Footwear (EC)<sup>3</sup>, in contrast to the Panel, held that the increase in imports must have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. Relevant extracts are as follows:

*"131. [T]he determination of whether the requirement of imports 'in such increased quantities' is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year — or five years ago. Again, and it bears repeating, not just any increased quantities of imports will suffice. There must be 'such increased quantities' as to cause or threaten to cause*

*serious injury to the Domestic Industry in order to fulfil this requirement for applying a Safeguard measure. And this language in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'."*

24. The Panel on US — Wheat Gluten<sup>4</sup>, interpreted the phrase "in such increased quantities" as follows:

*“8.31 [A]rticle XIX:1(a) of the GATT 1994 and Article 2.1 [of the Agreement on Safeguards (“SA”)] do not speak only of an ‘increase’ in imports. Rather, they contain specific requirements with respect to the quantitative and qualitative nature of the ‘increase’ in imports of the product concerned. Both Article XIX:1(a) of the GATT 1994 and Article 2.1 SA require that a product is being imported into the territory of the Member concerned in such increased quantities (absolute or relative to domestic production) as to cause or threaten serious injury. Thus, not just any increase in imports will suffice. Rather, we agree with the Appellate Body’s finding in Argentina — Footwear Safeguard that the increase must be sufficiently recent, sudden, sharp and significant, both quantitatively and qualitatively, to cause or threaten to cause serious injury.”<sup>2</sup> Panel Report on Argentina — Footwear (EC) WT/DS121/R dated 25 June 1999 <sup>3</sup> Appellate Body Reports on Argentina — Footwear (EC) WT/DS121/AB/R dated 14 December 1999 Panel Report on US — Wheat Gluten WT/DS166/R 31 July 2000*

25. In US — Line Pipe, the Panel found, in a statement not reviewed by the Appellate Body, that the word “recent” implies a “retrospective analysis”; but that it does not imply an analysis of the conditions immediately preceding the authority’s decision nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation. Relevant extracts are as follows:

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

26. The analysis of the increased imports of Flexible Slabstock Polyol (PUC) has been conducted in the light of the above mentioned evaluations. Flexible Slabstock Polyol (PUC) is imported into India from a number of countries, and primarily from Singapore. It has been argued by interested parties that:-

(a) As the data of import has been taken chapter heading wise, the same may also contain data in respect of products other than PUC of Molecular weight 3000 to 4000. The transaction wise data was called for from DGCI&S. The DI/ M/s Shell / M/s Sheela Foam provided the brand names of the PUC of MW 3000 to 4000 being imported into India. Accordingly, the transaction wise data was sorted in view of the details provided by the DI vide letter dated 2.12.2014, 9.12.2014 and by M/s Lakshmi Kumaran (M/s Shell) vide letter 5.11.2014. The brand names i.e. Alcupol F5511, Arcol Polyol 5613, Caradol SC 5615, SC 5616, SC 5616S, SC 4803, SC 4808, Excenol 3031, Sannix GP 3030, Petol 48-03, Petol 53-03, Polyol Dep 5631D, Polyol JH 3031 K, PPG 3001, PPG 3022, PPG JH 3031, Raypol 3003, Voralux HL 106, Yukol 5613, Yukol 5603, Konix GP 3001, Laprol 3003, Lupranol 2025 SG, Voranol 1900, Voranol 3010, 3136, 3010,3322, 3595, 3943 as intimated by the DI / Shell/ Bayer / Sheela Foam and searched from internet have been taken into consideration for sorting of the data.

(b) The Interested parties have also raised an issue that the import data contains duplicate entries of imported goods, first from the Bill of Entries for import of goods into India and second from the same goods being cleared from Customs Warehouses. M/s Shell vide letter dated 5.11.2014 also provided the details of ISCEAC no. showing duplicate entries of the imported goods on the basis of IBIS data. M/s Shell vide letter dated 11.12.2014 again reiterated that the import data contains duplicate entries. The ISCEAC numbers as provided in respect of the duplicate entries were checked in the transaction wise data received from DGCI&S and it was observed that there are no duplicate entries in the transaction wise data provided by the DGCI&S.

(c) The Rules require the designated authority to examine not only increased imports but also the conditions under which such imports have been made. Section 8B(1) requires the Director General to examine whether the article is imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. Thus, the conditions, under which the increased imports have been reported, are also relevant.

27. In view of the above, I have determined increased imports of Flexible Slabstock Polyol (PUC) for the POI on the basis of transaction wise data received from DGCI&S (Sorted on the basis of suggestion/inputs given by DI and Interested parties) which is as under:

**(a) Imports:**

Description	Unit	2010-11	2011-12	2012-13	2013-14
Total Imports	MT	31778	35186	46364	50634
Trend		100	111	146	159

28. The import has increased both in absolute and relative terms. Imports increased from 31778 MT in 2010-11 to 50632 MT i.e. by 59% viv-i-vis base year (2010-11).

**(b) Import in relation to production:**

29. It is seen that during the POI, imports have also increased in relation to total domestic production, as shown below:

Description	Unit	2010-11	2011-12	2012-13	2013-14
<b>Total Indian Production</b>	MT	17043	20392	14391	14069
<b>Imports</b>	MT	31778	35186	46364	50634
<b>Imports in relation to production</b>	%	186	173	322	360

There is a increase of imports to the total production to 360% in 2013-14 from just 186% in 2010-11.

**(c) Import in relation to consumption/demand:**

Description	Unit	2010-11	2011-12	2012-13	2013-14
<b>Demand/Consumption</b>	MT	48896	55369	60341	64462
Trend	%	100	113	123	132
Imports	MT	31778	35186	46364	50634
Imports in relation to Demand/consumption	%	65	64	77	79
Trend	%	100	98	118	121

30. However, between 2010-11(base year) and 2013-14, whereas the demand/consumption increased by 32%, the imports increased only by 21% in relation to total demand.

31. It is thus seen that Flexible Slabstock Polyol (PUC) has been imported into India in increased quantities in absolute terms as compared to the domestic production. Between 2010-11(base year) and 2013-14, the domestic demand/consumption increased by 32%, whereas, the imports increased only by 21%. It is held that the increase in imports shows a rising trend with relation to the base year (2010-11) which is significant enough to constitute “increased imports” within the meaning of Section 8B of the Act.

**G. Unforeseen Developments:**

32. It is noted that there is no specific requirement either in Indian Rules or in WTO Agreement on Safeguards on the methodology that should be followed for analyzing unforeseen developments. The Agreement on Safeguard also does not make any prescription with regard to the methodology that should be followed or the parameters that must be met in deciding unforeseen developments. However, it is important to examine the circumstances which have led to increased imports.

33. In Argentina — Footwear (EC) and Korea — Dairy, the Appellate Body held that “any Safeguard measure imposed after the entry into force of the WTO Agreement must comply with the provisions of both the Agreement on Safeguards and Article XIX of the GATT 1994. Article XIX of GATT 1994 states as follows ;-

*1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.*

34. The Appellate Body in Argentina – Footwear (EC case) held that the phrase unforeseen developments means the developments which were unexpected. ‘Unforeseen developments’ requires that the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been ‘unexpected’. The Body in the same case noted a GATT panel report which held that the development must have been unforeseen at the time of tariff negotiation. The Appellate Body in Korea-Dairy case held that unforeseen developments are developments not foreseen or expected when member incurred that obligation.

35. The Appellate Body, in Argentina — Footwear (EC), then held that the requirement of “unforeseen developments” did not establish a separate “condition” for the imposition of safeguard measures, but described a certain set of “circumstances”.

36. The panel on US- Steel Safeguards concluded that the confluence of several events can unite to form the basis of an unforeseen development:

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

37. I find that the applicant has intimated that the surge in imports is due to the price attractiveness of the Indian market combined with the excess capacities in Singapore. It has been contended by the DI that the exporters in Singapore are exporting the PUC at non-remunerative prices. However, I find that no evidence to support their contention has been submitted by the DI. The DI has further claimed that due to Indo-Asean FTA and Indo-Singapore CECA the international major suppliers have made special arrangements to control the market and supply chain with the motive of deriving undue benefit to the detriment of the DI. However, in this regard also no supporting evidence has been furnished by the DI.

38. At the time of Personal Hearing the DI also alleged that 98% of imports are from Singapore and the suppliers are using the provisions of the Indo-Asean FTA and Indo-Singapore CECA. It has been alleged by DI that they could not anticipate the collusion of exporters to take advantage of the trade agreements.

39. The Indo-Singapore CECA was made in the year 2005 and the duties have been gradually decreased. The agreements are in public domain and it is common knowledge that the the customs tariffs would gradually come down. The effective customs duties from the years 2008 onwards are enumerated below:

Year	Particulars	Rate of Duty
2008	Notification No. 10/2008 dated 15 <sup>th</sup> January 2008	6%
2009	Notification No. 70/ 2009 dated 19 <sup>th</sup> June 2009	4.5%
2009	Notification No. 150/2009 dated 31 <sup>st</sup> December 2009	3%
2010	Notification No. 131/2010 dated 24 <sup>th</sup> December 2010	1.5%
2011	Notification No. 106/2011 dated 1 <sup>st</sup> December 2011	0%

40. The DI being the major producer of PUC would have been aware of the same. Hence, the condition of unforeseen circumstances is not fulfilled by the DI. In the present case the majority of the imports( as per the DI and DGCI&S data) are from Singapore and therefore, I hold the rise in import of Flexible Slabstock Polyol (PUC)from Singapore can not be an unforeseen development resulting in increase in imports causing serious injury or threat of serious injury to the domestic industry.

#### **H. Serious Injury or Threat of Serious Injury:**

41. “Serious injury” means an injury causing overall impairment in the performance of the domestic industry; and “threat of serious injury” means a clear and imminent danger of serious injury.

42. The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. However, these provisions do not specify what such an evaluation must demonstrate. Any such evaluation will be different for 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, “overall impairment” of the industry. Thus, in addition to a technical examination of all the listed factors and any other relevant factors, it is essential that the overall position of the domestic industry is evaluated, in light of all the relevant factors having a bearing on the situation of that industry.

43. In *Argentina — Footwear (EC)*<sup>6</sup>, the Appellate Body 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):

“[I]t 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’.”

44. The Panel on *US — Wheat Gluten*<sup>7</sup>, in a finding upheld by the Appellate Body, elaborated on the meaning of the term “serious injury”: “[A] determination as to the existence of such ‘significant overall impairment’ can be made only on the basis of an 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.

...  
*[W]e 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 6 Appellate Body Reports on Argentina — Footwear (EC) WT/DS121/AB/R dated 14 December 1999 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.”*

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

46. It is held that the increased imports of Flexible Slabstock Polyol (PUC) have not caused or are threatening to cause serious injury to the domestic producers of Flexible Slabstock Polyol (PUC) as indicated by the following factors:

**i) Market Share:**

47. It is seen from the table below that the market share of the domestic industry in the total consumption has decreased.

Financial Year	Total Import(MT)	Sales of DI (MT)	Total Demand (MT)	Market Share(%)		Inventories (MT)
				DI	Import	
2010-11	31778	16,615	48896	34	65	319
2011-12	35186	18,192	55369	33	64	691
2012- 13	46364	13,451	60341	22	77	637
2013-14	50634	13,473	64462	21	79	645

48. The market share of the domestic industry has decreased from 34 % (2010-11) to 21 % (2013-14). The total demand has increased from 48896 MT in 2010-11 to 64462 MT in 2013-14. The Inventory has increased from 2010-11 to 2011-12 but has remained almost similar during 2012-13 and 2013-14.

**ii) . Production:**

49. The production has been determined on the basis of production reported by the Domestic Industry in its excise records. The statistics relating to production pertaining to the domestic industry is shown below.

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Total Capacity	MT	18375	25000	25000	25000
Production	MT	16510	18381	13986	13811

50. It is seen that the production of the domestic industry was increasing from 16510 MT to 18381 MT during 2011-12 but has remained similar during 2012-13 and 2013-14. The DI has not utilised its full capacity at any time during the POI not even during 2010-11 and 2011-12. The low production can also be attributed to the reason that their captive power plant was also running on lower loads so as to have adversely impacted its operations. In its annual report for 2013-14 on page 2 of the annual report under the head Operational highlights the DI has stated that- *“the availability of bio mass fuel for the Captive Power Plant (CPP) continued to be limited due to demand from paper mills and also similar power plants. Even at increased costs supplies were not forthcoming, forcing the company to operate the CPP at lower loads. Alternate fuels for the CPP are being tried to ensure operations at optimum load. The company went in for purchase of power through energy exchanges and third parties to meet the short fall. These resulted in higher cost of power and consequently the profitability was also impacted. ”*

**iii). Domestic sale:**

51. The sale of the domestic industry has been determined on the basis of goods cleared by the Domestic Industry from their factory premises for domestic market, as reported in their excise records. The table below contains sales by domestic industry and total export.

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Sales Volume – Domestic	MT	16615	18192	13451	13473
Sales Volume - Exports	MT	0	0		505
Sales Volume - Total	MT	16615	18192	13451	13978

52. It is seen that the domestic sales grew from 16615 MT (2010-11) to 18192 MT (2011-12) and decreased to 13451MT and 13473 MT subsequently during 2012-13 and 2013-14. However, it is seen that the domestic demand has been growing year on year basis. The sales volume has also been stable during the year 2012-13 and 2013-14.

**iv). Capacity Utilization:**

53. Capacity utilization of the domestic industry was as follows –

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Plant Capacity	MT	18375	25000	25000	25000
Production of PUC	MT	16510	18381	13986	13811
Capacity utilization	%	90	74	56	55
Domestic demand	MT	48896	55369	60341	64462
Trend of capacity wrt total demand	%	38	45	41	39

54. It is seen that the capacity utilization of the domestic industry is showing a decreasing trend but has stabilized during 2012-13 and 2013-14. However the ratio of the capacity of the DI (even after capacity enhancement during 2011-12 from 18375 to 25000) is less than 50 % of the domestic demand. The total capacity of domestic industry to produce the product under consideration is not sufficient to cater to the total demand in India.

**v). Inventories:**

55. The Inventory has increased from 2010-11 to 2011-12 but has remained almost similar from 2011-12 onwards indicating therein that the sales pattern has stabilized. The DI is able to sell all its production as the inventories position stabilised from 2011-12 to 2013-14.

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Inventories	MT	319	691	637	645

**vi). Employment and productivity:**

56. There is no significant change in the level of employment and in productivity over the injury period. It has shown normal growth over the period. It is observed that these parameters are dependent on a number of other parameters and not reflective of impact of imports on the domestic industry. The DI is running an automated plant and hence the level of employment is not dependent on the production but on the automation of the plant and machinery. With better automation the employment decreases.

**vii). Profit & Loss:**

57. The profitability & returns on investments of the Domestic Industry has improved during period of investigation (Balance sheets for the year 2010-11 to 2013-14). The profit before tax has increased from 100 (base year 2010-11) to 130 (2013-14) and 192 (2014-15 annualised). This is evident from the table below:-

Particulars	Unit	2010-11	2011-12	2012-13	2013-14	2014-15* (annualised)
Profit/(Loss)	Rs./Lacs	****	****	****	****	****
Profit/Loss	(Indexed) %	100	172	103	130	192

\* The profit has been annualised on the basis of half yearly standalone unaudited results for the quarter ending 30.9.2014.

58. It is also seen in the instant case that the domestic industry PBT has increased during the period of investigation and is overall in net profit during the period of investigation. However, the domestic industry has stated that they have suffered losses with regard to the PUC. Therefore, it is imperative to examine the cost audit report of the domestic industry. The DI is manufacturing different types of polyols and PUC is one of them. On examination of costing report, provided by the DI vide letter dated 5.11.2014, it is found that the domestic industry has not taken the cost on proportionate basis as per the cost audit report of polyols provided by the DI vide letter dated 26.9.2014. Had the cost charges for manufacture of PUC been taken on the proportionate basis of cost audit report of polyols the domestic industry might have registered profit in the PUC also.

59. The DI was again requested to provide cost audit data of all the products being manufactured by DI. However, the DI only provided the cost audit data of Polyols vide letter dated 19.12.2014.

60. Thus, in my view, the fact that the domestic industry is not attributing the cost on proportionate basis as per cost audit report of polyols to PUC, has purportedly resulted in loss as claimed by them and import is not responsible for reported loss, if any, on PUC.

**I. Other Important Factors:-**

61. It is noticed in the table below that the import with respect to demand has increased from 65 % in 2010-11 to 79 % in 2013-14, i.e., by 14%. However, the production of DI has stabilised for the period 2012-13 to 2013-14. The Domestic demand has also increased exponentially.

Year	Unit	2010-11	2011-12	2012-13	2013-14
Sales of Domestic Industry	MT	16615	18192	13451	13473
Captive consumption	MT	24	50	48	163
Sales of other producers	MT	479	1941	478	192
Imports Volume	MT	31778	35186	46364	50634
Total Demand/Consumption	MT	48896	55369	60341	64462
Trend	%	100	113	123	132
Imports in relation to Demand/consumption	%	65	64	77	79

Trend		100	98	118	121
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62. From the above analysis, it is seen that the imports of the product under consideration have increased in absolute terms and in relation to production and consumption in India. Further, the production capacity of the DI is less than 50% of the total domestic demand/consumption. The DI cannot cater to the total domestic demand/consumption.

63. In the instant case the loss being shown by the DI is because of non-apportioning of the cost of production and sales of PUC on proportional basis to other products and not on account of imports.

64. Thus, an evaluation of the overall position of the Domestic Industry, in the light of all the relevant factors having a bearing on the situation of the Domestic Industry, shows a significant improvement in their position. It is thus concluded that, there exists no serious Injury or threat of serious injury to the domestic industry in the period of investigation.

### **3). Causal Link between Increased Import and Serious Injury or Threat of Serious Injury:**

65. As per Rule 8 of the Customs Tariff(Identification and Assessment of Safeguard Duty) Rules’ 1997, The Director General(Safeguards) is obligated to “*determine serious injury or threat thereof of serious injury to the domestic industry taking into account, inter alia, the principles laid down in Annex to the these rules*”. Further, paragraph 2 of the Annex requires establishment of causal link between alleged increased imports and serious injury or threat thereof. The Paragraph 2 of Annex to Rule 8 provides as follows:

*The determination referred to in paragraph (1) 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 article concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.*

66. The Panel on Korea — Dairy set forth the basic approach 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.”<sup>1</sup>*

67. For the purpose of determining causation, all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry have been evaluated. The production and clearance have stabilized. The imports (annualized) are showing a decreasing trend in the year 2014-15. The DI is showing increasing profits, which have almost doubled in the half year 2014-15. It appears that there is no serious injury caused by imports as narrated above, there appears no need for evaluation of causal link between Increased Import and Serious Injury or Threat of Serious Injury.

### **4). Adjustment Plan:**

68. Rule 5(2)(b) of the Customs Tariff (Identification and Assessment of Safeguard Duty)Rules, 1997 requires submission of a statement on “efforts being taken or planned to be taken or both to make positive adjustment to import competition”. Further Article 7.1 of WTO Agreement on Safeguard provides that a member

<sup>1</sup> [Panel Report on Korea – Dairy](#), paras. 7.89-7.90

shall apply safeguard measure only to the extent necessary to prevent or remedy serious injury and facilitate adjustment.

69. The purpose of definitive safeguard measure is to provide the domestic producers with a limited period of time in which to restructure so as to more effectively compete with the imports. Section 8B (4) of Customs Tariff Act 1975 and Rule 16(2) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules' 1997 prohibits any possible extension of measure if there is no evidence that the domestic producers are adjusting.

70. The domestic producers in this case have laid down following adjustment plan:

- i) Increase capacity by De-bottlenecking of existing capacity
- ii) Increase capacity utilization levels
- iii) Increase Captive propylene oxide production capacity.
- iv) Bulk transportation of PO and improving logistics.

71. In this regard, it is noted that the DI has provided an adjustment plan which will be implemented across a period of time and no concrete time-bound plan for positive adjustments has been envisaged by the DI. It is also seen that even during 2010-11 and 2011-12 when the DI has shown itself in profit they did not utilize their full capacity. The DI vide letter dated 19.12.2014 has provided a letter of intent for carrying out detailed engineering services for polyol plant. However, there are no specifics regarding the time frame for implementations of the same. Also the order is for expansion of the polyol plant and no specific reference has been made for manufacture of PUC. No further evidence has been provided by the DI regarding expansion. In my view, the DI has not produced viable adjustment plan to become competitive to meet the challenge of imported PUC.

#### 5). Public Interest:

72. Interest of domestic producers alone cannot be seen as public interest. Even if it is admitted that imposition of safeguard duty on the product under consideration shall protect the domestic producers, the same cannot be termed as public interest. The demand of PUC in India is more 2 times of the total production/capacity of the DI who is the major producer of the PUC in India and as the adjustment plan to increase its capacity is in the nature of proposals and not time-bound in nature, the demand supply gap will increase over the time till DI actually expands the proposed capacity. In view of the huge demand-supply gap and inability of DI to expand its capacity to the extent to meet the total Indian demand in the near future, this will severely hamper the legitimate interest of the user industries. Hence, in these circumstances imposition of Safeguard Duty will not be in public interest at large.

#### 6. Examination of Post POI data:

73. In the given circumstances, an attempt was made to analyse the trend in the period after the POI to draw a clear inference about the possibility of accentuation of the injury to the domestic industry. The domestic industry vide their letter dated 9<sup>th</sup> December, 2014 submitted the data pertaining to certain economic parameters for the subject "PUC" imported into India for the half year 2014-15.

Particulars	2010-11	2011-12	2012-13	2013-14	2014-15 (annualised)
Total Imports (MT)	31778	35186	46364	50634	44648**
Production (MT)	16510	18381	13986	13811	17108*
Domestic Sales (MT)	16615	18192	13451	13473	16456*
Total Demand (MT)	48896	55369	60341	64462	61104
Market share of imports %	65	64	77	79	73
Market share of DI %	34	33	22	21	27
Profit/Loss (Rs/lacs)#	****	****	****	****	****
Trend %	100	172	103	130	192

\* The annualized figures are on the basis of half year data in respect of production/ clearance of FSP

*\*\* The annualized figures are on the basis of 1<sup>st</sup> quarter transaction wise import figures received from DGCI&S*

*# Figures from financial records of DI i.e. Balance sheets /financial results.*

74. On scrutiny of the said data it is noted that the market share of imports is decreasing and the market share of DI is increasing with relation to the total domestic demand. The profitability of the DI in the year 2013-14 has also increased significantly with relation to the year 2012-13. The current year is also showing similar trends as the profit is on the increase with relation to 2013-14 (based on the financial records of the DI). This indicates that the position of DI is improving and profitability will further improve.

**J) Conclusion:**

On examination of forgoing relevant factors I find that:

75. There has been a significant increase in imports in absolute terms as well as in relation to production in relation to the base year.

76. The Market share of the DI has decreased from 34% in 2010-11 to 21 % in 2013-14. However, the total demand increased by 32% in the year 2013-14 in relation to 2010-11. The share of domestic industry is showing an increasing trend and the imports are also showing a decreasing trend in post POI.

77. The production and sales of DI have stabilized during 2012-13 and 2013-14 and are showing increasing trend in post POI period.

78. Increase in imports have resulted in decline in market share of the domestic industry but there is no evidence to suggest overall impairment of the domestic industry as the domestic industry is in overall profit during the period of investigation and loss, if any, is due to other factors. In fact for the year ending March 2014, the domestic industry has announced 10% dividend which also shows that overall position of the domestic industry is good. The imports are showing a decreasing trend post POI, the production and clearance are also showing similar trend and are showing increasing trend in post POI period. It appears that there is no serious injury caused by increased imports.

79. The DI has shown loss in respect of the PUC. However, it is seen that the domestic industry has not taken the cost of PUC on proportionate basis as per the cost audit report of polyols provided by the DI vide letter dated 26.9.2014. Had the cost charges for manufacture of PUC been taken on the proportionate basis in terms of cost audit report the domestic industry might have registered profit in the PUC also. The DI was requested to provide cost data of all the products manufactured by DI. However, the DI provided only the cost audit data of Polyols and not of individual products. Further, since the DI is in overall profits, they apparently seem to have capability to fight the challenge posed by cheaper imports of PUC.

80. The domestic industry is not able to demonstrate that increase in imports is due to existence of unforeseen circumstances.

81. Adjustment plan submitted by the domestic industry has no specified time frame. The Di has submitted a letter of intent to increase the production capacity. However, the letter of intent for expansion is in respect of the polyol plant and no reference to PUC has been made. DI has not produced a viable adjustment plan to become competitive to meet the challenge of imported PUC.

82. There is a huge demand supply gap in the domestic market. In spite of the increased imports the DI has shown increase in profits in the POI. The increase in profits (annualized) in post POI period is almost double to the base year (2010-11). The share of the domestic industry is showing an increasing trend and the share of imports is showing a decreasing trend relative to the domestic demand.

83. Thus, the existence of alleged serious injury or threat of serious injury to domestic industry during the period of investigation does not stand vindicated and therefore, in my view, no protection as prayed for is warranted.

**K). Recommendations:**

84. In view of the discussions detailed above and the conclusions reached, safeguard duty on the imports of the "Flexible Slabstock Polyol of MW 3000 to 4000" is not recommended and the investigation in this case is terminated.

**(R.K Singla)**  
**Director General.**