

DIRECTOR GENERAL (SAFEGUARDS)

NOTIFICATION

New Delhi, 5th November, 2009

Subject:- Safeguard investigation concerning imports of Uncoated Paper and Copy Paper – Final findings

G S R having regard to the Customs Tariff Act, 1975 and the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 thereof.

A. PROCEDURE

- 1 An application was filed before me under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 by Indian Paper Manufacturers Association, PHD House, (4th floor), 4/2 Siri Institutional Area (Opp. Asian Games Village), New Delhi-110 016 on behalf of (1) ITC Limited -Paperboards and Specialty Papers Division, 106, Sardar Patel Road, Secunderabad – 500003, Andhra Pradesh, (2) Ballarpur Industries Limited, First India Place, Tower C, Mehrauli Gurgaon Road, Gurgaon (Haryana) – 122001, (3) JK Paper Limited, Nehru House, 4 Bafadur Shah Zafar Marg, New Delhi-110 002, (4) M/s The Andhra Paper Mills Ltd, 501-509,Swapanlok Complex, 92/93, Sarojinidevi Road, Secunderabad-500 003, (5) M/s Tamil Nadu Newsprint and Papers Limited , 67, Mount Road, Guindy, Chennai-600 032, (6) Abhishek Industries Ltd., (7) Century Pulp & Paper, (8) Emami Paper Mills Ltd., (9) Hindustan Paper Corporation Ltd. (10) Khanna Paper Mills Ltd., (11) The Mysore Paper Mills Ltd. (12) Orient Paper & Industries Ltd., (13) Pudumjee Pulp & Paper Mills Ltd., (14) Rama Newsprint and Papers Ltd., (15) Seshasayee paper and paper Board Ltd. (16) The Sirpur Paper Mills Ltd., (17) Star Paper Mills Ltd., (18) The West Coast Paper Mills Ltd. and (19) Yash Paper Mills Ltd. for imposition of Safeguard Duty on increased imports of Uncoated Paper and copy Paper made primarily from virgin chemical pulp into India to protect the domestic producers of Uncoated Paper and copy Paper against serious injury and continued threat of serious injury. Having satisfied that the requirements of Rule 5 were met, the Notice of Initiation of Safeguard investigation concerning imports of Uncoated Paper & Copy Paper (here in after called the “said products”) into India was issued on 20th April,2009 and was published in the Gazette of India Extraordinary on the same day.
- 2 A copy of the notice was sent to the governments of all the exporting nations through their embassies in New Delhi. A copy of initiation notice was also sent to all known interested parties listed below:

Domestic Producers Association

- I. Indian Paper Manufacturers Association
PHD House, (4th floor),
4/2 Siri Institutional Area,
(Opp. Asian Games Village),
New Delhi-110 016

Domestic Producers

- I. Ballarpur Industries Limited.
First India Place, Tower C,
Mehrauli Gurgaon Road,
Gurgaon (Haryana) - 122001
- II. JK Paper Limited
Nehru House, 4 Bafadur Shah Zafar Marg,
New Delhi-110 002
- III. ITC Limited
106, Sardar Patel Road,
Secunderabad – 500003,
Andhra Pradesh.
- IV. M/s The Andhra Paper Mills Ltd.
501-509, Swapanlok Complex,
92/93, Sarojinidevi Road,
Secunderabad-500 003
- V. M/s Tamil Nadu Newsprint and Papers Limited
67, Mount Road,
Guindy,
Chennai-600 032
- VI. Abhishek Industries Ltd.,
E 212, Kitchlu Nagar,
Ludhiana – 141 001,
Punjab.
- VII. Century Pulp & Paper,
Century Pulp & Paper
Ghanshyamdham, P.O. Lalkua – 262 402.
Distt. Nainital, Uttaranchal

- VIII. Emami Paper Mills Ltd.,
Emami Paper Mills Ltd.
687 Anandapur e.m. bypass,
Kolkata – 700 107.
- IX. Hindustan Paper Corporation Ltd.
75-C, Park Street,
Kolkata – 700 016.
- X. Khanna Paper Mills Ltd.,
Fatehgarh Road,
Amritsar – 143 001.
- XI. The Mysore Paper Mills Ltd.
16/4 Ali Asker Road,
P.B. No. 112,
Bangalore – 560 052.
- XII. Orient Paper & Industries Ltd.,
Birla Building
9/1, R.N. Mukherjee Road,
Kolkata – 700 001.
- XIII. Pudumjee Pulp & Paper Mills Ltd.,
Jatia Chambers,
60, Dr. V.B. Gandhi Marg,
Mumbai – 400 023.
- XIV. Rama Newsprint and Papers Ltd.,
31, Chowringhee Road,
Kolkata – 700 016.
- XV. Seshasayee paper and paper Board Ltd.
Cauvery R S P O
Erode – 638 007.
Tamil Nadu
- XVI. The Sirpur Paper Mills Ltd.,
UCO Bank Building (3rd Floor)
Parliament Street,
New Delhi – 110 001.
- XVII. Star Paper Mills Ltd.,
Seth Baldeodas Bajoria Road,
Saharanpur,
Uttar Pradesh – 247 001.

XVIII. The west Coast Paper Mills Ltd.
31, Chowringhee Road,
Kolkata – 700 016.

XIX. Yash Paper Mills Ltd
P.O. Darshannagar,
Distt. Faizabad – 224 135
Uttar Pradesh.

Importers and Users

- I Chimanlal Fein Paper Pvt. Ltd:
40/42, Bombay Mutual Building
293, Dr. D.N. Road Mumbai
- II Infinity INdutries Pvt. Ltd:
Haroon House, 1st Floor,
294, Parin Nariman Street,
Opp RBI Mumbai
- III Paper Plus Technologies (P) Ltd:
Sn. 592/2/11, Handewali Road,
Bhosala Farm, Devachi Urali,
Pune
- IV Akshay Impex:
7, Nyniappa Naicken Street,
Second Floor,
Chennai – 600003, Tamil Nadu
- V Amit Impex: New no. 17,
Old no.9, Narayana Mudali Lane,
Chennai – 600079
- VI Papers World Wide (India) services Private Limited:
18, Sadullah Street, Flat A,
Prabhu Apartments,
T. Nagar, Chennai,
Tamil Nadu - 600017
- VII Ajanta Offset and Packaging Limited:
Plot no. 61, sector 27- C,
Faridabad,
Haryana – 121003

- VIII Aero Exports:
Plot no. 183, Sector IV,
Manesar, Gurgaon, Haryana,
F-80, Khanpur Extension,
Delhi.
- IX Repro India Limited:
A-50/2, TTC Industrial Area,
MIDC Mahapa,
New Bombay – 400709
- X Printhouse (India) Pvt. Ltd
6, Datta Mandir Road
Bhandup (West), Mumbai

Exporters & Foreign Producers

- I. APRIL fine paper trading,
Jalan Teluk betung No. 31,
Jakarta,
Indonesia
- II. Advance Agro,
187/3 Moo 1, Bangna-Trad km.42 Road,
Bangwua District,
Amphur Bangpakong,
Chachoengsao, 24180
Thailand
- III. Stora Enso Oyj P.O. Box 309,
FI-00101 Helsinki,
Finland
- IV. Sinar Mass Group –APP China
Sinar –Mass Paper (China) Investment Co., Ltd.
8-9F, Bund Centre, No. 222,
East Yan'an Road,
Shanghai, 2000002
- V. Gold East Trading (HONGKONG) Co Ltd,
Unit 501-504A,
Empire Centre
68 Mody Road, T SimshaTsui East
Hongkong

- VI. Kowa Company Ltd,
6-29 Nishiki 3- Chome Naka-Ku Nagoya,
Japan
- VII. Vital Solutions pte Ltd,
Singapore 069532
- VIII. Daiei Paper (S.A.) Pte Ltd,
3. Shenton way, # 11-08,
Shenton House
Singapore
- IX. Cellmark asia Pte Ltd,
47 Scotts road
12-01 Goldbell Towers,
Singapore
- X. International Paper,
6400 Poplar Avenue,
Memphis 38197,
USA.
- XI. West Waco,
11013 West Broad street,
Glen Allen,
Virginia 23060,
USA.
- XII. M-real corporation,
PO Box 20,
Metsa 02020,
Finland.

- 3 Questionnaires were also sent, on the same day, to all known domestic producers and importers and exporters asking them to submit their response within 30 days.
- 4 All requests for consideration of interested parties and extension of the time period were considered and these requests were accepted considering the expediency of investigation.
- 5 The applicant had requested for provisional safeguard duty and provided evidences of critical circumstances in case of Uncoated Paper and Copy Paper and

thus preliminary findings were considered in the case of these products. The need to impose immediate safeguard measures was examined as per the Rule 9 of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 issued vide Notification No 35/97-NT-Customs dated 29.07.1997 which prescribes that the Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary finding regarding serious injury or threat of serious injury. On the basis of the above, preliminary finding was issued on 24th April 2009 recommending safeguard duty at the rate of 20% ad valorem on Uncoated Paper and Copy Paper when imported into India. However, no provisional safeguard duty was imposed.

- 6 A public hearing was held on 15th September 2009, notice for which was sent on 17th August, 2009. All interested parties who participated in the public hearing were requested to file a written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Copy of written submission filed by one interested party was made available to all the other interested parties. Interested parties were also given an opportunity to file rejoinder, if any, to the written submissions of other interested parties. All the views expressed by the interested parties either in the written submissions or in the rejoinders were examined and have been taken into account in making appropriate determination.
- 7 The information presented by domestic producers were 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.

Views of the Domestic Industry

- 8 The application has been filed by Indian Paper Manufacturers Association, on behalf of (1) ITC Limited (2) Ballarpur Industries Limited, (3) JK Paper Limited, (4) M/s The Andhra Paper Mills Ltd, (5) M/s Tamil Nadu Newsprint and Papers Limited, (6) Abhishek Industries Ltd., (7) Century Pulp & Paper, (8) Emami Paper Mills Ltd., (9) Hindustan Paper Corporation Ltd. (10) Khanna Paper Mills Ltd., (11) The Mysore Paper Mills Ltd. (12) Orient Paper & Industries Ltd., (13) Pudumjee Pulp & Paper Mills Ltd., (14) Rama Newsprint and Papers Ltd., (15) Seshasayee paper and paper Board Ltd. (16) The Sirpur Paper Mills Ltd., (17) Star Paper Mills Ltd., (18) The west Coast Paper Mills Ltd. and (19) Yash Paper Mills Ltd for imposition of Safeguard Duty on imports of Uncoated paper and copy paper, made primarily from virgin chemical pulp, into India; against threat of serious injury caused by the increased imports. The applicants have made following major points:-

- 9 The applicants have alleged that the trend of increased imports of Uncoated paper and copy paper into India have caused a threat of serious injury to domestic industry.
- 10 The domestic industries manufacture Uncoated paper and copy paper made primarily from virgin chemical pulp falling under various headings of chapter heading 4802. The domestic industry has submitted that their products are directly competing products with imported products falling under 4802 54 90, 4802 55 10, 4802 55 20, 4802 55 30, 4802 5540, 4802 55 50, 4802 55 90, 4802 5610, 4802 5620, 4802 5630, 4802 5640, 4802 56 50, 4802 5690, 4802 57 10, 4802 57 20, 4802 57 30, 4802 5740, 4802 57 50, 4802 5790, 4802 58 10, 4802 58 20, 4802 58 30, 4802 58 40, and 4802 58 90 of HSN as well as Customs Tariff Act, 1975. The applicants have alleged threat of serious injury caused to the domestic producers by the increased imports of Uncoated paper and copy paper made primarily from virgin chemical pulp into India falling under above headings under eight digit level.
- 11 Papers are made using pulp obtained by chemical or mechanical process or a combination of both. Further, the pulp can be obtained either by using fresh plant sources or from recycled paper. The present application covers, Uncoated Paper and copy Paper, primarily made with virgin pulp, using chemical process. The domestic industry has argued that the products falling under the headings mentioned above, at eight digit level, are similar as far as their technical characteristics, chemical composition and other basic features are concerned. The products of all these headings find similar uses. Therefore these products are like and directly competitive products. Despite possible minor superficial differences, in terms of quality, these products have the similar basic physical characteristics and similar end uses. These are sold via similar or identical sales channel. These products compete mainly on price. Imposition of safeguard duty on one heading at eight digit level in isolation will not serve any purpose since the importers will start importing other directly competing products. Thus, the domestic industry has argued, in view of above, for the purposes of safeguard investigation, the product basket, consisting of products mentioned above, needs to be considered as the 'product under consideration'.
- 12 They have alleged that surge in imports are taking place at lower prices making them lose their market share.
- 13 The increased imports at lower prices are on account of unforeseen developments. Fall in demand in exporting countries has forced manufacturers in those countries to get rid of their surplus inventories through excessive discounts of export which is the cause for sudden increase in imports. The major players have very small domestic demand compared to their respective production capacities. The Far East paper producers have created huge capacity of uncoated paper and copy paper. Out of this capacity, major portion was meant for developed countries. On account of sudden

decline in demand in the developed countries, the importers of developed countries stopped buying paper from these countries which resulted into huge stock built up with the companies of Exporting Countries. Resultantly, these units are left with piled stock of uncoated paper and copy paper, which they are trying to export at lower prices to India, which is still growing at a fair rate of growth. This product is being sent into Indian market to release the working capital, which is causing threat of serious injury to domestic industry.

- 14 The Profitability and return on capital employed of domestic industry has gone down. The difference in landed price of imports and domestic selling price has gone up during the period of investigation and has caused threat of serious injury.
- 15 They have requested for imposition of Safeguard duty to protect the domestic producers of uncoated paper and copy paper against serious injury in view of current threat of serious injury caused by the increased imports.
- 16 They have alleged that unforeseen developments are causing increased imports and that this increase has caused threat of serious injury. There is no other factor which has perceptible bearing on the threat of serious injury faced by the domestic producer.
- 17 The applicants submit that the imposition of safeguard duty on uncoated paper and copy paper shall not cause harm to public, as prices of domestic uncoated paper and copy paper are more or less stable in India. Further, the applicants have submitted that apart from direct employment to their employees, the paper industry, provides support to farmers in earning their livelihood and are instrumental in soil conservation. Therefore imposition of safeguard duty for protecting paper industry will be actually in public interest.
- 18 Market share of domestic industry was 99.4% in 2006-07, which declined to 99.1% during 2007-08. In the first nine months of 2008-09, market share of domestic industry was stagnant at the same level. This has further declined to 98.7% in Jan-march 2009, whereas there is a growth in imports in absolute terms as well as relative terms. However, import prices of these items have fallen sharply leading to threat of increased imports, and, consequent threat of serious injury.
- 19 In the recent period of nine months, there is abnormal increase in unsold inventory lying in the factory of the applicants. The inventory has increased to 104750 MT as on 31.12.2008 in comparison to 66808 MT as on 30.6.2008.
- 20 Capacity utilization has gone down to 90% in Apr-Jun, 2009 from 104% in Apr-Dec,2008.

- 21 The increase in imports has had injurious effects in terms of pressure on prices and a reduction in share of the domestic industry in sales and their profitability. Thus causal link between surge in imports and threat of serious injury to domestic industry is established.
- 22 Unprecedented uneven recession in various countries has led to sudden increase of imports into India, which has a better growth compared to other countries. There are surplus capacities of exporters in developed countries whereas demand of uncoated paper and copy paper in developed countries has fallen down. The growth in demand is the highest in India. This is causing diversion of uncoated paper and copy paper to Indian market at cheaper prices posing a threat of serious injury.
- 23 The present capacities of domestic producers which are being utilized to the extent of 90%, are capable of taking care of present domestic demand. Further, capacity expansions are planned to take care of future growth in the demand of the product. The domestic industry is committed towards use of better manufacturing practices, increase in house power generation, reduction in administrative expenses and effective inventory management.

Views of Governments of the exporting nations

- 24 Imports did not even reach the level of 1% of the market share in India in the last few years, thus the domestic industry held almost, the whole of the market for Uncoated Paper and Copy Paper.
- 25 There is absence of increased imports within the meaning of the WTO Safeguard Agreement. There is no increase in imports which is recent enough, sudden enough, sharp enough and significant enough.
- 26 The injury analysis carried out is totally unsatisfactory. Relevant injury indicators like data showing the development of sales, production, productivity, capacity utilization, profit and employment are not included in the analysis. Market share remained stable and exceptionally high (around 99%), production and sales increased, capacity utilization was very high and even reached 104% during the period April-December 2008. Profit level however, is unclear. It cannot thus be concluded that the situation of the domestic industry was impaired.
- 27 No causal link is established. Even if the domestic industry would have suffered from any injury, this would have been caused by factors other than imports.
- 28 According to Article 6 of the WTO SG, provisional measures may be taken in critical circumstances pursuant to a preliminary determination that there is clear

evidence that increased imports have caused or are threatening to cause serious injury. In this case, no clear evidence has been provided of injury and causal link.

- 29 Indian domestic producers have succeeded in increasing their domestic sales volumes from 1806161 MT in the period from April 2007 to March 2008 to 1974623 MT in the period from April 2008 to March 2009. This implies an increase in domestic sales to the tune of 9%. The domestic production also increased from 1810292 MT to 1999633 MT i.e. an increase of approximately 10% during the same period.

Views of the Exporters

- 30 There has been no increase in imports during the period of investigation which could be considered as a “surge” in imports. The monthly imports have gone up by a meager 82 MT in a market which is supposed to be of the magnitude of about 125000 MT per month as per estimates of the applicants themselves. The increase constitutes a miniscule 0.06% of the Indian demand and cannot be the basis for safeguard action which is meant only to address unforeseen and critical circumstances.
- 31 Unsubstantiated statements like economic meltdown and recession, idling of production capacities in exporting countries and resorting to export of the product in increased quantities at low prices by these countries to Indian market, have been made by the applicants in support of unforeseen developments. These statements are nothing but conjectures and surmises. There is no data, information or analysis to support any of the above inferences.
- 32 There is no decline in sales and market share. The market share of the domestic industry has increased from 99.07% in 2007-08 to 99.10% and decreased by a negligible 0.20% in January-March 2009. There is no basis to allege serious injury on account of a negligible increase of 0.20% in the market share.
- 33 There is no decline in the import prices. In fact the uncoated paper prices during the period of investigation have gone up as compared to the year 2007-08. The prices were Rs 35822/- per MT in 2007-08 whereas in Oct 08, Nov 08 & Dec 08, Jan 09, these were Rs 38055/- per MT, Rs 38653/- per MT, Rs 38843/- per MT & Rs 39270/- per MT respectively. The domestic industry has given misleading data of non-comparable periods which have been accepted by the DG without any in-depth analysis.
- 34 There has been no decline in the profitability of the domestic industry. The quarterly results of the three constituents of the domestic industry namely BILT, JK Papers & ITC Ltd show that the claims regarding fall in profitability are false and misleading. These three units have shown increase in profits by 2.63%, 16.55% & 8% respectively, if the results of nine months ending 31 Dec 2007 are compared with nine months ending 31 Dec 2008.

- 35 There is no analysis of capacity or capacity utilization of the domestic industry. In fact, domestic industry did not have the capacity to cater to the burgeoning demand in the country resulting in the increase in the market share of imports, marginally.
- 36 The total increase in imports from 2007-08 to 2008-09 is a mere 2753 for the entire year, which amounts to 229 MT per month. If it is compared with the total domestic consumption for the period 2008-09, it would amount to a meager 0.11%. This amount is certainly negligible, in absolute, as well as relative terms.
- 37 It must be noted that the total imports during the period 2008-09 were around 19000 MT which was a mere 2000 MT more than the imports during 2007-08. However, it needs to be noted that the inventories lying unsold as per domestic industry is in the range of 66808 to 104750 MT between June 2008 and December 2008. It is evident that the negligible increase in imports is not a factor for the increased inventories. The stock accumulation of the domestic industry is not due to surge in imports but due to some undisclosed inherent problems and cannot be attributed to the alleged surge in imports.
- 38 The domestic industry has made very general remarks about improvements in manufacturing and management practices, with regard to the restructuring plan. These cannot be treated as a viable restructuring plan by any stretch of imagination, under the rigorous requirements of the Agreement on Safeguards and the Indian laws.

Views of the end users and importers

- 39 The application did not contain a proper definition of the product under consideration. The description given is general and does not differentiate in any way between uncoated paper and copy paper. Uncoated paper and copy paper which are two distinct product groups. Each has distinct end uses. Use of copy paper is generally limited to use in offices for copying and printing purposes, whereas uncoated paper-which is much larger in size- is generally used for industrial printing purposes(e.g. books, diaries etc.).
- 40 There is no significant increase in imports as is required by Section 8B. The share of imports in total demand of the product has actually fallen to 0.90 % in 2008-09(Apr-Dec) from 0.93% in 2007-08. Further, the market share of imports from all countries combined adds up to less than 1%. Even according to applicants estimates, imports are set to hold a market share of 1.11%. An objective analysis of the data on record cannot lead to the conclusion that a serious injury has been caused or is threatened to be caused, by increase in imports.
- 41 Production and sales figures of the domestic industry have been steadily improving over the last three years. Production has increased to 1999633 MT in 2008-09 from 1744500 MT in 2006-07(an increase of 15%) and sales have increased to 1974623 MT in 2008-09 from 1744914 MT in 2006-07 depicting an increase of 13%. Therefore, there is no serious injury to the domestic industry.
- 42 Financial data available in the public domain belies the domestic industry's claims of financial harm. As per the Bloomberg press release from July 3,2009, Ballarpur Industries Ltd plans to invest about \$ 1 billion in overseas acquisitions

- and is expanding plants at home to quadruple capacity in five years. Further, shares of Ballarpur have gained by 18% since resuming trading after a March 31 stock split. During the same time, the benchmark Bombay Stock Exchange declined by 16.3%. BILT improved its ROCE from 8.1% to 8.3% between 2006 and 2007. In fact, Ballarpur's 5year average profitability ratios far exceeded those of other players in the industry. Similarly, J K Paper Ltd doubled its net profit for the quarter ending June 2009 to 20.2 crores, while ITC Ltd saw a 26% rise in revenues from the paper business in, the fourth quarter of 2008-09.
- 43 According to the data provided in the petition, including the petitioner's own estimates for 2008-09, the petitioners' total domestic production increased by 8% between 2006-07 and 2007-08, and by a further 18.8% between 2008-09 and 2007-08. When compared with the figures of 2006-07, total domestic production during 2008-09 increased by more than 28%.
- 44 Petitioner bases its claim of a threat of serious injury largely on "the recent global financial crisis". Notwithstanding the fact that the petitioner has provided no evidence to substantiate its claim(e.g. huge inventory pile up in China and Indonesia, etc), all indications are that the global recession has or is just about to come to an end.
- 45 The domestic industry has managed to maintain a sales-as-a-percentage-of-production level of nearly 100% for the last 3 years. Therefore, the petitioner's loss in the market share during this time cannot be the result of increased imports. Instead, the only explanation for this is the domestic industry's own inability to keep up with the growth in domestic demand.
- 46 While the petitioner points out the recent decline in import prices of uncoated paper and copy paper into India, Petition conveniently fails to discuss the reasons why such import prices have fallen. The fact is that import prices of the subject product have fallen as a direct result of a fall in raw material input prices. The prices of softwood pulp and hardwood pulp in US have fallen from 800 US\$ and 750 US \$ respectively in January 2008 to 500 US\$ and 410 US\$ respectively in May 2009. This shows a percentage drop of 37.5% and 45.3% respectively.
- 47 The imposition of safeguard duty on the subject product is against the public interest as such duties would further increase the cost of production for the Indian book publishing industry, in turn jeopardizing said industry in the face of outsourcing and foreign competition. Paper is major raw material for production of books(more than 50% of cost of books). If safeguard duty is imposed on books it shall result in imposition of tax on books in India which is against public interest.
- 48 Furthermore, the printing Industry provides employment to millions of workers in India. Any increase in the price of paper, let alone the substantial increase which would result from the imposition of safeguard duty, would increase the price of books and consequently affect Govt. of India's literacy drive.
- 49 The data contained in the petitioner's own application indicates that import prices are significantly up for all countries since 2006-07. In fact import prices were up 25.6% for the period April-December 2008 vs FY 2006-07(page 7 of petitioner's application refers).

- 50 There is no causal link between serious injury and increase in imports. The imports are virtually negligible. The serious injury, if any, is the result of a number of other factors which have nothing to do with the negligible imports of the subject goods. These other factors relate to issues of quality, delivery issues, overseas and domestic losses incurred in units which produce non-subject goods, scarcity of raw materials in the domestic market, high energy costs and low recovery rate for waste paper vis-à-vis foreign uncoated paper and copy paper manufacturers.
- 51 Petitioner's claims regarding its supposed "restructuring plan" are absurd. The said plan contains nothing more than generic statements about plans to increase capacity, and its plan to cut its raw material, energy and other costs.

Findings of D.G.

- 52 I have carefully gone through the case records and the replies filed by the domestic producers, users/importers, exporters and the exporting governments. Submissions made by the various parties and the issues arising therefrom are dealt with at appropriate places, in the findings below.
- 53 **Product under consideration:** The applicants have alleged that increased imports of Uncoated paper and copy paper into India have caused threat of serious injury to domestic industry. The domestic industries manufacture Uncoated paper and copy paper made primarily from virgin chemical pulp falling under various headings of chapter heading 4802. The domestic industry has submitted that their products are directly competing products with imported products falling under 4802 54 90, 4802 55 10, 4802 55 20, 4802 55 30, 4802 5540, 4802 55 50, 4802 55 90, 4802 5610, 4802 5620, 4802 5630, 4802 5640, 4802 56 50, 4802 5690, 4802 57 10, 4802 57 20, 4802 57 30, 4802 5740, 4802 57 50, 4802 5790, 4802 58 10, 4802 58 20, 4802 58 30, 4802 58 40, and 4802 58 90 of HSN as well as Customs Tariff Act, 1975. The applicants have alleged threat of serious injury caused to the domestic producer by the increased imports of Uncoated paper and copy paper made primarily from virgin chemical pulp into India falling under the above headings at eight digit level.
- 54 Papers are made using pulp obtained by chemical or mechanical process or a combination of both. The pulp can be obtained either by using fresh plant sources or from recycled paper. The present application covers Uncoated Paper and copy Paper primarily made with virgin pulp using chemical process. The product under consideration covers a large number of product groups, which are imported, as well as produced in India. There may be minor differences in terms of quality and technical specification but these products have similar technical characteristics, chemical composition and other basic features. These are sold via similar or identical sales channel. These products compete mainly on price. These imported products are substitutable to domestically produced products. Therefore, the imported products are 'similar or directly competitive' articles.
- 55 **Domestic Industry** - The application has been filed by Indian Paper Manufacturers Association (IPMA), on behalf of (1) ITC Limited (2) Ballarpur

Industries Limited, (3) JK Paper Limited, (4) M/s The Andhra Paper Mills Ltd, (5) M/s Tamil Nadu Newsprint and Papers Limited , (6) Abhishek Industries Ltd., (7) Century Pulp & Paper, (8) Emami Paper Mills Ltd., (9) Hindustan Paper Corporation Ltd. (10) Khanna Paper Mills Ltd., (11) The Mysore Paper Mills Ltd. (12) Orient Paper & Industries Ltd., (13) Pudumjee Pulp & Paper Mills Ltd., (14) Rama Newsprint and Papers Ltd., (15) Seshasayee paper and paper Board Ltd. (16) The Sirpur Paper Mills Ltd., (17) Star Paper Mills Ltd., (18) The west Coast Paper Mills Ltd. and (19) Yash Paper Mills Ltd for imposition of Safeguard Duty on imports. The members of IPMA constitute more than 80% of the total production in India and they have disclosed their information through IPMA. Accordingly, the member of IPMA constitute domestic industry in terms of clause (b) of subsection (6) of Section 8B of the Customs Tariff Act, 1975.

- 56 **Period of Investigation:** The domestic industry has supplied information up to 2008-09 (up to December) and claimed threat of serious injury based on comparison of 2008-09 (Up to December) with the information of past years i.e 2007-08 and 2006-07. The preliminary finding was based on 2008-09 (up to December) as period of investigation. The domestic industry has neither relied upon nor submitted any data for the subsequent period on the ground that the period of investigation should not be extended as it would be against the norms of natural justice. They also contended that the subsequent information is not necessary to be considered as the same might have been influenced by the initiation of Safeguard investigation.
- 57 The issue has been examined. The Customs Tariff Act, 1975, the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997, the Agreement on Safeguard or the relevant Article XIX of GATT does not specifically define what the Period of Investigation should be. However, the issue of period of investigation has been dealt extensively in the panel's report on Argentina Footwear as well as Appellate Body Report on Argentina Footwear, which are being produced below;

“Argentina– safeguard measures on imports of Footwear; Report of the Panel

8.216 *Regarding the investigation's almost exclusive reliance on end-point-to-end-point comparisons in its analysis of the changes in the situation of the industry, we have the same concerns as were noted above with regard to the “increased imports” analysis. Here we note in particular that if intervening trends are not systematically considered and factored into the analysis, the competent authorities are not fulfilling Article 4.2(a)'s requirement to analyse "all relevant factors", and in addition, the situation of the domestic industry is not ascertained in full. For example, the situation of an industry whose production drops drastically in one year, but then recovers steadily thereafter, although to a level still somewhat below the starting level, arguably would be quite different from the situation of an industry whose production drops continuously over an extended period. An end-point-to-end-*

point analysis might be quite similar in the two cases, whereas consideration of the year-to-year changes and trends might lead to entirely opposite conclusions.

We believe that consideration of changes over the course of the investigation period in the various injury factors is indispensable for determining whether an industry is seriously injured or imminently threatened with serious injury. An end-point-to-end-point comparison, without consideration of intervening trends, is very unlikely to provide a full evaluation of all relevant factors as required

Appellate Body Report

Note 130:

The Panel, in footnote 530 to para. 8.166 of the Panel Report, recognizes that the present tense is being used, which it states "would seem to indicate that, whatever the starting-point of an investigation period, it has to end no later than the very recent past." (emphasis added) Here, we disagree with the Panel. We believe that the relevant investigation period should not only end in the very recent past, the investigation period should be the recent past.

- 58 From the above it is apparent that neither the Agreement on Safeguard nor the relevant provisions of WTO provide specific definition or interpretation of the period of investigation. The Appellate Body Report has given the finding in unequivocal terms that the relevant investigation period should not only end in the very recent past; the investigation period should be the recent past. Therefore, the period after filing of the application cannot be ignored in safeguard investigation. However, in order to meet the requirement of natural justice, it is imperative that the information received or collected after initiation of investigation is made accessible to the interested parties. As far as the contention of the domestic industry that it is not necessary to examine the information relating to subsequent period, it is noted that irrespective of the fact whether the examination of information for the period subsequent to initiation of investigation is mandatory or not, the availability of such information certainly helps to have the latest status of domestic industry.
- 59 However, in the instant case, the domestic industry has not relied on information of the period other than referred to in the application. Therefore, the period of investigation is limited to the period 2008-09 (upto December).
- 60 **Increased Imports:** The table below gives the imports of product under consideration. The average monthly import has gone up by 495 MT in 2007-08 compared to 2006-07. The increase continued in 2008-09 and the import increased by 82MT per month during 2008-09 (upto December). In percentage terms the average monthly imports have gone up by 5.8% during April-December, 2008 compared to the average monthly imports of 2007-08. Therefore, there is an increase in imports in quantitative terms.

	2006-07	2007-08	2008-09 (upto December)
Total Imports (MT)	11077.00	17016.00	13504.00
Average Monthly Imports (MT)	923	1418	1500

61 Share of Imports relative to production: The table below gives imports relative to their production. The share of imports relative to production was 0.63% in 2006-07, which increased to 0.93% in 2007-08 but reduced slightly in 2008-09 (up to December) by 0.04%, compared to 2007-08. It is also seen that the share of imports remained below 1% since 2006-07.

	2006-07	2007-08	2008-09 (upto December)
Share of Imports (%)	0.63	0.93	0.89

62 Rate of increase of Import: The import increased at the rate of 53.63% in 2007-08. The rate of increase declined in 2008-09 (Upto December) to 5.78%. It implies that the rate of increase of imports has fallen by 47.85% in 2008-09 (up to December)

	2006-07	2007-08	2008-09 (upto December)
Average Monthly Imports (MT)	923	1418	1500
Rate of increase of imports		53.63%	5.78%

63 Market Share of domestic industry taken by imports: As is apparent from the table below, the market share of domestic industry declined in 2007-08 by 0.30% but it improved by 0.03% in 2008-09 (April-December). It is seen that the domestic industry has claimed threat of serious injury based on 2008-09 (upto December) information. Thus the comparison of the 2008-09 (upto December) data with 2007-08 data is relevant.

	2006-07	2007-08	2008-09 (upto December)
Share of domestic industry (%)	99.37	99.07	99.10

Hence, the share of domestic industry increased slightly despite the increased import.

64 Production: The average monthly production during 2008-09 (April-December) has gone up by 10% compared to 2007-08. The production had gone up by 3.78% in 2007-08 compared to 2006-07. Thus, there is a continuous increase in production since 2006-07. The rate of increase in production during 2008-09 (up to December)[10%] is more than the rate of increase in 2007-08 [3.78%], when compared to the immediately preceding years.

	2006-07	2007-08	2008-09 (upto December)
Total Production (MT)	1,744,500.00	1,810,292.00	1,499,725.00
Average Monthly Production (MT)	145375	150857.67	166636.11

65 **Sales:** The average monthly sales during 2008-09 (April-December) have gone up by 9.33% compared to 2007-08. The rise in sales in 2007-08 was 3.5% in 2007-08. Thus, there has been a continuous growth in sales of the domestic industry. The rate of increase of sales also improved to 9.33% in 2008-09 (upto December) compared to 2007-08.

	2006-07	2007-08	2008-09 (upto December)
Total Sales(MT)	1,744,914.00	1,806,161.00	1,480,967.00
Average Monthly Sales (MT)	145409.5	150513.42	164551.89

66 **Capacity Utilization:** The capacity utilization of domestic industry had gone down to 92% in 2007-08 from 98% in 2006-07, but the same increased to 104% in 2008-09 (up to December). Implying thereby that the domestic industry is able to achieve the best possible utility of the manufacturing plant.

	2006-07	2007-08	2008-09 (upto December)
Capacity Utilization	98	92	104

67 **Profitability:** The profitability has gone down by 20% to Rs. 4257.76 PMT during 2008-09 compared to 2007-08. The Return on Employed Capital has also gone down by 2.06% to 6.93% in 2008-09 compared to 2007-08.

Year	2006-07	2007-08	2008-09 (up to Dec)
Total profit (Rs/MT)	4663.06	5392.35	4257.76
ROCE % (EBIT/Capital Employed)	8.53	8.99	6.93

68 **Evaluation of Overall position of industry:** It is seen that the imports have increased by 5.8% during 2008-09 (upto December) in absolute terms, but the share of imports fell by 0.04% compared to production during the same period. The share of imports in domestic market also fell by 0.03%. The share of imports in domestic market has always been less than 1%. The market share of domestic industry also improved on account of improved sales and improved production. It means that the domestic market is growing and the domestic market is able to keep its share in the increased market size. The domestic

industry has more than 99% of share in the domestic market, and is showing an improving trend.

- 69 The capacity utilization is also found to be more than 100% (104%). It implies that the domestic industry is able to perform better than ordinarily expected in terms of capacity utilization. It also implies that the domestic industry is not able to meet the complete demand of domestic industry with its installed capacity. As the domestic industry cannot meet the domestic demand, the import is a natural consequence.
- 70 The sales and production by domestic industry is growing continuously. The rate of growth in sales and production during 2008-09 (up to December) improved compared to 2007-08. As the production in 2008-09 has been at above 100% capacity utilization, no better production can, ordinarily, be expected. The sales by domestic industries have gone up. In fact the domestic industry has been able to take the share of imports also in the increased market.
- 71 The profitability has gone down during 2008-09 (upto December) by 20%, even after increased production, increased sales and above 100% capacity utilization. The domestic industry has cited certain inherent problems in government policy in relation to corporate farming in India, which makes the raw material expensive in India. They have also referred to the expenses incurred in meeting the environment related norms. These factors increase the cost of production in India. It may be correct that the domestic industry has to face certain challenges, which their counterparts in exporting nations may not have to encounter. However, all these factors are relating to the government policies which are beyond the realm of possible restructuring by domestic industry. These factors were in existence in the past too. These factors may cause price difference, which in turn may cause increased import. However, the data provided by the applicant shows increase in import in quantitative terms, but the rate of increase of imports is showing a down ward trend. The market share of import is going down and remains below 1%. The average domestic price has gone up to 38,201 during 2008-09 (up to Dec) against 33,383 during 2007-08, which implies that the domestic industry is able to increase the price. Therefore, the reasons quoted by the domestic industry are remote possibilities and reduction in ROEC, alone, by 2.06% cannot be termed as overall impairment of domestic industry.
- 72 The domestic industry has been able to retain and improve its market share through increased sales and increased production. There is a reduction in profitability and ROEC in 2008-09 after improvement in 2007-08. This gain and reduction in profitability is part of business cycle and cannot be termed as overall impairment of the domestic industry. Nor can this fall in profitability, prove existence of clear and imminent danger of serious injury, when all the other parameters are showing signs of improvement of industry. Therefore, there is no serious injury or threat of serious injury.
- 73 **Causal Link:** The increase in import in absolute terms has not even been able to reduce the market share of domestic industry. Besides the imports, even after increase in absolute quantitative terms, have always remained below 1%. The capacity utilization of more than 100% also indicates that the increase in import may be on account of meeting the domestic demand. The sales, production,

capacity utilization and market share increased along with the increase in imports. Therefore, the increase in imports has no adverse impact on sales, production, capacity utilization and market share. The trend of fall in profitability does not coincide with increased imports during 2006-07 to 2008-09, as profitability increased in 2007-08 when sharper increase in imports was noticed. Therefore, there is no causal link between increased imports and fall in profitability.

74 As there is no serious injury or threat of serious injury, there is no possibility of causal link between increased imports and serious injury.

Conclusion and Recommendation:

75 Based on the above, it is concluded that there is no serious injury or threat of serious injury.

76 Accordingly, no safeguard duty on imports of Uncoated Paper & Copy Paper is recommended.

Praveen Mahajan
Director General (Safeguards)

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