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Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara Building, 4th Floor, 5 Parliament Street
New Delhi-110001

NOTIFICATION
Case No. (SG) 05/2019

Date: 21st August, 2020

Subject: Safeguard investigation concerning imports of "Single Mode Optical fibre" in to India - Final Findings – Proceedings under Customs Tariff Act, 1975 and the Custom Tariff (identification and Assessment of Safeguard) Rules, 1997- Reg.

A. Introduction

1. An application dated 18.07.2019 has been filed before the Director General (Safeguard) under Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (hereinafter also referred to as the "said Rules") by M/s Sterlite Technologies Limited ('STL') and M/s Birla Furukawa Fibre Optics Private Limited ('BFL') (hereinafter also referred to as the "Applicants") in terms of Section 8B of Customs Tariff Act, 1975 (for brevity, "the Act") read with Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (for brevity, "the Rules"), seeking imposition of Safeguard Duty on imports of "Single Mode Optical Fibre" (hereinafter also referred to as the "product under consideration" or "PUC") into India to safeguard the Domestic Industry ('DI') of like or, directly competitive products from serious injury or threat of serious injury caused by increased imports. The applicants have submitted that imports of subject goods has increased significantly in 2018-19and has continued to be at increased levels in the most recent period, i.e. January' 2019 to June' 2019. The applicants have claimed that they are not able to compete with the imports and regain their market share, thereby forcing them to close down or keep part of their production facilities idle,and requested for imposition of provisional Safeguard Duty to mitigate their injury. The Authority also issued Preliminary Findings dated 6th November, 2019 which was not notified by the Central Government.

B. Procedure Followed

2. An examination of the application and the evidence/details/documents submitted therewith led to the conclusion that the application satisfies the requirements of Rule 5 of the said Rules. Therefore, a Safeguard investigation against imports of the PUC into India was initiated vide notification published in the Gazette of India, Extraordinary dated 23.09.2019 vide GSR No.293 (E).

3. In accordance with sub-rules (2) and (3) of Rule 6 of the said Rules, a copy of the initiation notification dated 23.09.2019 and a copy of a Non-confidential Version (NCV) of the application filed by the Domestic Industry were forwarded to the Central Government in the Ministry of Commerce & Industry and Ministry of Finance, the Governments of major exporting countries through their Embassies in India, and the interested parties mentioned in the said application. Further, the questionnaire to be answered by the exporters / importers / domestic producers, as prescribed under Rule 6(4) of the said Rules, was forwarded to the known interested parties with a request to make their views known in writing within 30 days from the date of issue of the NOI.

4. In the meantime, the request made by the Applicants for imposition of provisional safeguard duty was examined and it was *primafacie* found that there existed critical circumstances wherein delay in imposition of Provisional Safeguard duty would cause irreparable damage to the domestic industry. The submissions of other interested parties filed till date was also taken into consideration.

5. Accordingly, the Preliminary Findings for Provisional safeguard duty was issued under Rule 9 (2) of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 on 6th November, 2019 and was published in the Gazette of India on the same day. However, the recommended Provisional Safeguard duty was not been notified by the Central Government.

6. Subsequently, on the request made by some of the interested parties, the time limit for filing Questionnaire Response was extended till 15th November, 2019. The submissions and questionnaire responses were received from the following interested parties:

i. Corning Technologies India Pvt. Ltd.
ii. Corning Finolex Optical Fibre Pvt. Ltd.
iii. Finolex Cable Ltd.
iv. HFCL Ltd., India
v. WestcoastOptilinks
vi. Fibrehome India Pvt. Ltd.
vii. Sumitomo Electric Industries Ltd. ('SEI'), Japan
viii. SWCC Showa Cable Systems Co. Ltd., Japan
ix. Fujikura Ltd., Japan
x. Pt. ZTT Cable, Indonesia
xi. Pt. Supreme Cable Manufacturing and Commerce Tbk, Indonesia
xii. Pt. Voksel Electric Tbk., Indonesia
xiii. Pt. Yangtze Optical Fibre, Indonesia
xiv. Pt. Communication Cable Systems, Indonesia

7. In addition to the above, Paramount Cables Limited, Orient Cables India Pvt. Ltd. and Om Optel Industries Pvt. Ltd had also filed their submissions subsequently after the expiry of the extended time period. However the same submissions were given by them during the first oral hearing. The submissions made by all interested parties either in public hearing or otherwise have been appropriately examined and addressed under relevant paras. As many issues are repetitive, they have been collectively addressed.

8. In view of the travel restrictions imposed because of Covid-19 pandemic and consequent lockdown, the Public hearing was held through Digital Video Conferencing on 12.05.2020. In the meantime there was a change in Director General (Safeguards), therefore, a second Public hearing was held by the present Director General through Digital Video Conference on 17.07.2020.

9. During both the public hearings, the interested parties, along with the Domestic Industry were given adequate opportunity to make their oral submissions. In terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, all the interested parties who participated in the public hearing were requested to file written submission of the views presented orally.

10. Copies of written submissions filed subsequent to both the Public hearings by the domestic Industry as also other interested parties were made available to all the interested parties. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.

11. All the views expressed by the interested parties in their written submissions, pursuant to the public hearings held on 12.05.2020 and 17.07.2020 were examined and have been taken into account in making appropriate determination. The non-confidential version of the information received or acquired has been kept in the public file. Thereafter, rejoinders to the written submissions filed subsequent to both hearings by DI and other interested parties were also considered.

12. The desk verification of the data submitted by the DI was carried out through digital video conferencing wherein DI shared their system's screen displaying relevant data for verification.

Post initiation submissions

13. The submissions received in response to the initiation notice but prior to the Public Hearing are summarized as under:

13.1 Finolex Cables Ltd.

Finolex Cables Ltd. is one of the six producers of PUC in India. They have supported the DI's petition for levy of safeguard duty on imports of PUC into India. They have submitted their Products, Sales, Capacity utilization and Inventory information for the POI. Accordingly, they have claimed that the sudden surge in imports have caused and is threatening to cause serious injury to domestic producers.

13.2 Corning Technologies India Pvt. Ltd. and Corning Finolex Optical Fibre Pvt. Ltd.

13.2.1 Technologies India Pvt. Ltd. is a producer of PUC in India and Corning Finolex Optical Fibre Pvt. Ltd. is a joint venture between Corning SAS and Finolex Cables

Ltd., engaged in sales of products manufactured by Corning Technologies India Pvt. Ltd. (hereinafter collectively referred to as "Corning"). Corning has supported the petition filed by the domestic industry for levy of safeguard duty.

13.2.2 They have submitted that the recent, sudden, significant, and sharp increase in imports has caused and is threatening to cause serious injury to domestic producers.It was also submitted that they have faced significant price depression and price suppression, particularly in January – June' 2019, due to low priced imports.

13.2.3 Corning has not been able maintain its Selling price commensurately with the change in cost of sales during the POI.

13.2.4 They had also shared the concern raised by Domestic industry that the actual price of imported goods is significantly lower than the prices reflected in import statistics, on account of considerable post-invoicing discounts given by exporters.

13.2.5 They have also submitted that the following "unforeseen developments" have led to sudden surge in imports:

a. Decline in demand in the Chinese Optical Fibre market
b. Anti-dumping duty imposed by China PR on optical fibre imported from US and Japan
c. Global overcapacity
d. Investment in Optical Fibre preform
e. Tariff imposed by US on optical fibreimports from China

13.3 **HFCL Ltd.**

They are one of the importers of PUC in India. They have mainly objected to the inclusion of grades other than grade G652 under the scope of PUC. It has been submitted by them that Indian demand is primarily of Non dispersion Shifted Fibre i.e. G 652 grade. Fibre Cable and other products manufactured using grades other than G652are majorly exported out of India rather than being used in India because of lack of demand and market. Thus, there is no adverse impact on the domestic industry from imports of

grades other than G652, therefore, all such grades should be excluded from the scope of Product under investigation.

13.4 Government of Mexico

There has not been any imports of PUC from Mexico to India during January 1, 2016 to June 30, 2019.Therefore, in terms of Article 9.1 of the Agreement on Safeguards of the World Trade Organization and due to the fact that Mexico is a developing country member of the WTO, the exports of PUC from Mexico to India should be excluded from the purview of any safeguard measure derived from the present investigation.

14. Post preliminary findings submissions

The following submissions have been received from interested parties after issuance of Preliminary findings:

14.1Sumitomo Electric Industries Ltd., Japan

14.1.1 There are no critical circumstances warranting imposition of Preliminary Safeguard Duty. They have submitted that while there was a surge in imports in Quarter 2' 2018-19, the imports thereafter have substantially declined.

14.1.2 The computation of profit and loss of DI has been made by comparing cost of sales of Domestic Industry with the selling price to independent customer. Exclusion of selling price to related/captive parties has distorted the figures.

14.1.3 Annualised data for January – June' 2019 cannot be used for analysis of injury parameters in absence of any explanation of the need for such annualisation. In this regard, they have placed reliance on the findings of Panel in *India- Steel Safeguards.*

14.1.4 Insufficiency in showing increased imports, as imports from all countries including Japan does not show an increasing trend. The injury, if any, being caused to the Domestic industry is only on account of surge in imports from China.

14.1.5 It is submitted that exclusion of imports of only STL (DI) on account of being imported under advance licensing scheme is unfair in data analysis as a similar exclusion

should have been done for all the import of the PUC undertaken under advance licensing scheme.

14.1.6 Analysis of the DI's data does not indicate existence of serious injury. Further analysis carried out after excluding captive/related party sales does not give the correct picture of the condition of the domestic industry.

14.1.7 Further, it was submitted that the increase in imports was not on account of any "unforeseen developments", as such the requirement of Article XIX of GATT is not met in the present case.

a. In this regard, it has submitted that global overcapacity should have resulted in the PUC being imported in increased quantity from all sources. However, in the present case the majority of imports (approx. 84%) has come from China and imports from other countries such as Japan is minor (8% in 2018-19).

b. Imposition of trade remedies by China should have resulted in increased imports from those countries.

c. It is undisputed that low priced imports of the PUC from China PR have led to price undercutting in India. In this light, they have submitted that the only source of injury, albeit not 'serious injury', to the DI is on account of low priced imports from China.

14.1.8 DI is suffering from an unfair trade practice like low priced imports from China, and therefore the remedy lies under the anti-dumping provisions and not safeguard provisions. Accordingly, the present investigations ought to be terminated in terms of paragraph 2 of Annexure to the said Rules.

14.1.9 The DI has failed to make a claim with respect of the "obligation incurred under GATT 1994" as required under Article XIX, in their petition and moreover, even in the preliminary findings there has been no analysis on this issue.

14.1.10 The exporter has further claimed that grade G654 should be excluded from the scope of PUC as it is not produced by the Domestic Industry.

14.1.11 Grades G652, G655 and G657 manufactured by the Exporter should also be excluded as there is significant difference between the products manufactured by the DI and those of SEI, in terms of quality, time delivery, customer support and packaging etc.

14.1.12 DI has claimed excessive confidentiality without giving any meaningful summarization of various factors in their Petition.

14.2 Paramount Cable Limited, Orient Cable Industries Ltd. and Om Optel Industries Pvt. Ltd.

14.2.1 Even though the aforesaid parties have not registered as "interested parties" during the extended time limited provided, their submissions have been taken on record for consideration.

14.2.2 The said parties are importers of the subject goods. They have objected to the initiation of the investigation, and have submitted that no injury has been caused to the domestic producers of PUC.

14.2.3 It has been submitted by them that all Indian producers of PUC, other than STL, merely convert imported Preform into Optical Fibre and therefore, they cannot be considered as a manufacturing industry.

14.2.4 Imposition of Safeguard duty would result in significant increase in prices of PUC, thereby forcing MSME Cabling industry to closure.

14.2.5 Further, imposition of Safeguard duty on Optical Fibre would result in significant increase in import Optical Fibre Cable, leading to closure of cable manufacturing units who would not be able to compete with imports.

14.2.6 Imports of the DI has substantially increased in 2018-19 as compared to the previous years. The claims made by STL that imports made by them are of grades which are not ordinarily manufactured by them appears to be false. The DI be put on strict proof of their claims regarding imports made by them.

14.3 Opti Fibre Systems JSC, Russia

14.3.1 They are the sole producers of Optical Fibre in Russian Federation with an installed capacity of about 7-8% of India's total installed capacity. As such, there sales to India is insignificant.

14.3.2 Thus, imports from Russian Federation has never caused any damage to Indian producers, as such, no Safeguard duty should be levied on exports from Russian Federation.

15. Written submissions filed post Public hearing held on 12.05.2020

15.1 **Domestic Industry- STL and BFL**

15.1.1 The Product under consideration ('PUC') is "Single Mode Optical Fibre" ('SMOF'), classifiable under CTH 9001 1000. The product and its grades are defined in terms of the International Telecommunication Union (ITU-T) standards. These products

are used for manufacturing Optical Fibre Cable, which are primarily used in telecommunication operations, CATV, FTTH etc. There is a complete substitutability between the domestic and imported products. The product manufactured by the Domestic industry is technically and commercially identical to the product being imported. The Petitioners, being the producers of a major share (approximately 60%) of the total production of the "like article" in India, qualifies as "domestic industry".

15.1.2 More than 95% of the Indian demand is of G652 grade fibre. From the data for 2018-19, it can be seen that 97% of both imports as well as domestic salesof the DI constituted of G652 fibre, and the remaining 3% was of other grades. Therefore, as the grade mix of the domestic product is identical to the grade mix of imported products, there is no need for grade wise analysis in a Safeguard Investigation. In this context, they had placed reliance on the Appellate Body findings in ***Argentina Footwear and European Commission Regulation in Safeguard investigation concerning Certain Steel products***.

15.1.3 They have also submitted that the DI has the technology and capacity to manufacture all grades of SMOF. G-654 grade is neither imported into India nor sold by domestic industry, as there is no demand for the said product in India. Therefore, the exclusion of G-654 from the scope of PUC is not warranted. In this context, they have relied on the Final Findings issued in the ***Anti-Dumping Duty investigation in respect of import of Synchronous Digital Hierarchy Transmission Equipment (SDH Equipment)***, originating in or exported from the People's Republic of China PR and Israel, dated 12.01.2012, wherein it was held that a claim for exclusion of a particular type cannot be entertained unless the same has been exported to India during the relevant period.

15.1.4 The imports of subject goods into India have significantly increased in 2018-19 as compared to 2016-17 and 2017-18. As compared to base year, there has been a 271% increase in 2018-19. They have further submitted that even from the quarter on quarter analysis, it is evident that imports in each quarter of 2018-19 and Quarter 1 of 2019-20 were significantly higher than previous years' quarters of 2016-17 and 2017-18.

15.1.5 Further, it has been submitted that under Section 8B (1) and Article XIX of GATT, read with jurisprudence laid down by Panel in ***US- Line Pipe and US- Steel Safeguards***, amongst others, it is evident that the requirement of law is of "increased

imports" and not of "increasing imports", therefore, a decline at the end of POI does not undo the previous increase.

15.1.6 Domestic industry is suffering serious injury caused by the sudden increase in imports. All the relevant parameters as mentioned in Annexure to the Rules show a considerable decline in the condition of the Domestic industry. The period of such decline directly coincides with the period of surge in imports. As such the requirement of serious injury and causation is met in the present case.

15.1.7 Further, the DI has submitted that a confluence of several unforeseen developments that has occurred over past years, particularly 2016-17 and 2017-18, has led to a significant surge in imports to India. These factors include global over-capacity built in Fibre industry because of delay in planned 5G rollouts, slower digitization, lower than excepted demand in Chinese market, setting up of new drawing facilities in various nations which were earlier import dependent. imposition of trade measures by China against most of the Fibre manufacturing countries, policy restrictions imposed by countries like USA, Australia etc. on import of telecom equipment/components from China and other non-fiscal/ non –regulatory restrictions imposed by major telecom operators (especially telecom operators in western Europe and USA) against China made Fibre, which have resulted in sudden diversion of imports to India.

15.1.8 As regards decline in imports in post POI period, it has been submitted that the law requires the Authority to examine "increased imports" only with reference to the Period of Investigation and not for a period thereafter. However, without prejudice to the above, it has also been submitted that if there is any decline in imports, it has to be examined whether the decline in imports, if any, is a temporary phenomenon or not (***Ref-Appellate Body in Argentina Footwear and Panel in Dominican Republic- Tubular bags & polypropylene bags***).

15.1.9 Since decline in imports in Quarter 2 of 2019-20 was because of temporary decline in Indian demand caused by troubled telecom sector, exceptionally heavy monsoon, liquidity crunch being faced by PSUs, delay in announcement of Bharatnet projects etc, therefore, it should not be taken in consideration for examining "increased imports". Further, the decline in imports in Quarter 3 of 2019-20 as compared to Quarter 2 is mainly on account of domestic sales substituting imports, as the importers wanted to avoid running the risk of 25% Provisional Safeguard duty. However, such sales had

to be made at a price comparable to the import prices, consequently, the injury of Domestic industry has further accentuated during the post POI period. Almost all the parameters of serious injury has further deteriorated in the post POI period and the domestic industry is on the brink of closure.

15.1.10 It has further been submitted thatinspite of decline in imports in Quarter 2 of 2019-20, the imports have continued to be at a significantly high levels in 2019-20 (annualized on basis of Q1 and Q2' 19-20) as compared to base year, in absolute terms as well as relative to domestic production. Further, on standalone basis also, the increase in imports relative to domestic production has remained at significantly high level in Quarter 2' 2019-20, as compared to 2016-17 and 2017-18 levels. Thus, the imports have continued to be at increased level even in Quarter 2' 2019-20.

15.1.11 It was also submitted that the present case is not fit for anti-dumping duty, as there is no evidence of imports coming at dumped prices during the POI. Further, the prices from all major exporting nations are in the same range, with Japan being lower than China. Moreover, most of SMOF manufacturers have a presence, either through fully owned plants or through JVs, in various countries. Therefore, imposition of country specific ADD would not give adequate protection to the Domestic Industry.

15.1.12 The imposition of duties is in Public interest, as without such protection DI would not be able to survive. Further, in Petitioners' opinion the impact of duties on Telecom operators (user industry) is less than 1% of their cost. Even the cablers would be able to pass on the impact of duties to Telecom operators, as Cable prices are always driven by Fibre prices. Moreover having a dependable domestic industry is in larger interest of the user industry, that is, the cable industry and also the telecom service providers.

15.1.13 They have therefore requested for immediate imposition of safeguard duty to the full extent of injury margin, for preventing or remedying serious injury and to facilitate positive adjustment.

15.2 Corning Technologies India Pvt. Ltd and Corning Finolex Optical Fibre Private Limited ("Corning")

15.2.1 **Increase in imports in absolute terms**

a. Total imports of SMOF have increased significantly by more than five times in 2018-19 as compared to 2016-17 and are continuing to come at an increasing level thereafter.

b. Imports of SMOF after excluding imports made by domestic industry have also increased by more than 3 times during 2018-19 and January to June 2019 (Annualised) as compared to 2016-17.

15.2.2 **Increase in imports in relative terms**

a. Relative to domestic production, imports of the PUC (excluding domestic industry imports) have consistently increased during 2016-17 to January- June 2019 and has more than tripled from the base year

b. Share of imports (excluding domestic industry imports) in Indian demand has also increased by five times in 2018-19 as compared to 2016-17 and has continued to increase thereafter.

15.2.3 **Increase in imports during POI period**

a. The decline in imports in the post POI period is not relevant for assessment of increase in imports.

b. WTO Panel in *US-Line* Pipe *(Safeguard)*case noted that "recent" increase in imports does not mean that it must continue up to the period immediately preceding the investigating authority's determination, nor up to the very end of the period of investigation.

15.2.4 **Unforeseen developments**

Tariff imposed by the United States, decline in demand in China, installation of pre-form capacity etc. are unforeseen circumstance that have led to overcapacity in China PR and consequent increase in imports into India.

15.2.5 **Serious Injury**

a. There is decline in market share, sales, production, productivity, capacity utilization, profitability, and employment during the period of investigation

b. Both, domestic industry and Corning are experiencing price pressure due to decline in landed value of imports. Domestic selling price of corning as declined by 22 index points in last six months of the POI.Domestic producers are not able to maintain selling price commensurately with the change in cost of sales.

15.2.6 **Causal link between increased imports and serious injury**

Decline in performance of domestic industry directly coincides with the period in which there was sudden and significant surge in imports.Other factors such as decline in

consumption, export performance, technology advancement etc. have not caused injury to domestic industry.

15.3 HFCL Ltd.

15.3.1 The definition of Product under Consideration as provided in the initiation notification dated 23.09.2019 has covered certain type of optical fibre with their respective codes in the definition of PUC. However, some of these types of optical fibre and more specifically dispersion shifted fibre (G.653), Cut-off shifted single mode optical fibre (G.654), Non Zero Dispersion Shifted Fibre (G.655 & G.656) and Bend insentitive Single Mode Fibre (G.657 A1 &A2) have almost negligible import into India.

15.3.2 It can be further verified that optical fibre cables & other products manufactured by using optical fibre other than Non-dispersion shifted Fibre (G.652) are majorly exported out of India rather than being used in Indian domestic market due to lack of demand and market in India. Therefore, there is no adverse impact on the domestic industry from imports of optical fibre other than Non-dispersion shifted Fibre (G.652).

15.3.3 DI has not even provided any details or bifurcation (grade wise) of their production, sales, exports etc. of their PUC, which is required to be examined by the Authority.

15.3.4 The prices of these grades i.e. dispersion shifted fibre (G.653), Cut-off shifted single mode optical fibre (G.654), Non Zero Dispersion Shifted Fibre (G.655 & G.656) and Bend insentitive Single Mode Fibre (G.657 A1 &A2) is significantly higher than that of G.652. All these grades cannot be compared and treated to be one and the same.

15.3.5 In this context, they have submitted that even for the "Bharatnet Projects", BSNL, BBNL, Railways, PGCIL, Railtel& other PSUs specifies use of G652 D fibres only. Therefore, other grades of PUCshould be excluded from the definition of PUC. They have alleged that the domestic industry wants to create its monopoly by including all types of fibre in PUC.

15.4 Sumitomo Electric Industries Ltd., Japan

15.4.1 The injury, if any, to the DI is only on account of high-volume of imports from China PR along with price injury, therefore, the appropriate forum to address such injury is through an antidumping investigation as opposed to a safeguards investigation which affects imports from all countries. Thus, the present investigations be terminated.

15.4.2 The DI has failed to bring forth "unforeseen developments" leading to surge in imports, if any. None of the reasons cited by DI in its petition as constituting 'unforeseen circumstances' are addressed specifically towards the import of the PUC in the subject investigation. Rather, the DI has alleged a surge in the broad category of 'optic fibre'. It is submitted that a mere allegation of some unexpected developments in the broad category of the entire 'optic fibre industry' is not sufficient to demonstrate a logical link between unforeseen developments and surge in imports of PUC into India.

15.4.3 Analysis of DGCI&S import data for PUC does show a recent, sudden, sharpand significant increase in imports, warranting imposition of Safeguard duty. From import data it is evident that there is no increasing trend of import of the PUC throughout the POI and even on an end-to end analysis, the import volumes have declined significantly.

15.4.4 They have also submitted that import figure for Quarter 1' 2019-20 is incorrect.

15.4.5 Further, as significant time has lapsed since the initiation of the present safeguard investigation and also the identified 'most recent period' in the initiation notification, an analysis of data for the Post POI data is warranted in the present case. In this respect, it must be noted that as per the data for Q2 and Q3 of FY 2019-20, the imports of the PUC have declined significantly.

15.4.6 Furthermore, if the import volumes were to be analysed on an end to end basis, it is amply clear that imports have declined from 769 KFKM in Q1 of 2017-18 to 273 KFKM in Q3 of 2019-20, a difference of 496 KFKM.

15.4.7 The overall analysis of the economic and performance parameters shows that the data provide by the DI with respect to its performance and the examination conducted by the Hon'ble DA is neither adequate nor sufficient; and moreover, is based on incorrect figures. Thus, the data provided and relied upon with respect to the claim of the DI and the preliminary findings thereby of serious injury being caused to the DI does not show a true picture of the domestic market situation with respect to the PUC.

15.4.8 Further, in light of the limited data available in public domain concerning the economic and performance parameters of the DI, these parameters have shown significant improvement. Thus, any claims of injury hinging on analysis of such parameters may kindly be rejected by the Hon'ble DA.

15.4.9 The DI has failed to provide a viable adjustment plan which is an important requirement under the Indian Safeguard laws. The applicants have claimed excessive

confidentiality on the entire adjustment plan without providing even a meaningful non-confidential version of the same. They have not provided any good cause with respect to their claims for confidentiality.

15.4.10 Product grade G.654 should be excluded from the scope of PUC in the present investigation, as the same is not manufactured by the DI neither does it have the capability to do so.

15.4.11 Further, product grades G.652.D, G.655 and G.657.A1 should also be excluded from the scope of PUC in the present investigation as there are significant differences with respect to physical properties, consumer preference, quality etc. between the PUC exported by SEI and the product manufactured by the DI.

15.4.12 It was further submitted that, since imports under the Advance Authorization Scheme do not compete with the domestic products, as they are directed towards the export market; and cause no injury to the domestic industry, they should be excluded from the import analysis in the present investigation.

15.4.13 The DI has failed in establishing a causal link between increased imports of PUC and the injury suffered by the DI therefrom.

15.4.14 Lastly, it has been submitted that the DI has failed to demonstrate that imposition of Safeguard duty is in "public interest' as envisaged under Article 3 of the Agreement on Safeguard.

15.5 **Fibrehome India Pvt. Ltd.**

15.5.1 They have submitted that the DI has prima-facie failed to identify "unforeseen developments" that have led to the increased imports of PUC into India. As such, the requirement of Article XIX of GATT is not met in present case.

15.5.2 Further, it has been submitted that as safeguard measure are based on a "no fault principle", therefore recourse to them should be taken only when there is a very strong case on merits and there is no other alternative available.

15.5.3 The standalone financials of STL suggest that they have earned high profits during the POI, therefore, the data submitted by them in the Petition appears to be manipulated.

15.5.4 The domestic production of DI would have grown substantially, had they not imported huge quantities themselves. Thus, the injury, if any, faced by the DI cannot be attributed to independent imports.

15.5.5 The total imports in the most recent period, i.e. Jan- June' 2019 has declined, as such the requirement of increased imports is not met.

15.5.6 The DI has failed to give a viable adjustment plan. In absence of an adjustment plan, the safeguard investigation are required to be terminated. In this regard, reference has been made to the decision of ***United Phosphorous v. Director General (Safeguards)***, 2000 (118) E.L.T. 326 (Del.),as well as Final Findings issued by DG Safeguards in application filed by United Phosphorous in 1999.

15.5.7 It was also submitted that the imposition of Safeguard duty in the present case would be against the Public interest, as it will inevitably lead to loss of employment and economic activity in the country, and would also encourage imports of Optical Fibre Cable.

15.6 Paramount Wires and Cables Limited

They reiterated their submissions made vide letter dated 20.01.2020, which has been discussed above.

15.7 Government of Indonesia, Government of Brazil and Government of Taiwan

15.7.1 The Government of Indonesia, Government of Brazil and Government of Taiwan have requested for adherence to Article 9.1 of the Agreement on Safeguard, which provides for exclusion of Developing country from where imports are below *de-minimis level.*

15.7.2 It has been submitted that since imports from the aforesaid countries is below 3%, no Safeguard duty should be recommended on their exports of PUC to India.

15.8 Government of Russian Federation

15.8.1 The requirements for proving serious injury under Safeguard investigation is much stricter than that of Anti-dumping investigation. Safeguard measures to be imposed only in special circumstances.

15.8.2 Exports from Russia accounts for 0.2% of total imports of PUC in India, as such no injury is likely to be caused to Domestic producers by imports from Russia.

15.9 Government of Japan

15.9.1 In view of the Penal/AB reports in DS 98 and DS 252, it is imperative for the Authority to determine the 'unforeseen developments' that resulted in increased imports and then serious injury to the domestic producers by changing competitive relationship between imported and domestic products.

15.9.2 Global overcapacity is mere a result of long term demand and supply condition and cannot necessarily be regarded as "unforeseen". Further, imposing import restrictive measure to counteract import restrictive measures imposed by other countries would distort global trade.

15.9.3 Government of India has failed to establish relationship of increased imports with a specific "obligation incurred under GATT".

15.9.4 As maximum imports of PUC to India are from China, Government of India should clearly confirm the scope of product, whose imports are causing serious injury to Indian domestic producers. Further, as imports are coming from select few countries, it has to be seen if Safeguard measure would be most appropriate.

15.9.5 Imposing Safeguard measures would frustrate India's digital infrastructure developments projects, as such duties would not be in national interest.

16. The summary of relevant issues filed in the rejoinders by the interested parties to the written submissions of other interested parties filed subsequent to public hearing held on 12.05.2020, areas under:

16.1 Domestic Industry – STL and BFL

16.1.1 **Decline in imports in post POI period**

a. The requirement under Section 8B and the Article XIX of GATT is of "increased imports" and not of "increasing imports". Thus, every decrease in imports does not prevent determination of "increased imports", if it can be established that despite the decrease, the imports continue to be at "increased level" as compared to previous year or the base year.

b. Further, analysis of "increased imports" has to be made for the sufficiently long Period of Investigation ('POI'), as defined at the time of initiation of the investigation, so as to even out temporary variations and seasonal declines. Analysis of data for a short period post POI would not allow an objective evaluation of "increased imports" as required under law.

c. The imports in Quarter 2' 2019-20 (i.e. Post POI) have continued to be at increased levels. Even on standalone basis, imports as a % of production in Quarter

2' 19-20 was 186% of 2016-17 and 162% of 17-18 level. Therefore, the requirement of "increased imports" is satisfied even in the Post POI period.

d. The temporary decline in imports in Quarter 2 of 19-20 as compared to Quarter 1 was on account of a temporary contraction of demand for the product caused by certain market factor. It is a trite law that temporary decline and variations in market should not be taken in consideration, while evaluating 'increased imports'.

e. In Quarter 3 of 2019-20, the present investigations were initiated and Preliminary findings were issued, thereby distorting the domestic market. Consequently, the domestic industry was able substitute the imports in Quarter 3. However, such sales were made at a price comparable to import prices, therefore, sales realization was very low, accentuating the DI's serious injury.

f. It was therefore submitted that the import data for the period post POI cannot be taken into consideration for determining "increased imports". Without prejudice, even if the same is taken in consideration, with the imports continuing to be at "increased level", a determination of "increased imports" is required to be made.

16.1.2 **Exclusion of certain grades from the scope of PUC**

a. As regards submissions made for exclusion of certain grade, the DI has submitted that under Safeguard law there is no requirement for carrying out grade-wise analysis, especially in cases where grade mix of imported product is similar to the grade mix of domestic products. (Ref- Appellate Body in **Argentina Footwear** and **European Commission regulation in Safeguard investigation concerning imports of certain Steel products**)

b. In the present case, approximately 95-97% of Indian demand is of G652 grade and 5-3% is of other grades such as G657, G655 etc. The analysis of 2018-19 import data shows that the grade mix of imported products is identical to the grade mix of domestic products. Therefore, there is no requirement for carrying out grade-wise analysis in the present case.

c. As regards exclusion of Grade G654, it has been submitted that DI has the technology and capacity to manufacture G654 grade. However, as there is no commercial demand of the said grade in India, the same has neither been produced nor imported into India. When the said grade has not been imported into India the question of non-availability of like product, on the ground that DI has not produced the said grade, does not arise.

d. Further, as the grades of PUC are partially interchangeable and have similar end uses, exclusion of few grades without any cogent reason would defeat the entire purpose of the duty, if imposed. Moreover, all the grades of PUC are visibly identical, are sold through similar channels, have same set of producers/customers and are classifiable under the same CTH 9001 1000. As such, exclusion of grades may lead to circumvention of any safeguard duty that may be imposed.

16.1.3 **Recourse under Anti-dumping measure instead of Safeguard measure**

a. The import prices from all the major exporting countries have been in the same range during 2018-19 as well as Jan- June' 2019. As such the allegation that injury to domestic industry is on account of low priced imports from China is unfounded. Further, no evidence has been produced by any of the interested parties to show that the imports from China were at dumped prices.

b. Further the averment that there is increase in imports from China only is incorrect, as analysis of import data clearly shows that imports from several other countries, including USA, Korea, Indonesia etc. had increased during 2018-19 as compared to base year.

c. Moreover, as most of the SMOF producing companies have a global presence either through fully owned plants or through Joint Ventures in various countries, there is a very high probability that the companies in order to avoid levy of any country specific duty, start exporting through their entities in other jurisdiction.

d. As Anti-dumping duty is imposed against "dumped imports" and not against "Cheap imports" or "increased imports", it has been submitted that Anti-dumping duty is not viable option in the present circumstances.

16.1.4 **Unforeseen Developments**

It has been submitted that confluence of various factors has led to the unexpected increase in imports to India. Some of these factors are as below:

a. Global overcapacity caused by delay in announced 5G roll out plans, slower than expected FTTH deployment and slow paced digitization along with significant decline in Chinese demand, which consumes more than 50% of global SMOF,

b. Imposition of trade barriers by many countries on import of PUC, thereby changing the dynamics of global trade of PUC

c. Various non- regulatory/ non –fiscal barriers imposed by telecom operators in most of the western countries putting stringent barriers on entry of Chinese fibre

16.1.5 The DI has also submitted that a detailed adjustment plan along with expected year wise saving has been provided in the Petition. It may be noted that SMOF industry is a technology intensive industry. Since, the Adjustment plan relates to development of proprietary technology and process/methods which would lead to better utilization of raw material/resources, the Petitioners have claimed confidentiality over it.

16.1.6 As regards reference made to STL's published financials/balance sheet or statements made at Company level, it has been submitted that along with PUC i.e. Optical Fibre Unit, STL has various other business units such as Optical Fibre Cable, Copper Cable, Services, Software etc. The Company's financials relates to all such business units and therefore same is beyond the scope of present investigation.

16.1.7 As regards the claim that Safeguard duty being a "no fault duty", the Petitioners have submitted that agreeably, Safeguard duties are "no fault duty" and therefore, are not "punitive measures". They are imposed only to the extent necessary to prevent or remedy serious injury and to facilitate Domestic producers to adjust to import competition.

16.2 Fibrehome India Pvt. Ltd.

16.2.1 The claim of DI as regards surge in imports and serious injury is unfounded, as is evident from the analysis of data submitted in the Petition.

16.2.2 Further, the imports have declined by about 89% from QII of 2018-19 (2797) to QIII of 2019-20 (305) which is a significant decline. When the imports have declined by 89% between QII of 2018-19 and QIII of 2019-20 which is the most recent period covering the POI, it is totally incorrect to say there was some surge in imports.

16.2.3 The DI has failed to establish serious injury, threat of serious injury or any causal link between injury being faced by them and the imports. As such pre-requisites for imposition of Safeguard duty are not fulfilled in the present case.

16.2.4 As regards submissions that imports in Post POI period is not to be taken in consideration, it is submitted that DI cannot be permitted to selectively rely upon Post POI data for certain parameters and disregard it for others.

16.2.5 Further, the admission of the DI that there was decline in imports coupled with decline in demand, means any temporary correction in performance based on fall in demand cannot be fixed by putting safeguard duties.

16.3 **Sumitomo Electric Limited, Japan**

16.3.1 As regards submissions made on exclusion of certain grades, it was submitted that as admittedly DI has not produced G654 during the POI, the same has to be excluded from the scope of PUC.

16.3.2 As regards DI's reliance on Appellate Body report in *Argentine Footwear* on the aspect of desegregated analysis, it was submitted the Appellate Body's decision was based on the fact that in the said case definition of PUC was not challenged. However, since in the present case, the exporter has questioned the definition of PUC, the reasoning of Appellate Body is not applicable in the present case.

16.3.3 Further, in response to DI's claim that it has not manufactured this grade because of no demand in India, they have submitted evidence of a contract entered by BSNL with NEC Technologies India Pvt. Ltd. ('NECTI') to design, engineer, supply, install, test and implement an optical submarine cable system between Chennai in mainland India and the Andaman and Nicobar Islands.

16.3.4 It was further submitted that the submissions made by DI in respect of temporary decline in imports in Post POI are factually incorrect, as the telecom operators have been in massive stress even prior to Q2 of 2019-20. Further, the report on prolonged monsoon referred to by the DI is only in respect of North eastern states, which accounts for a very miniscule share of Indian market of PUC.

16.3.5 DI has failed to show "unforeseen developments" which has resulted in increase in imports. Reliance of CRU reports specifically relating to decline in demand in China further proves that increase in imports is only from China and not from other countries.

16.3.6 Levy of duty would not be in Public interest as it will adversely impact the user- i.e. the cable manufacturing industry.

17. Thereafter, on account of change in the Director General, the present Director General held a Second Public Hearing on 17.07.2020, wherein Domestic Industry as well as other interested parties made their oral submissions. Subsequently, terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, all the interested parties who participated in the public hearing were requested to file written submission of the views presented orally. A summary of the submissions made by the DI And other interested parties is reproduced herein below. As most of the submissions made during the first hearing have been reiterated, for sake of brevity, the same are not being reproduced herein below. A summary of the additional submissions made subsequent to the second hearing are as below:

17.1 Domestic Industry – STL- BFL

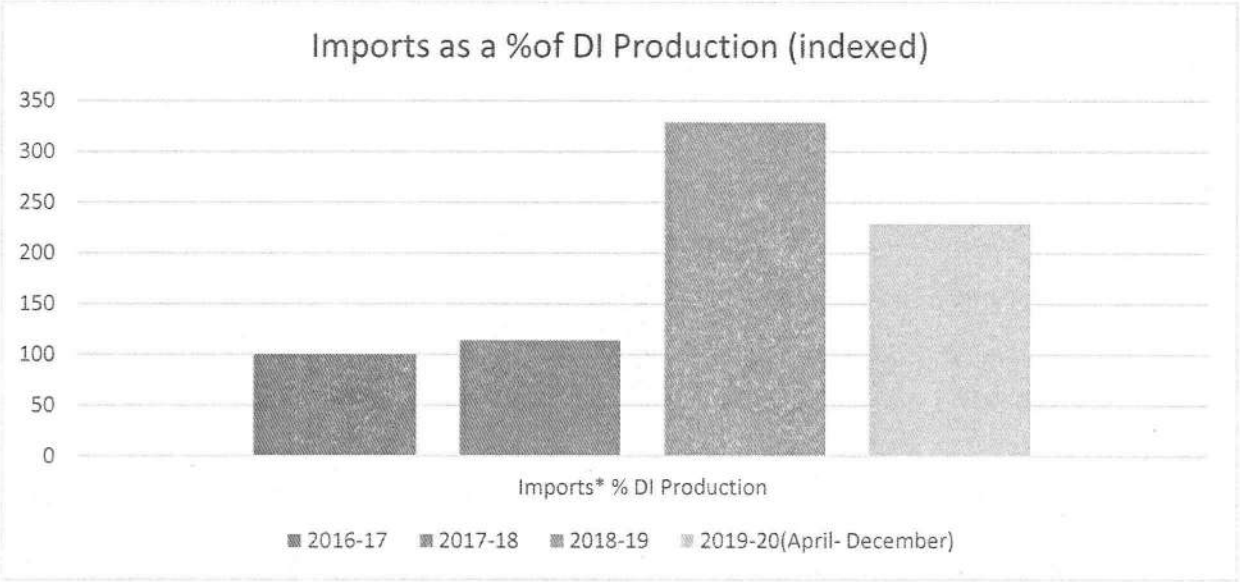
17.1.1 The Domestic Industry reiterated their earlier submissions *interalia* in respect of increased imports, serious injury, threat of serious injury, unforeseen developments, public interest.

17.1.2 It was additionally submitted that the imports in relation to Domestic Production has significantly increased in 2018-19 as also the most recent period i.e. January' 2019 to June' 2019.

17.1.3 Further, the Domestic industry submitted that the imports as a % of DI production have increased in Post Period of Investigation period as well. It was submitted

that the imports in relation to production in Quarter 2' 2019 was ***% of 2016-17 level and ***% of 2017-18 level.

17.1.4 Further, the imports in relation to DI production in 2019-20 (April- December' 2019) has continued to be significantly high, and the sharp increase in 2018-19, has not been out done by the decline in 2019-20, which is evident from the below graph:



17.1.5 It has further been submitted that Rule 2(c) of the Safeguard Rules, define "increased quantity" to include increase in imports whether in absolute terms or relative to domestic production. In this regard, they have referred to the Final Findings dated 11.03.2014 issued in investigations concerning imports of ***Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel***, wherein it was held as under:

> "***26. Increased Imports:***
>
> *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 :"*
>
> *Further, Rule 2 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 defines 'increased quantity' as follows:*

"Increased quantity" includes increase in imports whether in absolute terms or relative to domestic production."

From the above, it is seen that law i.e. Section 8B and the Rules mandate increase in imports as a basic prerequisite for the application of a safeguard measure. Thus, 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 increase in imports, in absolute terms or in relation to domestic production. ***It is also seen the expression "increased quantity "has been defined in inclusive terms and the definition includes two parameters i.e. increase of imports in absolute terms and increase of imports in relative terms to domestic production. It is also seen that both these parameters need not exist together. The increased quantity is to be measured either in absolute terms or in relative to domestic production. The satisfaction/existence of one parameter is sufficient to fulfill the legal requirement."***

17.1.6 The Domestic Industry has submitted that in any case, in terms of Appellate Body decision in ***Argentina – Footwear***, temporary decline in imports has to be excluded from consideration while determining "increased import". The imports in the Post POI period has gone down on account of temporary decline in domestic demand, caused because of precarious condition of telecom industry, delay in some of the Bharatnet projects, unprecedented rainfall in Quarter 2' 2019-20 etc. However, the current market trends indicate that the demand is likely to increase in near future.

17.1.7 The Domestic industry has also submitted their adjustment plan which they intend to implement to become more competitive to imports. The have submitted that through the various projects being undertaken by them, they estimate that the cost of production would decrease on account of improved yield from raw material and through reducing their dependence upon imported raw material.

17.1.8 The imports from Indonesia has increased substantially during the Post POI period, being 7% of total imports in Quarter 2' 2019-20. They have further submitted that some of the major Chinese SMOF manufacturing companies, such as ZTE and YOFC, have set up their SMOF Draw plants in Indonesia, and are now routing their exports to India, through Indonesia. They have further submitted that from Quarter 2' 2019-20 onwards, the imports from China attract levy of 15%, whereas the imports from Indonesia attract Nil BCD on account of ASEAN FTA.

17.2 **Government of Japan, Indonesia, Brazil, Russian Federation and Taiwan**

17.2.1 The aforesaid governments through their embassies have reiterated their earlier submissions which have already been reproduced in above.

17.3 **Government of UAE**

17.3.1 The Government of UAE has requested that it may be recognized as a "Developing country" for the purpose of the present investigation. Accordingly, exports from UAE being less than 3% of the total imports into India, UAE be excluded from the purview of any Safeguard duty that may be imposed.

17.4 Sumitomo Electric Industries Ltd., Japan

17.4.1 SEI Ltd. has submitted that the injury, if any, to the DI is only on account of high-volume of imports from China PR along with price injury. Therefore, the appropriate forum to address such injury is through an antidumping investigation as opposed to a safeguards investigation which affects imports from all countries and the present investigation deserves to be terminated.

17.4.2 None of the reasons cited by DI in its petition as constituting 'unforeseen circumstances' are addressed specifically towards the import of the PUC in the subject investigation. Rather, the DI has alleged a surge in the broad category of 'optic fibre'. It has been submitted that a mere allegation of some unexpected developments in the broad category of the entire 'optic fibre industry' is not sufficient to demonstrate a logical link between unforeseen developments and surge in imports of PUC into India.

17.4.3 For a positive finding necessitating the imposition of a safeguard duty there should be a finding of imports in such increased quantity. Such increase in quantity of imports in a safeguard investigation should be recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. The DGCI&S import data for PUC does not the same and rather establishes that there is no increasing trend of import of the PUC throughout the POI and even on an end-to end analysis, the import volumes have declined significantly.

17.4.4 As per the quarter-wise data provided by the DI, the import volume of non-DI imports of PUC for Q1 of 2019-20 has been reported as 1678 KFKM. However, as per the DGCI&S import data obtained by the respondent, the import volume for total imports

of PUC, i.e. inclusive of DI imports, is 1527 KFKM. Thus, the DI appears to be attempting to mislead the Hon'ble DG in the present investigation

17.4.5 The imports in Q2 and Q3 of FY 2019-20 have declined significantly. The imports of PUC have declined from 1527 KFKM in Q1 of 2019-20 to 273 KFKM in Q3 of 2019-20 alone, which is a significant difference of 1254 KFKM.

17.4.6 Furthermore, if the import volumes were to be analysed on an end to end basis, it is amply clear that imports have declined from 769 KFKM in Q1 of 2017-18 to 273 KFKM in Q3 of 2019-20, a difference of 496 KFKM.

17.4.7 The overall analysis of the economic and performance parameters shows that the data provide by the DI with respect to its performance and the examination conducted by the Hon'ble DG is neither adequate nor sufficient; and moreover, is based on incorrect figures. Thus, the data provided and relied upon with respect to the claim of the DI and the preliminary findings thereby of serious injury being caused to the DI does not show a true picture of the domestic market situation with respect to the PUC.

17.4.8 Further, in light of the limited data available to respondent concerning the economic and performance parameters of the DI, these parameters have shown significant improvement. Thus, any claims of injury hinging on analysis of such parameters may kindly be rejected by the Hon'ble DG.

17.4.9 The presence of a viable adjustment plan is an important requirement under the Indian Safeguard laws. The applicants have claimed excessive confidentiality on the entire adjustment plan without providing even a meaningful non-confidential version of the same. They have not provided any good cause with respect to their claims for confidentiality.

17.4.10They have requested for exclusion of product grade G.654 from the scope of PUC in the present investigation, as the same is not manufactured by the DI neither does it have the capability to do so.

17.4.11Further, they have requested to exclude the product grades G.652.D, G.655 and G.657.A1 from the scope of PUC as there are significant differences with respect to physical properties, consumer preference, quality etc. between the PUC exported by SEI and the product manufactured by the DI

17.4.12 They have further requested that, since imports under the Advance Authorization Scheme do not compete with the domestic products, as they are directed towards the export market; and cause no injury to the domestic industry, they may be exclude all the imports made under Advance Authorization scheme from the import analysis in the present investigation.

17.4.13 Furthermore, the Domestic industry has failed to establish a causal link between increased imports of PUC and the injury suffered by the DI therefrom.

17.4.14 The DI has failed to make any argument regarding the safeguard duty being in public interest and therefore deserves to be terminated.

17.5 HFCL Ltd.

17.5.1 The importer has submitted that the Indian demand majorly constitute of G652 Fibre. Other specialized Single Mode Optical Fibre*viz.* Dispersion shifted Fibre (G 653), Cut-off Shifted Fibre (G.654), Non Zero Dispersion Shifted Fibre (G.655 and G.656) and Bend insensitive SMOF (G657 A1 and A2), have a negligible domestic market in India, which is evident from their negligible imports and DI's domestic sales. As such, such specialized grade should be excluded from the purview of the present investigation.

17.5.2 The DI has not submitted a non-confidential version of the adjustment plan. As such, the interested parties are not in a position to comment on the viability of their adjustment plan.

17.5.3 During the on-going pandemic, due to decline in imports, the Domestic Industry has been able to capture the domestic demand, as such no further protection is warranted.

17.6 Fibrehome India Pvt. Ltd.

17.6.1 They have reiterated their earlier submissions *interalia*apropos absence of increased imports, serious injury, adjustment plan, unforeseen developments and public interest. They have submitted that the increase in imports and injury to the Domestic industry, if any, is primarily on account of their own imports and is therefore, self-inflicted. As such, it has been submitted that the requisites for imposition of Safeguard Duty are not met in the present case.

18. Rejoinder Submissions filed subsequent to second Public hearing held on 17.07.2020

The summary of rejoinder submissions filed by the Domestic industry as also other interested parties are as below. As some of the submissions are repetitive, only the new/additional submissions made in the second rejoinder submissions have been summarized below:

18.1 Domestic Industry – STL- BFL

18.1.1 The Domestic industry has reiterated their submissions in respect of increased imports, injury on account of dumping of goods from China, serious injury, imports under Advance License etc.

18.1.2 In addition, they have denied the allegation of SEI Ltd. in their written submissions that the DI during the second public hearing has accepted that G 654 grade was imported into during the POI. It has been submitted by them that there were no imports of grade G654 into India. However, it was only in response to the exporter's oral submission that the said grade was imported into India, that they have, without prejudice, submitted that even if such import was there, it must not have been any commercial/noticeable quantity. They maintain their categorical stand that said grade has not been imported into India during the POI.

18.1.3 As regards reference made by SEI to the contract between BSNL with NEC Technologies India Pvt. Ltd. ('NECTI'), the Domestic Industry has submitted that the said contract is for Optical Fibre Cable and not for the PUC, as such Safeguard duty would not apply to imports made under the said contact. Without prejudice, they have further submitted that the quantity of Fibre consumed in these cables is miniscule, i.e. around 18KFKM, as such, said imports cannot be considered as commercial imports of G 654 grade in India.

18.1.4 They further submitted that the given the proprietary nature of the research project undertaken by them, the adjustment plan has been kept confidential.

18.1.5 They have submitted that the submissions made by exporters in respect of "increase in imports" is factually and legally incorrect. The imports have continued to be at increased levels in absolute terms as well as relative to domestic production. The submission of the SEI Ltd., that the Appellate body in US- Steel Safeguards has held that "*an examination of surge in imports must demonstrate a clear and uninterrupted upward trend in import volumes*", is not only incorrect representation of law but a

deliberate fabrication of facts as the said sentence quoted by the exporter is not present anywhere in the said report.

18.2Government of Indonesia

18.2.1 The Government of Indonesia has denied the claim that imports from Indonesia in the post POI period has increased. It has been submitted that in the whole year of 2019 is imports from Indonesia have accounted for only 0.14% out of India's total import from the world. They have further submitted that the Petitioners has incorrectly submitted that import from Indonesia during period of July 2019 - June 2020 accounted for 11% share. It has been submitted that even the whole year of 2019 and 2020 combined only resulted in the amount of 0.2% by volume of India's import of SMOF from Indonesia.

18.2.2 They have further submitted that the Applicants' submission that China's investment in Indonesia would be able to cause exportroute from China to India via Indonesia is very much exaggerated.Investment of SMOF factories in Indonesia, therefore, should be viewed as there is a sizabledemand in Indonesia which enables investment of SMOF factories took place in the country.

18.3 Sumitomo Electric Industries Ltd., Japan

18.3.1 SEI Ltd. has reiterated its submissions *interalia*in respect of absence of increased imports, serious injury, causal link, unforeseen development, public interest and adjustment plan. It has submitted that in absence of any evidence of increased imports and serious injury, imposition of Safeguard duty is not warranted.

18.3.2 As regards exclusion of certain grades from the scope of PUC, it has submitted that certain grades as manufactured by SEI are either not manufactured by the DI or are not like or domestically competitive to the DI manufactured products. It is also pertinent to mention herein that each grade of SMOF has a separate end use and are not substitutable or interchangeable. Therefore, such grades require exclusion from the scope of PUC in the present investigation.

18.3.3 The DI has not manufactured and sold G.654 grade of SMOF in the domestic market during the POI, hence, it should be excluded from the scope of PUC in the present investigation. It has further submitted that grades G.652, G.655 and G.657 should also be excluded as these grades manufactured and sold by SEI are different from those manufactured by Domestic Industry on account of the difference in the physical

characteristics, customer preference, quality, etc.Further, as each of these grades are different and cannot be substituted with other grades, there is no basis to include these grades, i.e. G.652, G.654, G.655 and G.657, as manufactured by SEI within the scope of the PUC.

18.3.4 DI's claim that it has the technology to manufacture G.654 fibre is not substantiated by the evidence provided in the petition. The 2012 news report relied upon by the DI does not certify the capabilities of the joint venture Birla Furukawa Fibre Optics Ltd., which is one of the constituents of DI in the present investigation, to manufacture G.654 fibre; but rather that of the Furukawa Electric Group, Japan.

18.3.5 DI's claim that there is no demand for G.654 in India is incorrect. It should be noted that is G.654 is used in the manufacture of submarine cables. As per news article referred in the submission above, BSNL entered into a contract with NECTI to design, engineer, supply, install, test and implement an optical submarine cable system between Chennai in mainland India and the Andaman and Nicobar Islands. Further, as the project was expected to be complete in 2020, it implies the same had been imported to India during POI.

18.4 Fibrehome India Pvt. Ltd.

18.4.1 They have reiterated their earlier submissions *interalia* in respect of absence of increased imports, serious injury, unforeseen developments, adjustment plan and public interest.

18.4.2 In respect of the claim of the Domestic Industry on threat of serious injury on account of declining prices in China, as evident from China Mobile's tender in July, 2020, which closed at around Rs. 200/FKM, it was submitted that the said claim is without any basis. The price in India will not be influenced by the said deal and Indian industry is doing well even when the Chinese prices are on the lower side.

18.4.3 The concerns of the Domestic industry appear to be on account of fall in demand, as such imposition of Safeguard duty will not service any purpose.

C. EXAMINATION & FINDINGS OF DIRECTOR GENERAL (SAFEGUARDS)

19. Based on the submissions made by various interested parties in response to Initiation, preliminary finding and Public hearing, various primary and secondary records available,

Domestic verification was through undertaken DVC, I have examined concerns on various aspects and record my final findings as under:

20. Section 8B of the Customs Tariff Act, 1975 deals with imposition of safeguard duty on imports. Its sub-section (1) provides for imposition of safeguard measures by the Central Government on an article if the article is being imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the Domestic Industry.

21. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 provide the manner and principles governing investigation.

22. The investigation has been conducted in accordance with the said rules and the final findings are recorded through this notification.

a) **The Product under Consideration (PUC)**

23. In the Notice of Initiation and Preliminary Findings, the Product under consideration has been defined as "Single-mode Optical Fibre" ("SMOF"). SMOF refers to the Optical Fibre which facilitates transmission of a single spatial mode of light as a carrier and is used for signal transmissions within certain bands. The standardized single mode optical Fibre types include the Non-dispersion shifted Fibre (G.652), Dispersion shifted Fibre (G.653), Cut-off shifted single mode optical Fibre (G.654), and Non Zero Dispersion Shifted Fibres (G.655 & G.656) as well as Bend insensitive single mode Fibre (G.657) - as defined by International Telecommunication Union (ITU-T), which is a global standardization body for telecommunication systems and vendors.

24. Single-mode Optical Fibre is used for manufacture of Optical Fibre Cables, including Uni-tube and Multi tube stranded cables, tight buffer cables, Armoured and Un-armoured cables, ADSS & Fig-8 cables, Ribbon cables, Wet core and Dry core cables and etc. Single-mode Optical Fibre is mainly applied to high-data rate, long distance and access network transportation, therefore, is mainly used in long-haul, metro area network, CATV, optical access network (for example FTTH) and even over short distance networks as applicable. Major consumption is driven by 3G/4G/5G rollout by Telco's, Connectivity of Gram Panchayat, Defence (NFS Project) and Data centres.

25. The product concerned is classifiable under Customs Tariff heading 9001 10 00 of the Second Schedule of the Customs Tariff Act, 1975. The customs classification be taken as indicative only, and is not binding on the scope of the product.

26. Some of the interested parties have requested for exclusion of certain grades/types of SMOF from the scope of PUC, which has been considered. It is seen from the submissions made as well as analysis of import and domestic industry's data that the Indian demand is majorly of G.652 grade. However, most of the other grades have also been imported into India as well as sold by the Domestic Industry in the same proportion. It is observed that the grade mix of imported products is similar to that of domestic products. Further, these grades are partially interchangeable and have similar uses. As such there is no justifiable reason to exclude any such grade from the scope of PUC.

27. One of the interested parties, SEI Ltd., Japan has claimed that the grades G652, G655 and G 657 manufactured and sold by SEI are different from those manufactured by Domestic Industry on account of the difference in the physical characteristics, customer preference, quality, etc. In this regard, it is noted that the grades of SMOF are defined by the International Telecommunication Union (ITU-T), which are universally accepted. Further, it has been submitted by the Domestic Industry that their goods compete with those manufactured by SEI Ltd. not only in domestic market but also in international market. It is also not the case of the concerned exporter that grades manufactured by the Domestic industry do not confirm to the technical specification provided by the ITU-T, or that such specifications are vague or incorrect. Thus, in absence of any credible evidence to substantiate SEI Ltd.'s claim that there is any difference or any instance of customer preference in respect of goods manufactured by them over those manufactured by the domestic industry, their argument for exclusion of these grades cannot be accepted.

28. Further, another interested party, HFCL Ltd., has submitted that the Indian demand is primarily of Non dispersion shifter Fibre Grade 652. There is a negligible demand for other grades of SMOF such as G654, G655 and G657 in India market, which is evident from import data as well as domestic sales of the Applicants. In this regard, Domestic Industry has submitted that about 97% of the total imports as well as domestic Sales of the DI in 2018-19 were of G.652 grade fibre. The other grades of SMOF formed only about 3% of the Indian demand. It has been

submitted by them that as grade mix of the imported product is identical to those of domestic sales of the Applicants, the grade –wise analysis is not required in the present case.

29. In this context, the Domestic Industry has submitted the decision of Appellate Body in ***Argentina –Footwear*** wherein it was held that a disaggregated analysis is not required to be done in a Safeguard duty investigation. The relevant para of the Appellate Body report is reproduced herein below:

> *"(a) Product segments*
> *1.1 Regarding Argentina's segmentation of footwear into five product groups in its investigation (performance sports footwear, non-performance sports footwear, exclusively women's footwear, town and/or casual footwear, and other) (paras. 8.112), the European Communities argues that having adopted this segmented approach, Argentina was obliged to follow it consistently through its injury analysis and to prove serious injury in all segments in which safeguards were to be imposed. The European Communities claims that "serious injury" was not proven in any of the selected five segments, and that Argentina merely used data of one or another sector as it considered appropriate for its purpose. The European Communities argues in particular that factors relating to import trends, market share, profits and losses and employment were not investigated for each market segment. At the same time, however, the European Communities states that it does not challenge Argentina's definition of a single category of like or directly competitive products, namely all footwear.*
>
> *1.2 Argentina responds that the European Communities is confusing the CNCE's injury analysis of the whole of the footwear industry with the product categories that the CNCE used in the questionnaires for purposes of collecting pertinent information. In Argentina's view, a single "like or directly competitive" product and a single national industry are at issue in this case because there is sufficient elasticity of substitution on the supply and demand sides between all different segments of one single footwear market. Therefore, Argentina argues, the CNCE conducted an injury analysis regarding the footwear industry in its entirety. Consequently, there was no need for a disaggregated consideration of all the different injury factors with respect to the five product categories.*
>
> *1.3* ***We disagree with the European Communities that Argentina was required to conduct its injury and causation analysis on a disaggregated basis.*** *In our view, since in this case the definition of the like or directly competitive product is not challenged, it is this definition that controls the definition of the "domestic industry" in the sense of Article 4.1(c) as well as the manner in which the data must be analysed in an investigation. While Argentina could have considered the data on a disaggregated basis (and in fact did so in some instances), in our view, it was not required to do so. Rather, given the undisputed definition of the like or directly competitive product as all footwear, Argentina was required at a minimum to*

consider each injury factor with respect to all footwear.[1] By the same token the European Communities, having accepted Argentina's aggregate like product definition, has no basis to insist on a disaggregated analysis in which injury and causation must be proven with respect to each individual product segment.[2] Thus, in our review of the injury finding, we will consider the analysis and conclusions pertaining to the footwear industry in its entirety." **(emphasis added)**

30. The Authority has defined PUC comprising of various grades as defined in para 2 initiation notification dated 23rd September 2019. From the above cited jurisprudence, it is evident that in a Safeguard investigation, analysis of Product as such has to be made, and not of product segments. Further, Grade wise analysis becomes extraneous when the product basket of the imported products is similar to those sold by the Domestic industry. An analysis of the import data as well as the domestic sales of DI shows that the grade mix of the products in both cases is identical. Thus, there is no justification for analyzing imports and serious injury parameters for each grade separately. Therefore, I do not consider it appropriate to consider the contention of some of the interested parties regarding exclusion of grades other than Non-dispersion shifted Fibre (G.652)such as G655, G657 etc.

31. As regards submissions made for exclusion of Grade G654 on the ground that it has not been manufactured by the Domestic Industry during the period of investigation, it is noted that the said grade has neither been manufactured by Domestic Industry nor imported into India during the Period of investigation. The domestic industry has placed evidence on record to show that it has the capacity to manufacture said grade in India. It is their submission that as there is no demand for the said grade in India, the same has neither been imported nor sold by domestic industry.

32. From the data available on record, it is observed that there is no import of grade G654 into India during the POI. The reference made by SEI Ltd. to the contract between BSNL and with NEC Technologies India Pvt. Ltd. ('NECTI') in their rejoinder submissions, *prima facie* appears to be a contract for "Optical Fibre Cables" and not for "SMOF". In this regard, Domestic Industry has submitted that the said contract is for Optical Fibre Cable and not for the PUC, as such Safeguard duty would not apply to imports made under the said contact. They have further submitted that the quantity of Fibre consumed in these cables is miniscule, i.e. around 18 KFKM. It is felt that exclusion of said grade on the ground of non-availability of 'like product' being manufactured by Domestic industry cannot be sustained when there is no demand for such grade in India. The Directorate has been considering to exclude such grades from the scope of

PUC which have been imported into India but for which there is no "like product" being manufactured by Domestic Industry. However, no such exclusion can be justified when such grade has not been imported into India during the POI since fact of capability of domestic industry supplying this cannot be established. In Final Findings issued in ***Anti-Dumping Duty investigation in respect of import of Synchronous Digital Hierarchy Transmission Equipment (SDH Equipment)***, originating in or exported from the People's Republic of China PR and Israel, dated 12.01.2012, the Authority had refused to exclude a particular type of product from the scope of PUC as the same has not been exported to India during the relevant period. The relevant para is reproduced below:

> "...***The Authority observes that a claim for exclusion of a particular type can not be entertained unless the same has been exported to India during the relevant period, as the fact of non supply of like article by the domestic industry cannot be established unless the type is exported to India and is permitted to be used in India. The Authority holds that no grounds have been made out justifying exclusion of STM-256.***

33. Thus, on examination of information available on record, submissions made by interested parties as well as settled practice in respect of scope of PUC, it is noted that the exclusion of grades/types of PUC, as claimed by some of the interested parties, is not justified in the present case.

(b) Domestic Industry (DI)

34. Clause (b) of sub-section (11) of Section 8B of the Customs Tariff Act, 1975, as amended by Finance Act, 2020, defines Domestic Industry, as follows:

'(b) "Domestic industry" means the 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.'

The applicants have claimed that their collective production accounts for more than 50% of the total production of the PUC in India and thus represent a major share of the total Indian production of the PUC and may be treated as the Domestic Industry as given in the table below:

KFKM	2016-17	2017-18	2018-19	Jan to June 2019	Jan to June 2019 (Annul.)
Total Indian Production	***	***	***	***	***
Trend	100	112	118	105	105
DI Production as % of Total Production	***	***	***	***	***

35. The applicants have also claimed that they do not have access to production data of other Domestic manufacturers. However, all domestic manufacturers, other than STL, produce PUC from imported preform (which cannot be used for any other known purpose). Accordingly, estimate of total industry production has been made by them adopting the standard industry norm that 37 FKM Fibre can be manufactured from 1 Kg of Preform with ~90% After-Draw-Yield. Thus, on an average, it has been assumed by the Applicants in their application that 1 Kg of Preform will yield 33.3 FKM of Fibre. Accordingly, the Applicants have computed the total Indian Production by applying the aforesaid conversion ratio to the Preform import data obtained from Cybex Exim Solutions Pvt. Ltd. ("CESPL", for brevity) after excluding Preform imports by the Applicants.

36. Subsequently, the Director General has received letter dated 30.09.2019 from M/s Finolex Cable Ltd. ('Finolex', for brevity), who is also a domestic producer of the PUC, supporting initiation of investigation and requesting for imposition of provisional duties. They have also submitted their production, capacity, sales and inventory information for 2016-17 to 2018-19 and April 2019 to September 2019. Thereafter, another domestic producer, i.e. Corning Technologies India Pvt. Ltd. had also filed its letter dated 5th November, 2019in support of the Petition. Thus, 4 out of 6 Domestic producers have supported the petition.

37. On the basis of information available on record along with the fact that none of the interested parties have objected to or produced any evidence to refute the claim of the Applicants regarding their share in total production of PUC or their standing as Domestic Industry, I hold that the production of the applicants constitutes a major share of the total production of the said products in India, and are considered as Domestic Industry in terms of clause (b) of sub-section (6) of Section 8B of the Customs Tariff Act, 1975.

38. Some of the interested parties stated that STL, one of the constituents of the Domestic Industry, is itself an importer of the PUC, as such cannot be considered as Domestic Industry. In this regard, it is noted that unlike laws relating to Anti-dumping which specifically provide for exclusion of importers from the purview of Domestic industry, no such exclusion has been provided under the Customs Tariff Act, 1975 or Safeguard Rules made thereunder. As such, for the purpose of determining standing of Domestic Industry, the fact that STL has imported the PUC during the Period of investigation is irrelevant.

(c) Period of Investigation (POI)

39. The Customs Tariff Act, 1975 and the said Rules as well as the Agreement on Safeguards and Article XIX of GATT has not defined the period of investigation. However, it is evident that the investigation period should be adequately long and sufficiently recent in time to allow reasonable conclusions to be drawn on the basis of various relevant factors such as domestic market conditions, performance of DI etc., as to whether or not the increased imports are indeed causing serious injury or threatening to cause serious injury to the DI and therefore justify the need for imposition of Safeguard Duty. On this basis, in the facts of the present case, it is considered reasonable and just to determine the period of investigation (POI) as 2016-17 to 2018-19 and 2019-20 (upto June' 2019).Analysis of most recent period, contained in the POI i.e. January 2019 to June 2019 has been done to examine the extent of serious injury, threat of serious injury.

40. Further, the annualized data for the most recent period, i.e. Jan- June' 2019 has also been considered along with actual data for the entire POI, wherever considered appropriate.

(d) Source of Information

41. Initially the data in the Application was submitted for the period 2015-16 to 2018-19 and April 2019 to May 2019. Subsequently, it was updated to include data till June 2019.

42. The DI have submitted transaction-wise import data for the PUC, which has been sourced from Directorate General of Commercial Intelligence & Statistics (DGCI&S), Department of Commerce, Government of India for the period from 2016-17 to 2018-19. For the first quarter of 2019-20, the DI had initially submitted transaction wise import data from a secondary source. However, subsequently the Director General obtained data for first quarter of 2019-20 from DGCI&S which has been considered for analysis, in the investigation.

43. Thereafter, during the course of the investigation, Domestic industry has submitted import data for Quarter 2 and Quarter 3' 2019-20 obtained by them from DGCI &S, and the same has been provided to the DGTR and which has been validated by DGTR as well. DGTR has further obtained import data for Q4 of 2019-20 as well from DG-Systems.

44. The data relating to injury parameters for the period 2016-17 to 2018-19 and 2019-20 (upto June, 2019) in respect of the DI has been submitted by the applicants which has been considered for analysis to establish the fact of increased imports and consequential serious injury.

(e) Confidentiality of Information Submitted

45. The DI has provided some information in their application on confidential basis and has requested that it be treated as confidential. The DI has also provided a non-confidential version (NCV) of their application, as required under Rule 7 of the said Rules read with Trade Notice dated 21.12.2009 issued by Director General (Safeguards) under File No. D-22011/75/2009. Further, the DI has submitted reasons justifying their claim of confidentiality of this information.

46. In terms of Rule 7 of the said Rules, the applicant may choose not to disclose information which is by nature confidential and provide a non-confidential summary thereof. The DI has submitted reasons for claiming confidentiality of the information and furnished a non-confidential summary of the information filed on confidential basis. Since, the reasons satisfy the requirements of Rule 7 of the said Rules, the confidentiality claimed by the applicants is hereby granted.

47. Increase in Imports in Absolute Terms

47.1.1 The PUC is being imported into India from various countries including China PR, Japan, USA and Korea RP. The major quantity of the PUC is being imported from China PR. The applicants have claimed that there has been a sudden, sharp and significant increase in imports in 2018-19, which has continued to be at high levels even in the most recent period, January 2019 to June 2019.The import volumes of the PUC have increased from 1,903 KFKM i.e. 2016-17 to 9,918 KFKM in 2018-19 including domestic industry imports and 7706 KFKM excluding imports by domestic industry.

47.1.2 Since inclusion of imports by DI inflates that actual volume of imports, therefore, for analysis of surge in imports and serious injury, the imports made by Domestic industry has been excluded from total imports and examination has been made considering only Non- DI imports as tabulated below.

In KFKM	2016-17	2017-18	2018-19	Jan'19-June'19	Jan'19- June'19 (annl.)
Imports (Total)	1903	2469	9918	4,268	8,536
Trend	100	130	521	449	449
Imports (non DI)	1,903	2,469	7,066	3,267	6,534
Trend	100	130	371	343	343

47.1.3 The Imports (non DI) has increased from 1,903 KFKM in 2016-17 to 7066 KFKM in 2018-19, and have continued to be at increased levels in the most recent period (annualized figure 3,267 KFKM). There has been significant increase of 271% in 2018-19 and 243% in January 2019 to June 2019 as compared from the base year 2016-17.

47.1.4 There has been a significant surge in each quarter of 2018-19 and Quarter 1 of 2019-20, compared to previous year(s), as indicated below. However, this surge was much higher in Quarter 2 of 2018-19. The lowered imports in Q3 and Q4 of 2018-19 and Q1 of 2019-20 may be appreciate in this perspective. The imports in 2018-19 and most recent period have clearly continued to be at significantly high levels.

Imports (Non DI)KFKM	Quarter 1	Quarter 2	Quarter 3	Quarter 4
2016-17	420	353	598	531
2017-18	769	545	540	615
2018-19	1244	2797	1436	1589
2019-20	1678			

47.2 **Increasing Imports in Relative Terms**

47.2.1 Relative to the domestic production, imports of the PUC are found to have consistently increased between 2016-17 to 2018-19 and January- June' 2019 and has more than tripled from the base year as well as previous year level.

In KFKM	2016-17	2017-18	2018-19	Jan'19-June'19 *	Jan'19-June'19 (annl.)
Imports (non DI)	1,903	2,469	7,066	3,267	6,534
Trend	100	130	371	343	343
DI Production	***	***	***	***	***
Trend	100	114	120	103	103
Import as % trend of DI Production	***	***	***	***	***
Trend	100	114	329	286	286

47.3 Imports in Post POI period

47.3.1 The DG-Safeguards in case of Carbon Black final finding dated 1.7.1998 on the relevance of POI held that *"In their application the domestic producers had submitted data upto September, 1997 and the decision to initiate the investigation was taken on the basis of this data. It would now not be fair to change this reference period as various interested parties respond to the investigation with reference to the facts available during this period."* However, in later findings e.g. Caustic Soda Final Finding No. 22011/47/2009 dated 09.04.2010, the DG-Safeguards also analysed the data beyond the notified POI in consonance with the appellate body report in the Argentina Footwear and to mainly evaluate public interest. Further, the jurisprudence requires analysis of increased imports to be made over a sufficiently long period of investigation, which is defined at the time of initiation of investigation. Data analysis over a comparatively long period is done so as to even out any temporary variation or seasonal effects. It is therefore, the general practice of the Authority is to collect and examine relevant information for at least a period of 3 years. Considering data for one or two quarters in isolation, would not allow an objective analysis of "increased imports" However, as many interested parties have submitted on the decline in imports in the Post POI period, the import data for July – December' 2019 i.e. Quarter 2 and Quarter 3' 2019 has also been considered and examined herein below;

47.3.2 From the import data for the period post POI, it is observed that imports in Quarter 2 and Quarter 3 of 2019-20 have declined as compared to previous quarter i.e. Q1 of 2019-20 as given in table below:

FY 2019-20	Quarter 1	Quarter 2 Post POI	Quarter 3 Post POI	Q2 and Q3 Post POI
Imports (non DI) (KFKM)	1678	655	320	975
Import Price (CIF) Rs/FKM	328	306	313	308
Import (non DI) of DI production (%) (Trend)	100	48	22	33

47.3.3 Imports in Q2 and Q3 of 2019-20 are claimed to be inordinately low by DI on account of initiation of the present investigation on 23.09.2019 and issuance of Preliminary findings dated 06.11.2019, recommending Provisional Safeguard duty. The DI has submitted that during Quarter 3 of 2019-20, domestic sales were able to substitute imports, as importers in order to avoid running the risk of incurring Provisional Duty, had started buying from the DI. However, even though the sales of DI increased in Quarter 3 of 2019-20, their injury further accentuated as such sales were at prices comparable to import prices.

47.3.4 The below depicts analysis of post POI imports (Data of Quarter 2 and Q3 of 2019-20), and previous POI period as well:

	2016-17	2017-18	2018-19	2019-20 (Q1-Q2 annul.)	Quarter 2' 2019-20	Q2 and Q3
Imports (Non DI)	1,903	2,469	7066	4666	655	975
Trend	100	130	371	245	-	-
DI Production	***	***	***	***	***	***
Trend	100	114	120	89	-	-
Imports relative to DI Production (Trend)	100	114	328	285	185	128
Trend	100	114	329	286	-	-

It is noted that though there is a decline in imports in Quarter 2 and Quarter 3 of 2019-20, they have continued to be at a comparable level as compared to 2016-17 and 2017-18, in relative terms to DI's production.

47.3.5 As regards contention raised by some of the interested parties that the requirement of "increased imports" is not met in the present case, as the imports have declined in the most recent period, the reference is drawn to the following practice/Jurisprudence of panel decision in WTO. Attention is drawn to Rule 2(c) of the Safeguard Rules, which defines "increased quantity" to include increase in imports whether in absolute terms or relative to domestic production. In the Final Findings dated 11.03.2014 issued in Safeguard duty investigations concerning imports of *Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel*, it was held that:

> ***"the expression "increased quantity "has been defined in inclusive terms and the definition includes two parameters i.e. increase of imports in absolute terms and increase of imports in relative terms to domestic production. It is also seen that both these parameters need not exist together. The increased quantity is to be measured either in absolute terms or in relative to domestic production. The satisfaction/existence of one parameter is sufficient to fulfill the legal requirement."***

- The Panel in ***US – Line Pipe,*** has held that ***"there is no need for a determination that imports*** **are presently still increasing. Rather, imports could have 'increased' in the recent past, but not** ***necessarily be increasing up to the end of the period of investigation or immediately preceding the determination"***(emphasis added)

- Further, interpreting the requirement of ***"recent, sudden, sharp and significant increase in imports"*** as set out by Appellate Body report in ***Argentina-Footwear*** Safeguard, the Panel concluded that the word 'recent' to mean '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.

- In Panel in ***US – Steel Safeguards,*** in findings upheld by the Appellate Body, addressed the question of how recently the imports must have increased and concurred with the Panel's view in ***US – Line Pine***, as follows:

  "As the Panel in US – Line Pipe did, that Article 2.1 of the Agreement on Safeguards speaks of a product that 'is being imported ... in such increased quantities'. Thus, imports need not be increasing at the time of the determination; what is necessary is that imports have increased, if the products continue 'being

imported' in (such) increased quantities. The Panel, therefore, agrees with the US – Line Pipe Panel's view that the fact that the increase in imports must be 'recent' does not mean that it must continue up to the period immediately preceding the investigating authority's determination, nor up to the very end of the period of investigation. ***As pointed out by the Panel in US – Line Pipe, the most recent data must be the focus, but should not be considered in isolation from the data pertaining to the less recent portion of the period of investigation.*** *However, as indicated by the present continuous 'are being', there is an implication that imports, in the present, remain at higher (i.e. increased) levels.* ***Whether a decrease in imports at the end of the period of investigation, in the individual case, prevents a finding of increased imports in the sense of Article 2.1 of the Agreement on Safeguards will, therefore, depend on whether, despite the later decrease, a previous increase nevertheless results in the product (still) 'being imported in (such) increased quantities'.*** *In this evaluation, factors that must be taken into account are the duration and the degree of the decrease at the end of the relevant period of investigation, as well as the nature, for instance the sharpness and the extent, of the increase that intervened beforehand."* **(emphasis added)**

It is also noted that in past safeguard cases (Tubes, Pipes and Hollow Profiles, Seamless of iron, alloy or non-alloy steel, Methyl Acetoacetate and Soda Ash), despite a slight decline in imports in the last year of POI, Safeguard duty was recommended.

47.3.6 In addition to the above, another relevant aspect which must be examined in such cases, is whether the decline in imports is a temporary phenomenon or reflects a long term change in demand pattern. (Ref: Appellate body report in Argentina- Footwear). DI has made reference to the Panel ruling in ***Argentina – Footwear (EC)***, as well as in ***Dominican Republic- Safeguard measures on Tubular fabric and Polypropylene bags***, where while considering decline in imports in the last year of the period of investigation, the Panel upholding the finding of increased imports, held that any temporary decline should not be taken in consideration, unless competing parties are able to adduce evidence to show that such decline is not temporary. Relevant para is extracted below:

"7.233 The Panel does not consider the arguments of the complainants convincing. The Panel does not exclude the possibility that the demand for certain products could have remained stable and therefore unaffected by the overall fall in imports. However, the complainants have not argued or put forward any evidence from which it could be concluded that this was the case with respect to the products in question. ***Although the DEI did not explicitly show that the decrease in imports at the end of the period was temporary, the***

complainants have not offered any evidence to the contrary. In particular, the complainants have not demonstrated that the decrease in imports (or the overall decrease in imports) reflected a permanent or long-term change."

47.3.7 In this context, the Domestic Industry has claimed that the decline in imports in Quarter 2' 2019-20 was on account of temporary decline in market demand, *interalia,* caused by; Troubled condition of Indian telecom industry, Prolonged Monsoons and flooding in many places, Delay in rolling out of new Bharatnet projects, Stockpiling by importers and Filing of the present Petition seeking imposition of Safeguard Duty.

47.3.8 Since SMOF is one of the most important component of the telecommunication network and digital infrastructure in today's world. The Domestic Industry has stated that the demand of SMOF in India is likely to increase in near future, viz. new Bharatnet projects being announced, very low FTTH penetration in India (0.7% against 78% in China) offering huge potential for growth in demand, recent investments made by Reliance Jio, talks about Amazon's likely investment in Airtel, alongside Google potentially taking a stake in Vodafone Idea, amongst others. Thus, there is a likelihood of Indian demand increasing in the near future.

47.3.9 It is noted that the condition of telecom sector and monsoon led to decline in demand whose impact would happen both on imports and as well as the domestic sales. Therefore, imports in relative terms to production would be appropriate to be examined for Q2 and Q3 of 2019-20 as stated above.

*47.3.10*Based on the above jurisprudence and the analysis of import data, it is concluded that though there is a decline in imports in Quarter 2' and Q3 2019-20 i.e. Post POI period, the imports in relative terms to DI production have continued to be at the levels, prevalent in 2016-17 and 2017-18. Thus, the decline in demand, and consequently in imports, in Post POI could be a temporary phenomenon and such a decline which cannot be confirmed as a long lasting phenomena, cannot undo the previous increase in imports.

48. **Unforeseen Developments**

48.1 While Section 8B of the Customs Tariff Act, 1975 nor the Rules made thereunder impose an obligation on the Director General (Safeguards) to analyze the unforeseen

developments as a result of which the increased imports have occurred, the Agreement on Safeguards read with Article XIX of GATT obligates the national authorities to examine "unforeseen developments" that led to the increase in imports and the consequent serious injury to the DI.

48.2 In view of the above requirement, the Director General has consistently been examining the issue of "unforeseen developments" in its investigations. Therefore, even in the present case, it is considered appropriate to examine the unforeseen developments that have led to the sharp increase in the imports of the PUC during the period of investigation.

48.3 The Appellate Body of WTO in **Argentina–Footwear (EC)**[1]case held that imports in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers, must have been 'unexpected'. In that case it was also held that the development of increased imports must have been due to "unforeseen developments". The relevant para form the findings of Appellate body is reproduced below:

"91. To determine the meaning of the clause – "as a result of unforeseen developments and of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions ... " – in sub-paragraph (a) of Article XIX:1, we must examine these words in their ordinary meaning, in their context and in light of the object and purpose of Article XIX. We look first to the ordinary meaning of these words. As to the meaning of "unforeseen developments", we note that the dictionary definition of "unforeseen", particularly as it relates to the word "developments", is synonymous with "unexpected". "Unforeseeable", on the other hand, is defined in the dictionaries as meaning "unpredictable" or "incapable of being foreseen, foretold or anticipated". ***Thus, it seems to us that the ordinary meaning of the phrase "as a result of unforeseen developments" requires that the developments which led to a product being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been "unexpected". With respect to the phrase "of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions ... ", we believe that this phrase simply means that it must be***

[1] Appellate Body Report, Argentina- Footwear (EC), para 90

demonstrated, as a matter of fact, that the importing Member has incurred obligations under the GATT 1994, including tariff concessions. *Here, we note that the Schedules annexed to the GATT 1994 are made an integral part of Part I of that Agreement, pursuant to paragraph 7 of Article II of the GATT 1994. Therefore, any concession or commitment in a Member's Schedule is subject to the obligations contained in Article II of the GATT 1994."* (emphasis added)

48.4 Thus, Article XIX requires the importing member who has incurred obligation under the GATT, to examine developments it had not "foreseen" or "expected" when it incurred that obligation, which led to increase in imports.

48.5 Similarly, the **Appellate Body of WTO in Korea-Dairy**[2] case held that unforeseen developments are developments not foreseen or expected when member incurred that obligation. In that case it was also recognized that unforeseen developments are circumstances which must be demonstrated as a matter of fact. In another case, the Panel on **US-Steel Safeguards**[3] concluded that the confluence of several events can unite to form the basis of an unforeseen development. The relevant para is reproduced below, for ease of reference:

"10.99 Article XIX does not preclude consideration of the confluence of a number of developments as "unforeseen developments". Accordingly, the Panel believes that confluence of developments can form the basis of "unforeseen developments" for the purposes of Article XIX of GATT 1994. The Panel is of the view, therefore, that it is for each Member to demonstrate that a confluence of circumstances that it considers were unforeseen at the time it concluded its tariff negotiations resulted in increased imports causing serious injury."

48.6 The above reasoning of the Panel has been relied upon by the Hon'ble Authority in the Final Findings issued in ***Safeguard Investigations concerning Solar Cells*** dated 16.07.2018.

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[2] Appellate Body Report, Korea- Dairy, Para 85 and 89

[3] US – Steel Safeguards, para. 315
[https://www.wto.org/english/tratop_e/dispu_e/248_259_abr_e.pdf]

48.7 In the present investigation, the applicants have submitted that the sudden increase in imports in 2018-19 and the POI was a consequence of a confluence of several unforeseen developments in the global market, such as global over-capacity in Fibre industry, imposition/extension of trade measures by China against most of the Fibre manufacturing countries, policy restrictions imposed by countries like USA, Australia on import of telecom equipment/components from China and other non-fiscal/ non – regulatory restrictions imposed by major telecom operators (especially telecom operators in western Europe and USA) against China made Fibre, which have resulted in sudden diversion of imports to India. Some of these developments are discussed in detail herein below:

48.7.1 **Global Overcapacity created in 2018-19 is far in excess of the global demand**

a. It has been submitted by the Applicants that anticipating that the global demand for SMOF is going to increase exponentially, primarily because of planned 5G roll outs, FTTH deployment, increased investments in digitization etc., most SMOF and preform manufacturers had made huge investments in scaling up their capacities. Consequently, there was an unprecedented increase in global SMOF manufacturing capacity in 2018-19 and 2019-20 by approximately 220 Million FKM, as compared to 2016-17. The enormity of this increase is more apparent from the fact that the total demand in India, which is the third biggest consumer of SMOF, was only 35 Million Fkm in 2018-19.

b. Further, in addition to the above, due to unexpected delaying of 5G roll out plans coupled with slower growth in FTTH deployment and digitization projects, the global demand did not increase commensurate to the increase in global capacity, thereby causing significant idling of capacities. In fact, an analysis of data for 2018-19 shows that as against the world's cumulative SMOF draw capacity of 753 Million FKM, the global demand in 2018-19 was only 554 Million FKM.

c. Thus, the overcapacity created in 2018-19 coupled with decreased demand, forced the SMOF manufacturers to look for new avenues to offload their excess production. At the same time, announcement of the New Digital Communications Policy, 2018 by Government of India focusing on widespread digitization in India,

along with announcement of launch of FTTH services by Reliance Jio, created a huge demand possibility in India, thereby making it a very lucrative export target during 2018-19.

d. In addition to the above, the slower than expected growth in 2018-19 especially in China, which is the biggest consumer and producer of SMOF, further accentuated the overcapacity being faced by Chinese as well as other manufacturers. The lower than expected demand for SMOF in China during January- June' 2018 resulted in augmentation of inventories not only in China but in other jurisdictions as well, thereby forcing them to export to growing markets such as India. The Domestic industry has referred to the extracts from various CRU –reports capturing changing dynamics of global SMOF industry during the period leading to surge in imports, which are reproduced herein below:

CRU – September' 2018 report-

"As a result, we see the fibre industry shifting from a shortfall of preform capacity in 2017 to an excess of preform capacity in 2018. The shift has become more pronounced as 2018 has progressed. ***In other words, there is more excess capacity in the latter months of the year****. The reason is that several major suppliers have been bringing up further new preform capacity as the year progresses"*

CRU- November' 2018 report-

"China market flattens out

World optical cable installations in H1 2018 amounted to 245 million fibre-km. This figure is 20 million fibre-km lower than the amounted we reported for H1 2018 in the last issue of this report (Sept. 2018 OFC Monitor). The downward revision reflects new information about weaker-than-expected orders in China.

...The excess capacity in some markets, such as China, is also putting pressure on some fibre makers to get more aggressive in export markets."

e. Further, the lower than announced procurement by Chinese telecom giant, China Mobile ('CM') during January- June' 2018 started off a global slowdown. The impact of this slowdown is visible in most SMOF producing nations, with many countries reporting accumulation of inventory level. The relevant para of **CRU-November' 2018** report is as below:

In other words, one customer, which accounted for 28% of the world's 2017 optical cable consumption, did not procure as much cable in 2018 as it had indicated in its tender documents. Thus, CM (China Mobile) was the main contributor to the market slowdown reported in the summary on page one.

...

The tender documents that CM issued in Q4 2017 said that its demand for standard (loosetube, G.6523.D) cable in H1 2018 would be 110 million fibre-km. Over six months, this amount would average 18.3 million fibre-km per month. But recent reports indicate that CM had amassed a non-negligible inventory of cable at the end of 2017, and this quantity resulted in lower-than-expected orders in the early months of 2018. As the year progressed, CM's orders showed no increase compared with 2017 orders. Recent comments suggest that CM's standard cable orders through three quarters barely had reached 110 million fibre-km."

...

"*Further, Chinese companies have said* ***that inventories have continued to accumulate, contributing to the downward pressure on prices. China is more than half the world's optical cable – in terms of both production and consumption.*** *China's manufacturers also have stepped up international sales, leading China to become a major exporter of fibre and cable. Thus, China's domestic market developments, such as higher inventories, also are affecting prices and sales in other countries and regions.*

For example, we note that optical cable inventories in Japan, as indicated in the monthly data from Japan's Ministry of Economy, Trade and Industry (METI) have increased this year. Japanese inventories in September 2018, for example, were 71% higher than in September 2017...."

f. Thus, from the above, it is evident that the global overcapacity on account of various factors such as delayed 5G roll outs, slower growth in FTTH deployments and Digitization projects, along with slump in Chinese market has distorted the international SMOF market. The slump has forced producers in various jurisdictions to look for other viable export markets. In such circumstances, India being a significant consumer of Optical Fibre cable, witnessed surge in imports.

48.7.2 The Domestic industry has further claimed that various trade barriers/ restrictions imposed by SMOF producing nations against each other, has made open markets such as India as a prime target for exports. For example,

a. China's MOFCOM has significantly increased anti-dumping duties on imports of SMOF from US and Japan, Anti-dumping duty investigation initiated by Eurasian Union concerning imports of fibre from the US and Japan

b. In March 2018, the department for the protection of the internal Market of the Eurasian Economic Commission (ECE) initiated an anti-dumping investigation against single-mode optical fibre imports from the US and Japan to the Eurasian Economic Union.

c. China has extended Anti-dumping duty on imports SMOF from India

48.7.3 It has further been submitted by the Domestic industry that the trade barriers imposed by major markets to protect their domestic industries, has left open markets like India a soft target for exports. Further, China has imposed anti-dumping duty against most of the Optical Fibre manufacturing countries including India, Japan and the USA. Consequently, Chinese market, which is the biggest consumer of the subject goods, has become unviable option for exporters from other countries. These factors have forced exporters in China as well as other countries to look for other viable export options. Consequently, year 2018-19 has seen an unprecedented diversion of exports from different nations to India, which has substituted the Indian domestic industry's market share. The European Commission Regulation imposing definitive Safeguard duty on Certain Steel Products (supra), had considered trade restrictive measures as an :unforeseen development", as below:

"(56) *The Commission disagrees with such claims as the fact that trade restrictive actions are taken within the framework of WTO rules does not imply that they cannot be considered as an unforeseen development.* ***The Commission does not contest the right of countries to take anti-dumping***

or anti-subsidy measures according to the relevant WTO rules. The issue at stake, however, is the unprecedented and increased number of such measures taken by third countries, which have created trade diversion resulting in increase of imports into the EU ..."

48.7.4 **Restriction on sale/use of China made Optical Fibre in many western countries including USA and most of the Europe.**

It has been submitted by the Domestic industry that since SMOF is one of the key products in the digital infrastructure, with a view to ensure digital security, many telecom operators in western/developed countries have imposed restriction on use of China made Optical Fibre in their networks. Similar, non-regulatory and non-fiscal barriers to Chinese products have been put in place by various nations including Australia, Western Europe in order to protect themselves from onslaught of Chinese exports, as well as for data security concerns. Therefore, the Chinese manufacturers have a restricted international market and are forced to off-load their production in nearby growing markets such as India.

48.7.5 The Indian demand is about 35 Million FKM, as against the global capacity of approx. 220 Million FKM in 2018-19. With many countries undertaking tariff/ non- tariff or regulatory measures to protect their domestic industry, there has been diversion of exports to countries with open markets, such as India. Such factors were not foreseeable or expected when India incurred obligations under GATT and therefore I hold that the condition of unforeseen developments causing increase in imports is met in the present case.

48.7.6 Some of the interested parties have contended that these unforeseen developments primarily relate to China and therefore do not justify global action. China accounts for approximately 60% of global SMOF production as well as consumption, and therefore the state of plan in Chinese market would affect most of the SMOF producers globally. Further Domestic Industry has stated in China, the market is predominantly driven by China Mobile, which accounted for almost 30% of global fibre consumption in 2017-18. Thus, changed dynamics of Chinese market, especially any change in consumption pattern of China Mobile, significantly impacts the global SMOF trade pattern. In this context, the Domestic industry has relied upon the below excerpt from

CRU- September' 2018 report, highlighting the influence of China Mobile (CM) on global scale-

> ***"This scrutiny of China Mobile's demand is warranted because the company's orders in 2017 accounted for 29% of the world's optical cable consumption. In the 2018 forecast, China Mobile's orders are expected to account for 32% of the world's total fibre installations. Thus, if China Mobile's orders are lower than expected, say by 10%, then the world market will be 3% lower than expected.***
>
> ***This situation, with one customer having such an influential role in the world's optical cable market, is unusual. In 2006, the peak year of fibre installations for its FiOS FTTP program, Verizon accounted for 9% of the world's optical cable market. In 2001, when NTT East and West together installed almost 11 million fibre-km, the two "sister" companies accounted for 11% of the world's optical cable consumption."***

48.7.7 Therefore with China being the biggest producer, and also the biggest consumer of SMOF, has the ability to influence the dynamics of Global SMOF trade. Slowdown of Chinese market coupled with trade barriers imposed by China as well as other nations, has made open markets such as India an easy target for offloading excess productions. From the aforesaid demonstrated factors, it is noted that confluence of various aforestated factors has led to a surge in imports to India, the significant overcapacity, slump in global demand and inventory build-up in other jurisdictions.

48.7.8 In this context, reference is also made to the decision of Panel in **India- Steel Safeguards**, wherein it had accepted India's claim that significant increase in global production capacity along with decline in demand, among other factors, were "unforeseen developments" that caused increase in imports. The relevant paras of the said report are extracted below for reference:

> *" 7.97. In our view, it was reasonable for the Indian competent authority to find that an increase to such extent in production capacity, combined with higher domestic demand in India, decreased demand in several major markets, and that currency depreciation in Russia and Ukraine were unforeseen developments. We consider that negotiators could not reasonably have expected this confluence of events when India*

negotiated its tariff concessions. In light of the above reasons, we conclude that the Indian competent authority provided reasoned and adequate explanation as to why the identified developments were unforeseen."

48.7.9 With respect to the "the effect of the obligations incurred" under the GATT 1994, according to India's Schedule of Concessions, the bound rate on the product concerned is 40% ad valorem. India reduced its applied rates on products in many sectors, including SMOF with the applied rate on the product concerned being 10% during the POI. (15% from July' 2019 onwards). Thus, the increase in imports during POI and in the most recent period may be appreciated in the context of aforecited unforeseen development and the effect of obligation incurred.

49. **Serious Injury and threat thereof:**

49.1 To determine whether the increased imports of the PUC have caused and / or are threatening to cause serious injury to the Domestic Industry of like or directly competitive products, various parameters including domestic Industry's share production, capacity utilization, and price parameters were analysed in the preliminary finding dated 6.11.2019, which are retreated below after examining submissions filed in respect of later investigation.

49.2 The term "*serious injury*" has been defined in sub Section (11) (c) of Section 8B of the Act, as amended by Finance Act, 2020, an injury causing significant overall impairment in the position of a domestic industry. "Threat of serious injury" has been defined in subsection 11 (d) of section 8B, as a clear and imminent danger of serious injury.

49.4 The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 technically require that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury. In this regard, reference may be made to the decision of **Argentina – Footwear (EC)**[4], wherein 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):

[4]Appellate Body Report, Argentina – Footwear (EC), para. 139.

"[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'.

49.5 Further the Panel in **US – Wheat Gluten**[5], in a finding which was 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 is for the investigating

[5]Panel Report, US – Wheat Gluten, paras. 8.80 and 8.85.

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."

49.6 Accordingly, in analyzing serious injury and threat of serious injury, factors which are mentioned in the rules and are relevant for determination of serious injury or threat of serious injury, have been considered, as discussed herein below:

a. Changes in level of Sales:

The Applicants' sales in domestic market can be bifurcated into two segments: (i) Sales to independent Customers, (ii) Sales to Captive/related parties. It has been submitted by the DI that surge in imports has not impacted their sales to captive/related parties, as imports do not compete with them in captive/related party segment. However, their Domestic sales to independent customers have declined significantly as compared to the previous years, and the sales of Domestic industry in this segment has been substituted by imports. Analysis of Sales made by the DI as against imports is as below:

(KFKM)	2016-17	2017-18	2018-19	Jan'19 to June'19	Jan'19 to June'19 (Annl.)
DI sales (captive & related)	***	***	***	***	***
Trend	100	188	213	171	171
DI Domestic Sales (Non- captive/Non related)	***	***	***	***	***
Trend	100	65	48	31	31
Imports (Non DI)	1,903	2,469	7,066	3,267	6,534
Trend	100	130	371	343	343

The above table demonstrates that in 2016-17 the imports was 1903 KFKM and DI sales was *** KFKM. The situation has reversed in most recent period with imports increasing to *** KFKM and DI sales being reduced to *** KFKM. The share of market lost by DI has been substituted by the increased imports. Further, DI's sales to captive/related party customers has by and large remained unaffected by the surge in imports.

b. Market Share of imports and domestic producers in domestic demand:

The Applicants have submitted that they do not have access to sales data of other Indian producers, therefore, total Indian Consumption number has been taken from quarterly reports of CRU, a body which specialises in studying and analysing commodity markets, including Optical Fibre market. Accordingly, in the Preliminary findings Indian demand computed in terms of data published in CRU was considered. Since, none of the interested parties have raised objection to the computation of demand from CRU reports or have produced any alternate source of information on India demand, the demand computed in terms of CRU is being considered for final determination as well.

For the analysis of share in market for independent consumers, the consumption of PUC by the domestic industry (either by captive/related party sale or imports) has been excluded from the Total Indian consumption as reported in CRU and the percentage share in demand is tabulated below.

Fig: In KFKM

	2016-17	2017-18	2018-19	Jan'19-June'19	Jan'19-June'19 (Annl.)
Indian Consumption as per CRU	27062	32186	35197	17547	35094
Indian Consumption for independent customers (excluding DI's Captive/Related party sales and DI imports)	17,971	15,057	12,948	8,763	17526
Imports (Non DI)	1,903	2,469	7,066	3,267	6534
DI Market share in demand for independent customers	***	***	***	***	***
DI Domestic Sales (Trend)	100	65	48	31	31
Imports (Non DI) share in demand for independent customers (excluding DI's Captive/Related party sales and DI imports)	11%	16%	55%	37%	37%
Trend of DI's Share in demand for independent customers (excl. DI's Captive consumption and related party sales)	100	77	67	31	31

c. Changes in level of Production:

The production of the domestic industry in the most recent period has substantially declined in comparison to 2017-18 & 2018-19 though the demand has increased substantially.

Production (KFKM) (Trend)	2016-17	2017-18	2018-19	Jan' 19- June 19	Jan' 19- June 19 (Annl.)
STL	100	115	123	117	117
BFL	100	111	109	62	62
Total DI Production	100	114	120	103	103

d. Capacity Utilisation:

The capacity utilisation of the Domestic industry is given below.

Capacity Utilization	2016-17	2017-18	2018-19	Jan'19- June'19	Jan- June' 2019 (annualised)
DI Installed Capacity (KFKM)	***	***	***	***	***
Trend (%)	100	112	135	143	143
DI Production (KFKM)	***	***	***	***	***
Trend (%)	100	114	120	103	103
DI Capacity Utilization	***	***	***	***	***
Trend (%)	100	103	86	73	73

The capacity utilisation of the Domestic industry has declined from *** % in 2017-18 to *** % in the most recent period.

The Applicants have claimed that the optimum capacity utilization for this industry is around 95-100%, as the cost associated with reducing production or restarting plant is very high. The DI has further claimed that the capacity utilization going below previous years' levels and remaining below 95% to 100%, without there being any fall in demand of PUC.

The applicant has also submitted that anticipating the increase in Indian demand, the applicants had made huge investments for increasing their production capacity and that STL was forced to delay the commissioning of its new capacity of 11000 KFKM (not considered in the above table) because of lack of orders in the domestic market. However, this capacity has now been

commissioned and is in use from August, 2019, thereby further accentuating the injury and reducing the capacity utilisation in the post POI Period.

e. Employment

The applicants have submitted that there has not been any substantial change in employment levels during the POI.

Locations	2016-17	2017-18	2018-19	Jan-June'19
STL, Waluj (Trend)	100	110	110	107
STL, Shendra (Trend)	100	201	167	153
BFL(Trend)	100	112	112	110
Total DI Employees(Trend)	100	125	120	115

However, in view of the reducing market share and capacity utilization, the applicants have claimed that they have shut-down a part of their manufacturing capacity in Quarter2' 2019-20 (July 2019 to September 2019), and had to lay-off some of their work-force.

f. Productivity

Productivity has marginally declined in the most recent period due to decrease in production, as stated below;

Productivity	2016-17	2017-18	2018-19	Jan- June'19
DI Production	***	***	***	***
Trend	100	114	120	103
Employees	***	***	***	***
Trend	100	125	120	115
Productivity	***	***	***	***
Trend	100	90	99	89

g. Profitability

The profitability of the domestic industry has declined in 2018-19 as compared to previous year i.e. 2017-18 with losses in the most recent period. Due to imports coming at such lower prices,

the domestic industry is not able to earn reasonable return/profit. The profit/loss trend, during the POI is as below:

Fig.- in Trend

	2016-17	2017-18	2018-19	Jan- June' 19
DI Wt. Avg. Unit Selling Price (Non-captive/Non-related)	100	117	121	82
DI Wt. Avg. Cost of Sale	100	103	112	118
DI Profit/ Loss	100	173	158	(65)

The above table depicts that during the most recent period, the applicants had to sell at prices substantially below their cost of sales, due to imports coming at very low prices in the most recent period, especially Quarter 1 of 2019-20 and suffered losses. The quarterly analysis of profitability of DI for the last 4 quarters is as below:

Profit/Loss	Q1' FY 18-19	Q2' FY 18-19	Q3' FY 18-19	Q4' FY 18-19	Q1' FY 19-20
STL (Rs/FKM)	***	***	***	***	***
Trend	100	80	79	9	(48)
BFL (Rs/FKM)	***	***	***	***	***
Trend	100	95.80	(35)	(138)	(192)

h. Price Underselling, undercutting and Price suppression

Price Underselling, undercutting and Price suppression is shown in the table below:

Fig.- In Rs/ FKM

Per Unit	Jan- June 2019
DI- Weighted Avg. Unit Selling Price (SP)	***
Weighted Avg. Fair Selling Price (FSP)	***
Landed Value (Rs/KFKM) (LV)	411
Price Undercutting (SP-LV)	(***)
Price Underselling (FSP-LV)	***

Price Suppression	***

In the most recent period, the landed price of the subject goods is significantly below the level of Fair Selling Price of the domestic industry, thereby suppressing the prices of the domestic industry.

On the point of negative Price undercutting, DI has submitted that the exporters have been providing longer credit period or huge volume discounts to the importers.

The Director General notes that the DI is able to achieve a selling price of Rs. *** per FKM which is much below the cost of sales and fair selling price established for DI for the PUC. Thus, the negative price undercutting needs to be appreciated in this backdrop that the import prices have infact led to significant price suppression to the extent that it has pulled the NSR of DI even below the landed price of import for it to remain in market.

a. Inventory

The table below depicts the inventory levels which have witnessed a significant increase during the POI.

The applicants have submitted that generally they maintain production in line with the projected sales, so as to avoid costs associated with maintaining high inventories. Consequently, it would normally have limited stock available. However, due to onslaught of imports, many customers of the applicants have refused to honour their contracts, leading to high inventories. Moreover, reducing production has led to building up of huge raw material (preform) inventory with BFL.

fig-In Trend

Financial Year/Quarter	Inventory (STL)	Inventory (BFL)	Total DI
2016-17	100	100	100
2017-18	79	67	73
2018-19	567	171	356
Jan'19 to June'19	588	193	377

49.7 From the above analysis, it is noted that the all major relevant parameters in the present case indicate deterioration in the condition of the domestic industry establishing serious injury and threat thereof.

50. Causal Link between Increased Import and Serious Injury / Threat of Serious Injury

50.1 The WTO Panel on Korea-Dairy set forth the basic approach for determining "causation", as follows:

> *"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 abearing 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."*

50.2 In the WTO Appellate Body Report in Wheat Gluten case, it has been held as under:

> *"We begin our reasoning with the first sentence of Article 4.2(b). That sentence provides that a determination "shall not be made unless [the] investigation demonstrates ... the existence of the causal link between increased imports ... and serious injury or threat thereof." (emphasis added) Thus, the requirement for a determination, under Article 4.2(a), is that "the causal link" exists. The word "causal" means "relating to a cause or causes", while the word "cause", in turn, denotes a relationship between,*

at least, two elements, whereby the first element has, in some way, "brought about", "produced" or "induced" the existence of the second element.[1] The word "link " indicates simply that increased imports have played a part in, or contributed to, bringing about serious injury so that there is a causal "connection" [2] or "nexus" between these two elements. Taking these words together, ***the term "the causal link" denotes, in our view, a relationship of cause and effect such that increased imports contribute to "bringing about", "producing" or "inducing" the serious injury. Although that contribution must be sufficiently clear as to establish the existence of "the causal link" required, the language in the first sentence of Article 4.2(b) does not suggest that increased imports be the sole cause of the serious injury, or that "other factors" causing injury must be excluded from the determination of serious injury. To the contrary, the language of Article 4.2(b), as a whole, suggests that "the causal link" between increased imports and serious injury may exist, even though other factors are also contributing, "at the same time", to the situation of the domestic industry****".*

50.3 Keeping in account the aforesaid jurisprudence, the facts of the present case are examined to see whether there is a causal link between imports and serious injury or threat of serious injury being faced by the Domestic industry. Analysis of data for the period 2016-17 to 2018-19and January- June' 2019 indicates that imports of the PUC have remained at significantly high levels from Quarter 1' 2018-19 onwards till the most recent period, and also the import prices of the PUC have come down significantly in the most recent period. This has led to the DI revising their own prices downwards in the most recent period, leading to losses. As a result, the net sales realization of the DI has sharply declined when compared to previous quarters and the base year and previous year.

50.4 A comprehensive evaluation of parameters enumerated above demonstrates that serious injury is being caused to the DI by the significantly increased imports of PUC during POI more so from Q1 of 2018-19 to Q1 of 2019-20. Under aforestated circumstances and, it is concluded that there exists a causal link between sudden surge in imports and the injury (and threat thereof) being caused to the DI. The period of decline in market share of the

DI, sales (volume as well as price), capacity utilization and profitability etc., directly coincides with the period when there was a sudden and significant surge in imports.

Submissions regarding Anti-dumping duty to be more suitable remedy for DI

50.5 Some of the interested parties have claimed that as the injury to domestic industry is on account of surge in low priced imports from China, therefore the suitable remedy in the present case would have been "Anti-dumping duty" and not safeguard action. They have therefore requested for termination of the present investigation in terms of Para 2 of Annexures to the Rules.

50.6 Noting the submissions of the Interested Parties, it is clarified that various Trade Remedy Measures i.e. anti-dumping, countervailing duty or safeguard are not mutually conclusive and infact can be applied concurrently as well if conditions pertaining to a measure are satisfied. In this investigation, the analysis has been undertaken for a safeguard measure in accordance with relevant Act/Rules and remedy of appropriate quantum and tenure due to increase in imports in later paras has been considered.

Imports of Individual Countries

50.7 Further, SEI Ltd., one of the interested parties, has submitted that share of Japan in total imports has declined considerably during 2018-19 and the most recent period, therefore, imposition of Safeguard duty on Japan is not warranted. In this regard, it is noted that neither the Customs Tariff Act nor the Rules made thereunder provide for country-wise examination of "increased imports". Thus, for a determination of "increased imports", there is no requirement under the law to show that imports from all sources have increased. In this context, it is imperative to note that the mandate under Safeguard law is to protect domestic industry from onslaught of sudden surge in imports. As such, country wise import analysis is not warranted, other than for determining *de-minimis* imports from developing countries, in a Safeguard investigations. Thus, no relevance is required to be given to the each country's share in Imports.

Further, in the Final findings dated 16.11.2012, issued in Safeguard duty investigation concerning imports of ***Dioctyl Phthalate*** into India, while dealing with a similar argument, the Authority held as below:

" As regards the arguments that the Korea's exports dropped to 3382MT from 11924 MT in the said period in 2011, ***it is noted that individual country movements in imports are entirely irrelevant under Safeguard investigations because cumulative imports from various sources have been considered for surge in imports***"

50.8 Thus, keeping in view the objective of the legislation as well as the past practice of this Directorate, termination of the present investigation is not warranted.

51. Adjustment Plan

51.1 One of the essential features of the WTO Agreement on Safeguards is adjustment by the domestic industry.

51.2 Further, Article 5.1 of the Agreement on Safeguards provides that a Member shall apply Safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Article 7.1 of the Agreement on Safeguards mandates a WTO member country to apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. Article 7.4mandates that in order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. The provisions are *pari-materia* with Safeguard Rules 4(4)(ii), 11(2), proviso to 11(3), 12(1), 16(1) and proviso to 16(2). In addition Rule5(2) of the Safeguard Rules provides as under:

*"**(2)** An application under sub-rule (1) shall be in the form as may be specified by the Director General in this behalf and such application shall be supported by, -*

(b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to import competition".

51.3 The Domestic industry have submitted a detailed statement of plan that they have undertaken or will be undertaking to make themselves more competitive to the imports. The plan includes steps towards improving their efficiency and reducing their costs by better utilization of raw materials/consumables and through backward integration. The Domestic

industry has already taken concrete steps towards achieving better yield from their raw material, reducing cost by in-house generation of certain raw material for which they were otherwise import dependent. Both the companies constituting Domestic Industry have given their separate plans/projects they are considering for adjusting to the increased level of imports. They have also provided a statement of saving that would ensue on successful implementation of their plan.

51.4 Some of the interested parties opposing the levy of safeguard duty have argued that the DI has claimed excessive confidentiality on their adjustment plan. It is noted that in the Non-confidential summary, DI has indicated that they have undertaken projects which would help them achieve more cost efficiency by better utilization of raw material, reduction in cost of procurement of raw material and removal of bottlenecks in the production process. It has been submitted by the Domestic industry that the projects being undertaken by them consist of developing proprietary technology, information in respect of which is not available in public domain and is business sensitive.

51.5 It is observed that Rule 5(2) of the Safeguard Rules does not provide a format for the statement of adjustment referred to as adjustment plan. No guidance is provided in the Agreement on Safeguards also. The statement of the efforts planned to be taken by the Domestic Industry as provided in the Petition has been examined. Further, since this is a technology intensive industry, with several patented process being adopted by all interested parties, the DI's claim for confidentiality on their Adjustment plan has been accepted.

51.6 It is observed that STL has indicated *** different projects that has been undertaken by them which would significantly bring down their raw material prices and improve their efficiency. Further, BFL has also submitted their plan of action which would help them bring their cost down by 8-10 %.

51.7 The panel report in Korea-Dairy case (WT/D598) held the following regarding adjustment plan

> "We wish to make it clear that we do not interpret Article 5.1 as requiring the consideration of an adjustment plan by the Authorities, as the European Communities asserts. The panel finds no specific requirement that an adjustment plan as such must be requested and considered in the text of the Agreement on

Safeguards. Although there are references to industry adjustment in two of its provisions, nothing in the text of the Agreement on Safeguards suggests that consideration of a specific adjustment plan is required before a measure can be adopted. Rather, we believe that the question of adjustment, along with the question of preventing or remedying serious injury, must be a part of the Authorities' reasoned explanation of the measure it has chosen to apply .Nonetheless, we note that examination of an adjustment plan, within the context of the application of a Safeguard measure, would be strong evidence that the Authorities considered whether the measure was commensurate with the objective of preventing or remedying serious injury and facilitating adjustment."

51.8 Therefore, in view of the aforesaid and the adjustment plan submitted by the Domestic Industry, it is found that the adjustment plan contemplated by industry in the given ecosystem appears to be reasonable and pragmatic. Needless to mention that since relief under a safeguard measure is only for a limited period of time as an emergency measure and industry's adjustment efforts to withstand the surge in imports needs to be seen primarily in accordance with the provision of the rules.

52. Public Interest

52.1 The requirement to analyse whether imposition of Safeguard measure would be in public interest is contained in Article 3.1 of the Agreement on Safeguards, which states as follows:
"A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law."

52.2 Though Section 8B of the Customs Tariff Act 1975 and the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, does not stipulate examination of public interest, the DG-Safeguards has consistently evaluated public interest before

recommending the levy of definitive safeguard duty in terms of Article 3.1 of the Agreement on Safeguards.

52.3 In the present case, it is noted that the Domestic Industry is facing serious injury due to surge in imports in POI as evaluated during POI especially, in 2018-19 and Q1 of 2019-20. Being highly technology and investment intensive industry, the domestic industry needs protection.

Also, one of the interested parties has stated that Safeguard duty would not be in public interest as it will impact users industry. It is noted that the SMOF is a input for optical cable manufacturing which is further used by Telcos. The obligation to evaluate public interest essentially requires a likely impact of the recommended safeguard measure on various stakeholders. It is therefore important to examine the same with reference to the value chain partners.

52.4 It is noted that w.e.f. 01.07.2019 the BCD on PUC has been increased from 10% to 15%. This increase is just after the end of POI during which increased imports have been analysed to have caused serious injury to domestic industry.

During the Post POI the imports have came down significantly in absolute terms though they remain at a comparable level with 2016-17 and 2017-18 in relative terms as percentage of DI's production. The market share of DI in Q2 and Q3 of 2019-20 i.e. Post POI has not been adversely impacted though price suppression is witnessed. As in a Safeguard measure, it is the surge in imports and not the import price which is of prime importance, the safeguard measure recommended should commensurate with the extent of injury essentially on account of import surge. As stated above a domestic industry may face injury on account of various trade practices which may include dumping, subsidy or surge in imports.

52.5 Therefore, on the basis of all the aforesaid considerations, a safeguard measure of an appropriate quantum and tenure has been recommended so as to balance the two competing concerns in the later paragraphs.

53. Conclusions

53.1 During the period of investigation there was an overall deterioration in the functioning of the DI, which is indicative of the serious injury and threat of serious injury in future. The

parameter-wise finding of the serious injury suffered by the DI on account of enhanced imports of the PUC is summarized as under:

a) The volume of imports of the PUC have increased significantly during POI mainly in 2018-19 and Q1 of 2019-20.

b) The imports in Q2 and Q3 of 2019-20 are at comparable level of 2016-17 and 2017-18 in terms relative to production.

c) The DI's market share has declined, whereas the market share of imports has increased.

d) The increased imports of the PUC have substituted for the market share of DI;

e) The capacity utilization has decreased significantly in POI despite increase in demand;

f) The Domestic sales of the DI has declined significantly during the most recent period with their lost market been taken over by the imports;

g) The DI was earning profit in 2017-18 are in significant losses during 2018-19 and Post POI;

h) The inventories of the PUC have increased significantly;

i) There is significant price underselling and price suppression due to imports of PUC.

j) On an overall basis, DI has suffered serious injury during POI due to increased imports.

(F) Developing Nations

54. Proviso to Section 8B(1) of the Customs Tariff Act, 1975 provides that Safeguard Duty shall not be imposed on article originating from a developing country so long as its share of imports does not exceed 3% of the total imports of that article or, where the article is originating from more than one developing country, then, so long as the aggregate of the imports from all such developing countries, each with less than 3% import share taken together, does not exceed 9% of the total imports of that article. Further, Notification No.19/2016-Custom (NT), dated 5th February, 2016 specifies the developing countries for the purposes of this provision. Upon applying this legal provision read with the said notification to the available data during the most recent period of the POI in the present case, it is noted that as a percentage of the total imports of the PUC into India, the imports from China PR individually account for more than 3% while the share of every other developing country is individually less than 3%. As data of most recent period has been considered, DI's claim to consider Indonesia not meeting the 3% criteria is not justified and has not been considered. Also, the collective share of the developing countries whose individual share is less than 3% does not exceed 9% of the total imports of the PUC into India. Therefore, it is held that the import of the PUC originating from developing countries

(except China PR) will not attract Safeguard Duty in terms of proviso to Section 8B(1) of the Customs Tariff Act, 1975.

55. (G) Recommendations

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

i. The product under consideration viz. "Single Mode Optical Fibre" is being imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the DI manufacturing like or directly competitive products.

ii. The existing circumstances justify the imposition of a Safeguard Duty in order to protect the DI from further serious injury, which may be difficult to repair.

55.2 Accordingly, the following recommendations are made:

i. Considering that BCD has been increased by 5% on 01.07.2019 and imports in Post POI have reduced, a weighted average Fair Selling Price (FSP) of the Domestic Industry has been computed on the basis of cost plus a return as considered appropriate after considering competing interests of all stake holders. This FSP has been compared with the landed value of imports of PUC during the most recent period which leads to an injury margin of ***%.

ii. Considering all circumstances and the extent of serious injury, a Safeguard Duty of 10% is proposed to be imposed *ad valorem* on CIF price on the imports of the PUC viz. "Single Mode Optical Fibre" falling under Customs Tariff Item 9001 10 00 of the Customs Tariff Act, 1975 from all countries with the exception of the developing countries indicated in clause (iii) below. The Tariff Item mentioned herein is indicative only and the description of the imported goods will determine the applicability of the Safeguard Duty.

iii. As the imports from the developing countries listed in Notification No.19/2016-Custom (NT), dated 5th February, 2016, other than China PR, do not exceed 3% individually and 9% collectively, the imports of "Single Mode Optical Fibre" originating from such developing countries (other than China PR) will not attract the Safeguard Duty in terms of first proviso to Section 8B(1) of the Customs Tariff Act, 1975.

iv. The Safeguard Duty on the import of the said product, as above, is proposed to be levied for a period of one year. Since, the safeguard duty is proposed to be for one year only, no progressive liberalisation is recommended.

v. An appeal against the order of the Central Government arising out of these findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

(Bidyut Bihari Swain)
Special Secretary & Director General (Safeguard)