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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
Reference File No. 22/5/2019-DGTR**

Date: 6th November, 2019

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

GSR.....

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”), through M/s TLC Legal, Advocates, 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 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 2018-19 and has continued to be at increased levels in the most recent period, i.e. January’ 19 to June’ 19. 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. For this reason, the

applicants have also requested for imposition of provisional Safeguard Duty as an urgent measure to mitigate their injury.

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 Notice of Initiation (NOI) dated 23.09.2019. The NOI was 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 NOI 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.

C. Observations

4. The Director General has carefully examined the said application and the duly certified financial and other records produced by the applicants. The preliminary observations of the Director General on various factors that are relevant to the present investigation for imposition of a Safeguard Duty on imports of “Single Mode Optical Fibre” into India to protect the Domestic Industry of like and directly competitive products against serious injury / threat of serious injury caused by their increased imports are as follows:

4.1 The Product Under Consideration (PUC)

4.1.1 The product concerned is “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.

4.1.2 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.

4.1.3 The product concerned is Single Mode Optical Fibre, which are 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.

4.2 Domestic Industry (DI)

4.2.1 Clause (b) of sub-section (6) of Section 8B of the Customs Tariff Act, 1975 defines Domestic Industry (hereinafter also referred to as the "DI"), 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 represent a major share of the total Indian production of the PUC. The applicants may be treated as the Domestic Industry.

KFKM	2016-17	2017-18	2018-19	Jan to	Jan to June
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				June 2019	2019 (Annul.)
Total Indian Production	42612	47861	50590	22428	44856
Trend	100	112	118	105	105
DI Production as % of Total Production	***	***	***	***	***

4.2.2 The applicants have also claimed that they do not have access to production data of other Domestic manufacturers. However, all other domestic manufacturers 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.

4.2.3 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.

4.2.4 The Authority in view of the above for the purpose of preliminary finding pending final determination holds 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.

4.3 Period of Investigation (POI)

4.3.1 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, i.e. January 2019 to June 2019 has been done to examine the extent of serious injury, threat of serious injury and existence of critical circumstances.

4.4 Source of Information

4.4.1 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.

4.4.2 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 has obtained data for first quarter of 2019-20 from DGCI&S which has been considered for analysis.

4.4.3 The corresponding data relating to injury parameters for the period 2016-17 to 2018-19 and 2019-20 (upto June, 2019) in respect of the DI itself has been submitted by the applicants. All these data has been taken into consideration for analysis.

4.5 Confidentiality of Information Submitted

4.5.1 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.

4.5.2 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 have

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.

5. Increasing Imports in Absolute Terms

5.1.1 The PUC is being imported into India from various countries including China PR, Japan, 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 in 2016-17 to 9,918 KFKM in 2018-19. M/s (STL) has also imported the subject goods from 2018-19 onwards. Therefore, for an accurate analysis of surge in imports and serious injury, the DI imports have been excluded from total imports and examination has been made considering only Non- DI imports and is 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	521	449
Imports (non DI)	1,903	2,469	7,066	3,267	6,534
Trend	100	130	371	371	343

5.1.2 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 (6,534 KFKM). There has been significant increase of 271% in 2018-19 from the base year 2016-17.

5.1.3 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. The applicants have submitted that in Quarter 2 of 2018-19 there was an unprecedented rise in imports, which completely disrupted the domestic market. The imports thereafter have decreased, nevertheless, they have continued to be at high levels, and has been on an increasing trend.

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

5.2 Increasing Imports in Relative Terms

5.2.1 Relative to 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	100	114	329	357	357

5.3 Unforeseen Developments

5.3.1 Neither Section 8B of the Customs Tariff Act, 1975 nor the Rules made there under impose an obligation on the Director General (Safeguards) to analyze the unforeseen developments as a result of which the increased imports have occurred. The legal provisions neither contain any parameters that must be verified to identify the unforeseen developments nor do they specify any methodology that must be followed in the analysis of such unforeseen developments. However, 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. In view of this 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 or circumstances that have led to the sharp increase in the imports of the PUC during the period of investigation. However, in order to do so, it is necessary to first appreciate the import of the term “unforeseen developments or circumstances” and for this, a reference needs to be made to various rulings of the Appellate Body of WTO.

5.3.2 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”. 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. It was also noted that increased imports must be an outcome of unforeseen developments i.e., it is the unforeseen developments that resulted in increased imports.

5.3.3 Applying the aforementioned findings to the present case, it is clear that the temporal nature of the increase in imports of the PUC so as to cause serious injury to the DI or give rise to a threat of such serious injury must have been unforeseen or unexpected and factual. Whereas the event of increased imports itself must be demonstrable on the basis of data on imports, a finding on its unforeseen or unexpected nature must be contextual.

5.3.4 In the present investigation, the applicants have submitted that the sudden increase in imports in 2018-19 and the POI was a consequence of certain unforeseen developments in the global market. There is a confluence of a number of developments 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, has resulted in sudden diversion of imports to India. It has been submitted that the Chinese market, which is the biggest consumer and producer of Optical Fibre, is facing a slump caused by their over-capacity and lower domestic demand. Moreover, China made Optical Fibre is not approved by major Telecom operators in many western countries

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

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

³US – Steel Safeguards, para. 315

[https://www.wto.org/english/tratop_e/dispu_e/248_259_abr_e.pdf]

including USA and most of the Europe. Therefore, the Chinese manufacturers have a restricted international market and are forced to off-load their production in nearby growing markets.

5.3.5 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 for exporters from other countries. These factors have forced exporters in China as well as other countries to look for other viable export options. India being a growing demand market, has become a soft target for the exporters to off-load their excess production.

5.3.6 From the data available on record, it is seen that there was a sudden diversion of imports to India from Quarter 1 and 2 of 2018-19. This coincides with the period when Chinese market had started facing over-supply issues, *inter alia* because of sudden increase in its Fibre manufacturing capacity, delay in tender of China Mobile, which is the biggest consumer of Optical Fibre in China as well as globally. Further, with the slump in Chinese market which consumes around 50% of global Optical Fibre production, foreign producers in other countries were also left with excess production.

5.3.7 Thus, the sudden and sharp increase in imports of the PUC during 2018-19 and the most recent period is an outcome of a combination of various global events, which were unforeseen or unexpected. This surge in imports has significantly modified the competitive relationship between the imported and domestically produced PUC to the disadvantage of the DI.

6. Legal Provisions for Preliminary determination of Safeguard Measure

6.1.1 The applicants had requested for imposition of Provisional Safeguard measures in their application. They have further brought forth evidences of Critical circumstance from the data of Quarter 2' 2019-20 (July – September, 2019) in addition to the POI, vide their letter dated 03.10.2019 and submitted that delay in imposition of provisional levy will cause irreparable damage to them.

6.1.2 Section 8B (2) of the Act, enables the Director General for recommending imposition of a provisional safeguard duty on the basis of a preliminary determination that increased imports have

caused or threaten to cause serious injury to a domestic industry pending determination under Section 8B (1).

6.1.3 Article XIX of the GATT, 1994, describes Safeguard measures as “Emergency Action on imports of Particular Products”. This sense of urgency or emergency has been adopted in our Municipal Legislations as well. Rule 9 of the said Rules require the Director General to proceed expeditiously with the conduct of the investigations and in critical circumstances, to record a preliminary finding regarding serious injury or threat of serious injury. The relevant portion of the Rule is reproduced as under:

“(1) The Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary findings regarding serious injury or threat of serious injury.”

6.1.4 The term “critical circumstances” has been defined in Rule 2(b) as under:

“Critical circumstances” means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause serious injury to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry”

6.1.5 The provisions in the Municipal law are in consonance with Article 6 of the Agreement on Safeguards under GATT 1994, which also provides that in critical circumstances where delay would cause damage, which it would be difficult to repair, a member may take a provisional safeguard measures pursuant to a preliminary determination that there is a clear evidence that increase in imports have caused or are threatening to cause serious injury. The Article 6 further provides that the Provisional safeguard measures can be imposed only for a period of 200 days, during which period the Director General has carry out analysis required under Article 2 through 7 (which *interalia* deals with investigation/ determination of serious injury) and 12. Further, Article 6 as well as Rule 15 of the Safeguard Rules provides for refund of duty, if the duties imposed on the basis of concluded investigation is lower than the provisional duty already imposed.

6.1.6 From a harmonious reading of the Act and Rules under Municipal law and the provisions of Agreement on Safeguards under GATT, it follows that the law contemplates recording of interim measures expeditiously in appropriate cases. Accordingly, analysis of increased imports, serious injury or threat and critical circumstances warranting imposition of provisional levy has been done herein under, to examine whether the present case falls within the category of “critical circumstances” warranting imposition of Provisional levy.

7. Serious Injury:

7.1.1 From above, Preliminary Finding recommending imposition of safeguard measure is required to be given in cases where there is:

- i. Evidence of increased imports;
- ii. Such imports have caused or are threatening to cause serious injury;
- iii. Existence of critical circumstances, where delay would cause irreparable damage.

7.2 The aspect of increased imports has been dealt with in detail in foregoing paragraphs. The import data clearly suggest that there has been a sharp and significant increase in imports, both in absolute terms and relative to domestic production. The analysis of existence of serious injury/threat of serious injury and critical circumstances is made herein under.

7.3 The term “*serious injury*” has been defined in sub Section (6) of Section 8B of the Act, as an injury causing significant overall impairment in the position of a domestic industry. “Threat of serious injury” has been defined therein as a clear and imminent danger of serious injury.

7.4 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. However, these provisions do not specify what such an evaluation must demonstrate. 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

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

"serious injury" in Article 4.1(a) and the requirement of an evaluation of "all relevant factors" in Article 4.2(a):

"[I]t is only when the overall position of the domestic industry is evaluated, in light of all the relevant factors having a bearing on a situation of that industry, that it can be determined whether there is 'a significant overall impairment' in the position of that industry. Although Article 4.2(a) technically requires that certain listed factors must be evaluated, and that all other relevant factors must be evaluated, that provision does not specify what such an evaluation must demonstrate. Obviously, any such evaluation will be different for different industries in different cases, depending on the facts of the particular case and the situation of the industry concerned. An evaluation of each listed factor will not necessarily have to show that each such factor is 'declining'. In one case, for example, there may be significant declines in sales, employment and productivity that will show 'significant overall impairment' in the position of the industry, and therefore will justify a finding of serious injury. In another case, a certain factor may not be declining, but the overall picture may nevertheless demonstrate 'significant overall impairment' of the industry. Thus, in addition to a technical examination of whether the competent authorities in a particular case have evaluated all the listed factors and any other relevant factors, we believe that it is essential for a panel to take the definition of 'serious injury' in Article 4.1(a) of the Agreement on Safeguards into account in its review of any determination of 'serious injury'.

7.5 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

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

totality of the trends, and their interaction, which must be taken into account in a serious injury determination. Thus, such upturns in a number of factors would not necessarily preclude a determination of serious injury. It is for the investigating authorities to assess and weigh the evidence before them, and to give an adequate, reasoned and reasonable explanation of how the facts support the determination made."

7.6 Accordingly, in analyzing serious injury, threat of serious injury and critical circumstances for consideration of imposition of provisional duty, 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' Domestic sales to independent customers have declined significantly as compared to the previous years.

(KFKM)	2016-17	2017-18	2018-19	Jan'19 to June'19	Jan'19 to June'19 (AnnL.)
Combined 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

It follows from the above table that in 2016-17 the imports was 1903 KFKM and DI sales was *** KFKM. The situation has reversed in 2018-19 with imports increasing to 7066 KFKM and DI sales being reduced to *** KFKM. The share of market lost by DI has been substituted by the increased 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. The DG for the purpose of Preliminary Finding has considered the CRU report for the purpose of referencing demand pending final determination.

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	2186
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)	2016-17	2017-18	2018-19	Jan' 19- June 19	Jan' 19- June 19 (Annl.)
STL (Trend)	100	115	123	117	117
BFL (Trend)	100	111	109	62	62
Total DI Production (Trend)	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)	100	112	135	143	143
DI Production (KFKM)	100	114	120	103	103
DI Capacity Utilization	100	103	89	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 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, indicates a clear price preference for the imported PUC.

Moreover, the applicants have submitted that anticipating the increase in Indian demand, the applicants had made huge investments for increasing their production capacity. In fact, STL was forced to delay the commissioning of its new capacity of *** KFKM (which is not considered in the above table) because of lack of orders in the domestic market. However, this capacity has now been commissioned and is ready to be used from August, 2019, thereby further reducing the capacity utilization from August' 2019 onwards.

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.

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

g. Profit/loss

The profitability of the domestic industry has declined in 2018-19 as compared to previous year, 2017-18 and they are running in 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, as claimed by the DI, 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 were forced to sell at prices substantially below their cost of sales, thereby suffering huge losses. Due to imports coming at very low prices in the most recent period, especially Quarter 1 of 2019-20, the applicants were not able to increase their prices inspite of increase in cost of sales, and have been forced to accept offers below their cost. The quarterly analysis of profitability as submitted by the DI for the last 4 quarters is as below:

Profit/Loss	Q2' FY 18-19	Q3' FY 18-19	Q4' FY 18-19	Q1' FY 19-20
STL (Trend)	100	99	11	(60)
BFL (Trend)	100	(36)	(144)	(200)

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. This shows that the imports are suppressing the prices of the domestic industry, making it unviable for them to continue in the domestic market.

On the point of negative Price undercutting, the DI has submitted that they have credible market information that the exporters have been providing longer credit period or huge volume discounts to the importers. The same will be examined by the Director General as per the responses received from the exporters and importers. The Director General also noted that the DI is getting a selling price of Rs. *** per FKM against the fair selling price of Rs. *** per FKM and such selling price is much below the cost of sales and fair selling price of DI for the PUC. Thus, the price undercutting is slightly negative due to huge price suppression. However, for preliminary injury analysis, the import prices indicated in DGCI&S data has been considered.

i. Inventory

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

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

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.

8. Threat of serious injury

- 8.1** Applicants have submitted that in addition to serious injury being faced by them, the analysis of the data for the most recent period and POI clearly indicates that the Indian domestic industry is also facing an imminent threat of further serious injury.
- 8.2** The Safeguard measures are governed by Article XIX of the General Agreement on Tariffs and Trade (GATT), which permits the imposition of safeguard measures to protect industries that exhibit serious injury or threat of such injury due to "increased quantities" of imports. In consonance therewith, the Section 8B sub-section (1) of the Customs Tariff Act, 1975, also provides for imposition of safeguard duty by the Central Government on an article which 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. Thus, under both the GATT and the municipal laws, a Safeguard measure can be imposed even in cases where there is an imminent threat of serious injury to the domestic industry.
- 8.3** Threat of serious injury has been interpreted as a threat that is clearly imminent as shown by facts, and not based on mere allegation, conjecture or remote possibility. The claim of threat of injury is a preventive mechanism whereby the investigating authorities are prompted to act before the actual serious injury is inflicted on the domestic industry.
- 8.4** As per Article 4.1(b) of Agreement on Safeguards, "*threat of serious injury*" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. The Applicants have submitted that imminent threat of serious injury is evident from analysis of data for the POI as well as for the most recent period, i.e. January- June, 2019. The domestic industry vide their letter dated 03.10.2019 has submitted data relating to Quarter 2' 2019-20 also, which shows a further decline in their condition.
- 8.5** From the analysis of the data, it is noted that the imports have increased very significantly from 1903 KFKM in 2016-17 to 7066 KFKM in 2018-19, and have continued to be at increased levels in April 2019 to June 2019 (6,534 KFKM, annl.). It is seen that even though there is a very marginal dip in imports in the most recent period (annualised), but on account of their drastically low prices, i.e. Rs. 375/FKM as against Rs. 603/FKM in 2018-19, they have in effect caused even more injury

to the domestic industry. The continued surge in imports coupled with their decreasing prices, has impacted domestic sales and market share of both the Domestic industries, which has significantly declined during the most recent period. The applicants have claimed that their sales have decreased inspite of substantial reduction in their prices. The condition in Quarter 2 of 2019-20 again looks abysmal, and the customers are now negotiating at prices below Rs. 270-280 per FKM, which is substantially below the cost of production. The capacity utilization of the domestic industry has also declined significantly during the most recent period, and has further reduced in Quarter 2' 2019-20. Further, the impact of low priced imports is now threatening to affect Domestic industry's captive sales for manufacturing downstream product, i.e. cable, also.

8.6 In US – Lamb, the Panel has held the analysis of USITC qua threat of serious injury as flawed because it was not "prospective", that is, it was based on past data, instead on projections as to how the industry was likely to perform in the immediate future. The panel therein drew some inferences on how to conduct a threat analysis, as follows:

“A threat determination needs to be based on an analysis of objective and verifiable data from the recent past; These recent past facts need to be complemented by fact-based projections concerning developments in the industry's condition, and concerning imports, in the imminent future; and lastly - that the analysis needs to determine whether injury of a serious degree will actually occur in the near future unless safeguard action is taken.”

8.7 The Applicants have submitted that the data for the most recent period clearly shows that the Indian domestic industry is already facing serious injury. The profitability of the Applicants has been completely eroded, and the imports are coming at such un-remunerative prices/ terms that the Indian industries are not in a position to compete with the import. The present trend indicates a clear evidence of imminent threat of further injury to the domestic industry. To substantiate their claim of market trends, the applicants have also relied upon the analysis and projection of the industry condition done by CRU (May, 2019 report), wherein it was stated as below:

“Price collapse in China feeding into overseas markets

With prices falling to historical lows in China, domestic manufacturers are increasingly seeking export opportunities to support current production levels and higher utilisation at existing plants.

Chinese exports of both bare fibre and cable have increased significantly over the last few months. Indeed, CRU estimate exports on a value basis to have jumped 110% and 22% respectively in Q1 2019 compared to the same period last year.

As shown in the chart below, Chinese bare fibre exports to Europe have surged 149% y/y in Q1. Meanwhile, exports to India have risen five-fold. CRU understands much of this material is being offered at highly competitive rates, in line with weak domestic pricing, and causing significant pressure on prices in both target markets. For instance, CRU have heard of offers as low as \$4.50 /F-km or below to India and Mexico. With Chinese exports likely to remain at this elevated level near-term, CRU expect continued pressure on prices globally throughout much of this year."

8.8 The analysis and projections done by CRU based on the most recent data i.e. Quarter 1, of Calendar year 2019-20 (i.e. January 2019 to March 2019) clearly indicates that the Indian domestic industry is facing imminent threat of serious injury. It has been stated in the said report that with slowdown in Chinese market, imports to India from China has risen 5-fold and are coming at low prices. Further, the slowdown in Chinese market has put pressure on Fibre industry globally.

8.9 The data of the most recent period, i.e. Quarter 4 of FY 2018-19 and Quarter 1' FY 2019-20, shows a considerable decline in applicants' financial condition. The surge in imports at lower landed cost has substituted the domestic market. In addition, the slump in Chinese market has caused global over-capacity of Optical Fibre, forcing manufacturers in other countries also to look for non-Chinese export markets. Thus, on preliminary analysis, threat of serious injury is imminent in present circumstances, wherein the Indian industries would not be able to survive unless an adequate safeguard is provided to them to fight the onslaught of imports.

9. Critical Circumstances

9.1 The Applicants have submitted that in addition to the serious injury being faced in the most recent period, i.e. Januray'19 to June'19, the condition of the domestic industry has further worsened in Quarter 2 of 2019 -20 (i.e. July- September' 2019). The capacity utilization of STL has substantially decreased to *** in Quarter 2' 19-20 from *** in Quarter 2 of 2018-19. The Capacity Utilization of BFL has also substantially decreased to *** in July- August' 2019 as against *** in

Quarter 2 (July – September)’ 2018. Further, the inventory with the Applicants has also remained at significantly high levels, in-spite of reducing production substantially.

9.2 The Applicants have further submitted that the selling price of the Domestic industry has declined significantly in the most recent period as also Quarter 2 of 2019-20. The average selling price of PUC of STL has also significantly declined from Rs. *** per FKM in Quarter 2’ of 2018-19 to Rs. *** per FKM in Quarter 2’ of 2019- 20. In case of BFL the average selling price of PUC has also significantly declined from Rs. *** per FKM in Quarter 2 of 2018-19 to Rs. *** per FKM in July 2019 – August 2019. Thus the losses of the Domestic industry has further increased in July-August’ 2019 and the condition of both the Applicants has become more critical in Quarter 2. It has also been submitted by the applicants that in order to remain viable, both the domestic producers were forced to lay off a part of its work-forces in Quarter 2’ of 2019-20.

9.3 The Applicants have further submitted that the Import prices have drastically gone down in July – August’ 2019. As against average CIF Price of Rs. 603/FKM during 2018-19 and Rs. 375/FKM during January to June 2019, the Applicants have highlighted some of the import transactions in Quarter 2’ of 2019-20, where import prices are even below Rs. 280/FKM Level.

9.4 The Applicants have also submitted that given the current market situation, STL has currently closed production from most of its draw towers in its Waluj Plant. The new capacity commissioned in August’ 2019 at Shendra is also running at very low capacity utilization. Even BFL has practically stopped production, as is evident from its capacity utilization significantly going down in July- August’ 2019.

9.5 From the analysis of the data submitted, it can be seen that the domestic industry is not able to compete with the low priced increased imports. It is noted that there is significant decline in domestic sales as well as average selling price of the Domestic industry. Due to lack of orders in the domestic market, the Domestic industry is not able to achieve the desired level of capacity utilization which is essential for remaining viable. Thus, the increased imports have caused and are threatening to cause serious injury to the Domestic industry, and the condition of Domestic industry is very critical where delay in granting immediate protection in the form of provisional safeguard measure would cause irreparable damage to the industry.

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

10.1 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 a bearing on the situation of that industry. In addition, if the national authority has identified factors other than increased imports which have caused injury to the Domestic Industry, it shall ensure that any injury caused by such factors is not considered to have been caused by the increased imports. To establish a causal link, Korea has to demonstrate that the injury to its Domestic Industry results from increased imports. In other words, Korea has to demonstrate that the imports of SMPP cause injury to the Domestic Industry producing milk powder and raw milk. In addition, having analyzed the situation of the Domestic Industry, the Korean authority has the obligation not to attribute to the increased imports any injury caused by other factors.”

10.2 The analysis of data for the period 2016-17 to 2018-19 and January- June’ 2019 indicates that imports of the PUC have remained at significantly higher levels and also the import prices of the PUC have come down drastically 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.

10.3 Under these circumstances and based on the above analysis, it is preliminarily concluded that there appears to be 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. There is a complete substitution of DI’s market by imported product, which has caused and is threatening to cause further injury to the DI. Thus, a comprehensive evaluation of parameters enumerated above demonstrates that serious injury is

being caused to the DI and is likely to continue in future by the significantly increased and continually increasing imports of the PUC at alarmingly low import prices. All relevant factors of an objective and quantifiable nature having a bearing on determining the causation of serious injury to the DI have been preliminarily evaluated.

11. Adjustment Plan

11.1 The applicants have submitted an adjustment plan to enable them to achieve more cost efficiency by better utilization of raw material, reduction in cost of procurement of raw material and removal of bottlenecks (if any) in the production process.

11.2 The Director General notes that the aforesaid adjustment plan will be examined during the remainder of investigation.

12. Public Interest

12.1 The requirement to analyse whether imposition of Safeguard measure would be in public interest flows from 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.”

12.2 Though Section 8B of the Customs Tariff Act 1975 and the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, do not require an examination of public interest, the public interest has been consistently evaluated before recommending the levy of definitive safeguard duty in terms of Article 3.1 of the Agreement on Safeguards. The same will be evaluated during the remainder of investigation after receipt and examination of responses from interested parties.

13. Preliminary Findings

13.1 To sum up, during the period of investigation there was an overall deterioration in the functioning of the DI. Moreover, the trend of the deteriorating parameters is indicative of the serious injury and continuing 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 and are continuing to be at increased level both in absolute and relative terms;
- b) The DI's market share has declined, whereas the market share of imports has increased;
- c) The increased imports of the PUC have substituted for the market share of DI;
- d) The capacity utilization has decreased significantly despite increase in demand;
- e) The Domestic sales of the DI has declined significantly during the most recent period, and their market has been completely taken over by the imports;
- f) The DI has now shut-down a part of their manufacturing facility and now running at very low capacity utilization
- g) The DI have been forced to lay-off their work force in Quarter 2, 2019-20;
- h) The productivity per employee of the DI has shown a declining trend;
- i) The DI which were earning profit in 2017-18 are now experiencing significant losses;
- j) The inventories of the PUC have significantly increased within the DI; and
- k) There is significant price underselling and price suppression by the imported PUC.

13.2 It is relevant to note that the DI continue to suffer serious injury and are facing further threat of serious injury. The trend in import volumes suggests that imports of PUC are likely to increase in future. Thus, an imminent threat of serious injury is also found in this case.

13.3 In view of the above analysis, it was noted that there is a direct correlation between the increase in imports and serious injury already suffered by the DI. Various indicators suggest that the increased imports, which are continuing to increase and are at decreasing prices, are threatening to cause serious injury to the DI in the coming days. Thus, critical circumstances exist requiring imposition of provisional Safeguard Duty immediately in order to save the DI from further serious injury which would be difficult to repair, if the application of this Safeguard measure is delayed.

These are, of course, preliminary findings on the basis of the documents and information on record and if any other factors that have a material bearing come to light during the course of investigation, they would be examined in detail in the due course.

(F) Developing Nations

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 in the present case, the finding is that import of the PUC is originating from more than one specified developing country including China PR. However, 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%. 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 must be 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.

(G) Recommendations

14. In view of the aforementioned analyses and findings, the Director General preliminary concludes that 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. The Director General further concludes that existing critical circumstances justify the immediate imposition of a provisional Safeguard Duty in order to save the DI from further serious injury, which would be difficult to repair, if the application of the provisional Safeguard measure is delayed. Accordingly, the Director General makes the following recommendations:

- i. Considering the weighted average Fair Selling Price of the Domestic Industry arrived on the basis of cost plus a reasonable return and the present average import prices, the injury margin of*** has been determined. The Director General has noted that in July 2019 and August 2019 the import prices of PUC have further reduced to Rs. 280 per FKM. As a result, the injury margin is likely to further increase if the import prices of second quarter of 2019-20 are considered. Therefore, considering the critical circumstance and the extent of serious injury, pending final determination of rate of safeguard duty, a provisional Safeguard Duty of **25 %** 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 provisional Safeguard Duty..
- ii. The provisional Safeguard Duty on the import of the said product, as above, is proposed to be levied for a period of 200 days (two hundred days).
- 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 provisional Safeguard Duty in terms of first proviso to Section 8B(1) of the Customs Tariff Act, 1975.

H. Further Process

15. The following further procedure would be followed subsequent to notifying the preliminary findings:

- i. The Director General invites comments on preliminary findings from all known interested parties within 21 days from the date of issue of preliminary findings. The comments received from them would be examined in the final findings.
- ii. The Director General would conduct oral hearing to give an opportunity to all interested parties to present their views relevant to the investigation. Issues and concerns raised during oral hearing will be examined in the final findings.

- iii. The date of the oral hearing would be announced separately on the DGTR website (dgtr.gov.in).
- iv. The Director General would conduct verification to the extent deemed necessary.



6.11.19
(Sunil Kumar)

Special Secretary & Director General (Safeguard)