

कुछ हितबद्ध पक्षकारों ने कीमत में कटौती का विश्लेषण के संबंध में यह उल्लेख करते हुए आपत्ति उठायी है कि कीमत में कटौती का विश्लेषण विचाराधीन उत्पाद की पहुंच मूल्य में रक्षोपाय शुल्क को जोड़े जाने के बाद किया जाना चाहिए। इस संबंध में यह नोट किया जाता है कि चूंकि यह क्षति के फिर से होने को रोकने के लिए रक्षोपाय शुल्क का विस्तार किए जाने की जांच करने के लिए एक समीक्षा है अतः पाटनरोधी शुल्क के बिना आयातों के प्रभाव का मूल्यांकन किए जाने की आवश्यकता है।

### झ. पीओआई पद की प्रवृत्ति

64. 2019-20 की पहली तीन तिमाहियों के दौरान, आयातों में 2018-19 की पहली तीन तिमाहियों की तुलना में 33% वृद्धि हुई है। इसके अतिरिक्त, आयात की मात्रा में वृद्धि को भी आयात की कीमतों में कमी के साथ जोड़ दिया गया था। पीओआई

पद की अवधि सहित जांच की अवधि के दौरान आयात का मूल्य और प्रति इकाई मूल्य निम्नलिखित तालिका में दिया गया है:

विवरण	इकाई	2016-17	2017-18	2018-19	अप्रैल-सितं. 2019	अप्रैल, 19 से फर.-20	2019-20 (वार्षिकीकृत)
सैल्स	लाख रूपए में	121,126	175,202	181,155	113,301	207,785	226,675
सैल्स	रू./वाट	15.42	13.68	8.95	8.76	7.91	7.91
मॉड्यूल्स	लाख रूपए में	1,632,107	1,920,223	1,143,368	517,875	849,750	927,000
मॉड्यूल्स	रू./वाट	29.2	22.56	19.1	16.8	16.32	16.32
कुल	लाख रूपए में	1,753,233	2,095,425	1,324,523	631,176	1,057,535	1,153,675
कुल	रू./वाट	31.29	34.10	27.50	21.40	16.54	14.42

65. वर्ष 20-16-17 के दौरान प्रति वाट भारित औसत आयात मूल्य 27.5 रू. से घटकर वर्ष 2019-20 के दौरान 13.5 रू. हो गयी है। पिछले कुछ महीनों के दौरान आयात की कीमतों की मासिक प्रवृत्ति में गिरावट प्रदर्शित हुई है, जैसा कि निम्नलिखित तालिका में दर्शाया गया है:

	सैल्स	मॉड्यूल्स		सैल्स	मॉड्यूल्स
वि.व. 2018-19	8.95	19.10	वि.व. 2019- 20	7.91	16.32
2018-04	12.08	22.40	2019-04	8.61	17.36
2018-05	11.96	23.26	2019-05	8.92	16.00
2018-06	9.73	22.61	2019-06	9.04	16.29
2018-07	8.50	21.83	2019-07	9.03	15.97
2018-08	8.26	20.93	2019-08	8.70	17.76
2018-09	8.06	20.02	2019-09	8.25	16.82
2018-10	8.07	19.75	2019-10	8.30	15.85
2018-11	7.91	18.02	2019-11	7.61	16.02
2018-12	7.77	17.24	2019-12	6.91	15.18

2019-01	8.24	17.09	2020-01	6.84	14.86
2019-02	8.87	17.62	2020-02	6.11	14.86
2019-03	8.92	16.94			

जैसा कि ऊपर दी गई तालिका से देखा जा सकता है, अप्रैल 2018 में सौर सेल आयात मूल्य 11.96 रुपये प्रति वाट से घटकर फरवरी 2020 में प्रति वाट हो गया है। इसी अवधि के दौरान, माँड्यूल की आयात कीमतें प्रति वाट 23.26 रु. से 14.86 रुपये प्रति वाट से नीचे आ गई थीं।

**(ज) मार्जिन तथा क्षति का खतरा**

66. जांच की मौजूदगी का मूल्यांकन करने के उद्देश्य से, एक उचित बिक्री कीमत (एफएसपी) की गणना उत्पादन की लागत पर उपयुक्त तर्कसंगत लाभ पर विचार करने के बाद की गई है। उसके बाद क्षति के मार्जिन की गणना सोलर सैल और एफएसपी से आयातों के पहुंच मूल्य के अंतर के रूप में की गई है। जांच की अवधि की सबसे हाल की अवधि अर्थात् 1.4.19 से 30.9.19 के दौरान आंकड़ों का विश्लेषण यह दर्शाता है कि आयातों की पहुंच कीमतों से घरेलू उद्योग की निवल बिक्री प्राप्ति (एनएसआर) की न केवल कटौती होना जारी है बल्कि वह उचित कीमत प्राप्त करने में घरेलू उद्योग को रोक भी रहा है। इसके अलावा, घरेलू उद्योग की मालसूची में भी सबसे हाल की अवधि तीव्र वृद्धि देखी गई है। इस कारण से, यदि रक्षोपाय शुल्क को अब हटा लिया जाता है तब विचाराधीन उत्पाद के प्रयोग का बढ़ते हुए क्रम में विचाराधीन उत्पाद के आयातों को संबद्ध जांच की शुरुआत के समय प्राप्त स्तरों तक अपना लेंगे। इसके परिणामस्वरूप गंभीर क्षति जो घरेलू उद्योग को हो रही थी वह फिर से होगी क्योंकि घरेलू उद्योग की लाभप्रदता का नकारात्मक होना जारी है और घरेलू उद्योग द्वारा की गई प्रगति प्रभावहीन हो जाएगी।

**(ट) कारणात्मक संबंध**

67. नियम 11(1) के अनुसार, यह निर्धारण करना अपेक्षित है कि क्या विचाराधीन उत्पाद के आयातों और समान प्रतिस्पर्धी उत्पाद के घरेलू उद्योग को क्षति अथवा क्षति के खतरे के बीच कोई कारणात्मक संबंध है। इस संबंध में, कोरिया-डेयरी में डब्ल्यू टी ओ के पैनल द्वारा टिप्पणी जो "कारण" का निर्धारण करने के लिए मूलभूत दृष्टिकोण दर्शाता है, को नोट कर लिया गया है। इस कारण से कारणात्मक संबंध का आकलन करने में मुझे वस्तुपरक और परिमाण योग्य प्रकृति के सभी संगत कारकों जिनका उद्योग की इस स्थिति पर प्रभाव पड़ता हो, मूल्यांकन करना पड़ता है। इसके अलावा, बढ़े हुए आयातों को छोड़कर यदि अन्य कारकों के कारण घरेलू उद्योग को क्षति हुई हो तब ऐसे कारकों द्वारा हुई किसी क्षति के लिए आयातों को जिम्मेदारी नहीं ठहराया जाना चाहिए।

68. 2016-17 से सितंबर, 2019 की अवधि के लिए आंकड़ों का विश्लेषण यह दर्शाता है कि विचाराधीन उत्पाद का आयात अधिक स्तरों पर रहा है। इसके अलावा, विचाराधीन उत्पाद के आयात की कीमतों में भी बहुत अधिक गिरावट आई है। आयातों की कीमतें घरेलू उद्योग की निवल बिक्री प्राप्ति से बहुत कम बनी हुई है। रक्षोपाय शुल्क के बिना, आयातों के कारण घरेलू उद्योग की कीमतों में कटौती होगी। घरेलू उद्योग की लाभप्रदता वर्तमान में नकारात्मक है और उस पर उस स्थिति में प्रतिकूल प्रभाव पड़ेगा जब विचाराधीन उत्पाद पर रक्षोपाय शुल्क को हटा लिया जाएगा।

69. निम्नलिखित कारकों को नोट कर लिया गया है और उन पर यह सिद्ध करने में संगत के रूप में विचार किया गया है कि रक्षोपाय शुल्क को जारी नहीं रखने और घरेलू उद्योग को गंभीर क्षति के जारी रहने और उसके फिर से होने के बीच कारणात्मक संबंध है।

क. भारत में विचाराधीन की घरेलू बाजार में आयातों की मात्रा बहुत अधिक रही है। 30 जुलाई 2018 से 25 प्रतिशत की दर से रक्षोपाय शुल्क लगाए जाने के साथ, 2018-19 में समग्र आयातों में कमी आई। हालांकि 30 जुलाई, 2019 तक 20 प्रतिशत तक रक्षोपाय शुल्क में कमी के साथ, आयातों में वृद्धि फिर से देखी गई है।

ख. आयातों का बाजार हिस्सा अपनी प्रमुख स्थिति बनाए रखा और आगे क्षति के विश्लेषण की अवधि के दौरान इस में थोड़ी वृद्धि हुई है। घरेलू उद्योग के बाजार हिस्से में भी रक्षोपाय शुल्क के द्वारा दिए गए

संरक्षण के फलस्वरूप आंशिक रूप से वृद्धि हुई है। हालांकि अन्य घरेलू उत्पादकों का बाजार हिस्सा जो घरेलू उद्योग का हिस्सा नहीं था, कमी आई। यद्यपि, घरेलू उद्योग का उत्पादन, बिक्री और क्षमता उपयोग में रक्षोपाय शुल्कों को लगाए जाने के साथ सुधार आया है, क्षमता का उपयोग अभी भी भारत में विचाराधीन उत्पाद की भारी मांग पर विचार करते हुए आदर्श से कम है। इसके अलावा, 30 जुलाई, 2019 से शुल्कों में कमी के साथ, विचाराधीन उत्पाद के आयातों में फिर से वृद्धि हुई है, जिसके फलस्वरूप मालसूची के स्तरों में बहुत अधिक वृद्धि हुई।

- ग. मूल जांच में अंतिम जांच परिणामों में यह नोट किया गया था कि आयात की कीमतों के कारण घरेलू उद्योग की कीमतें कम हो रही थीं और उसमें हास हो रहा था। घरेलू उद्योग की निवल बिक्री कीमतों के साथ आयातों का पहुंच मूल्य की तुलना यह दर्शाती है कि आयातों की कीमतों के कारण अभी भी घरेलू उद्योग की कीमतों में कटौती हो रही है। इस कारण से यदि रक्षोपाय शुल्क को जारी नहीं रखा जाता है तब प्रयोक्ता आयात किए गए विचाराधीन उत्पाद को फिर से अपनाएंगे जिसके फलस्वरूप कीमत हास पुनः होगा और घरेलू उद्योग द्वारा प्राप्त बाजार हिस्से को नुकसान होगा।
- घ. वर्तमान रक्षोपाय शुल्क लागू रहने के कारण बढी हुई कार्यक्षमता के कारण बिक्री की लागत में कमी आई है और उसके द्वारा घरेलू उद्योग को लाभप्रद हेने की बढी हुई संभावना के बाद घाटे को कम करने में मदद मिलेगी। यदि रक्षोपाय शुल्क का विस्तार नहीं किया जाता है तब परिणामी कीमत कटौती में कमी आएगी और घरेलू उद्योग द्वारा किए गए सकारात्मक समायोजन निष्प्रभावी हो जाएंगे और यह वापस गंभीर क्षति की स्थिति तक पहुंच जाएगा।
- ड. यद्यपि पिछले वर्ष से इसमें सुधार आया है फिर भी घरेलू उद्योग की लाभप्रदता नकारात्मक ही है।
- च. हितबद्ध पक्षकारों ने किसी अन्य कारकों का उल्लेख नहीं किया है जिनके कारण भी घरेलू उद्योग को साथ-साथ क्षति हो रही हो।

70. अतः उपर्युक्त मानदंडों का व्यापक मूल्यांकन यह दर्शाता है कि घरेलू उद्योग को हो रही गंभीर क्षति संभवतः भविष्य में भी जारी रहेगी। यदि रक्षोपाय शुल्क का विस्तार नहीं किया जाता है और इस कारण से उसे जारी रखना आवश्यक है ताकि घरेलू उद्योग को आगे गंभीर क्षति का उपचार किया जा सके और उसे रोका जा सके।

### (ठ) समायोजन योजना

71. मूल जांच के दौरान, घरेलू उद्योग ने निम्नलिखित कदम उठाकर आयात किए गए विचाराधीन उत्पाद के विरुद्ध प्रतिस्पर्धी बनने के लिए एक समायोजन योजना प्रस्तुत की।
- छ. यदि बेहतर नकदी प्रवाह को प्राप्त कर लिया जाता है, तब कच्चे माल की दीर्घावधि खरीद, दर और मात्रा।
- ज. क्षमता का अपेक्षाकृत अधिक उपयोग जिसके फलस्वरूप बेहतर परिवर्तन लागत प्राप्त हो।
- झ. अर्ध निर्धारित और निर्धारित लागतों का बेहतर विभाजन।
- ञ. उधार लेने की लागत को कम करने के लिए बेहतर क्रेडिट रेटिंग और ऋण की बेहतर सर्विसिंग।
- ट. बैकवर्ड एकीकरण के प्रति प्रयास और समग्र पारि-प्रणाली का विकास करना।
- ठ. प्रौद्योगिकी का विकास और आर एंड डी
72. कुछ हितबद्ध पक्षकारों ने यह आपत्ति उठाई है कि घरेलू उद्योग ने समायोजन योजना कार्यान्वित करने के संबंध में कोई साक्ष्य उपलब्ध नहीं कराया है और यह कि उन्होंने मूल जांच के दौरान यह साक्ष्य उपलब्ध नहीं कराया है जिसके कारण उन्होंने रक्षोपाय शुल्क को जारी रखने की मांग की है।
73. इस संबंध में जैसा कि ऊपर नोट किया गया है, घरेलू उद्योग की समायोजन योजना के प्रति उल्लेख किए गए कदमों का केन्द्र लागत में कमी को प्राप्त कर प्रतिस्पर्धात्मकता प्राप्त करना था। घरेलू उद्योग द्वारा लागत की समायोजन कटौती के प्रति उठाए गए कदमों के बारे में उपलब्ध कराई गई सूचना का सत्यापन संबंधित घरेलू उत्पादकों के रिकॉर्डों से किया गया है और यह देखा गया है कि घरेलू उत्पादकों ने अपनी कार्यक्षमताओं में सुधार

लाने के लिए अपने आरंभिक आवेदन में उनके द्वारा उल्लिखित कदमों को नहीं उठाया है यद्यपि, उन्हें अभी भी समायोजन योजना में निर्धारित लक्ष्यों को प्राप्त करने के लिए आगे प्रगति करने की आवश्यकता है। उनके द्वारा किए गए प्रयासों के परिणामस्वरूप यह नोट किया गया है कि समायोजन योजना के संबंध में डेढ़ वर्षों के भीतर, घरेलू उत्पादकों ने निर्धारित लागतों में 12.25 सेंट/वॉट के लक्ष्य की तुलना में सितंबर, 2019 तक 2.48 सेंट/वॉट की लागत में कटौती प्राप्त हुई है। प्राधिकरण आगे कहता है कि कच्चे माल की कीमतों को कम करने के लिए डीआई ने रसद को हवा से समुद्र में बदल दिया और बड़े आकार के वेफर्स का उपयोग करना भी शुरू कर दिया।

74. लागत में उपर्युक्त कटौती को कच्चे माल की लागत में कटौती, क्षमता के बेहतर उपयोग के कारण परिवर्तन लागतों में कटौती के फलस्वरूप किफायती उत्पादन को प्राप्त कर और कर्मचारियों की संख्या में कटौती के कारण निर्धारित लागत में कटौती और बड़े हुए उत्पादन के द्वारा आसान बनाया गया है।
75. इस कारण से यह देखा गया है कि घरेलू उद्योग ने मूल समायोजन योजना के संबंध में जिसके द्वारा उल्लिखित प्रयास किए हैं और यह अपने आप को आयात प्रतिस्पर्धा को पूरा करने के लिए सकारात्मक रूप से समायोजन कर रहा है। हालांकि आयात की कीमतें तेजी से गिरना जारी है और घरेलू उद्योग की कीमतों में रक्षोपाय शुल्क को शामिल किए बिना कटौती हो रही है। इस कारण से घरेलू उद्योग से यह अपेक्षित है कि उसे विचाराधीन उत्पाद के आयातों के कारण हुई अपने अस्थिर वित्तीय स्थिति पर विजय पाने के लिए अपने आप को एक साथ तैयार करने हेतु और अधिक समय दिया जाए।
76. घरेलू उत्पादकों ने उन कदमों का ब्यौरा देते हुए एक संशोधित समायोजन योजना प्रस्तुत की है जो इसमें आयात संबंधी प्रतिस्पर्धा का मुकाबला करने के उद्देश्य से आगे अपनी लागतों को कम करने के लिए उठाने की योजना बनाई है। संशोधित समायोजन योजना में घरेलू उद्योग द्वारा प्रस्तावित निम्नलिखित कदम शामिल हैं।
- कच्चे माल की कीमतों में आगे कटौती : बेहतर नकदी के प्रवाह के साथ, घरेलू उद्योग दीर्घावधि संविदा करने, दर में छूट और मात्रा में छूट क द्वारा आपूर्तिकर्ताओं के साथ कीमतों के बारे में आगे फिर से मोलभाव करने की स्थिति में हागा। कंपनी का उद्देश्य प्रमुख कच्चे माल अर्थात वेफर्स का उत्पादन करने की सुविधा स्थापित करने की भी है।
  - परिवर्तन लागतों में आगे कटौती : घरेलू उद्योग ने उल्लेख किया है कि लागत में लक्ष्य कटौती अभी प्राप्त की जानी है और उत्पादन की मात्रा में आगे वृद्धि से घरेलू उद्योग को अगले पांच वर्षों में उसे प्राप्त करने में सहायता मिलेगी और इसमें इस संबंध में एक संशोधित लक्ष्य प्रस्तुत किया है।
  - उत्पादन बढ़ाकर, निर्माण की प्रक्रिया को स्वचालित कर और प्रचालन संबंधी कार्यक्षमताओं को प्राप्त कर निर्धारित लागत में आगे कटौती।
  - संयंत्र और मशीनरी के पूर्ण उपयोग के द्वारा, ह्रास लागत में अगले कुछ वर्षों में कटौती होगी।
  - एस जी ए, वित्त और अन्य लागतों में कटौती।
77. घरेलू उद्योग ने अनुमान लगाया है कि इसकी समायोजन योजना अगले तीन वर्षों में पूरी कर ली जाएगी। संशोधित समायोजन योजनाओं को घरेलू उत्पादकों द्वारा उनके अलग-अलग प्रश्नावली के उत्तरों के साथ प्रस्तुत किया गया था। इस कारण से यह देखा गया है कि यदि शुल्कों को जारी नहीं रखा जाता है, तब आयातों के कारण भारत में अस्थिर घरेलू उद्योग को क्षति पहुंचेगी और वह समाप्त हो जाएगा। पूर्व के समायोजन योजना के संबंध में यह नोट किया जाता है कि घरेलू उद्योग अनुमानित लक्ष्य को प्राप्त करने में सक्षम नहीं हो पाया है क्योंकि वे अपने प्रयासों के कारण मुख्य रूप से केवल निर्धारित लागतों पर लागत में कटौती को प्राप्त करने में सक्षम हुआ है। इसके बावजूद, घरेलू उद्योग ने सकारात्मक समायोजन को दर्शाया है।

## ड जनहित

78. कुछ पक्षकारों ने यह तर्क दिया है कि विचाराधीन उत्पाद के आयातों पर रक्षोपाय शुल्क को लगातार लगाए रखने से कोई जनहित का कार्य पूरा नहीं होगा। इसके विपरीत रक्षोपाय शुल्क को लगाए जाने से जनहित को गंभीर रूप से नुकसान पहुंचेगा क्योंकि विचाराधीन उत्पाद के अनेक अंतिम प्रयोक्ता जैसे सोलर पावर डेवलपर अपने संयंत्रों को बंद कर सकते हैं। इस संबंध में, यह देखा गया है कि "जनहित" अभिव्यक्ति के क्षेत्र में केवल उपभोक्ता

का हित शामिल नहीं है। इसका एक बहुत व्यापक अर्थ है, जिसमें व्यापक सामुदायिक हित को ध्यान में रखकर सामान्य सामाजिक कल्याण शामिल है। जबकि रक्षोपाय शुल्क लगाए जाने के फलस्वरूप क्रेताओं के हाथ में आयात किए गए विचाराधीन उत्पाद और अंतिम उपभोक्ता के हाथों में बिजली की मामूली रूप से बढ़ी हुई लागत हो सकती है अतः यह महत्वपूर्ण होगा कि रक्षोपाय शुल्क को लगाए जाने के उद्देश्य को ध्यान में रखा जाए। रक्षोपाय शुल्क लगाए जाने का उद्देश्य घरेलू उद्योग को बढ़े हुए आयातों के द्वारा उत्पन्न प्रतिस्पर्धा की नई स्थिति का मुकाबला करने के लिए सकारात्मक समायोजन करने हेतु समय देना है। उस अवधि तक और उस सीमा तक जिस सीमा तक उसे समुचित माना गया है, रक्षोपाय शुल्क को लगाने से न केवल प्रतिकूल प्रभाव, यदि कोई हो, उपभोक्ताओं के लिए कम होगा, बल्कि उनकी आवश्यकताओं को पूरा करने के लिए उपयोग किए गए अपेक्षाकृत व्यापक विकल्प और वह भी प्रतिस्पर्धी दरों पर दिया जा सकेगा। घरेलू उत्पादकों, जिन्होंने भारी निवेश के साथ संयंत्रों की स्थापना की है, काफी संख्या में लोगों को रोजगार प्रदान करते हैं और राष्ट्रीय अर्थव्यवस्था को बहुमूल्य योगदान देते हैं। रक्षोपाय शुल्क लगाने से घरेलू उत्पादक बढ़े हुए आयातों के द्वारा उत्पन्न प्रतिस्पर्धा को देखते हुए फिर से पूर्व स्थिति में आने में सक्षम होंगे और इस कारण से वे विचाराधीन उत्पाद के क्रेताओं तथा अंतिम उपभोक्ताओं के दीर्घ अवधि हित में भी होगा।

79. माँड्यूल निर्माताओं की प्राथमिक चिंता संस्थापित सोलर सैल निर्माण क्षमता की तुलना में सोलर माँड्यूल का निर्माण करने के लिए उनकी संस्थापित क्षमता के बीच मांग और आपूर्ति में अंतर रही है जो आयात को आवश्यक बना देता है। हालांकि यह देखा गया है कि यह केवल अस्थायी स्थिति है, जहां इस अंतर को उच्चतर कीमत पर आयात किए गए सोलर सैलों के द्वारा तब तक पूरा किया जाएगा, जब तक घरेलू उत्पादक मांग को पूरा करने के लिए अपनी क्षमता में वृद्धि नहीं कर लेते हैं। दूसरी ओर, वर्तमान वास्तविक स्थिति पर विचार करते हुए जहां घरेलू सैल निर्माताओं को अपने अस्तित्व के खतरे का सामना करना पड़ रहा है और न कि रक्षोपाय शुल्क को जारी रखने के फलस्वरूप घरेलू सैल निर्माण आधार का पूर्ण रूप से क्षय हो जाएगा और सोलर माँड्यूल निर्माता माँड्यूल का निर्माण करने के लिए आयात किए गए सोलर सैल पर पूर्ण रूप से निर्भर हो जाएंगे। भारत में घरेलू सैल के निर्माण के प्रचालनों को पूर्ण रूप से बंद करने पर, माँड्यूल निर्माता निर्यातकों की दया पर रहेंगे जो बाद में कीमतों को तय करने की स्थिति में होंगे और केवल सोलर सैल निर्माण करने वाले माँड्यूल निर्माताओं की कीमतों को अप्रतिस्पर्धी बनाने के लिए वृद्धि कर सकते हैं। इसका सोलर माँड्यूल जैसे ई वी ए शीट और सोलर ग्लास के लिए उपकरण के निर्माण में शामिल अन्य अपस्ट्रीम और डाउन स्ट्रीम उद्योगों पर नीचे क्रम तक प्रभाव पड़ेगा और भारत की सोलर उपकरण निर्माण क्षमताओं को पूर्ण रूप से नष्ट कर देगा। वहीं दूसरी ओर रक्षोपाय शुल्क लगाने से घरेलू सैल निर्माताओं का बना रहना सुनिश्चित होगा, जो बाद में सैल की आपूर्ति करने के लिए माँड्यूल निर्माताओं को आपूर्तिकर्ताओं का एक व्यापक विकल्प उपलब्ध कराएगा। इसके अलावा, यद्यपि, सोलर सैल की खरीद की कीमतों में अस्थायी रूप से वृद्धि हो सकती है, फिर भी घरेलू स्तर पर उत्पादित सोलर सैल की लागत तब कम हो जाएगी जब सैल निर्माता प्रतिस्पर्धा के अनुरूप अपने आप को समायोजित करेंगे। बदले में इससे सोलर माँड्यूल की उत्पादन लागत में कमी आएगी और यह माँड्यूल निर्माताओं को उससे आयात किए गए माँड्यूल के साथ बेहतर तरीके से प्रतिस्पर्धा करने में सहायता मिलेगी जिससे वे स्वीकार्य तौर पर कड़ी प्रतिस्पर्धा का सामना कर रहे हैं। यह नोट किया जाता है कि घरेलू उद्योग बैकवर्ड एकीकरण का प्रयास करते रहे हैं और कुछ प्रमुख आपूर्ति जैसे सोलर ग्लास, ईवीए शीट, बैड शीट आदि ने पहले ही भारत में उत्पादन की क्षमता में सुधार लाने के लिए बहुत अधिक मात्रा में निवेश किया है। कुछ हितबद्ध पक्षकारों ने सरकार द्वारा विचाराधीन उत्पाद पर मूल सीमाशुल्क 20 प्रतिशत तक बढ़ाए जाने की घोषणा की ओर ध्यान आकर्षित किया है। यह घोषणा दर्शाती है कि विचाराधीन उत्पाद पर प्रशुल्क लगाना भी जनहित का एक महत्वपूर्ण पहलू है।

80. इस कारण से, घरेलू उद्योग को संरक्षण देने के लिए रक्षोपाय शुल्क लगाना व्यापक जनहित में है क्योंकि इसके फलस्वरूप रोजगार, पूंजी खर्च का विस्तार, आर एंड डी तथा विदेशी प्रत्यक्ष निवेश (एफडीआई) में वृद्धि होगी। कच्चे माल और उपभोग किए जाने वाले सामानों जैसे वेफर, पेस्ट, ईवीए, जंक्शन बॉक्स, सोलर ग्लास के आपूर्तिकर्ताओं को भी नई इकाइयों को स्थापित किए जाने के लिए प्रोत्साहित किया जाएगा। दूसरी ओर यदि रक्षोपाय शुल्क को संरक्षणात्मक रूप से लगाया जाना जारी नहीं रखा जाता है तब इसके फलस्वरूप घरेलू उद्योग समाप्त हो जाएगा, जो इस देश की अर्थव्यवस्था के लिए और अधिक भयावह स्थिति होगी।

81. यह भी अनुरोध किया गया है कि रक्षोपाय शुल्क लगाए जाने से मांग और घरेलू आपूर्ति के अंतर, जिसके के कारण आयात करना जरूरी होता है, की वजह से भारत का 2022 तक 100 गीगावाट सोलर विद्युत उत्पादन प्राप्त करने के लक्ष्य पर प्रतिकूल रूप से प्रभाव पड़ेगा। इस संबंध में यह नोट किया जाता है कि रक्षोपाय शुल्क के प्रशुलक उपायों की प्रकृति के हैं और न कि परिमाणात्मक प्रतिबंधों की प्रकृति के हैं। इस कारण से घरेलू मांग में कमी आयातों के द्वारा यद्यपि, रक्षोपाय शुल्क का भुगतान करने के बाद पूरा किया जा सकता है। रक्षोपाय शुल्क का उद्देश्य घरेलू उत्पादकों को अंतर्राष्ट्रीय स्तर पर प्रतिस्पर्धी बनाने के लिए सक्षम बनाना है। इस कारण से, घरेलू उद्योग को दिये गये संरक्षण से इसे अपनी कीमतों को अंतर्राष्ट्रीय कीमतों के स्तर तक लाने में सहायता मिलेगी जो सोलर पावर डेवलपर और अंतिम उपभोक्ताओं के दीर्घावधि हित में होगा क्योंकि वे आयात किए गए विचाराधीन उत्पाद पर एकमात्र निर्भर नहीं रहेंगे। इस कारण से यह देखा गया है कि विचाराधीन उत्पाद पर रक्षोपाय शुल्क को लगातार लगाए रखना जनहित में है। घरेलू उद्योग के उत्पादन की लागत उचित ब्याज के साथ जब आयात के उतरा मूल्य के साथ तुलना में संकेत मिलता है कि घरेलू उद्योग के लिए मूल्य की चोट जारी है। इस क्षति को रोकने के लिए, मौजूदा रक्षोपाय शुल्कों को रक्षोपाय शुल्क के चालू प्रगामी उदारीकरण के साथ जारी रखते हुए कुछ और समय के लिए विस्तार किए जाने की आवश्यकता है।

#### ढ. विकासशील राष्ट्र

82. सीमाप्रशुलक अधिनियम, 1975 की धारा 8 ख (1) के परंतुक में यह प्रावधान है कि रक्षोपाय शुल्क विकासशील देश से आने वाली वस्तु पर नहीं लगाया जाएगा क्योंकि आयातों में इसका हिस्सा उस वस्तु के कुल आयातों का 3 प्रतिशत से अधिक नहीं होता है अथवा जहां वस्तु एक से अधिक विकासशील देश से उत्पादन किया गया हो, तब इस प्रकार के सभी विकासशील देशों से आयातों का सकल योग जिसमें प्रत्येक का 3 प्रतिशत से कम आयात का सामूहिक हिस्सा है, उस वस्तु के कुल आयातों का 9 प्रतिशत से अधिक नहीं होता है। इसके अलावा, दिनांक 5 फरवरी, 2016 की अधिसूचना सं. 19/2016-सीमाशुल्क (एन टी) में इस प्रावधान के उद्देश्य से विकासशील देशों का उल्लेख है। वर्तमान मामले में उपलब्ध आंकड़ों की उक्त अधिसूचना के साथ पठित इस कानून प्रावधान को लागू करने के बाद जांच परिणाम यह है कि विचाराधीन उत्पाद का आयात चीन जन.गण., थाइलैंड और वियतनाम सहित एक से अधिक उल्लिखित विकासशील देश से हो रहा है। हालांकि भारत ने विचाराधीन उत्पाद के कुल आयातों के प्रतिशत के रूप में, चीन जन.गण., थाइलैंड और वियतनाम से अलग-अलग रूप में आयात 3 प्रतिशत से अधिक होता है, जबकि प्रत्येक अन्य विकासशील देश का हिस्सा अलग-अलग रूप में 3 प्रतिशत से कम है। कुछ हितबद्ध पक्षकारों ने यह तर्क दिया है कि घरेलू उद्योग ने थाइलैंड से आयातों का अनुमान गलत तरीके से लगाया है क्योंकि क्षति की अवधि के दौरान यह 3 प्रतिशत से अधिक है जबकि वास्तव में यह बहुत कम है। इस संबंध में, यह भी तर्क दिया गया है कि किसी समीक्षा में, विकासशील राष्ट्र जिन्हें रक्षोपाय शुल्क लगाए जाने से बाहर किया गया था, को समीक्षा के अनुसरण में इसके क्षेत्र में शामिल नहीं किया जा सकता है।

83. हितबद्ध पक्षकारों के कहने पर थाइलैंड से विचाराधीन उत्पाद के आयात संबंधी आंकड़ों का फिर से सत्यापन किया गया था और यह पाया गया है कि थाइलैंड से आयातों की मात्रा 2018-19 में और 1 अप्रैल, 2019 से 30 सितंबर, 2019 तक 3 प्रतिशत से अधिक है। इसके अलावा, मैं इस अनुरोध में यह पाता हूं कि नए विकासशील देशों को बिना किसी सही कारण के समीक्षा के अनुसरण में शामिल नहीं किया जा सकता है क्योंकि समीक्षा का उद्देश्य ही इस तथ्य का मूल्यांकन करना है कि क्या रक्षोपाय शुल्क घरेलू उद्योग को गंभीर क्षति से रोकने अथवा उसका उपचार करने के लिए अपेक्षित है। इस कारण से, यदि आयातों की मात्रा में अन्य अन्य विकासशील देशों, जिन्हें मूल जांच के अनुसरण में शुल्क के क्षेत्र में शामिल नहीं किया गया था, से वृद्धि हुई हो, घरेलू उद्योग को गंभीर क्षति को उस स्थिति में नहीं रोका जा सकता है अथवा इसका उपचार नहीं किया जा सकता है जब इन विकासशील देशों जिनका आरंभिक 3 प्रतिशत से आयात अधिक हुआ है, को इस शुल्क, जिसे जारी रखा जाना है, के क्षेत्र में शामिल नहीं किया जाता है। इस कारण से ऐसी स्थिति में, शुल्क को जारी रखने में कमी केवल एक औपचारिकता होगी, क्योंकि यह इन नए स्रोतों, जो घरेलू उद्योग को गंभीर क्षति उत्पन्न कर रहे हैं अथवा उसकी चुनौती दे रहे हैं, से आयातों के अंतरप्रवाह पर लागू नहीं होगा। मैंने फिनोल पर रक्षोपाय शुल्कों के दिनांक 11 दिसंबर, 2001 की समीक्षा में अंतिम जांच परिणामों को भी नोट किया है जिसमें मलेशिया, दक्षिण अफ्रीका और सिंगापुर को समीक्षा के अनुसरण में शुल्क के क्षेत्र में शामिल किया गया था। यद्यपि, इन देशों को मूल शुल्क के समय शामिल नहीं किया गया था। इसके अलावा, मैंने एसीटोन के आयातों पर रक्षोपाय शुल्क की समीक्षा में

जिसमें साउथ अफ्रीका और सिंगापुर को समीक्षा के अनुसरण में रक्षोपाय शुल्क के क्षेत्र में शामिल किया गया था, यद्यपि उन्हें मूल शुल्क लगाए जाने के समय शुल्क के क्षेत्र में शामिल नहीं किया गया था, दिनांक 4 फरवरी, 2002 के अंतिम जांच परिणामों में नोट भी किया है। तदनुसार, इन हितवद्ध पक्षकारों द्वारा उठाए गए मुद्दे को स्वीकार नहीं किया जाता है।

84. आगे यह नोट किया जाता है कि विकासशील देशों जिसका अलग-अलग हिस्सा 3 प्रतिशत से कम है, का सामूहिक भारत में विचारधीन उत्पाद के कुल आयातों का 9 प्रतिशत से अधिक नहीं है। इस कारण से, चीन जन गण, थाइलैंड और वियतनाम को छोड़कर विकासशील देशों से होने वाले विचाराधीन उत्पाद के आयात की सिफारिश सीमा प्रशुलक अधिनियम, 1975 की धारा 8 ख (1) के परंतुक के संबंध में रक्षोपाय शुल्क लगाए जाने के अध्यधीन किए जाने के लिए सिफारिश नहीं की गई है।

#### ग. निष्कर्ष

85. उपर्युक्त जांच और विश्लेषण के आधार पर यह निष्कर्ष निकाला गया है कि

- विचाराधीन उत्पाद पर रक्षोपाय शुल्क लगाए जाने के परिणामस्वरूप 2018-19 में आयातों में गिरावट के बाद, 30 जुलाई, 2019 से रक्षोपाय शुल्क की दर में कमी के अनुसरण में 1 अप्रैल, 2019 से सितंबर, 2019 की अवधि में आयातों में वृद्धि हुई है। विचाराधीन उत्पाद के आयातों में जांच की समग्र अवधि की तुलना में कुल भारतीय घरेलू उत्पादन के सापेक्ष तथा स्वतंत्र रूप में बहुत अधिक वृद्धि हुई है।
- घरेलू उद्योग को लगातार गंभीर क्षति हो रही है जिसे इसके कार्य निष्पादन के समग्र विचार विशेषकर इसका क्षमता उपयोग जो विचाराधीन उत्पाद की मांग पर विचार करते हुए कम है, माल भंडार के स्तरों में वृद्धि तथा नकारात्मक लाभप्रदता के आधार पर देखा गया है। यद्यपि, घरेलू उद्योग ने अपने उत्पादन और बिक्री में सुधार किया है और अपने घाटे को कम किया है फिर भी इसकी स्थिति अस्थिर बनी हुई है और यदि रक्षोपाय शुल्क को जारी नहीं रखा जाता है, तब इसे आगे और गंभीर क्षति हो सकती है।
- आयात की कीमतें क्षति की अवधि अर्थात् 2016-17 से 2019-20 (वार्षिकीकृत) के दौरान गिरावट होना जारी रहा है। रक्षोपाय शुल्क के बिना आयात की कीमतें घरेलू उद्योग की बिक्री कीमत से कम है और इसके कारण यदि शुल्क को हटा लिया जाता है, तब घरेलू उद्योग की कीमतों में कटौती होगी। इसके परिणामस्वरूप इस बात की पूरी संभावना है कि घरेलू उद्योग को रक्षोपाय शुल्क लगाए जाने के पूर्व हो रहा गंभीर कीमत न्यूनीकरण और ह्रास फिर से होगा और घरेलू उद्योग की लाभप्रदता पर आगे और प्रतिकूल प्रभाव पड़ेगा।
- सोलर पावर डेवलपर और अंतिम उपभोक्ता की लागत में विचाराधीन उत्पाद पर रक्षोपाय शुल्क लगाए जाने के फलस्वरूप वृद्धि होगी। हालांकि रक्षोपाय शुल्क लगाया जाना जनहित में होगा क्योंकि यह देश में सौर उद्योग के निर्माण आधार के पूर्ण रूप से क्षय होने से रोकेगा जिसने बहुत अधिक मात्रा में निवेश किया है। यद्यपि, घरेलू उद्योग ने समायोजन योजना का पूर्ण रूप से पालन नहीं किया है, परंतु अपनी समायोजन योजना को कार्यान्वित करने के लिए गंभीर प्रयास किए हैं जिसने अपने कार्य निष्पादन में सुधार किया है और इसके फलस्वरूप आगे आयातों की तुलना में इसकी प्रतिस्पर्धात्मकता में वृद्धि होगी और साथ ही दीर्घावधि में घरेलू उपभोक्ता को विचाराधीन उत्पाद की लागत में कमी आएगी।

#### त. सिफारिशें

86. विचाराधीन उत्पाद का भारत में आयात के कारण घरेलू उद्योग को न केवल गंभीर क्षति होना जारी रहा है बल्कि इसके कारण "विचाराधीन उत्पाद" के घरेलू उत्पादकों को गंभीर क्षति होने का भी खतरा है और यह जनहित में होगा कि सीमा प्रशुलक (रक्षोपाय शुल्क की पहचान और आकलन), नियमावली 1997 के नियम 12 के साथ पठित नियम 18 के संबंध में भारत में विचाराधीन उत्पाद के आयातों पर रक्षोपाय शुल्क लगाए रखना जारी रखा जाए। यह नोट किया जाता है कि घरेलू उद्योग ने चार वर्षों में क्रमशः 14.95%, 14.90%, 14.85% और 14.80% के रक्षोपाय शुल्क के प्रगामी उदारीकरण के साथ आगे चार वर्षों की अवधि के लिए रक्षोपाय शुल्क को बढ़ाए जाने की मांग की है। इस बात को ध्यान में रखकर कि संरक्षण के दो वर्ष पहले ही दिए जा चुके हैं और घरेलू उद्योग ने अपनी स्थिति में सुधार किया है परंतु उसे समायोजित करने के लिए कुछ और समय की जरूरत है, एक अन्य वर्ष

की अवधि के लिए रक्षोपाय शुल्क का विस्तार किया जाना समुचित होगा। इसके अलावा, इस अवधि के दौरान, शुल्क की मौजूदा मात्रा को उस गति से उदारीकृत किया जाना जारी रखना होगा, जिससे कि यह सुनिश्चित हो सके कि घरेलू उद्योग द्वारा समायोजन को केवल एक वर्ष की अवधि के भीतर प्राप्त किया जाए। तदनुसार, जैसा कि नीचे दर्शाया गया है, आगे सकारात्मक समायोजन को आसान बनाने के लिए रक्षोपाय शुल्क को घरेलू उद्योग का संरक्षण जारी रखना उपयुक्त माना जाता है। रक्षोपाय शुल्क का पालन करने की सिफारिश सीमा प्रशुल्क अधिनियम, 1975 प्रथम अनुसूची के उप शीर्ष 85414011 और 85414012 के अंतर्गत आयात किए गए विचाराधीन उत्पाद पर 30.7.2020 से लगाए जाने के लिए की जाती है। इसमें उल्लिखित प्रशुल्क मर्दें सांकेतिक मात्र हैं और आयात की गई वस्तुओं का विवरण सिफारिश की गई रक्षोपाय शुल्क की प्रयोज्यता का निर्धारण करेगा।

वर्ष	सिफारिश किए गए रक्षोपाय शुल्क
प्रथम 6 माह	रक्षोपाय शुल्क @ 14.90% यथामूल्य की दर से
अगले 6 माह	रक्षोपाय शुल्क @ 14.50% यथामूल्य की दर से

87. चूंकि विकासशील देशों जिसे दिनांक 5 फरवरी, 2016 की अधिसूचना सं. 19/2016-सीमाशुल्क (एन टी) में सूचीबद्ध किया गया है और जिसमें चीन जन.गण., थाइलैंड और वियतनाम को शामिल नहीं किया गया है, से आयात अलग-अलग रूप में 3 प्रतिशत और सामूहिक रूप में 9 प्रतिशत से अधिक होता है, चीन जन.गण., थाइलैंड और वियतनाम को छोड़कर विकासशील देशों के मूल के विचाराधीन उत्पाद के आयात पर सीमा प्रशुल्क अधिनियम, 1975 की धारा 8 ख (1) के परंतुक के संबंध में रक्षोपाय शुल्क नहीं लगेगा।

बिद्युत बिहारी स्वैन, महानिदेशक (रक्षोपाय)

## MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(DIRECTORATE GENERAL OF TRADE REMEDIES)

### NOTIFICATION

New Delhi, the 18th July, 2020

Case No. (SG) 01/2020

**Subject : Final Findings of review investigation for continued imposition of Safeguard duty on imports of “Solar Cells whether or not assembled in modules or panels” into India- Proceedings under the Customs Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 - Reg.**

**F. No. 22/1/2020 - DGTR**

#### (A) Introduction

1. An application dated 15 January 2020 was filed before me on 15 January 2020 under Rule 18 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (hereinafter also referred to as the “Rules”) by the Indian Solar Manufacturers Association (ISMA) on behalf of three Indian producers, namely (i) M/s Mundra Solar PV Limited, Adani House, Meetha Khali 6 Road, Navrangpura, Ahmedabad-380009, Gujarat; (ii) M/s Jupiter Solar Power Limited, Village Katha, Post Office Baddi, Teh. Nalagarh, Dist. Solan, Himachal Pradesh-173205; and (iii) M/s Jupiter International Limited, Village Katha, Post Office Baddi, Teh. Nalagarh, Dist. Solan, Himachal Pradesh-173205, seeking continued imposition of the existing safeguard duty (hereinafter also referred to as the “Duty”) against imports of “Solar Cells whether or not assembled in modules or panels” (hereinafter also referred to as the “product under consideration” or “PUC”) into India.



2. The existing safeguard duty on the product under consideration was imposed pursuant to the final findings issued by the Director General (Safeguards) under Rule 11(1) of the Rules, and published in the Gazette of India (Extraordinary) on 16th July 2018 recommending levy of safeguard duty @ 25% *ad valorem* during the 1st year, @ 20% *ad valorem* during the next 6 months and @15% *ad valorem* during the next 6 months on imports of “Solar Cells whether or not assembled in modules or panels” into India for protection of the domestic industry from the serious injury caused by the increased imports of the PUC. Based on the said final findings and in exercise of powers conferred by sub-section (1) of section 8B of the Customs Tariff Act, 1975(51 of 1975) read with Rules 12 and 14 of the Rules, the Central Government vide Notification No.01/2018 - Customs (SG) dated 30th July, 2018 imposed on “Solar Cells whether or not assembled in modules or panels”, falling under sub-heading number 8541.40.11 of the First Schedule to the said Customs Tariff Act, when imported into India, a safeguard duty at the rate of:

- (i) twenty-five per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 30th July, 2018 to 29th July, 2019 (both days inclusive);
- (ii) twenty per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 30th July, 2019 to 29th January, 2020 (both days inclusive); and
- (iii) fifteen per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 30th January, 2020 to 29th July, 2020 (both days inclusive).

3. Further, the said notification exempted levy of safeguard duty on imports of the PUC from notified developing countries other than China and Malaysia under Clause (a) of sub-section (6) of Section 8B of Customs Tariff Act 1975,

4. The Customs Tariff Heading 8541 4011- Solar cells, whether or not assembled in modules is split into the following two headings, vide Section 117(b) of the Finance Act 2020 (No.12 of 2020) read with entry No.2 of Schedule III thereof w.e.f. 01.02.2020:

8541 4011- Solar Cells, not assembled

8541 4012- Solar Cells assembled in modules or made up into panels

5. Vide customs notification No. 1/2020-Customs (SG) dated 2 February 2020, the two new tariff headings mentioned hereinabove were substituted in the place of single tariff heading in the earlier customs notification No. 1/2018-Customs (SG) dated 30 July 2018.

6. Thus, the existing safeguard duty is applied on “Solar Cells whether or not assembled in modules or panels” classifiable under the Tariff Headings 85414011 and/or 85414012 of Chapter 85 of Schedule I of the Customs Tariff Act 1975. The Customs tariff classification is, however, indicative only and is in no way binding on the scope of the product under consideration as mentioned in the final findings dated 16th July 2018.

7. On the basis of the written application referred to in paragraph 1 above and having satisfied itself, on the basis of the prima facie evidence submitted by the applicants regarding evidence of serious injury and that the domestic industry is adjusting positively, the Director General initiated a review investigation, in accordance with Section 8B of the Act, read with Rule 18 of the Rules, for examining the need for continued imposition of safeguard duty on the PUC vide Notice of Initiation (NOI) No. F.No.22/1/2020-DGTR dated 3rd March 2020.

8. In accordance with Rule 18 read with sub-rules (2) and (3) of Rule 6 of the said Rules, a copy of the NOI dated 03.03.2020 and a copy of a Non-confidential Version (NCV) of the application dated 15.01.2020 filed by the Domestic Industry were forwarded to the Central Government in the Ministry of Commerce & Industry, Ministry of Finance, Ministry of New and Renewable Energy, Ministry of Power, Ministry of MSME, Ministry of Consumer Affairs Food and Public Distribution and the Governments of major exporting countries through their Embassies in India, and the interested parties mentioned in the said application. Further, a questionnaire seeking information from the interested parties as prescribed under Rule 6(4) of the 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.

9. In response to the NOI and oral hearing, either a request to consider as interested parties or submissions were received from the following parties:

1.	M/s Indian Solar Manufacturers Association
2.	M/s Jupiter Solar Power Limited
3.	M/s Jupiter International Limited
4.	M/s Mundra Solar PV Limited
5.	Indonesian Embassy
6.	Government of Malaysia
7.	China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME)
8.	M/s ACME Solar Holdings Limited
9.	M/s Solar Power Developers Association
10.	M/s Canadian Solar Manufacturing (Thailand) Co., Ltd.,
11.	M/s All India Solar Industries Association
12.	M/s Shapoorji Pallonji Infrastructure Capital Company Pvt. Ltd.
13.	M/s Azure Power India Private Limited
14.	Council on Energy, Environment and water
15.	M/s REC Solar Pvt Ltd, Singapore
16.	M/s Vikram Solar Ltd
17.	Taipei Economic and Cultural Centre
18.	M/s Suzhou Talesun Solar Technologies Co., Ltd.
19.	M/s SB Energy Pvt. Ltd,
20.	M/s GRT Jewellers (India) Pvt. Ltd
21.	M/s Acme Cleantech Solutions Pvt. Ltd.
22.	M/s AMP Energy India Private Limited
23.	M/s Avaada Energy Private Limited.
24.	M/s Ayana Ananthpuramu Solar Private Ltd
25.	M/s Emmvee Photovoltaic Power Private Limited
26.	M/s Goldi Solar Private Ltd
27.	M/s TEPSOL Photovoltaic Power Ventures Pvt
28.	M/s North India Module Manufacturer Association (NIMMA)
29.	M/s Insolation Energy Pvt Ltd (On behalf of NIMMA)
30.	M/s Patanjali Renewable Energy Pvt Ltd
31.	M/s Renewsys India Pvt Ltd
32.	M/s Websol Energy System Ltd
33.	M/s Viraj Solar Maharashtra Pvt Ltd

10. The Authority hosted the list of interested parties on the DGTR's website.

11. To enable access of all non confidential version (NCV) submission by all interested parties, the Authority advised all interested parties exchange their NCV submissions with each other through email in view of the practical difficulties faced by them in accessing the public file due to Covid-19 crisis.

12. An oral hearing was held on 3rd July 2020. In terms of sub rule (6) of rule 6 of the Rules, all the interested parties who participated in the oral hearing were requested to file written submission of the views presented orally. Copy of written submissions filed by an interested party was made available to all the other interested parties as was advised in the oral hearing. Interested parties were also given an opportunity to file rejoinders, if any, to the written submissions of other interested parties.

13. The submissions made by all interested parties pursuant to the oral hearing or otherwise have been appropriately examined and addressed under the relevant paras. As many issues are repetitive, they have been collectively addressed at the relevant paras. Data submitted by the Domestic Industry has been verified through desk study to the extent considered necessary.

**(B) Submissions made by interested parties**

14. The submissions made by various interested parties are summarized below:

**i) Governments of exporting countries**

15. Governments of Indonesia, Malaysia and Taiwan made their views known to the DG(Safeguards).

16. In the written submission filed pursuant to the oral hearing, Indonesia contended that (a) increase of imports and unforeseen development also need to be looked into in a review (b) Indonesia was excluded from the application of safeguard measure in the original investigation as imports from Indonesia constituted less than 3% of total imports into India and should continue to be so under any subsequent review, and (c) current imports from Indonesia continues to be less than the de minimis level of 3% and accordingly no safeguard duty shall be imposed on imports from Indonesia.

17. In the written submissions filed pursuant to the public hearing, Government of Malaysia submitted that (a) the imports of product under consideration has drastically reduced post imposition of safeguard duty in July 2018 and Malaysia should be excluded as per Article 9 (1) of the Agreement on safeguard, and (b) as per Article 12(2) of the Agreement on safeguard, in the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided to the Committee on Safeguards. Malaysia also suggested to inform the interested party of the developments of domestic industry's adjustment plan after the imposition of safeguard measure.

18. Taiwan in its written submissions filed pursuant to the oral hearing raised the following issues:

- (i) Article 8 of the Agreement on safeguard gives right of suspension of substantially equivalent concessions or other obligations under GATT 1994 to exporting countries if duration of safeguard measures is more than 3 years.
- (ii) Information provided in the petition does not support the claim of the domestic industry regarding extension of safeguard measure for another 4 years period.
- (iii) Article 2.1 of the Agreement provides that for levy of safeguard measures, there should be an increase of imports, absolute or relative to domestic production. Total imports into India have decreased from 9,790 Mega Watts in 2017-18 to 8,754 Mega Watts in 2019-20 (A).
- (iv) Imports from Taiwan fell from 393 Mega Watts in 2017-18 to 24 Mega Watts in 2019-20. Taiwan's share in total imports is approximately 0.28% in 2019-20.
- (v) One of the constituents of domestic industry is situated in special economic zone. The Authority had clearly observed in the final findings of the original investigation that unit situated in special economic zone cannot be considered as part of domestic industry for the purpose of safeguard investigation. The standing of the applicants as domestic industry and claim of serious injury should be assessed based on the remaining two constituents of domestic industry only.
- (vi) Revised adjustment plan cannot be relied upon because domestic industry has not provided complete information regarding its fulfilment and compliance of adjustment plan submitted during original investigation. If safeguard duty imposition in the range of 25% to 15% has not allowed the domestic industry to implement its original adjustment plan, there is no certainty that the revised adjustment plan will be implemented when safeguard duty of less than 15% will be in force.
- (vii) The information provided in the petition of the domestic industry regarding market share, production, capacity, capacity utilisation, domestic sales etc. during the period of investigation shows substantial improvement. This indicates that domestic industry is not suffering any serious injury.

- (viii) According to the Union Budget of India for 2020-2021, we note that India has proposed to make the amendments in the first schedule to the Customs Tariff Act 1975, creating tariff item 8541.4011 for “Solar Cells, not assembled” and tariff item 8541.4012 for “Solar Cells assembled in modules or made up into panels” and that a tariff rate of 20% has been proposed to be effective from 2 February 2020. We concern that the tariffs on these products raised by India have surpassed India's zero bound commitment in the WTO.

**ii) Exporters or trade or business associations from exporting countries**

19. The following exporters and trade or business associations from the exporting countries filed submissions in this review:

- (i) REC Solar Pte Ltd ("REC Solar")
- (ii) Canadian Solar Manufacturing (Thailand) Co Ltd ("Canadian Solar")
- (iii) China Chamber of Commerce for Import and Export of Machinery and Electronic Products ("CCCME").

20. Submissions in response to the initiation notice and oral hearing made by REC Solar:

- (i) As per Rule 18 of the Rules, provisions of Rules 5, 6, 7 and 11 apply mutatis mutandis to a review investigation. Accordingly, review application submitted by an applicant is to be substantiated by sufficient evidence regarding increased imports, serious injury or threat of serious injury, causal link between increased imports and alleged serious injury or threat of serious injury and a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to import competition. The initiation of the investigation does not comply with the requirements of under Rule 5.
- (ii) If the DI had not filed the questionnaire response along with the DI petition, this implies that the application examined by the Hon'ble DG did not include the adjustment plan. Thus, if the application for initiation of this present review investigation did not include the revised adjustment plan, thus the Hon'ble DG has not followed the requirement under Rule 5 of the Indian SG Rules.
- (iii) The applicants do not meet the criteria for being considered as 'domestic industry' on account of two factors - (a) JIL is not a 'producer' of the PUC as it merely carries out repurposing/ incremental job work. (b) The DI, as identified, is not representative of the major proportion of the total domestic production – with or without the inclusion of JIL within the scope of DI.
- (iv) Alpha product is designed under a Design Patent issued by Singapore as well as by governments in other jurisdictions including Europe. A Design application made by them in India is pending. Because of the use of patented design, the product - (i) uses proprietary advanced technology, is of superior quality, space efficient, and more environmental friendly, (ii) commands a higher price in the Indian market and (iii) is neither identical nor alike in all respects to the articles manufactured in India. Alpha product shall be excluded from the scope of the PUC as it is patented and such exclusion will be in line with the decision of the Indian authority in the Anti-Dumping duty investigation concerning imports of *Cold Rolled Flat Products of Stainless Steel* from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA dated 24 November 2009 where certain patented grades of stainless steel were excluded.
- (v) Rule 2(e) provides for two scenarios in which a product can be declared as a “like article”. WTO panels and appellate body in multiple cases have resorted to the test of ‘likeness’ such as *Japan - Alcoholic Beverages* and *Canada – Periodicals*. The WTO Appellate Body endorsed the basic approach set out in the 1970 Report of the Working Party on Border Tax Adjustment. As observed by the DG (SGD) in the final findings of safeguard investigation against import of Hot Rolled Coils/sheet/strips dated 08 December 2009, likeness of the products shall be assessed by considering physical characteristics, end use, manufacturing process and price relationship.

- (vi) Base year to determine any increase or decrease in import volumes in the present review investigation should not overlap with the Original Investigation. However, this has not been followed in the present case where 2016-17 has been taken as the base year for all data analyses and projections.
- (vii) Only six months import data is available for the year 2019-20. Such import data cannot be 'annualized' to construct import volume for the year 2019-20 because such annualization will not be an evidence of actual imports as required under the relevant provisions and as interpreted by WTO DSB.
- (viii) It would be insufficient to make an affirmative determination of increased imports based on only a minor increase in imports. Though the volume of imports has increased slightly during the period of investigation, the increase is not sharp, sudden or significant enough to cause serious injury as interpreted by WTO DSB Appellate Body in WT/DS-121 Argentina-Footwear (EC).
- (ix) Data clearly highlights that if import figures of March 2020 are considered then the import of the PUC has actually declined from 2018-19 to 2019-20 by 1% instead of increasing as claimed by DI on the basis of annualised figures
- (x) The injury in a safeguard investigation cannot be determined on a same footing as in an anti-dumping or a countervailing duty investigation and that it must be analyzed on a higher standard. The term "serious injury" is also defined in Article 4.1(a) of the Agreement on Safeguards. The DI has made significant improvements during the POI. There is increase in production, sales, market share, productivity etc. The respondent claims that DI has been able to increase its capacity utilization as well as production but has nowhere indicated that the imports are causing serious injury to the DI with respect to the sales of PUC in domestic market
- (xi) Article 4.2(b) of the AoS expressly states that injury caused to the DI by factors other than increased imports "shall not be attributed to increased imports". Any decline in domestic prices is attributable to the falling prices of PUC globally and not the imports of PUC into India. DI's performance, if any, is not attributable to increased imports. Some of the 'factors which demonstrate a break in the causal link between increased imports and alleged serious injury and threat thereof are demand-supply gap, inherent deficiency in Indian Solar Manufacturing Industry, insufficiency in showing increase in imports and absence of serious injury.
- (xii) The capacity utilization of the DI has increased from 44% in 2016-17 to 75% during 2019-20(A) which is an equivalent increase by 70%. Similarly, domestic production of the DI has increased from 100 indexed-MW points in 2016-17 to 171 indexed-MW points during 2019-20(A) which is an equivalent increase by 71%. The domestic sales by the DI have increased in volume from 100 indexed-MW in 2016-17 to 166 indexed-MW in 2019-20(A). It is incorrect to say that the domestic share has gone down considerably during the POI.
- (xiii) Market share of DI shows a sharp increase in the most recent period. It must be noted that the market share of the DI has increased from 60 Indexed-% points in 2018-19 to 124 Indexed-% points in 2019-20(A) which is an equivalent increase by 64% in a year whereas the market share of imports has actually seen a decline by 3 Indexed-% points during the same period.
- (xiv) DI should not include MSPL in calculating price undercutting. The undercutting provided in the petition is not accurate and should be re-calculated. The DA should direct the DI to refile revised data at the earliest for purpose of reasonable analysis in the present investigation.
- (xv) Price undercutting is calculated based on average prices charged by domestic producers including MSPL i.e. the SEZ unit. In the price undercutting calculations, SEZ units shall not be included. The price undercutting for solar cells has decreased from 55-65% range in 2016-17 to 0-10% range during the POI. Similarly, the price undercutting for solar module has decreased from 35-45% range in 2017-18 to 5-15% range during the POI.

- (xvi) Some of the 'factors which demonstrate a break in the causal link between increased imports and alleged serious injury and threat thereof are enlisted as follows
- a. Demand Supply gap
  - b. Inherent deficiency in Indian solar manufacturing industry
  - c. Insufficiency in showing increased imports
  - d. Absence of alleged serious injury
- (xvii) Rule 18 of the Indian SG Rules requires the DI to adjust positively before the Hon'ble DA can make a recommendation for continued imposition of the SG duty. DI is enjoying duty protection since July 2018 and has yet not made the requisite efforts to adjust positively in accordance with the adjustment plan. DI has not provided information on usage of PERC technology or Bi-facial technology projects, which was another step they intended to undertake while enjoying the duty protection. DI has not produced documentary evidence regarding positive adjustment. Further, the revised adjustment plan provided with the questionnaire response is vague and excessively confidential DI should have at least provided a non-confidential summary of the comparison between the adjustment plan provided during the original safeguard investigation and as provided in the present review investigation.
- (xviii) The DI has not adduced any evidence as to how continued imposition of safeguard duty on the PUC will not affect the consumers/ user industry and the user industry/consumer in India heavily relies on imports of PUC from other countries.
- (xix) Imposition of safeguard duty is not in public interest. Given the increasing demand of the PUC globally as well as in India, it is very likely that the user industry may not be able to procure the PUC from the DI in line with its requirements. In such circumstances, the user industry would have no other option but to import the PUC from overseas. As their projects cannot be closed due to the unavailability of the PUC in domestic market, such continuous imposition of duty would make imports financially unviable. This would be severely prejudicial to the interest of the user industry in India.
- (xx) continued imposition of duty will create trade barriers for imports which would lead to formation of monopoly by the DI. And it will result in damage to the downstream industries which collectively are large employers in the country. They have tremendous scope for further generating employment if this duty is removed. A concept note was issued by the Ministry of New and Renewable Energy, Government of India, dated 15 December 2017 wherein it stated the following: "The present maximum solar cell manufacturing capacity per year is only around 3 GW against an average requirement of 20 GW i.e. 15%. Balance capacities have to be procured from international market." Any increase in imports of PUC in India is attributable to the lack of domestic supply. The Indian solar manufacturers have been using obsolete technology and are highly insufficient to meet the domestic demand.
- (xxi) However, the Indian manufacturers lack an integrated production chain. This has resulted in inherent deficiencies rendering them uncompetitive against global companies.
- (xxii) DI has proposed to liberalize the duty at the meagre rate of 0.05% in a year which in itself shows that it is not willing to positively adjust. Given the oddity of the reduction such meagre liberalization is unheard of in any safeguard investigation. Even in the Final Findings of the Original Investigation the Hon'ble Authority has recommended 5% reductions in three stages.
- (xxiii) Indian Government's proposal to raise the Basic Customs Duty ('BCD') on the imports of the PUC by 20%.<sup>48</sup> This will be 5% higher than the current levy of 15% safeguard duty and thus is over and above the 14.95% duty that the DI has requested in review. In sum with the increase in BCD the DI is no longer in need of a safeguard duty to protect its interests. safeguard levy in addition to the increase in BCD will result in an irreversible negative impact on the overall user industry which is already facing supply shortages.
- (xxiv) During 2019-20, 94% of imports of PUC into India came from three countries - China PR -

75%, Thailand -10.2% and Vietnam -9.4%. DI has also argued that not only import of the PUC is coming into India in significant quantities from China PR, Thailand and Vietnam, the import price from Vietnam and Thailand has also decreased consistently throughout the POI. Where the DI is suffering from unfair trade practice, such as low-priced imports, the remedy lies under the anti-dumping provisions and not the safeguard provisions.

21. Submissions in response to the initiation notice and in its written submissions and oral hearing made by Canadian Solar:

- (i) Volume of Imports from Thailand are inflated in the petition. Imports from Thailand are not above 3% if import quantity as per the methodology determined by the domestic industry is taken into account for assessing volume of total imports and volume of imports from Thailand. They were less than three percent in the year 2016-17 and the year 2017-18 i.e. in the first two years of the period of investigation. No rule which provides that the Authority should rely on the last 18 months period in the period of investigation.
- (ii) Rule 18(1)(i) does not provide for imposition of safeguard duty afresh on countries that were not originally subject to safeguard duty. Accordingly, developing countries excluded from the scope of safeguard duty pursuant to the original investigation cannot be included pursuant to a review.
- (iii) Safeguard duty should normally not be extended in a review unless there are extraordinary circumstances requiring such as an extension.
- (iv) Safeguard duty should normally not be extended in a review unless there are extraordinary circumstances requiring such an extension. Extension of safeguard duty for another period will also result in suspension of substantially equivalent level of concessions and other obligations existing under GATT 1994 between India and exporting WTO member countries in accordance with Article 8 of the Agreement on Safeguards.
- (v) In the original investigation the Authority relied on the binding tariff concession of 0% basic customs duty on imports of the PUC pursuant to the IT Agreement ("ITA-I"). Tariff rate under HS code 8541 4011 and 8541 4012 has already been increased to 20% vide the Finance Act, 2020 with effect from 1st February 2020. The Government of India is now expected to announce its decision to impose this increase in customs duty rate on import of solar cells and modules. It should be clearly specified whether ITA-I restricts India's freedom of action and prevents it from raising customs duties on import of solar cells and modules. It is inconsistent with Article XIX of GATT to impose both safeguard duty and customs duty on the imports of PUC. In any case, to ensure that India does not communicate conflicting stance to WTO, both safeguard duty and customs duty should not be imposed. Authority should consider that if basic customs duty of 20% is imposed as contemplated under the First Schedule of Customs Tariff Act, domestic industry will get sufficient protection and there is no need for additional safeguard duty of 15%.
- (vi) Solar Cells and Solar Modules have different physical characteristics, different usage, different pricing and different production process and they should be treated separately for the purpose of determining standing of the domestic industry in the present safeguard review. Authority must assess whether production of each of the subject goods by the petitioners constitute a major proportion of the total Indian production as has been done by the authority in the antidumping investigations concerning (a) *Front Axle Beam and Steering Knuckles from China PR* and (b) *Penicillin – G and 6APA from China and Mexico*.
- (vii) Standing of solar cells and solar modules should be assessed separately. To increase their utility of solar cells, a number of individual PV cells are interconnected together in a sealed, weatherproof package called a module. There are several standalone producers of solar modules who are not producers of solar cells. Production of these module producers cannot be excluded from total domestic production. Total Indian production of both solar cells and solar modules should be taken into account to determine whether the share of domestic industry in total production constitute major proportion or not. If it is done so, it would clearly establish that the domestic industry does not have sufficient standing for

solar modules because the share of the petitioners in total module production in India is very less and would not amount to major proportion share .

- (viii) Trade Notice SG/TN/1/97 dated 6th September 1997 provides the format of application and the data to be provided in the application. However, petitioner companies have claimed complete confidentiality with regard to several economic parameters, which is relevant for assessment of serious injury and have not complied with the requirements of Annexure I of Trade Notice No. 10/2018 dated 7th September 2018 issued by the DGTR that provides guidelines for disclosure of information in confidential and non-confidential version of the petition. The domestic industry has also not shown any good cause for such excessive confidentiality in contravention of the Trade Notice. The claims of confidentiality by the petitioner over Appendix 10 of the petition shall be disallowed.
- (ix) In terms of Article 7.2 of the WTO Safeguards Agreement , Article 2.1 of the Agreement and Rule 18 of the Rules safeguard measures can be imposed or extended only if there is 'increase in imports' of the subject product. Only six months import data is available. Such import data cannot be 'annualized' to construct import volume for the year 2019-20 because such annualization will not be an evidence of actual imports as required under Article 2.1 of the WTO Safeguard Agreement, Section 8B(1) of the Customs Tariff Act, and the Rule 11 of the Safeguard Rules. WTO Panel in *India- Certain Measures on Imports of Iron and Steel Products* noted that objective data for the full financial year is required for assessment of trend in comparison with previous two years.
- (x) In the Safeguard review of PX-13 OR 6PPD (Rubber Chemicals) into India and the Safeguard review of Phenol into India under, the DG safeguards examined whether there is increase in imports or not into India. Thus, there is no doubt that the requirement of increase in imports is applicable in safeguard review as well.
- (xi) In the present safeguard review, the DI should show that there is continued increase in imports in the subsequent years after 2017-18 i.e. 2018-2019 and the year 2019-2020. However, the import data shows that there is no increase in imports in this period. Increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough to cause or threaten to cause 'serious injury'.
- (xii) The increase in imports should not be viewed in comparison with the base year of 2016-17. As per the data shown in the petition, there is decline in imports in recent period if 2017-18 is considered as the base year.
- (xiii) imports from China PR have not increased during the period of application of safeguard duty during last two years despite gradual reduction of safeguard duty from 25% to 15%. Thus, the apprehension that if safeguard duty is further reduced to 0% after 29th July 2020, it will result in increase in imports from China PR is unfounded.
- (xiv) The petitioner companies cannot be treated as domestic industry in terms of Article 4.1(c) of the AoS and Section 8B(6)(b) of the Act, as their collective output does not constitute a major proportion of the total domestic production.
- (xv) Further, the Petition does not disclose the following:
- (a) total production of the petitioner companies of cells and modules;
  - (b) total Indian production of cells and modules;
  - (c) Percentage share of petitioner companies in total Indian production in cells and modules;
  - (d) Percentage share of two petitioner companies having manufacturing units in DTA in total production of cells and modules (after excluding production of SEZ Units).
- (xvi) Domestic industry has not disclosed total Indian production and aggregate figure of its total production during the POI. The total Indian production cannot be confidential because the information does not pertain to the domestic industry specifically. In absence of disclosure of this information, no effective rejoinder submission can be made by the



other interested parties in response to the claim that the domestic industry had more than 30% share in total Indian production during the entire POI. If the petitioner companies are unwilling to disclose the information, Authority is requested to disregard such information in terms of Rule 7(3) of the Safeguard Rules.

- (xvii) Authority should verify whether the capacity of two petitioner companies located in DTA would constitute a 55-60% share in total Indian production during April 2019 to September 2019 as their combined capacity is only 390 MW.
- (xviii) Jupiter International Ltd. was not the petitioner company in the original investigation. The petition does not provide information regarding (i) reason for non-inclusion of Jupiter International Ltd. in the original investigation (ii) the reason for inclusion of Jupiter International Ltd in the present review investigation. (iii) Standalone capacity, production and sales of Jupiter International Ltd. during the period of investigation (iv) Date of commencement of production of subject goods by Jupiter International Ltd.
- (xix) Petitioners located in SEZ units should not be considered as part of domestic industry as their primary goal is to cater to the export market. The final findings dated 27 September 2012 of the DG Safeguards in the Electrical Insulators case, where WSI Industries (located in SEZ), was excluded from the scope of the domestic industry. SEZ unit cannot be included within the scope of the domestic industry as stated in the Manual of Operating Practices for antidumping cases issued by DGTR.
- (xx) If Mundra Solar PV Limited is excluded from the scope of the domestic industry, the non-injurious price of the domestic industry would reduce substantially.
- (xxi) The domestic industry is not adjusting positively. Indosolar Ltd. has become non-operational and is undergoing insolvency proceedings and ten more companies have also become non-operational during this period. The safeguard duty is not permitting the domestic industry to adjust positively and therefore there is no need for extension of safeguard duty.
- (xxii) Revised adjustment plan not provided in the petition but in the questionnaire response of each petitioner company and is treated as confidential. The petitioner companies have also not provided non-confidential summary of the same.
- (xxiii) Rule 17 of the Safeguard Rules provide for progressive liberalization of duty at regular intervals. Requirement of liberalization of safeguard duty at regular intervals is not a symbolic requirement and cannot be met by merely reducing safeguard duty by 0.05% at the end of each year. Request for such low liberalization of duty evidences that the safeguard duty is not required to be continued because it will not be useful to facilitate adjustment.
- (xxiv) Rule 18 of the Safeguard Rules requires that safeguard duty can be extended to prevent or remedy serious injury. The petitioner companies are not suffering serious injury or threat of serious injury. In terms of the decision of the Appellate Body in WT/DS 178- US – Lamb existence of serious injury or threat of serious injury cannot be easily assumed. The Authority should satisfy itself based on the evaluation of economic parameters of the domestic industry that the injury suffered by the domestic industry is ‘serious’ in nature.
- (xxv) Domestic producers who are experiencing decline in market share are not included as domestic industry in the application. Market share of petitioner companies has increased during the period of investigation. Market share of other Indian producers of subject goods has reduced substantially. Objective assessment of material injury cannot be made without examining performance of the other Indian producers who are experiencing decline in market share.
- (xxvi) From the data, it is evident that the capacity, sales and production of the domestic industry has significantly improved in the POI. It is clear that the domestic industry has faced no injury in terms of employees and productivity per day. Both parameters have witnessed a healthy increase. Therefore the domestic industry has not suffered injury at all, leave alone

injury in the nature of 'overall impairment' which can be categorized as serious injury.

- (xxvii) Price undercutting should be determined after adding safeguard duty. In any case price undercutting trend shows that there is no correlation between price undercutting by imports and the profit/loss experienced by the domestic industry. In 2016-17, the domestic industry was making profits. In the year 2017-18, price undercutting reduced by 41 indexed points from the base year, however, the domestic industry started incurring losses. In the year 2018-19, price undercutting was at the lowest for both cells and modules, however, the losses incurred by the domestic industry was the highest.
- (xxviii) The market share of domestic industry has increased by approximately 50% during the period of investigation. The market share of imports has remained stable and has only increased by 2% during the period of investigation.
- (xxix) The domestic industry's reliance on Article 9.1 of the Agreement on Safeguards to contend that developing countries can be included within the scope of a levy pursuant to a review is incorrect since if exclusion of imports from developing countries were required to be reviewed periodically, Agreement on Safeguard would have provided review mechanism for such purpose. If developing countries are included within the ambit of the levy after two years of safeguard duty, an inconsistent practice would be created which would result in unpredictability.
- (xxx) The Phenol safeguard investigation does not support the contention of the Domestic industry as in the first review proceedings initiated on the said product, the SGD was not extended to other developing countries which were not included within the scope of the original levy. A third review investigation was conducted after the first review was over in order to assess whether the import of Phenol from other countries had increased.
- (xxxi) The domestic industry has wrongly equated imposition of safeguard duty with the survival of domestic industry. Other module producers in India namely (i) Patanjali Renewable Energy Private Limited and (ii) Goldi Solar Private Limited have specifically objected to the continuation of safeguard duty on import of solar cells. They have stated that the indigenous cell manufacturing is hardly 3 GW, which constitutes only 25% of the requirement of module manufacturers. Both companies have protested against extension of safeguard duties on imports of solar cells, since manufacturing of solar modules is dependent on imports. If claim of DI that reduction in imports is in public interest in general is accepted, then it would mean that safeguard duty should be imposed on all imports into India for which there is a domestic producer in India. The requirement of public interest is to be examined in the context of the PUC and not generally in relation to imports into India.
- (xxxii) Continuation of SGD will result in its imposition for a total period of six years. India has not imposed safeguard duty for a continuous period of six years on any product in last 25 years.

22. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s CCCME:

- (i) Authority has considered only two companies namely Jupiter International Limited and Jupiter Solar Power Limited for the scope of the domestic industry and excluded Mundra Solar PV Limited (SEZ). However, no clarification has been provided with regard to activities of JIL and JSPL. JSPL, being only a job-worker manufacturing subject goods as per orders of JIL, cannot be considered as part of DI. This is a new development which had been hidden by the petitioners till the time of oral hearing.
- (ii) Request of petitioners to reconsider SEZ unit as part of DI is incorrect as Section 53 of SEZ Act 2005 provides that a special economic zone is deemed to be a territory outside the customs territory of India for the purpose of authorized operations. Further, Section 30(a) of the SEZ Act provides that any goods removed from SEZ to the DTA shall be chargeable to duties of customs including safeguard duties where applicable on such goods when imported which is a condition also applicable to EOUs. The petitioners located in SEZs and EOUs cannot be considered as domestic industry as they are at a separate commercial

position on account of the various incentives and benefits that accrue to them. Hence, SEZ units are not impacted by the conditions of competition in the domestic industry and accordingly, there is no reason for including SEZ units into the Domestic industry.

- (iii) Certain products which the Indian Domestic Industry has no or insufficient capability to produce, i.e. thin film products, mono-crystalline solar products and solar cells, should be excluded from the scope of subject goods.
- (iv) Solar cells are raw materials for modules. Several other materials and additional production processes are needed to manufacture modules from solar cells. Therefore, they are different products, which are needed by different types of clients. Considering these facts, solar modules should be excluded from scope of PUC.
- (v) The revised adjustment plans submitted in the questionnaire response by M/s Jupiter Solar Power Limited and M/s Jupiter International Limited, are insufficient and inappropriate. In Safeguard investigation concerning imports of Phthalic Anhydride (PAN), PX-13 OR 6PPD (Rubber Chemicals), Cold Rolled Flat Products of Stainless Steel of 400 Series, Not Alloyed Ingots of Unwrought Aluminium into India, Flexible Slabstock Polyol (FSP), the DG refused to impose SGD when the DI failed to produce documentary and corroboratory proof regarding adjustment plan. The petitioner only claimed reduction of costs but did not provide any evidence about the steps they have undertaken to adjust and whether there is relationship between the steps they have undertaken and the reduction of cost. Even in the questionnaire response, the description of their adjustment is quite abstract.
- (vi) In the revised adjustment plan provided by DI, the cost of manufacturing has shown a downward trend. This has been fueled by the reducing prices of main raw material, namely silicon wafers internationally. Reduction in cost of production, due to reduction in raw material prices globally cannot be attributed to positive implementation of Adjustment Plan.
- (vii) Claim that adjustment plan is not necessary for the levy of safeguard duty is incorrect as Rule 5(2)(b) of the Customs Tariff which is mutatis mutandis applicable to safeguard reviews requires adjustment plan to be submitted.
- (viii) A safeguard measure may be adopted only if there is evidence of increased imports causing serious injury and such increase must have occurred as a consequence of unforeseen developments as per Article XIX:1(a) of GATT and as confirmed by the Appellate Body on Argentina -Footwear (EC). The Questionnaire Format for prospective applicants requires them to provide evidence regarding existence of unforeseen developments which has not been provided by the applicant. Reliance has been placed upon *US- Lamb* and Final Findings issued in case of *Hot Rolled Flat products of Stainless Steel of 304 grade into India from China PR (F.No. D-22011/06/2012)* wherein it was held that SGD could not be imposed on the absence of unforeseen developments.
- (ix) The reason for increase in imports from China PR is not any unforeseen development but the GOI's vision to promote renewable sources of energy, which results in an increase in the demand for solar cells and modules. The demand-supply gap will have to be filled by imports from China PR and other countries in the absence of adequate domestic supply. The DI only argued that levy of measures is unforeseen but ignored that causal relationship between such developments and increase in imports is also necessary. The Indian market is a free and demand-oriented market, so increase in imports is caused by increase in demand instead of levy of trade remedy measures by other countries. Excess capacities cannot be seen as unforeseen developments within the meaning of Article XIX of GATT. In line with India's commitments for reduction of CO2 emissions by 33-35% from 2005 levels, India targets achieving 100 GW of solar generation by 2022 and this cannot be considered as unforeseen either. Commitments under certain international agreement may be unforeseen, but the fact that certain international agreement may be signed and may cause influence and change to relevant market is indeed foreseen.

- (x) Purpose for which the petitioner requests a continuation of the duty is not to remedy the injury but to obtain unjustified trade protection through illegal means to maintain its monopoly or dominant position in the market. The domestic industry does not have enough capacity to meet Indian demand. Imports have to be made to meet the demand supply-gap. Negative effect of imposition of SGD will include: (1) trade relationship between India and other countries; (2) the various downstream industries and consumers in India; (3) the healthy development of the Solar Cell Industry, and will also adversely affect the Rural Electrification projects initiated by the Current Government on large scale. In the Final Findings on Methyl Acetoacetate, the DG safeguard did not recommend imposition of SGD as the Domestic Industry was not able to demonstrate that the imposition of SGD on said product was in public interest.
- (xi) Initially, the petitioner had filed an application for ADD in 2012 wherein DA recommended duty on the imports of Solar Cell. However, no ADD was levied pursuant to such recommendations since domestic solar capacity was insufficient to meet the government's ambitious targets for power generation from green energy sources. Later, in 2017, Petitioners again sought ADD but the investigation was later terminated on request of petitioners due to "unreasonable and unjustifiable grounds" put forward by the petitioners.
- (xii) The demand of huge costs associated with manufacturing cells is a great challenge to the Domestic Industry. According to one manufacturer, a 100 MW cell manufacturing facility calls for an investment of ₹800 million (\$10.53 million), excluding land and infrastructure costs. However, a 100 MW cell facility would not have the same economies of scale to compete with imported cell prices, especially Chinese cells. An optimum capacity of 500 MW is what would be profitable, for which investment about ₹4 billion (\$52.63 million) is required. Even if domestic manufacturers do decide to invest, there is no guarantee of demand as government policies change too often without much notice. When the DI's manufacturing capacity is insufficient to even fulfil demand of locally manufactured products required for projects under DCR category, it is vague/absurd to curb or impose duty on imports which will affect the entire industry.
- (xiii) No surge in imports of subject goods has been experienced in the recent past, either in absolute or relative term. However, the reason for the increase of imports in India from 2016 to POI is not the sudden surge of imports, but the growth of the Indian market demands following the development of downstream industry.
- (xiv) The sales of domestic industry are showing positive trend with significant growth. The market share of domestic Industry has increased drastically during the POI as compared to the base year 2016-17. Capacity remains unchanged during the injury period and period of investigation. However, production has increased sharply during 2019-10. The cost of sale has decreased. The profitability of the domestic industry has improved. Accordingly, capacity utilization has also increased during the POI when compared to the base year. Thus, there is no injury to the domestic industry from the imports from subject countries.
- (xv) Rule 5(2)(b) of the Rules states that the application shall be supported by a statement of efforts being taken or planned or both to make adjustment to import competition. Since current investigation was initiated on March 2020, hence the proposed adjustment plan for 2019-20 becomes infructuous. In essence, the DI wants a blanket extension of safeguard duty for four years but has no plans to improve its competitiveness post 2022.

**iii) Importers, Domestic Producers and trade/business associations in India**

23. The following importers and trade or business associations from India have filed submissions in this review:

- (i) Solar Power Developers Association ("SPDA")
- (ii) Shapoorji Pallonji Infrastructure Capital Co. Ltd ("Shapoorji")
- (iii) Vikram Solar Limited ("Vikram")
- (iv) Patanjali Renewable Energy Pvt Ltd ("Patanjali")

- (v) Goldi Solar Private Limited ("Goldi")
- (vi) RenewSys India Private Limited ("Renewsys")
- (vii) Websol Energy System Ltd. ("Websol")

24. SPDA has reiterated the submissions made by Canadian Solar Thailand during the course of the investigation and the same have not been stated again to avoid repetition. Only those arguments which have specifically been raised by SPDA and do not find mention in the submissions of Canadian Solar have been reproduced below:

- (i) MNRE had issued Order dated 02.01.2019 regarding Approved List of Models & Manufacturers (ALMM) for Solar PV cells & modules, providing for enlistment of models and manufacturers of solar PV cells and modules, complying with the BIS Standards in ALMM List-I (for solar PV modules) & ALMM List-II (for solar PV Cells). The list is scheduled to be published on 30<sup>th</sup> September 2020. Therefore, the DG is requested to examine whether the petitioner companies have adjusted positively to attain quality to ensure reliability and consistency and qualify to be included in this list.
- (ii) Imports from China PR have not increased during the period of application of safeguard duty despite gradual reduction of safeguard duty from 25% to 15%. Thus, the apprehension that reduction of safeguard duty to 0% after 29th July 2020, would result in increase in imports from China PR is unfounded.
- (iii) Furthermore, EU withdrew the antidumping and countervailing duties on solar cells and modules against China with effect from 3rd September 2018 and this has led to increase in exports from China to EU and India's share in China PR exports have declined proportionately from 29.6% to 7.3%. Thus, there is no requirement for China to increase its exports to India if safeguard duty is withdrawn.
- (iv) Indosolar Ltd. and ten other domestic producers of the PUC have become non-operational or are undergoing insolvency proceedings. Therefore, Domestic Industry is not adjusting positively so as to warrant extension.
- (v) Relying on decline in import price of the PUC into India during the 4 year POI is simplistic and misleading.
- (vi) The domestic industry cannot reasonably claim that all countries including developed countries such as EU countries, Taiwan, Singapore and other smaller developing countries such as Thailand, Vietnam, Malaysia, Indonesia, etc. are exporting PUC to India at cheap and unfair prices and are undercutting the price of domestic industry even though domestic industry has taken sufficient steps towards positive adjustment in last two years.

25. Submissions in response to the initiation notice and in its written submissions and oral hearing made by Shapoorji :

- (i) Review Applicants has failed to establish that the pre-conditions specified in Rule 18(2) have been satisfied so as to warrant continued imposition of Safeguard duty beyond the two-year period (from July 2018 to July 2020)
- (ii) The current review investigation should not be undertaken as a Writ Petition, filed by the Company, challenging the validity of the previous imposition of Safeguard duty on PUC is sub-judice before the Hon'ble Madras High Court.
- (iii) Review Applicants do not qualify as a 'domestic industry' in terms of Section 8B read with Rule 18 Safeguard Duty Rules and should not be permitted to file the review application for the continuation of the imposition of Safeguard duty on PUC. Review Applicants have a very small portion of the domestic installed capacity which disqualifies them from being considered as a DI and they cannot be permitted to file the review application
- (iv) There has not been any increase in the import of PUC. Assessment of whether there has been any increase in the imports or not should be done by analysing the import volumes during the years in which Safeguard duty is imposed viz 2018-19 and 2019-20 with the year immediately prior to the imposition of Safeguard duty viz. 2017-18 which would be

the last year considered in the Final Findings dated 16.07.2018. Comparing the import volumes with any year before such a year (2017-18) would imply that the Agreement, CTA or the Safeguard Rules envisage imposition of Safeguard duty till import becomes lower than the imports in the first year of the period under investigation of the original investigation – which is not the case. An assessment in imports in absolute terms and in relative terms (to the domestic sales) indicates that the same have not increased.

- (v) Any assessment of whether the DI is adjusting positively should necessarily take into account, the impact of Safeguard duty not just on solar cells but also on solar modules / panels which form part of the PUC and imports of which have been subject to Safeguard duty.
- (vi) There is no evidence to show that the DI is adjusting well to the imposition of Safeguard duty. In terms of the adjustment plan, the DI had provided future performance for the next 3 years as under:
- i. long term procurement of raw material, rate and volume discounts if better cash flow is achieved.
  - ii. higher utilisation of capacity leading to better conversion cost;
  - iii. better apportionment of semi-fixed and fixed costs;
  - iv. better credit ratings would lower the cost of borrowing and better servicing of debt;
  - v. efforts towards backward integration and developing an entire eco-system;
  - vi. technology development and R&D.
- (vii) Review Applicants have merely shown that they have achieved costs reduction (of raw material, conversion costs, fixed costs). Apart from this, the Review Applicants have not given any data or made any claim to show that the DI has achieved the other performances (in the adjustment plant) or have taken appropriate steps to fulfil the same. DI cannot claim that it is adjusting positively to the imposition of Safeguard duty without providing information / data to show that appropriate steps have been taken to fulfil the aforesaid adjustment plan. In absence of such information / data, the claim of the Review Applicants is false and cannot be accepted.
- (viii) Essential economic figures of the DI and other domestic manufacturers of PUC are ambiguous and vague which has made appropriately responding to the Review Application difficult. It renders response an empty formality and is against the principles of natural justice. Economic data for the period prior to the imposition of Safeguard duty on PUC viz. period prior to 30<sup>th</sup> July 2018 has been wrongly taken into account in the Review Application. Aggregate Data should have been provided instead of indexed data.
- (ix) DI is not facing any serious injury which would warrant continued imposition of Safeguard duty. There has not been an absolute increase in imports. Even on relative terms, when the volume of imports are compared with the domestic sales it is seen that volume change in both import and domestic sales is based on the demand / consumption. Both volume and domestic sales dipped when there was a dip in consumption, however, in 2019-20 when consumption and demand was higher, domestic sales recuperated with a growth in sales of 101% than imports which saw only a 9.2 percent increment. After the imposition of Safeguard duty in 2018, market shares of domestic sales is on a rise with about 40.9% increase in market share from 2017-18 to 2019-20 for the DI, compared with only a 0.99 % increase in the market share for the same period for the imports. Domestic sales (in MW) clearly show that while there was dip in 2018-20 (due to reduction in consumption) the same sales level shot up again in 2019-20 with increment of 130.5 % from the previous year 2018-19. Therefore, imports do not seem to have an impact on the domestic sales which is on an upward trend. Except in the year 2018 -19 when the consumption /demand was low, production quantity and capacity utilisation has incrementally increased to cater to such a demand. This shows that imports have not had a negative impact on such indicators.

- (x) The fact that installed capacity has not been increased is not due to the imports, but for various other economic factors which puts the DI at a disadvantage.
- (xi) Profits and Losses figures show that in 2019-20 the domestic producers have drastically recuperated (upto an extent of 91.1 %) from the losses faced during the year 2018-19. This clearly shows that the imports do not adversely affect the domestic industry
- (xii) Data in relation to the certain other relevant economic factors such as inventory, numbers of employees and productivity per employee have also been compared. Reduction / Stagnation in the employee number is due to the fact that manufacturing of solar cells has over the years become automated due to technological advancement. High productivity per employee in the year 2019-20 is indicative of the positive growth of the domestic industry which have not suffered serious injury due to the imports.
- (xiii) Methodology for price undercutting (which is alleged to be the main source of injury) has not been provided (d) The combined installed capacity for Jupiter International and Jupiter Solar Power Ltd has been provided without providing individual installed capacities for each of the companies
- (xiv) The Review Applicants have determined a year wise non-injurious price (and basis that price underselling) point without so much as providing any methodology / basis for the same and that provided figures in indexed form – making the data in relation to the same vague, ambiguous and incomprehensible making it impossible for the Company to rebut the claim of the Review Applicant.
- (xv) Domestic producers have managed to substantially reduce the cost of the solar cells – and at the same time have been able to improve their overall financial health including reduce their losses. In such a scenario, where the domestic industry is financially improving at a time when the Review Applicant's are alleging price undercutting shows that lower landed value of imports while undoubtedly giving competition to the domestic producers do not cause serious injury to them. In any event, lower landed value of the imports is only one criteria which is adverse to the domestic industry and the same cannot be the sole basis for claiming serious injury.
- (xvi) Any injury, if at all, are due to economic which have nothing to do with import of the PUC which would persist even if Safeguard duty is continued to be imposed.
- (xvii) The imposition of Safeguard duty would do little to remove the underlying reasons for the DI being at a competitive disadvantage, and problems pertaining to demand and visibility would persist. While imposition of Safeguard duty would reduce the unit costs for Indian manufacturers and improve cash flows, effect of such a benefit would only be temporary. Some of the key factors which are responsible for the competitive disadvantage of the DI – clearly showing that injury, if at all, is caused due to such factors (and not due to surge in imports) have been provided herein under
- a. Higher cost of finance:
  - b. Higher electricity prices
  - c. Lower economies of scale
  - d. Lack of vertical integration
  - e. Lack of increase in installed capacity
  - f. Under-utilisation of DI: In furtherance
  - g. PUC manufactured by the DI are not as bankable as the imported PUC
- (xviii) Continued imposition of Safeguard duty would hamper Public Interest. In this regard, the following may be taken into account:
- i. It would lead to further erosion of imports of PUC (which forms an essential part of solar power projects), thereby making it impossible for India to achieve its Paris Convention target of installing 100GW of solar energy capacity.

- ii. Due to imposition of Safeguard duty, the cost of module increased, in turn, leading to increase in project cost and electricity tariff costs. This eventually led to delays in awarded projects and cancellation of tenders, especially as developers have expressed doubts about the viability of tariff caps recommended by the Ministry of New and Renewable Energy (“MNRE”).
  - iii. Increase in tariff led to cancellation of nearly 5 GW of awarded project capacity, which was a setback to the Government’s goal of installing 100 GW of solar power capacity.
  - iv. Project deployment viz. solar power projects is more labour intensive and provides for around 3.45 (utility) and 24.72 (rooftop) direct full-time equivalent jobs per MW. Cancellation / Delays in solar power projects led to curtailing of huge employment potential.
  - v. Problems relating to recovery of additional Safeguard duty cost and cancellations of projects which led to uncertainty and hurt investor sentiment.
  - vi. Imposition of Safeguard duty on imports would be in violation of Article 51(c) of the Constitution of India which requires a state to endeavour to foster respect for international law and treaty obligation.
  - vii. Imposition of Safeguard duty has adversely impacted standalone module manufacturers which have faced an increase in raw material cost as they are largely dependent on imported solar cells.
  - viii. Solar power developers instead of procuring domestically manufactured solar module manufactured out of domestically produced solar cells, structured their transaction in manner so as to procure the maximum amount of modules made from imported solar cells (which were cheaper and better in quality) when the Safeguard duty rate was at its lowest. The intended effect of Safeguard duty to improve the competitiveness of the domestic producers of solar cells was limited.
  - ix. Chinese Government in 2018 decided to replace the system of providing subsidies and brought in a system of competitive bidding for the solar projects as a result of which the growth of solar projects would be limited in China. This has impacted the domestic solar cell manufacturers in China leading to a collapse in prices which have huge built out capacity largely dependent on the Chinese demand. Such prices are also reflected in the imports and are unlikely to reduce any further even if Safeguard duty is continued to be imposed – especially as it would be imposed only at a lower rate (than what was earlier imposed).
  - x. This factor coupled with the factor that Safeguard duty has had a negative impact on the growth of the solar industry in general due to project cancellations / delays, increase in tariffs etc. would further dis-incentivize investment in the DI – consequently leading to an effect completely opposite of what was initially intended.
- (xix) DI has no intentions / ability to adjust positively is clear as they have proposed liberalisation of merely 0.05% at the end of each year, thereby enabling them to take maximum protection of the Safeguard duty for the a long duration of time.
- (xx) If the allegation of the DI is that dumping results in the injury to the DI and they should take recourse to a separate anti-dumping investigation. Having not done so, the DI cannot allege this as a ground under a Safeguard investigation.

26. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s Vikram :

- (i) DG (Safeguards) should clarify that under the provisions of Section 30 of the SEZ Act read with Section 8B (6) of the Customs Tariff Act, 1975, any safeguard duty imposed on solar cells whether or not assembled in modules or panels would not be payable on clearance of solar cells and/or modules from SEZ units to DTA.



- (ii) If clearance from SEZ units to DTA is subject to levy of safeguard duty, SEZ units will be at a disadvantage vis-a-vis DTA units and the SEZ units will die an unnatural death and thousands of people will have to lose their jobs.
- (iii) This will also adversely affect the country's ability to produce indigenously manufactured cells and modules as the entire investment made by PV cell and module manufactures including that of VSL, which operates out of SEZ, will become redundant.
- (iv) Imposition of safeguard duty without settling interpretation issue between the provisions of Section 30 SEZ Act 2005 and Section 8B(6) of Customer Tariff Act or otherwise without exempting units set up in the SEZs would be counterproductive and defeat the very purpose of its imposition. Any imposition of safeguard duty without exempting units set up in the SEZs from safeguard duty will cause irreparable harm to SEZ units and thus will not accord the adequate safeguard protection to the domestic industry as a whole.

27. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s Patanjali :

- (i) The Government should extend the imposition of safeguard duty for another 3-4 year but only on import of modules and not on cells.
- (ii) The Indigenous Cell manufacturing is hardly 3 GW (25% of Indigenous Module Manufacturing) so most module manufacturers have to import Chinese Cells after paying safeguard duty and this increases the cost of indigenous modules are costlier than the Chinese modules.
- (iii) Till India have extra cell manufacturing capacity to cater requirements of the module manufacturers, SGD should be discontinued on cells, so that the cost indigenous module could be reduced.

28. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s Goldi :

- (i) The Government should extend the imposition of safeguard duty for another 3-4 year but only on import of modules and not on cells.
- (ii) Indian manufacturers are keen to substantially expand their manufacturing capacities with further investment into Cell Production. However, due to lower cell production capacity and high demand, maximum module manufacturers have to import the cells and needs to pay SGD and this could be increasing the cost of Indigenous Modules.
- (iii) Till India have sufficient capacity to cater domestic requirements of the module manufacturers, SGD should be discontinued on cells import, so that the cost of indigenous modules could be reduced.

29. Submissions in response to the initiation notice and in its written submissions and oral hearing made by M/s RenewSys and Websol:

- (i) There is no prohibition in law for SEZ units to be considered as domestic producers of an article for the purpose of constituting Domestic Industry within the meaning of Section 8B(6)(b) of the Customs Tariff act, 1975.
- (ii) SEZ clearances to the DTA do not attract customs duties, since India has reduced its customs duties to 'nil' for the PUC pursuant to being a signatory to ITA:1. DTA clearances for the PUC by the producers based in the SEZ do not attract any customs duties. SEZ units are under an obligation to maintain positive Net Foreign Exchange (NFE). Since sale of the subject goods into the DTA are considered for the purpose of computing positive NFE, SEZ Units do not have any impediment in continuing to sell the same in the DTA and no compulsion to export either for the purpose of maintaining positive NFE.
- (iii) There is no embargo and in fact there is a specific provision which facilitates the sales in DTA by such SEZ units. Such DTA sales by the SEZ units compete in the domestic market with other manufacturers of the subject goods based out in the DTA. Therefore, these SEZ units are also domestic producers of the subject goods. The SEZ Units have