

THE RELEVANCE OF ANTIDUMPING/SAFEGUARD DUTY IN THE CONTEXT OF LINEAR ALKYL BENZENE (A LIQUID PETROCHEMICAL) MARKETING IN INDIA

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Abstract: In India petrochemicals sector is still in nascent stage when compared to other countries. This sector has lot of potential and lot of growth is possible. RIL is the private sector and biggest in this field. IOCL, a PSU, is considerably new entrant came in 2004 with Linear Alkyl Benzene(LAB) product, a liquid chemicals for marketing and also has a significant presence in the petrochemicals.TPL and NIRMA are other private players. As this sector is still in nascent stage government has to take initiative to protect this sector and hence antidumping plays a vital role for this sector. Dumping, is a pricing practice where a firm charges a lower price for exporting goods than it does for the same goods sold domestically. It is said to be the most common form of price discrimination in international trade. Dumping can only occur at places where imperfect competition exists and where the markets are segmented in a way such that domestic residents cannot easily purchase goods intended for export. Antidumping duties were initiated with the intention of nullifying the effect of the market distortions created due to unfair trade practices adopted by aggressive exports. They are meant to be remedial and not punitive in nature. In the light of above, this paper studies the necessity of antidumping/ safeguard duty of LAB in India.

Keywords: Antidumping Duty, Safeguard duty, LAB, Petrochemical Sector

INTRODUCTION

Although dumping does benefit the consumers of the importing country in the short run, it is harmful to the domestic producers as their products are unable to compete with the artificially low prices imposed by the imported goods. As a method of protection to the domestic industries, anti dumping duties are thus levied on the exporting country which has been accused of dumping goods in another country. As the antidumping duty is only meant to provide protection to the domestic firms in the initial stages, as per the international laws, the antidumping legislations may last for a maximum period of five years.

The major economies of the world trading system adopted different approaches to liberalise trade during 1985-2009 .Multilateral negotiations resulted in the initiation and completion of one round (Uruguay Round, 1986–94) which transformed the GATT to the WTO, and WTO members subsequently initiated further liberalisation negotiations in 2001 under the (still ongoing) Doha Round. India responded to its balance of payments crisis of 1991–92 by reducing its applied tariffs through a unilateral liberalisation. While WTO economies pursued different liberalisation routes to reduce and sustain lower applied tariffs

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over these 25 years, a second theme common to this period is that many increasingly adopted 'contingent' or 'administered' import protection under policies such as antidumping, safeguards and countervailing duties.

Dumping refers to selling a product in an export market at less than its "normal value," a benchmark that is most commonly based on sales in the domestic market of the same product. Antidumping laws set tariffs to offset the amount of dumping, the excess of normal value over export price.

Assessment of an antidumping duty requires both a determination of "material" injury to the domestic industry by imports and a finding that the imports in question have been sold below "normal" value in the domestic market.

The WTO defines dumping, in general, as a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country. Dumping is defined in the Agreement on Implementation of Article VI of the GATT 1994 (The Anti-Dumping Agreement) as the introduction of a product into the commerce of another country at less than its normal value. In addition to substantive rules governing the determination of dumping, injury, and causal link, the Agreement sets forth detailed procedural rules for the initiation and conduct of investigations, the imposition of measures, and the duration and review of measures.

Since 2005-06, there is a growing concern regarding imports of Linear Alkyl Benzene into India alleging that increased imports of Linear Alkyl Benzene is causing and/or threatening to cause serious injury to the domestic producers of Linear Alkyl Benzene in India.

Domestic Producers

- (i) M/s. Reliance Industries Ltd., Mumbai,
- (ii) M/s Tamilnadu Petroproducts Ltd., Chennai,
- (iii) M/s Nirma Ltd., Ahmedabad
- (iv) M/s Indian Oil Corporation Ltd., New Delhi

Major Exporter Countries

- (i) Iran Chemicals Industries Investment Companies, Iran .
- (ii) Gulf Farabi Petrochemical Co., Saudi Arabia
- (iii) Seef Limited, Qatar

VIEWS OF DOMESTIC PRODUCERS OF INDIA

The product is defined as "All Linear Alkyl Benzene, Mixed Alkyl Benzene falling under the tariff description of Customs Heading 3817 00 11. The above product is generally known as 'Linear Alkyl Benzene' (for short "LAB") in commercial market parlance. The subject goods

are used for manufacture of Linear Alkyl Benzene Sulfonic Acid or the Sodium Salt of Linear Alkyl Benzene Sulfonic Acid. All Linear Alkyl Benzene and the subject goods have been classified under chapter heading 38.17 of the Customs Tariff Act, 1975.

Rule 2(c) elaborates the concept of “increased quantity” so as to mean increase in imports whether in absolute terms or relative to domestic production. The imports have increased not only in absolute terms but also in relation to the production and demand. Imports which were a meagre 9854MT in the year 2004-05 rose four and a half times in the year 2007-08. Further, the quantities increased by 62% in the latest period of April 2008 – March 2009 increasing the problems of the Domestic Industry. An examination of the trend of imports would clearly indicate that the imports have shown an exponential increase with the quantities doubling every year with the exception of 2005-06. Imports have further gone up in the first quarter of 2009-2010 (April-June) to 17783MT from 11545MT during the corresponding period of the previous financial year i.e., an increase of a whopping 54%. A comparison of the imports between the first half of 2008-09 (25001MT) and the second half (48629MT) also clearly establishes that the situation with regard to imports has worsened in the latter half of the year inasmuch as the increase is 94%.

As regards the quantum of imports in relation to production, the imports which were a meagre 2.66% of the total production by the Domestic Industry increased to 6.36% in 2006-07, then to 13.46% in 2007-08 and subsequently to 25.70% in the year 2008-09.

Thus, the data establishes beyond any doubt that there is a tremendous surge in imports of the subject goods in absolute terms, rate of increase as well as in relation to the total production of the Domestic Industry. It is pertinent to note that the phenomenal increase in the year 2008-09 has taken place despite the fact that there was global slowdown in the second half of the last financial year.

The Domestic Industry submitted that they have suffered serious injury on account of the sudden and huge increase in imports. The total sales of the Domestic Industry was to the tune of 211155MT in the year 2004-05 which has been consistently falling despite an increase in total demand. The most significant fall has been witnessed in the year 2008-09 to 168744MT from a level of 184212MT in the preceding year.

Imports have increased from 3.82% in 2004-05 to 21.18% in 2008-09 thus, taking away as much as 17.36% of the Domestic Industry’s market. The percentage of share taken away by imports will still be higher if the sales of only the applicant Domestic Industry are taken into account. A great majority of LAB imports coming to India are from Qatar, Iran and Saudi Arabia. Roughly 70% of the combined capacities of LAB in these countries and other Middle East countries are earmarked for exports. The geographical proximity of these countries combined with the strong LAB downstream sector in India, provides a huge attraction for these countries to direct their exports to India.

The production of the Domestic Industry has also come down drastically from a level of 338010 MT in the year 2007-08 to 286549 MT in 2008-09, clearly indicating that the Domestic Industry has suffered on account of fall in production. The capacity utilization of

the Domestic Industry has suffered significantly during the year 2008-09. The Domestic Industry had a very healthy capacity utilization of 113% and 109% in the years 2004-05 and 2005-06 which has fallen to a meagre 76% in 2008-09.

It is important to note that in the LAB industry, it is critical for the plants to operate at high levels of capacity utilization in order to reduce its average fixed cost per unit. Any fall in capacity utilization directly affects their profitability and the long-term viability. In the facts of the instant case also, it is clear that the Domestic Industry has suffered on account of the surge in imports which has led to lower levels of capacity utilization and the resultant fall in profitability of the Domestic Industry.

Due to the increased imports and consequent lower levels of capacity utilization, the Domestic Industry has suffered enormously on the profitability front. From a positive profit level of *** (indexed at 100), the Domestic Industry has now been reduced to a situation of losses in the year 2006-07 and 2007-08. The Domestic Industry has made a negligible profit in the year 2008-09, therefore, the indexed number shows as zero.

The average net sales realization of the domestic industry has increased over the injury investigation period. However, this increase in the average net sales realization of the domestic industry is partly resulted input cost which has not been recognised by Govt. of India.

Methodology and Source of Information

Import data has been captured from DGCIS up to Financial Year 2006-07 and IBIS for the subsequent period. The other economic parameters relating to all manufacturers of India have been sourced from the industries.

Product under Investigation

The product under investigation is "All Linear Alkyl Benzene, Mixed Alkyl Benzene. It falls under sub-heading No. 38170011 of Schedule I of the Customs Tariff Act 1975, sub-heading No. 38170011 of ITC and sub-heading No. 38170011 of HSN. The subject matter of investigation is only Mixed Alkyl Benzenes and Linear Alkyl Benzenes. The above product is generally known as 'Linear Alkyl Benzene' (for short "LAB") in commercial market parlance.

The domestic industries use Kerosene, (Extracted - C10-C13 Paraffins) and Benzene as raw materials for the production of Linear Alkyl Benzene. C10-C13 Paraffins are extracted from the Hydrobon Molex Process, from Feedstock Kerosene. These Paraffins are converted to their Olefins, by selective dehydrogenation, at high temperature. The C10-C13 Olefins are then alkylated to Benzene, to form Linear Alkyl Benzene. The linear alkylbenzenes produced from C10C13 linear olefins are useful detergent intermediates and can be readily sulfonated to yield linear alkylbenzene sulfonates. These compounds constitute the "active" ingredients of household detergents. They are surface active compounds (surfactants) which are combined with various builders (often inorganic salts) to make up a detergent. In short, LAB is used as an important input by the detergent industries.

Domestic Industry

The shares of these companies are as mentioned below:

Table 1

	2004-05	2005-06	2006-07	2007-08
Company	Share	Share	Share	Share
Indian Oil	11%	24%	26%	28%
Nirma	26%	21%	19%	19%
Reliance	41%	38%	36%	36%
TPL	22%	17%	19%	17%
Total	100%	100%	100%	100%

Period of Investigation: 2005-06 to 2008-09

Examination of facts: The table below shows the import statistics relating to LAB.

Table 2

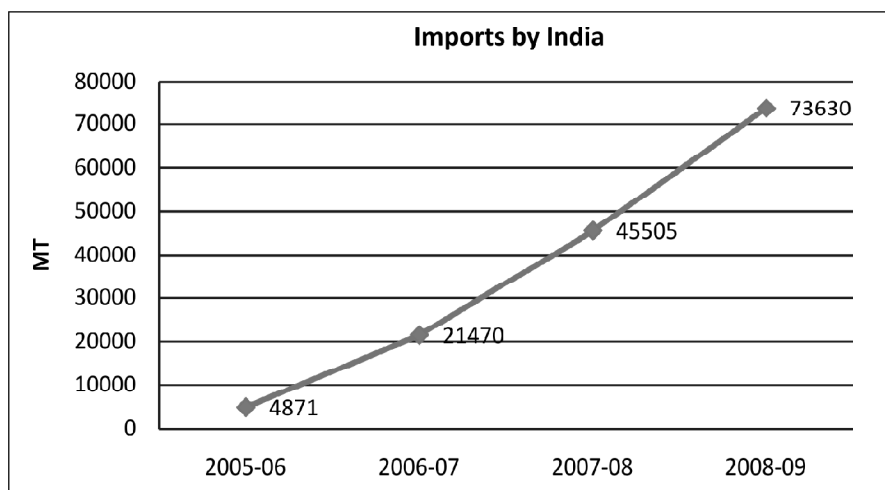
Year	2005-06	2006-07	2007-08	2008-09
Imports (MT)	4871	21470	45505	73630
Market Share of Imports (%)	1.73 %	7.22 %	13.91%	21.16%

The total import of LAB in 2008-09 has been 73,630 MT showing increase of 28,125 MT over previous year of Import of 45,505 MT in absolute terms and 61.8% in percentage term. Except in 2005-06, there has been continuous increase in import.

The share of imports in the total market size also increased to 21.16% from 1.73% in 2005-06, 7.22% in 2006-07 and 13.91% in 2007-08.

The graph 1 below shows the nature of trend of imports.

Graph 1



Conditions under which Imports are Taking Place

The table below gives value of imports in terms of Rs/MT. The table below shows the relevant statistics.

Table 3

<i>Year</i>	<i>CIF value of Imports/ MT</i>
(Unit)	Rs
2005-06	47504
2006-07	53523
2007-08	55981
2008-09	70132

The CIF value increased by 25.28% in 2008-09 and by 4.6% in 2007-08. There is a consistent increasing trend in CIF value of imports over the years. Therefore, the imports are at increased prices. However, in public domain the additional credit notes which are being issued by exporters to their agents in India are not reflected anywhere. The same can be captured if the final transaction can be traced thru' banking channel.

Serious Injury and Causes Thereof

Statutory Framework

“Serious injury” means as an injury causing overall impairment in the position of a domestic industry;¹

The Article 4.2(a) of the Agreement on Safeguard and Annexure to Rule 8 of the Custom Tariff (Identification and Assessment of Safeguard duty) Rules, 1997 technically requires that certain listed factors as well as other relevant factors must be evaluated to determine serious injury or threat of serious injury.

Examination of Factors

Rate of increase of imports: The table below gives the information about rate of increase of imports over their previous years. It is seen that the imports increased at the rate of 61.80% in 2008-09 against 111.95% of increase in 2007-08 and 340.77% of increase in 2006-07 (compared to their previous years). The Graph 1 above shows that the increase in imports is gradual and steady since 2006-07.

Table 4

<i>Year</i>	<i>2005-06</i>	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>
Imports	4871	21470	45505	73630
Rate of Increase of Imports (Over the Previous Year) %	-	340.77%	111.95%	61.80%

Share of the domestic market taken by increased imports: The table below gives relevant statistics relating to Share of Total Indian LAB industry in the Indian domestic market.

Table 5

Year	2005-06	2006-07	2007-08	2008-09
Market Size (MT)	280859	297394	327116	347959
Market Share of Indian Producers (%)	98.27	92.78	86.09	78.84

The share of the All Indian industries in the domestic market was 98.27% in 2005-06, which has gone down to 78.84% in 2008-09. It can be construed that market share in 2008-09 was badly affected by sharp increase in import from 45.5KY(2007-08) to 73.6KT(2008-09).

In 2008-09 the unutilized capacity was 81,022 MT and the imports were to the tune of 73,630 MT. It is also seen that the exports by India fell by 31,452MT during 2008-09 compared to 2007-08. The loss of market share can not be significantly attributable to factors other than imports because we have to see the export realization in the global level.

Change in level of domestic sales: The table below gives relevant statistics relating to cumulative domestic sales of the ‘domestic industry’ as well as of the All Indian producers (including IOC).

Table 6

Year	2005-06	2006-07	2007-08	2008-09
Sales by ‘Domestic Industry’ (MT)	188942	185503	184212	169014
Cumulative Sales by All Indian Producers Including IOC (MT)	275988	275924	281611	274329

The sales of ‘domestic industry’ have shown a downward trend since 2005-06 to 2008-09.

The sales of all Indian producers including IOC went down by 7282 MT in 2008-09 compared to 2007-08, which constitutes 2.58%. The sales figures of past four years indicate that the cumulative sales of all Indian industries were moving in band of (+/-)1.3% of average 276963 MT.

Production: The table below gives relevant statistics relating to cumulative domestic production of ‘domestic industry’ and of all Indian Producers including IOC.

Table 7

Year	2005-06	2006-07	2007-08	2008-09
Production by ‘domestic industry’ (MT)	356554	337808	338010	286549
Cumulative Production by All Indian Producers Including IOC (MT)	467985	459082	470331	416316

The total production of 'domestic industry' fell by 51461MT in 2008-09 compared to the year 2007-08.

In order to analyse the inter unit dynamics of Indian LAB manufacturers and overall scenario of all domestic producers taken together, the production figures of all Indian domestic producers have also been analysed. The analysis of total production by all domestic producers (including IOC) shows that there has been improvement in production in 2007-08 by 2.45% compared to 2006-07. However, the total production fell by 54015 MT (11.48%) in 2008-09 compared to 2007-08. The total exports fell by 31452 MT in 2008-09² compared to 2007-08. This does imply that the production fell by 31452 MT on account of fall in exports. The fall in production on account of reduction in export is 58.23% of the total fall in production in India. However, as per industry assessment, the export level had gone down due to non-viability of export in global market. Thus, fall in production was thrust upon domestic producers by the extra import at lower price which could not compete with importers price. Hence, domestic producers had to cut down their production to the extent of import which penetrated in domestic market.

The annual maintenance contributed to the extent of production capacity of around 5000 MT which is very less compared to the fall of production of 31452MT. Therefore, closure of the unit is not very significant factor, which contributed to fall in production.

Capacity Utilization: The table below gives relevant statistics relating to capacity utilization of the domestic industry.

Table 8

Year	2005-06	2006-07	2007-08	2008-09
Installed Capacity of 'domestic industry' (MT)	328500	328500	377338	377338
Installed Capacity of all Indian Producers including IOC (MT)	448500	448500	497338	497338

Table 9

Year	2005-06	2006-07	2007-08	2008-09
Capacity Utilization of 'Domestic Industry' (%)	108.54	102.83	89.58	75.94
Capacity Utilization of all Indian Producers Including IOC (%)	104.34	102.36	94.57	83.71

The capacity utilization of "domestic industry" has shown continuous declining trend since 2005-06 to 2008-09. It is seen that there is a fall in capacity utilization in 2007-08 compared to 2006-07, despite improvement in production during the same period. The fall in capacity utilization in 2007-08 is partly on account of increase in installed capacity of domestic industry by 48838 MT but more so it got affected by the import influx which grown at a steady pace.

Similarly, the analysis of capacity utilization of all domestic producers (including IOC) also shows that the decline in capacity utilization in 2007-08 compared to 2006-07 which is partly on account of increase in installed capacity and more impacted by uninhibited import influx.

Profits and Losses: The table below gives relevant statistics relating to profit and losses of the domestic industry relating to business of LAB

Table 10

<i>Year</i>	<i>Profit/MT</i>	<i>Profit (PBT)</i>
(Unit)	Indexed	Indexed
2005-06	100	100
2006-07	- 25.05	- 24.5
2007-08	- 40.73	- 39.71
2008-09	+ 0.47	+0.42

The domestic industries suffered losses during 2006-07 and 2007-08. The loss in 2006-07 was there in spite of more than 100% capacity utilization because industry had to reduce the realization to compete with imported offers in the market. Hence, the increased import can be construed as a reason of loss. The imports increased during 2007-08 and 2008-09 with maximum imports in 2008-09. However, the profitability improved by 41.20 points in 2008-09 at the cost of less capacity utilisation.

Hence, the trend of profitability does coincide indirectly with the trends of import.

Other Factors

Price Analysis: The table below gives domestic prices of LAB. There has been continuous improvement in domestic prices since 2005-06. The price of LAB increased by 35% in 2008-09 compared to 2007-08 against 2% increase in price of LAB in 2007-08 compared to 2006-07. However, input cost need to be considered while considering price trend.

Table 11

<i>Year</i>	<i>Actual selling Price/MT</i>
(Unit)	Rs
2005-06	62059
2006-07	63418
2007-08	64767
2008-09	87552

Exports: The table below gives information on exports by all Indian producers as well as by domestic industries.

Table 12
Analysis of Export Figures

Year	2005-06	2006-07	2007-08	2008-09
Exports by 'Domestic Industry' (MT)	101852.32	107064.12	96855.47	82614.46
Exports by all Indian Producers including IOC (MT)	122313.32	138368.12	135473.47	104021.46

Table 13
Export Vs Imports

Year	Total Quantity of Exports by All Indian Producers (including IOC)	Imports by India	Net Exports by India
(Unit)	(MT)	(MT)	(MT)
2005-06	122313.3	4871	117442.3
2006-07	138368.1	21470	116898.1
2007-08	135473.5	45505	89968.47
2008-09	104021.5	73630	30391.46

India has always been a net exporter of LAB. However, the exports from India are on the decline since 2006-07. The export from India fell by 23.22% in 2008-09 against 2% fall in 2007-08 compared to the preceding years as the export realization went down making export unviable. To accommodate additional quantity of import at lower price, domestic producers forced to lower production³ and lower capacity utilization.

Inter unit dynamics amongst producers of India: The table below gives the percentage share of individual LAB producers of India.

Table 14

	2004-05	2005-06	2006-07	2007-08
Company	Share	Share	Share	Share
Indian Oil	11%	24%	26%	28%
Nirma	26%	21%	19%	19%
Reliance	41%	38%	36%	36%
TPL	22%	17%	19%	17%
Total	100%	100%	100%	100%

The IOC had a mere 11% of production capacity of India, but from 2005-06 the production share is rising consistently. The Share of IOC in total domestic production reached 28% and 31% in 2007-08 and 2008-09, respectively. This rise is at the cost of other LAB producers, who constitute 'domestic industry'. This means part of the share of the 'domestic industry' has been taken by IOC.

CONCLUSION AND RECOMMENDATION

Based on the analysis, it can be concluded that the significant increased trend of LAB import has badly impacted the overall India domestic market in terms of profitability and capacity utilization resulting in underutilization of resources. Therefore, there is a causal link as required under law which shows serious injury. Hence, safeguard duty on imports of LAB should be imposed to protect domestic market. As the input cost of LAB is low in Gulf region, Indian producer can not compete with the imported product. Govt. of India should assess the actual transaction cost of import which is not captured in public domain as there is a hidden element of additional discount being offered in the imported LAB which is not taken into account while comparing the price with domestic producers. More so, stand alone production unit like TPL, NIRMA can not compete with imported LAB as their input cost works to be much higher compared to IOC or RIL. More import may force organization like TPL and NIRMA to close down their unit resulting in huge loss of productivity. Like some developed countries, at least some duties that implement trade remedies—including antidumping duties—are special duties that should be distinguished from ordinary customs duties. Accordingly, AD/safeguard duties as special duties should not be subject to the requirement to deduct import duties (normal customs duties) from Indian prices in calculating dumping margins. World Trade Organization (WTO) rules allow governments to impose AD/safeguard duties beyond most favored-nation tariffs when an administering agency determines that foreign firms “dump” products (i.e. exported below cost or below home price) in the domestic market and that dumping causes “material injury” to the domestic industry.

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