

MINISTRY OF COMMERCE AND INDUSTRY**(Department of Commerce)****(DIRECTORATE GENERAL OF TRADE REMEDIES)****NOTIFICATION**

New Delhi, the 11th December, 2020

(Final Findings)**Sub. : Final Finding in Countervailing Duty/Anti-subsidy investigation concerning imports of Textured Tempered Glass whether Coated or Uncoated from Malaysia.****A. BACKGROUND OF THE CASE**

F. No. 6/13/2019–DGTR.—Having regard to the Customs Tariff Act, 1975, as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, as amended from time to time thereof:

1. Whereas, M/s Gujarat Borosil Limited (hereinafter also referred to as the Petitioner or Applicant) has filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules as amended from time to time (hereinafter also referred to as the Rules) for imposition of Countervailing on imports of "Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission having thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated" (hereinafter also referred to as the subject goods or PUC) from Malaysia (hereinafter also referred to as the subject country).
2. And, whereas, the Authority, on the basis of sufficient evidence submitted by the Petitioners, issued a public notice vide Notification No. 6/13/2019 - DGTR dated 12th September, 2019, published in the Gazette of India, initiating the subject investigation in accordance with Rule 6 to determine existence, degree and effect of the alleged subsidy and to recommend the amount of anti-subsidy/countervailing duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
 - a) The Authority notified the Embassy of the subject country in India about the receipt of the present anti-subsidy application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 6 supra.
 - b) The Authority invited the Government of Malaysia for consultation with the aim of clarifying the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement on subsidies and countervailing measures. The consultation was held on 29th August, 2019 in New Delhi, which was attended by the representatives of the Government of Malaysia.
 - c) The Authority issued a public notice dated 12th September, 2019 published in the Gazette of India Extraordinary, initiating countervailing duty/anti-subsidy investigation concerning imports of the subject goods.
 - d) The Authority sent a copy of the initiation notification dated 12th September, 2019 to the Embassy of subject country, known producers/exporters from subject country, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the Petitioner and requested them to make their views known in writing within the prescribed time limit.
 - e) The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassies of subject countries in India in accordance with Rule 7(3) of the Rules supra.

- f) The Embassy of subject country in India was also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.
- g) The Authority sent questionnaires to the Government of the subject country in order to seek relevant facts/information with regard to various schemes/programs where countervailable benefit might have been conferred by the Government. Government of Malaysia filed a questionnaire response, which has also been taken into account.
- h) The Authority sent questionnaires to the following known producers/exporters in subject country, in accordance with Rule 7(4) of the Rules:
 - i. M/s Xinyi Solar (Malaysia) SDN BHD.
 - ii. GAR Lightglass SDN BHD.
- i) In response, the following exporters/producers from the subject countries filed exporter's questionnaire response in the prescribed format:
 - i. M/s Xinyi Solar (Malaysia) SDN BHD.
- j) Pursuant to the initiation notification, apart from the above producers/ exporters from the subject country, Government of Malaysia has also filed the questionnaire response.
- k) The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 7(4) of the Rules:
 - i. M/s Waaree Energies Limited
 - ii. M/s Alpex Exports Pvt Ltd
 - iii. M/s Vikram Solar Pvt Ltd
 - iv. M/s Surana Solar Limited
 - v. M/s Topsun Energy Limited
 - vi. M/s Tata Power Solar Systems Limited
 - vii. M/s Emmvee Photovoltaic Power Pvt Ltd
 - viii. M/s Navitas Green Solutions Pvt Ltd
 - ix. M/s Sova Power Limited (Godown)
- l) In response, the following importers/users have responded and filed importer's questionnaire response.
 - i. M/s. Waree Energies Ltd.
 - ii. M/s. Patanjali Renewable Energy Pvt. Ltd.
 - iii. M/s. Isolation Energy Pvtl. Ltd.
 - iv. M/s. Goldi Solar Pvt. Ltd.
- m) Apart from the respondent exporters and importers mentioned above, some legal submissions have been received on behalf of the following parties during the course of this investigation.
 - (i) Government of Malaysia
 - (ii) All India Solar Industries Association
- n) The Authority made available non-confidential version of the evidence presented/ submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties.
- o) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has, relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions.

- p) The Non-Injurious Price (NIP) based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Countervailing duty Rules has been worked out so as to ascertain whether Countervailing duty lower than the subsidy margin would be sufficient to remove injury to the Domestic Industry.
- q) Physical inspection through on-spot verification of the information provided by the applicant domestic industry, to the extent deemed necessary, was carried out by the Authority. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of present disclosure statement.
- r) Verification of the information provided by the producers/exporters and Government of Malaysia to the extent deemed necessary, was carried out by the Authority and such verified information has been relied upon for the purpose of present disclosure statement.
- s) The Period of Investigation for the purpose of the present anti-subsidy investigation is from April, 2018 to March, 2019 (12 Months). The injury investigation period has however, been considered as the period 2015-16, 2016-17, 2017-18 and the POI.
- t) The Authority held an oral hearing on 26.02.2020 to provide an opportunity to the interested parties to present relevant information orally in accordance with Rule 7 (6). The Authority held 2nd oral hearing also on 24.07.2020 due to change in Designated Authority as per the judgment of the Hon'ble Supreme Court in the matter of Automotive Tyre Manufacturers' Association (ATMA) vs. Designated Authority, in Civil Appeal No. 949 of 2006 on 07-01-2011. The interested parties who presented their views orally at the time of oral hearing were asked to file written submissions of the views expressed orally. The interested parties were provided opportunity to offer rejoinder submissions to the views expressed by other interested parties. The submissions made therein have been duly considered and addressed appropriately.
- u) The arguments made in the written submissions/rejoinders received from the interested parties have been considered in the present disclosure statement.
- v) The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this disclosure statement.
- w) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- x) Further information was sought from the applicants and other interested parties to the extent deemed necessary.
- y) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the disclosure statement on the basis of the facts available.
- z) A Disclosure Statement was issued to interested parties on 25th November, 2020 containing essential facts under consideration of the Designated Authority, giving time up to 30th November, 2020 to furnish comments, if any, on the Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately in the present final findings.
- aa) The exchange rate adopted by the Authority for the subject investigation is 1 USD = ₹70.85
- bb) In the final findings, *** represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. At the stage of initiation, the product under consideration was defined as:

"Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission having thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated".

C.1. Submissions made by the Domestic Industry

5. The submissions made by the domestic industry with regard to product under consideration and like article and considered relevant by the Authority are as follows:
 - a) The product under consideration in the present application is "Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission having thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated" (hereinafter referred to as the "subject goods" or the "Product under Consideration"). The minimum level of transmission required in the subject good can be achieved by keeping the iron content low, typically less than 200 ppm. The transmission level goes up by about 2%-3% when coated with an anti-reflective coating liquid. The glass whether coated or uncoated is tempered / toughened in a tempering furnace, as it is essential for solar applications. The product in the market parlance is also known by various names such as Solar Glass, Low Iron Solar Glass, High Transmission Photovoltaic Glass, Tempered Low Iron Patterned Solar Glass etc.
 - b) The subject good is used as a component in Solar Photovoltaic Panels and Solar Thermal applications. The glass of thickness 3.2 mm and 4 mm is generally used in Solar 4 Photovoltaic Panels and Solar Thermal applications as per the current trend. The subject goods are classified under chapter heading 70071900. However, it has been claimed by the petitioner that the subject goods are also being imported under various other tariff headings like 70031990, 70051010, 70051090, 70052190, 70052990, 70053090, 70071900 etc.
 - c) As per the usual practice of the Authority, it is clarified that the HS codes are only indicative and the product description shall prevail in all circumstances.

C.2. Submissions made by the other interested parties

6. None of the interested parties filed any comments regarding Product under Consideration.

C.3. Examination by the Authority

7. The Authority has noted submissions made by various interested parties with regard to scope of the product under consideration and like article offered by the domestic industry. With respect to the product under consideration, the Authority notes as follows:
 - a) The product under consideration in the present investigation is "Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission having thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated" (hereinafter referred to as the "subject goods" or the "Product under Consideration"). The minimum level of transmission required in the subject good can be achieved by keeping the iron content low, typically less than 200 ppm. The transmission level goes up by about 2%-3% when coated with an anti-reflective coating liquid. The glass whether coated or uncoated is tempered / toughened in a tempering furnace, as it is essential for solar applications. The product in the market parlance is also known by various names such as Solar Glass, Low Iron Solar Glass, High Transmission Photovoltaic Glass, Tempered Low Iron Patterned Solar Glass etc.
 - b) The subject good is used as a component in Solar Photovoltaic Panels and Solar Thermal applications. The glass of thickness 3.2 mm and 4 mm is generally used in Solar 4 Photovoltaic Panels and Solar Thermal applications as per the current trend. The subject goods are classified under chapter heading 70071900. However, it has been claimed by the petitioner that the subject goods are also being imported under various other tariff headings like 70031990, 70051010, 70051090, 70052190, 70052990, 70053090, 70071900 etc. It is clarified that the HS codes are only indicative and the product description shall prevail in all circumstances.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1. Submissions made by the Domestic Industry

8. The submissions made by the domestic industry during the course of the investigation with regard to scope of domestic industry & standing are as follows:
 - a) The applicant is the only producer of the subject goods in India.

- b) The applicant has neither imported the subject goods nor is related to any of the importer or exporter.

D.2. Submissions of other interested parties

- 9. None of the interested parties filed any submission with regard to the scope and standing of the domestic industry.

D.3. Examination by the Authority

- 10. Rule 2(b) of the Rules provides as follows:

“domestic industry means the domestic producers as a whole of the like article or domestic producers whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidized article, or are themselves importers thereof, in which case such producers shall be deemed not to form part of domestic industry”.

- 11. The application has been filed by M/s Gujarat Borosil Limited, as domestic industry of the product under consideration. The Authority notes that the applicant is the sole producer of the subject goods in India.
- 12. The Authority further notes that the applicant has neither imported the subject goods nor is related to any importer or exporter of the subject goods. The Authority holds that the applicant constitutes a major proportion of the production of the subject goods in India. Accordingly, for the purpose of this investigation, the applicant satisfies the standing requirement and constitutes the domestic industry in terms of Rule 2(b) and Rule 6(3) of the Rules.

E. ISSUES RELATING TO CONFIDENTIALITY

E.1. Submissions by domestic industry

- 13. The following submissions have been made by the domestic industry with regard to confidentiality issues:
 - a) The applicant has followed the requirements mentioned under Trade Notice No. 10/2018 to the hilt and has provided all the information as required under the said Trade Notice.
 - b) The contention of the Malaysian exporter with respect to annual account statements and balance sheet of the applicant is incorrect in view of the fact that the annual account statements and balance sheet submitted by the applicant to the Authority includes the account statements and balance sheet with respect to specific PUC as well. While the annual account statements and balance sheet of the applicant at the company level are available at the website of the applicant, the standalone annual account statements and balance sheet pertaining to the PUC is confidential and is not required to be provided to the opposite parties.
 - c) While the Malaysian exporter has raised issue regarding the applicant not providing a copy of its annual report, the said exporter itself has not provided its annual report.
 - d) The responses from the Government of Malaysia, participating producer/exporter as well as that of the importer are not in accordance with their obligations under Rule 7 of the Countervailing Duty Rules and the various Trade Notices issued by the Authority in this regard.
 - e) The names of the schemes availed by the producer/exporter have been claimed as confidential. This cannot be permitted under any circumstances as such withholding of critical information has severely restricted the ability of the Domestic Industry to comment on the response filed by them. Unfortunately, none of the said parties has attempted to make good for the deficiencies in their responses nor was any explanation provided for claiming such vital information as confidential in their written submissions.
 - f) The exporter from Malaysia and participating importers have claimed confidentiality even on the narrative portion to the questionnaire response. It is further submitted that quantitative figures also kept as confidential. This claim of excessive confidentiality has severely restricted the ability of the Domestic Industry to assist the Authority.

E.2. Submissions by other interested parties

14. The following submissions have been made by other interested parties with regard to confidentiality issues:
- a) The non-confidential version of the petition violates the requirements and standards laid down in Rule 7 and 8 of the CVD Rules and Trade Notice No 10/2018 issued by the DGTR.
 - b) The Petition does not comply with Trade Notice no. 10/2018 dated 7th September 2018, which sets standards for disclosure of information in confidential version/non-confidential version of responses filed by the domestic industry and other interested parties with a view to streamline the investigation process.
 - c) The Non-Confidential Version of the petition is not the exact replica of the Confidential Version as the same is not serially numbered. No index is provided in order to get the overview of the documents submitted with petition.
 - d) In response to Costing Information of the application, the Domestic Industry has not furnished any information at all. The domestic industry has replied to all the questions as “*Enclosed as Annexure 6*”. However, Annexure 6 has been claimed as confidential without any justification.
 - e) Annual reports of the petitioner have been claimed as confidential without any grounds of justifications in the petition.

E.3. Examination by the Authority

15. With regard to confidentiality of information, Rule 8 of Anti-Subsidy Rules provides as follows:

“Confidential information. (1) Notwithstanding anything contained in subrule (1), (2), (3) and (7) of rule 7, subrule (2) of rule 14, subrule (4) of rule 17 and subrule (3) of rule 19 copies of applications received under subrule (1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish nonconfidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in subrule (2), if the designated authority, is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information.

16. The Authority made available the non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non- confidential version of evidences submitted by various interested parties for inspection.
17. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality to the extent considered relevant were examined by the Authority and addressed accordingly. Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. OTHER MISCELLANEOUS ISSUES

F.1. Submissions by the Domestic Industry

18. The submissions made by the domestic industry are as follows:

- i. The submission of the interested parties regarding imports being a necessity and demand-supply gap in the country, it is submitted that the Domestic Industry has been increasing its capacities at regular intervals. As a matter of fact, the interested parties themselves acknowledge this fact in their submissions. Therefore, it is fallacious to state that the imports were a necessity for the importers. The installed capacity has been increased by Domestic Industry from 65700 TPA to 160600 TPA in 2019 by setting up a new facility and also enhancing the capacity of the existing equipment.
- ii. The response filed by the Government of Malaysia seems to pertain to some other product instead of the Product under Consideration. Question 5 in section B of the questionnaire response filed by the Government of Malaysia asks for the tariff schedule numbers which correspond to the ITC (HS) classification for the subject country. In response to the said question, the government of Malaysia has provided details relating to float glass and safety glass. No details relating to the subject goods been provided.
- iii. In response to question number 7 in section B, the Government of Malaysia has provided the export quantity and value of the subject goods from Malaysia to India for the years 2014, 2015, 2016, 2017 and the POI. It may be noted that the said response shows extraordinarily large quantities of exports of the subject goods from Malaysia to India in 2017, 2018 and Jan-Jun 2019. The said figures cannot be true for the Product under Consideration as even the total demand of the subject goods in the country is much lower than the volume of exports of subject goods from Malaysia to India mentioned in the response.
- iv. In relation to subsidies available to the Domestic Industry, it is submitted that the same is not the subject-matter of this investigation and, therefore, the Domestic Industry is not required to comment on the same. In any case, subsidy (if any) available to the Domestic Industry, does not justify or grant the license to producers in Malaysia to injure the Domestic Industry in India by channeling their subsidized imports into India.
- v. The submission of the interested parties that 84% of the imports are happening in SEZ, the Domestic Industry would like to submit that imports in DTA in the POI were around 77% of the total imports from Malaysia in 2018-19. Further, in 2019-20, while the imports have seen a significant spurt, the DTA imports remain to be major portion of the imports from Malaysia at 64%.
- vi. The interested parties have tried to relate the injury to furnace condition and quality issues. They have quoted improvement in financial performance for year 2018-19 but failed to relate the decline in profitability evident from the quarterly results for quarter ended on 31st December 2018 and quarter ended March 2019. Moreover, they have wrongly interpreted the comments made in the Annual report for year 2018-19 as relating to performance of first six months of year 2018-19 which actually relate to the period April to August 2019 i.e., after the POI.
- vii. With regard to the submissions relating to public interest, it is submitted that the interested parties have failed to provide any reason or instance as to how the levy of anti-subsidy duty will be against public interest. Even though there is no legal basis or obligation for the Authority to look into the public interest issues, the interested parties have miserably failed to demonstrate their claim that the imposition of countervailing duties will not be in larger public interest. On the contrary, the Domestic Industry submits that levy of duty will be in the public interest as it will allow the downstream user industry a continuous and reliable supply of subject goods.
- viii. As regards the submissions relating to injury parameters and their accuracy, Domestic Industry humbly submits that they have filed complete information which is true and correct. Therefore, the contention raised by interested parties in this regard is incorrect. It is further submitted that all the injury numbers and costing numbers have already been verified by the Authority from books of accounts of the producers. The detailed analysis of injury parameters is already on record and are not reported herein for the sake of brevity.

F.2. Submissions made by the producers/exporters/other interested parties

19. The submissions made by the other interested parties are as follows:

- i. The declaration provided in the petition is not as per the format prescribed by the DGTR. The certificate provided in the petition for the declaration that the applicant has not imported the subject goods during the period of investigation cannot be taken into consideration by the Authority as the period of investigation mentioned in the certificate is from January 2018 to December 2018 whereas the POI for the current case is April 2018 to March 2019.
- ii. Even Indian Government provides several tax and non-tax benefits to business and investors investing in the country. While local jurisdictions, such as states, may also provide tax incentives for businesses, country-wide incentives are most widely applicable, and are broadly organized into four categories: location-based, industry-specific, export-linked, and activity-based.
- iii. Levy of anti-subsidy/countervailing duty will be contrary to public interest and would lead to the monopoly of the Domestic Industry.
- iv. The petition does not meet the adequacy and accuracy criteria and no initiation should have been contemplated based on such an incomplete petition.
- v. The petition contains data separately for Coated and Uncoated Glass at places and at TTG level at some other places. Though the bifurcation is welcome, data combined for the PUC as a whole which is total of coated and uncoated glass also should be given in the Format H. Else the injury cannot be fairly understood for the subject goods as defined.
- vi. The petitioner by way of the present petition is apparently attempting to implicate the Malaysian producer of subsidy as they failed to prove the contention of dumping against the said party in the past. We request the Authority to consider this background while evaluating the claims of the petitioners
- vii. Imports of PUC were necessitated due to the extraordinary level of demand-supply gap and no CVD should be imposed in such a circumstance.
- viii. Apart from capacity constraints, the subject goods produced by the petitioner suffer seriously from quality issues which also make the users dependent on imports.
- ix. An important feature of the subject goods is that the same is used by large number of units in the SEZ area. The imports made by such units do not attract ADD/CVD and it is very essential that the imports made in SEZ area should not be considered along with non-SEZ imports for the purpose of injury examination. Imports by the SEZ units are not of any consequence to the petitioner in view of the SEZ Act and the units in the non-SEZ area cannot be penalized for any imports made by the SEZ units. Thus, the Authority should use only imports in the non-SEZ area to examine injury on account of alleged subsidized imports.
- x. The finding in the anti-dumping investigation shows that about 84% of the total imports of PUC were made by SEZ units and the remaining 16% were in the non SEZ area. It is submitted that a similar pattern is apparent in the POI of the present investigation also which necessitates segregation of imports by SEZ units and non SEZ units. The units in the non SEZ area should not be made liable to pay CVD based on the imports made by the SEZ units and the segregation of imports is very essential.

F.3. Examination by the Authority

20. As regards the issue raised by the interested parties regarding inconsistencies in the data and certificates provided in the petition, the Authority notes that it has relied upon verified information and data for the purpose of the present disclosure statement. The Authority has also called for additional information wherever required and verified the information furnished by the domestic industry.
21. Regarding the submission that there are subsidies available to the Domestic Industry too, the Authority notes that the subsidies available to the Domestic Industry are not the subject matter of the present investigation.
22. With regard to the submission that levy of anti-subsidy/countervailing duty will be contrary to public interest, the Authority notes that the purpose of the of anti-subsidy/countervailing duty investigation is to address the situation created by subsidizing of the product under consideration. The objective of such investigation is not to block the imports but to provide a level playing field to the domestic industry against the subsidized imports.

23. As regards the submission that the present investigation is an attempt by the Domestic Industry to implicate the Malaysian imports since no contention of dumping against the said party was established in the Anti-Dumping investigation concerning import of subject goods from subject country, the Authority notes that the scope of present investigation is distinct from the Anti-Dumping investigation conducted earlier. It is further noted that the purpose of the present investigation is to investigate as to whether or not the article under investigation is being subsidized and whether imports of such articles in India cause or threaten material injury to the domestic industry.
24. As regards the submission of the interested parties relating to demand-supply gap, the Authority notes that the Domestic Industry has continuously increased its capacities to meet the demand of the subject goods in the country. Moreover, the purpose of the present investigation is not to block imports but to provide a level playing field to the Domestic Industry.
25. Regarding the issue of the quality of the goods manufactured by the Domestic Industry, the Authority notes that the interested parties have not provided any reliable evidence to support their claims in this regard. Also, quality, per-se is not an issue in a countervailing duty investigation.
26. With respect to the submission of the interested parties that most of the imports of the subject goods are happening in SEZ, the Authority notes that more than 75% of the imports from subject country were in DTA. Also, it is important to appreciate that any sales of PUC by SEZ units to DTA would also attract applicable CVD on PUC as per section 30 of the SEZ Act. Therefore, the concerns related to SEZ units both from the perspective of users and domestic industry is appropriately addressed through provisions of relevant rules.

F. DETERMINATION OF SUBSIDY AND SUBSIDY MARGIN

27. The petition filed by Domestic Industry provided *prima facie* evidence of the existence of countervailable subsidies in the subject country to initiate the instant investigation prior to initiation of the investigation. Government of Malaysia was invited for consultation on 29th August, 2019 in New Delhi. The producers and exporters from Malaysia were advised to file response to the questionnaire and were given adequate opportunity to provide verifiable evidence on the existence, degree and effect of alleged subsidy program for making an appropriate determination of existence and quantum of such subsidies, if any.
28. The following producers/exporters from Indonesia, Malaysia, Vietnam and Thailand including the Governments of Indonesia, Malaysia, Vietnam and Thailand have filed questionnaire responses.

i. M/s Xinyi Solar (Malaysia) SDN BHD

General overview of the alleged Subsidy Programs

F.1. Submissions made by domestic industry

29. The following submissions have been made by the domestic industry:
 - i. Response of Xinyi Solar cannot be accepted, as they have not provided the information of their related company situated in Malaysia namely Xinyi Smart. Domestic Industry has further submitted that unless the data of Xinyi Smart is examined, the Authority would not be in a situation to calculate the total subsidy benefit availed by Xinyi Solar.
 - ii. Exporters have stated "not applicable" on most of the schemes on the grounds that the company did not avail the specified programs. However, when a company is eligible for a program, there is no reason to believe it would not have benefited under program. Thus, either the company should show absence of eligibility or must demonstrate why it has not availed benefit that is available under the program.
 - iii. Exporters from Malaysia have only responded with respect to three programs and haven't provided even a single submission for the rest of the 15+ programs alleged by the petitioners.
 - iv. The response filed by the Government of Malaysia is contradictory to the response filed by Exporters. The Government of Malaysia has stated that they are providing subsidy on gas. However, exporters denied of having any knowledge of any such subsidy.

F.2. Submissions made by other interested parties

30. The following submissions have been made by the other interested parties:

- v. Article 11.3 of the SCM Agreement requires an investigating authority to review the accuracy and adequacy of the evidence provided in a petition in order to determine whether it is "sufficient" to justify the initiation of an investigation.
- vi. It must be noted that "prima facie" and "sufficient" are two completely distinct terms, imply different standards and are not interchangeable. Further, the petitioner could not establish the existence of the three elements comprising a countervailable subsidy, i.e. financial contribution by a government or public body; benefit; and specificity.
- vii. The GOI's consistent use of a lower standard of assessment and its failure to first determine that the petition provides "sufficient evidence" of subsidization of the subject goods exporting producers and resulting injury to the Indian industry is a fatal error.

F.3. Calculation Methodology

- 31. Article 14 of ASCM, provides guidelines and methodology for calculating the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 and further provides that any method used by the investigating authority to calculate the benefit to the recipient shall be transparent and adequately explained. Further, any method used by the investigating authority to calculate the benefit to the recipient shall be provided for in their national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. In accordance with the requirement, the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 lays down the methodology of determination of quantum of subsidization. The determination in this investigation is in accordance with these guidelines.
- 32. Further, the Authority has determined countervailability of any admissible subsidy only once under a countervailable programme and not to undertake a double countervailability

F.4. Examination of the Subsidy programs alleged by the Petitioners**(i) Program No. 1: Subsidies on natural gas****a. Submission of the Domestic Industry**

- 33. The Petitioner submitted that under this program, natural gas is provided at subsidized rate by the gas providing company to manufacturing sector and electricity producers. The Domestic Industry further submitted that this subsidy is available for industries engaged in manufacturing activities as well as to the electricity producers. This, in turn, while providing the industries in manufacturing sector access to cheap gas, leads to reducing the cost of electricity production. As per the petitioner, the electricity so produced is thereafter supplied to the manufacturing industries at cheap rate leading to substantial overall cost reduction. They submitted that Gas and electricity are critical components of manufacturing process in glass industry and thus, this scheme confers benefit upon the Malaysian producers. As per the petitioner, the gas company is compensated by the government to the extent of subsidization.

34. As evidence of existence of the program, Petitioners relied on:

- Annual report of the Gas company "Gas Malaysia Behrad:"
- Regulated and unregulated gas prices published by the energy commission of Malaysia.
- Securities Analysis of Xinyi Solar published in the CMB international which demonstrates that Xinyi solar had upto 10% lower gas cost in 2018 which was 30% in 2017 but narrowed down after 18% price hike since 2018.
- Investment act, 1986

b. Submission by Government of Malaysia/ other interested parties

- 35. Prior to the Asian Financial Crisis of 1997-98, the gas price to downstream consumers in Malaysia was based on market value. Contractually, gas prices were linked to a substitute petroleum product. As part

of the overall stimulus and recovery package implemented by the Government in response to the crisis, domestic gas prices were subsequently regulated. In October 2002, the Government began regulating the gas pricing for industrial sector where the gas prices for industrial sector were lower than the market price.

36. The price adjustments for industrial sector experienced eleven cycles of price revisions since 2014, with an increase of RM 1.50/million British thermal unit (MMBtu) every six months. As of March 2019, the average gas tariff for industrial sector was RM 32.92/MMBtu. The regulated gas price was expected to reach market price in 2020. In that note, the current regulated gas price is slightly lower than the market price.
37. Currently, there are two categories of gas prices in Malaysia that are collectively referred to as the two-tiered pricing mechanism, namely regulated gas price and market-based LNG-indexed price. Under the regulated gas price regime, which only applies to customers with pre-existing contracts, the Government regulates the price of the gas supplied by PETRONAS and Gas Malaysia Berhad (GMB). On the other hand, LNG indexed pricing is applicable for all new volumes, including additional volumes from customers with pre-existing contracts.
38. In addition, the government has also prescribed the Incentive Based Regulation (IBR) framework which sets the base tariff for industrial customers for three years from January 2017 to December 2019. This IBR framework allows changes in the gas costs to be passed through via the Gas Cost Pass-Through (GCPT) mechanism every six months. GCPT is the mechanism to pass through the gas cost differential which incurred due to the difference between gas cost forecasted in base tariff and actual gas cost. GCPT is implemented every 6 months in January and July. The rate will be either a rebate or surcharge.
39. The gas price charged to industrial customers is based on tariff category. All the customers in the same tariff category will be imposed the same price.
40. Since this program is not available for industrial customers, no application process is applicable.

c. Examination by the Authority

41. Authority notes that this program is governed by Gas Supply Act, 1993. The subsidy program allows regulated rates of natural gas prices for industrial sector including the electricity sector. It is noted that the GOM has admitted that subsidies are provided to the gas supplying company, which in turn supplies gas to the exporter at reduced rates. The difference is then recovered by the said company from the GOM. Thus, there is a direct financial contribution by the GOM. Further, the response of GoM states that:

“The government has also prescribed the Incentive Based Regulation (IBR) framework, which sets the base tariff for industrial customers for three years from January 2017 to December 2019. This IBR framework allows changes in the gas costs to be passed through via the Gas Cost Pass-Through (GCPT) mechanism every six months. GCPT is the mechanism to pass through the gas cost differential which incurred due to the difference between gas cost forecasted in base tariff and actual gas cost. GCPT is implemented every 6 month in January and July. The rate will be either a rebate or surcharge”

42. Regarding the contention of the GOM that the program is not available to the industrial customers, the Authority observes that the GOM has admitted the existence of the subsidy element in the gas pricing mechanism which is supplied to the industrial producers. The Authority notes that it is not necessary for a subsidy to be countervailable that it should be made available to the concerned enterprise directly. In this context, it would be appropriate to refer to the definition of “subsidy” under Section 9(1) of the Customs Tariff Act, 1975.
43. The Authority takes note of the fact that neither the Malaysian Government nor the cooperating producer from Malaysia has made any submission against the countervailability of this scheme. Nevertheless, the Authority examines the countervailability of the scheme below:
 - i. The response submitted by the GoM states that the gas prices in Malaysia are regulated by the Government.

- ii. The response submitted by the GoM acknowledges that there is a price differential in the market prices of gas and the prices of gas for industrial users.
- iii. Further, the response of GoM also states that the gas price charged to industrial customers is based on tariff category, indicating consumption based tariff system.

44. In view of the aforesaid, the program is noted to be countervailable.

(ii) Program No. 2: The Market Development grant

a. Submission by the petitioners

45. The Petitioner submitted that the scheme is introduced by Malaysian Investment Development Authority (MIDA) for SMEs to promote export promotional activities. The maximum grant for an SME under the MDG program is RM 200,000. The SME should have been incorporated under the Companies Act, 1965 with at least 60% Malaysian equity ownership. The evidence and the legal basis are General Policies, Facilities, and Guidelines for Market Development Grants (MDG)-2016

b. Submission by the Government of Malaysia/ other interested parties

46. It is a continuous program structured under the 11th Malaysia Plan (Rmk11, 2016 - 2020) for increasing the SME's participation in export promotional activities.

47. The MDG provides an opportunity for Malaysian SMEs to apply for a reimbursable grant up to RM200,000 for participation in export promotional activities namely International Trade Fairs, Trade & Investment Missions /Export Acceleration Missions, International Conferences Overseas and Listing Fees for Made-in-Malaysia Products in supermarkets, hypermarkets or retails centres overseas

c. Examination by the Authority

48. The Authority notes that the Market Development Plan (MDP) was introduced in 2002. It is part of the 11th Malaysian Plan (2016-20). It is intended to increase the participation of SMEs in export promotional activities. The MDP provides SMEs with a reimbursable grant up to RM 2,00,000 for their participation in export promotional activities such as International Trade Fairs, Trade & Investment Missions /Export Acceleration Missions, International Conferences Overseas and Listing Fees for Made-in-Malaysia Products in supermarkets, hypermarkets or retails centres overseas.

49. The subsidy program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred to the recipient. The subsidy program is also specific because is contingent on export. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(iii) Program No. 3: Pioneer Status

a. Submission by petitioners

50. The Domestic Industry has submitted that under this program a company granted Pioneer Status will enjoy tax exemption from corporate income tax. The program encourages investments in promoted activities/products in the manufacturing sector that can contribute to development and growth of economy. It applies to both local and foreign investors for approved promoted products/activities in the manufacturing sector. Five-year partial exemption is provided from payment of income tax. A company pays tax on 30% of its statutory income, with exemption period commencing from its Production Day. Unabsorbed capital allowances and accumulated losses incurred during the pioneer period can be carried forward and deducted from post pioneer income of company. As evidence of existence of the program, petitioners have relied on:

- Promotion of Investment Act, 1986
- New and full notification pursuant to article xvi:1 of the GATT 1994 and article 25 of the Agreement on Subsidies and Countervailing measures-Malaysia dt. 5 October, 2017
- <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
- List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986

- Laws of Malaysia Act 327 of Promotion of Investment act, 1986 Part-II Sec 5,6,7, deals with pioneer status
- Web Report: EXIM Bank's Export Credit Refinancing
- US Extruded through Malaysia

b. Submission by the Government of Malaysia/ other interested parties

51. Companies are required to submit the applications for the Pioneer Status program to the Malaysian Investment Development Authority (MIDA), an agency under Ministry of International Trade and Industry (MITI). The company will then be required to get the Pioneer Certificate from MIDA. This is to ensure that the company has complied with the conditions imposed. After MIDA is satisfied that the company has complied with the conditions, MIDA will determine the production date for the company and determine the start and ending date of the program. Later, companies approved with the program submit their claims to the Inland Revenue Board together with their annual tax returns containing the calculation of claim for the tax deductions. The applicants will need to go through the Approval Committee also.
52. The major tax incentives for companies investing in the agricultural and manufacturing sectors are the Pioneer Status and Investment Tax Allowance. These incentives are mutually exclusive. Sections 5-25 Promotion of Investments Act 1986 are evidence of the same. The benefit is an exemption from taxes owed. Also, losses can be carried forward.
53. The eligibility criteria for the Pioneer Status is case such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country.

c. Examination by the Authority

54. The Authority notes that Sections 5 to 25 of the Promotion of Investment Act 1986 provides for pioneer status program. The program provides for tax incentives in the form of exemption from income tax. Losses incurred during the exemption period can be carried forward for subsequent years to offset taxable income/net profit. The program is available for a pre-specified list of promoted products/activities.
55. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is available to promoted activity/product mentioned in the list. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(iv) Program No. 4: Investment Tax Allowance

a. Submission by petitioners

56. The Petitioner submitted that under this program, a company granted Investment Tax Allowance (ITA) is entitled to offset this allowance against the statutory income for each year of assessment. The program encourages investments in promoted activities/products in the manufacturing sector, that can contribute to development and growth of economy. It applies to both local and foreign investors for approved promoted products/activities in the manufacturing sector. An allowance of 60% on its qualifying capital expenditure incurred within 5 years from the date the first qualifying capital expenditure is incurred is given. Company can offset this allowance against 70% of its statutory income for each year of assessment. Remaining 30% of its statutory income will be taxed at the prevailing company tax rate. As evidence of existence of the program, Petitioners have relied on:

- Promotion of Investment Act, 1986
- New and full notification pursuant to article xvi:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing measures-Malaysia dt. 5 October, 2017
- <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
- List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986

b. Submission by the Government of Malaysia/ other interested parties

57. Investment Tax Allowance (ITA) may be granted to any company intending to participate in a promoted activity or to produce a promoted product including an activity/product which is of national and strategic importance to Malaysia. Promoted activities and promoted products are determined and gazetted by the Minister of International Trade and Industry. Sections 26 – 29 of the Promotion of Investments Act 1986 (Act 327) are evidence of the same.
58. The allowance is only given on capital expenditure incurred on industrial buildings, plant and machinery directly used for promoted activities or the production of the promoted products. Companies are required to submit the applications for ITA program to MIDA, an agency under MITI. The company will then be required to establish the commencement of ITA period which is on the incurrence of the first capital expenditure duly certified by MIDA. Later, companies approved with the program submit their claims to the Inland Revenue Board (IRB) together with their annual tax returns containing the calculation of claim for the tax deductions.
59. The eligibility criteria for the ITA are value added (VA) percentage and level of technology as measured by the MTS Index.
60. Not all individuals/firms who applied and met all the eligibility criteria are approved. The applicants will need to go through the Approval Committee. The assistance is a deduction from taxable income. The allowance can be carried forward until fully utilized.
61. A company can elect to receive Pioneer Status but not receive the Investment Tax Allowance, or can elect to receive the Investment Tax Allowance, but not Pioneer Status.

c. Examination by the Authority

62. Authority notes that Sections 26 to 29 of the Promotion of Investments Act 1986 provides for Investment Tax Allowance program. Promoted activities and promoted products are granted a capital allowance. Value addition and technological requirements are also to be fulfilled. Out of the total capital expenditure, 60% of the capital expenditure is granted as allowance and can be deducted against 70% of statutory income for 5 years. Remaining income can be taxed at the normal income tax rate. Even for companies that meet the listed criteria of promoted activity, value addition and level of technology, the Authority retains the discretion to reject the applicant seeking benefit under this program.
63. The program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific since it is limited to certain enterprises, which meets the promoted product and are approved by the Authority. A company that has received income tax exemption from Pioneer Status cannot avail benefit under this program. The Authority has already determined that countervailing duty should be imposed for exemption from income tax under Pioneer Status. Therefore, the Authority notes that no additional countervailing duty should be imposed against this subsidy program.

(v) Program No. 5: Accelerated Capital Allowance

a. Submission by Petitioners

64. The Domestic Industry has submitted that under this program a special allowance, where the capital expenditure is written off within 3 years, i.e. an initial allowance of 40% and an annual allowance of 20%, is given. After the 15-year period of eligibility for Reinvestment Allowance, companies that reinvest in the manufacture of promoted products are eligible to apply for Accelerated Capital Allowance. Applications have to be submitted to the IRB accompanied by a letter from MIDA certifying that the companies are manufacturing promoted activities/products. As evidence of existence of the program, Petitioners have relied on:
- i. Promotion of Investment Act, 1986
 - ii. <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
 - iii. List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986

b. Submission by Government of Malaysia/other interested parties

65. Accelerated Capital Allowance (ACA) provides allowances to write off the capital expenditure within two years, i.e., an initial allowance of 20 percent in the first year and an annual allowance of 40 percent. This program is available to all companies and the IRB applies objective criteria in granting ACA. Program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available. The assistance is an accelerated capital allowance to be deducted from taxable income. The allowance can be carried forward. Generally, to be eligible for accelerated capital allowance (ACA), a person must meet the following conditions:

- He was carrying on a business during the basis period
- He has incurred qualifying expenditure in the basis period
- The asset was used for purposes of a business, and
- At the end of the basis period, he was the owner of the asset and the asset was in use

66. The companies under investigation will be eligible to claim ACA if they fulfil the criteria and government doesn't exercise discretion as to which firm is eligible to benefit.

c. Examination by Authority

67. Authority notes that the program provides for capital allowance to write off the total capital expenditure within two years, i.e., an initial allowance of 20 per cent in the first year and an annual allowance of 40 per cent.

68. Authority notes that the program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific because it is available to certain enterprise carrying out a promoted activity that qualifies for using this allowance and does not qualify for re-investment allowance on account of expiry of 15 years period of eligibility. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(vi) Program No. 6: Double deduction for promotion of Malaysian brand**a. Submission by Petitioners**

69. The Domestic Industry has submitted that under this program, expenditure incurred on advertising local brand products domestically is allowed double deduction i.e. expenses incurred on certain activities can be set off twice as against taxable profits. The local brand must be owned more than 50% by the registered proprietor of the Malaysian brand name which should be owned by a company that's locally incorporated with at least 70% Malaysian owned and registered in Malaysia or overseas. The deduction can only be claimed by one company in a year of assessment. As evidence of existence of the program, Petitioners have relied on

- Promotion of Investment Act, 1986
- Income tax promotion of export rules 1986
- Inland Revenue Board of Malaysia Public Ruling No.1/2013
- Malaysian External Trade Development Corporation

b. Submission by Government of Malaysia/other interested parties

70. Expenditure for qualifying advertisements in advertising Malaysian brand name goods is eligible for a double deduction in arriving at adjusted income from a business. Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002 are given in evidence. Applicant companies are required to make the claim for the incentive by completing forms and substantiate the claims together with copies of business receipts pertaining to the expenses incurred within Malaysia for advertising Malaysian brand goods. The original supporting documents must be retained by the company for audit purposes by the IRB. The claim can be made in the annual tax returns for the fiscal year (basis period) in which the expenditure is incurred. The companies under investigation will be eligible to claim the deductions if they fulfill the criteria. The assistance is a deduction from taxable income. The deduction can be carried forward.

71. No changes are anticipated to the program.

c. Examination by the Authority

72. The Authority notes that this program is governed by Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002. Under this program, expenditure incurred in advertising Malaysian brand is eligible for double deduction from business income. To qualify for this double deduction, the company must have 70% Malaysian equity and the brand name should be of goods of export quality.

73. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is available to an enterprise that incurs expenses on advertising Malaysian brand. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(vii) Program No. 7: Drawback on Import duty, Sales tax and Excise duty

a. Submission by petitioners

74. The Domestic Industry has submitted that under this program, drawback on import duty, sales tax and excise duty that have been paid may be claimed by a manufacturer if the parts, raw materials or packaging materials are used in the manufacture of goods for export within a year based on conditions stipulated in the acts. As evidence of existence of the program, Petitioners have relied on

- Section 99 of the Customs Act 1967
- Section 29 of the Sales tax Act 1972
- Section 19 of the Excise Act 1976

b. Submission by the Government of Malaysia/ other interested parties

75. Program provides for Duty Import Refund on imported goods that are subsequently re-exported. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). No changes are anticipated to the program. Companies are required to submit the applications for Drawback under sections 93, 95, 99 of Customs Act 1967 to Royal Malaysian Customs Department (RMCD). Then the companies are required to provide proof of import/export declaration and relevant import/export documents. RMCD will verify the documents before refund is made or disapprove.

c. Examination by the Authority

76. Authority notes that the program is administered by the Royal Malaysian Customs Department. The program provides import duty refund on goods that are subsequently re-exported. It is however, noted that the Government of Malaysia has not indicated the mechanism of providing duty drawback.

77. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(viii) Program No. 8: Sales Tax Exemption

a. Submission by the Domestic Industry

78. The Domestic Industry has submitted that in order to reduce cost of doing business and enhance competitiveness the government has exempted the sales tax. This program is approved and administrated by RMCD and established in 1.9.2018. The Domestic Industry has submitted that under this scheme manufacturers with an annual sales turnover of less than RM 100,000 are exempted from licensing and are thus exempted from paying sales tax on their output. However, these manufacturers can opt to be licensed and obtain sales tax exemption on their inputs instead.

b. Submission by Government of Malaysia/other interested parties

79. The program provides exemption from payment of sales tax on importation and purchase of locally manufactured goods under Sales Tax (Person Exempted from Payment of Tax) Order 2018. Exemptions are classified into three (3) schedules.

c. Examination by Authority

80. Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, to persons or manufacturers who meet the eligibility criteria and conditions. This exemption is on import of plant and machinery and also on sales of subject goods in the domestic market. The benefit is in the form of exemption of Sales tax to the exporters which is otherwise due. The program is also specific because it is available to certain enterprise who meet the eligibility criteria. Therefore, this program is noted to be countervailable.

(ix) Program No. 9: Exemption from Import Duty and Sales Tax for Outsourcing Manufacturing Activities**a. Submission by Domestic Industry**

81. The Domestic Industry has submitted that under this program, to reduce cost of doing business and enhance competitiveness, import duty and sales tax exemption are given to Malaysian brands with at least 60% Malaysian equity who outsource manufacturing activities. Import duty and sales tax exemption on raw materials and components used in manufacturing of finished products by their contractual manufacturers locally/abroad and import duty and sales tax exemption on semi-finished goods from their contract manufacturers abroad to be used by their local contract manufacturers to manufacture finished products are available. As evidence of existence of the program, Domestic Industry have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

82. The program provides import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD, MIDA and IPC. Section 14(2) Customs Act 1967 is given as evidence. All manufacturers which meet the eligibility criteria will benefit from scheme and the authorities do not exercise discretion. No changes are anticipated to the program.

83. This program is not countervailable since it conforms with the provisions of Annex I, II and III of the SCM Agreement (Exception to the subsidy definition).

84. To qualify for the exemption,

- Imported raw materials and components which are used to manufacture finished products with nil import duty.
- Semi-finished products which are imported from contract manufacturers abroad and are used in the manufacture of finished products by local contract manufacturers.

c. Examination by the Authority

85. Authority notes that Section 14(2) Customs Act 1967 governs the administration of the program. The program is administered by the Malaysian Investment Development Authority. The program provides import duty exemption on raw materials, components and/or semifinished products for outsourcing manufacturing activities. Raw materials which are used in the production of the exported product and semi-finished goods which are imported from contract manufacturers for use by local manufacturers qualify for this exemption.

86. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(x) Program No. 10: Exemption from Import Duty and Sales Tax on Spares and Consumables**a. Submission by the Domestic Industry**

87. The Domestic Industry has submitted that since it is the policy of the government not to impose taxes on spares and consumables used directly in manufacturing process where import duties are nil process and not produced locally, tax exemption-Revenue forgone is given where imported spares and consumables are taxable but not available locally. Full exemption is given on import duty and sales tax. As evidence of existence of the program, Petitioners have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

88. The program provides import duty exemption on spares and consumables to qualified manufacturer. MIDA issues a letter to confirm the status of the manufacturer. The program involved evaluating import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD, MIDA and IPC. All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. No changes are anticipated to the program. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The laws and regulations governing this program are contained in Customs Duties (Exemption) Order 2017.

c. Examination by the Authority

89. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on spares and consumables. The program is administered by Malaysian Investment Development Authority (MIDA). The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is subject to fulfilment of certain criteria.

90. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xi) Program No. 11: Exemption from Import Duty and Sales Tax on Machinery and Equipment

a. Submission by the Domestic Industry

91. The Domestic Industry has submitted that since it is the policy of the government not to impose taxes on machinery and equipments used directly in manufacturing process and not produced locally, tax exemption-Revenue forgone is given where imported machinery and equipment are taxable but not available locally. Full exemption is given on import duty and sales tax. For locally purchased machinery and equipment full exemption is given on sales tax. As evidence of existence of the program, Petitioners have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

92. The program provides import duty exemption on machinery and equipment to qualified manufacturer. MIDA issues a letter to confirm the status of the manufacturer. The manufacturer then claims for exemption. To qualify for the exemption, the machinery and equipment must be new, unused and directly used in the manufacturing process of the finished product at the approved manufacturer's premise(s). All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. No changes are anticipated to the program. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The laws and regulations governing this program are contained in Customs Duties (Exemption) Order 2017.

93. The companies under investigation conformed with the eligibility criteria which are under MIDA's purview.

c. Examination by the Authority

94. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on new and unused machinery and equipment to qualified manufacturer. There is no exemption from sales tax during the POI because Sales Tax Act 1972 [Act 64] was repealed with the enactment of the Goods and Services Tax Act 2014 [Act 762] entered into force 1 July 2014. The program is administered by the Malaysian Investment Development Authority.

95. The program provides a financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to certain enterprises that import new machinery and equipment for manufacturing activity.

96. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xii) Program No. 12: Exemption from Import Duty on Raw Materials/Components**a. Submission by the Domestic Industry**

97. The Domestic Industry has submitted that under this program, full exemption from import duty on raw materials/components is normally granted, provided raw materials/components are not produced locally or if produced locally, they aren't of acceptable quality and price. This is regardless of whether the finished products are meant for export or domestic market. The eligibility is that the companies should be involved in manufacturing activities.

b. Submission by Government of Malaysia/other interested parties

98. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on raw material and components. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD and MIDA. All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The companies under investigation conformed with the eligibility criteria which are under MIDA's purview.

c. Examination by Authority

99. Authority notes that the program is governed by Section 14(2) of Customs Act 1967. The program provides for import duty exemption to the qualified manufacturer on raw materials / component that are not locally available.

100. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to an enterprise that uses raw material that are not locally available.

101. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xiii) Program No. 13: Double Deduction for Promotion of Exports**a. Views of the Domestic Industry**

102. The Domestic Industry has submitted that under this program tax deduction is given to exporters for expenses which are aimed at promoting exports and supply of goods overseas, cost of maintaining office overseas for purpose of promotion of services, publicity and advertisements in any media outside Malaysia for promotion of export of services and Page 59 of 139 export market research. As evidence of existence of the program, Petitioners have relied on

- Section 41 of Promotion of Investment Act, 1986
- Income tax promotion of export rules 1986
- WT/TPR/S/292
- WTO-Notification-G/SCM/N/3/MYS-1995
- US carbon steel wire rod from Malaysia

b. Submission by Government of Malaysia/other interested parties

103. The program which is provided under section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) read together with rule 4(2) of the Income Tax (Promotion of Exports) Rules 1986 is applicable to all resident trading, manufacturing or agricultural companies in respect of expenses incurred in the basis period primarily and principally for the purpose of seeking opportunities, or in creating or increasing a demand for the export of Malaysian manufactured goods or agricultural products. There are no anticipated changes to the program. The deduction can be carried forward.

104. Applicant companies are required to make the claim for the incentive by completing forms and substantiate the claims together with copies of business receipts pertaining to the expenses incurred overseas for advertising, travelling and related export promotional expenditure. The original supporting documents must be retained by the company for audit purposes by the IRB.

105. In the case of participation in an international trade fair, companies are required to get a letter of approval from MATRADE.

c. Examination by the Authority

106. Authority notes that the program is governed by Section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) & Rule 4(2) of the Income Tax (Promotion of Exports) Rules 1986. Under this program double deduction from income to enterprise involved in manufacturing, trading and agricultural activities is available for expenses incurred for promotion of export. Expenses incurred by a company for increasing demand for exports are allowed for double deduction.
107. The Authority notes that the program provides for financial contributions the form of revenue foregone, which is otherwise due, and benefit is thereby conferred. The benefit is the difference between the amount of income tax paid after double deduction and the amount of income tax that would have been payable in absence of such double deduction. The program is also specific because it is contingent on export performance and is limited to an enterprise engaged in export promotion activity.
108. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xiv) Program No. 14: Double Deduction for Promotion of Export Cargo

a. Submission by the Domestic Industry

109. The Domestic Industry has submitted that under this program an exporter may make a deduction from taxable income for premium insurance on export cargo and regional tax deduction for tax insurance. As evidence of existence of the program, Petitioners have relied on

- Promotion of Investment Act, 1986
- Income tax promotion of export rules 1986
- Tax incentives for Companies
- Other Authority findings

b. Submission by Government of Malaysia/Other interested parties

110. A double deduction is allowed to a person who incurs premium on the insurance of cargo exported from Malaysia provided that the risks are insured with an insurance company incorporated in Malaysia. The premium paid must be in accordance to section 33 of Income Tax Act 1967. The assistance is a deduction from taxable income. The deduction can be carried forward.
111. This program has been revoked since 2016. Income Tax (Deductions of Insurance Premiums for Exporters) (Revocation) Rules 2012 is given as evidence.

c. Examination by the Authority

112. The Authority notes that the program was governed by Income Tax (Deductions Of Insurance Premiums For Exporters) Rules 1995 and is revoked by Income Tax (Deductions Of Insurance Premiums For Exporters) (Revocation) Rules 2012 since 2016.

(xv) Program No. 15: Allowance for Increased Export

a. Submission by the Domestic Industry

113. The Domestic Industry has submitted that this program is a form of tax incentive granted to companies under section 154(1) of Income Tax Act 1967 and Rule 3 of Income Tax (Allowance for increased exports) Rules 1999 and Income Tax (Allowance for increased exports) amendment Rules 2003. An exporter can avail 70% tax deduction from taxable income for increased exports. Also, if the said allowance is not used during the earned year that can be forwarded to the following assessment year. As evidence of existence of the program, Petitioners have relied on:

- Promotion of Investment Act, 1986
- Income tax act 1967
- Customs Act 1967

- Sales tax Act 1972
- Excise Act 1976
- Free zones act 1990

b. Submission by Government of Malaysia/other interested parties

114. A resident manufacturing company or agricultural company that exports manufactured products or agricultural produce is to be given an allowance for increased exports. The assistance is an exemption from taxable income. The allowance can be carried forward. There are no anticipated changes to the program. Income Tax (Allowance for Increased Exports) Rules 1999 is given in evidence. The Rules contain the following definitions:

- a. agricultural produce means fresh and dried fruits, fresh and dried flowers, ornamental plants and ornamental fish, frozen raw prawn or shrimp, frozen cooked and peeled prawn and frozen raw cattle fish and squid;
- b. export means direct exports not including sales to Free Industrial Zones and Licensed Manufacturing Warehouses; Page 62 of 139
- c. value added means the sale price of goods at ex-factory price less the total cost of raw materials; and
- d. value of increased export means the difference of the Free-On-Board (FOB) value of products exported in the basis period and that of the immediately preceding period. FOB value will exclude the freight charges and insurance cost.

115. The allowance is determined as follows:

a. Manufactured products

- 10% of the value of increased exports of the manufactured products by the company where the products exported attained at least 30% of value added;
- 15% of the value of increased exports of the manufactured products by the company where the products exported attained at least 50% of value added.

b. Agricultural products

- 10% of the value of increased exports of agricultural produce by the company.

116. The allowance will be given against seventy per cent of statutory business income of the company. Any export allowance not set off would be carried forward to be set-off against seventy per cent of the statutory income in future years.

c. Examination by Authority

117. Authority notes that a resident manufacturing company or agricultural company that exports manufactured products or agricultural produce is to be given an allowance for increased exports. The allowance is equivalent to 10% or 15% of the value of increased exports of the manufactured products by the company. Allowance will be given against 70% of the statutory business income.

118. The program provides for financial contribution in the form of revenue foregone, which is otherwise due. The program is also specific because it is contingent on export performance. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xi) Program No. 16: Tariff Related Incentive

a. Submission by the Domestic Industry

119. The Domestic Industry has submitted that under this program, full exemption from import duty on raw materials/components is normally granted, provided raw materials/components are not produced locally or if produced locally, they aren't of acceptable quality and price. This is regardless of whether the finished products are meant for export or domestic market. The eligibility is that the companies should be involved in manufacturing activities.

b. Submission by Government of Malaysia/other interested parties

120. The subsidy program is same as program No. 13. **(Double Deduction for Promotion of Exports)**

c. Examination by the Authority

121. The Authority notes that the program is administered by Director General of Customs. The program provides import duty exemption on raw material / component to qualified manufacturer. Exemption is granted when the raw materials / components are not locally available and used directly in the production of the finished product at the approved manufacturer's premise(s).
122. The Authority notes that the program provides financial contribution in the form of revenue foregone, which is otherwise due. The program does not qualify to be permissible duty remission program because it provides exemption from import duty for raw material used in all kinds of manufacturing activities and not only for raw materials used in exported products, as provided in footnote 1 of the SCN Agreement and Section 9B(b) of the Customs Tariff Act. The program is specific because it is limited to enterprise that use raw materials that are not available locally.
123. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xvii) Program No. 17: Allowance for plants and Machinery**a. Submission by petitioners**

124. The Domestic Industry has submitted that Capital allowance is to give relief for wear and tear of fixed assets for business. It is further submitted that the expenditure must be capital in nature and used for business purpose. Costs of assets used in business such as plants and machinery, office equipment, furniture, fittings, motor vehicles etc.
125. Under this scheme initial allowance is fixed at 20% based on the cost of the asset at the time when the capital expenditure is incurred. Annual allowance is a flat rate given every year based on the original cost of the asset and varies accordingly.

b. Submission by the Government of Malaysia/ other interested parties

126. Capital allowance (CA) is deductions for qualifying expenditure on machinery or plant. CA is given only in respect of a business source and the person who incurs the qualifying expenditure is eligible to claim the allowance. CA is calculated for a year of assessment and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method on the basis of a prescribed rate of allowance. All companies that meet the eligibility criteria can claim the CA. This program is available to all companies and the IRB applies objective criteria in granting CA. Thus, this program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available

c. Examination by the authority

127. Authority notes that capital allowance provides deductions for qualifying expenditure on machinery or plant. It is given to enterprise that incurs the qualifying expenditure. It is calculated for a year of assessment and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method based on a prescribed rate of allowance.
128. Authority notes that this program does not provide countervailable benefit because it provides for normal deduction of depreciation on plant and machinery as per straight line method to all enterprise. Therefore, the Authority holds that no countervailing duty should be imposed against this subsidy program.

(xviii) Program No. 18: Export Credit Refinancing**a. Submission by the Domestic Industry**

129. The Domestic Industry has contended that this scheme is in the form of export credit. It is a short term and post shipment financing to direct and indirect exporters. Exporters can obtain financing up to 95% of the value of their export order.

b. Submission by Government of Malaysia/other interested parties.

130. Export Credit Refinancing (ECR) scheme is used to promote Malaysia's exports and international trade in the form of Pre-shipment and Post-shipment financing. ECR is available to all companies incorporated in Malaysia and involved in export activity.
131. The operational procedure of the ECR Scheme is governed by the ECR Guideline which is issued by EXIM Bank.

c. Examination by the Authority

132. The Authority notes that the program is administered by Export-Import Bank of Malaysia (EXIM Bank). Export credit refinancing program provides loan to enterprise to finance export of products. The program is governed by Export Credit Refinancing guideline issued by the Bank, which provides for eligibility criteria including eligibility of product (negative list of products which is maintained by bank) for the purpose of the program. The subsidy program is not restricted to any particular sector and is available to all companies incorporated in Malaysia.
133. EXIM Bank is a government-owned Development Financial Institution. It is a wholly owned subsidiary of the Minister of Finance Incorporated (Inc.). As an agency under the purview of the Ministry of Finance, EXIM Bank's mandated role is specified by the Government. It is to provide credit facilities to finance and support exports and imports of goods, services and overseas projects with emphasis on non-traditional markets, providing export credit insurance services, export financing insurance, overseas investments insurance and guarantee facilities.
134. The Authority determines that EXIM Bank is a public body because it is owned by Government and is vested with the Government Authority to carry out governmental functions. Accordingly, the loan provided by EXIM Banks are financial contribution in the form of direct transfer of funds by a public body. The benefit conferred on the recipient is in the form of difference between the amount of interest charged by the EXIM bank and the amount of interest charged by the comparable commercial loan.
135. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xix) Program No. 19: Buyer Credit Guarantee

a. Views of the Domestic Industry

136. The Petitioner submitted that under this program the overseas buyers are backed by EXIM Bank's unconditional and irrevocable guarantee in which lending bank is guaranteed repayment of due and interest amount. Malaysian exporter can help the overseas buyer to secure a long-term financing with a lender using the BCG. Malaysian exporter is paid as if he has a cash contract, whilst the overseas buyer has time to pay the contract through financing secured from the lender which is backed by EXIM Bank's guarantee. The evidence given is Buyer Credit Insurance by EXIM Bank. The loan amount under this program must be minimum value of RM 2mn in support of a cash contract and the repayment period should be at last 2 years and maximum 15 years.

b. Submission by Government/other interested parties

137. Bankers Trade Credit Takaful (BTCT) is a Credit Takaful designed to protect the Islamic Financial Institutions (IFIs) against risk of non-payment by their exporters arising from Page 45 of 139 default by the overseas buyers. It's available against a trade finance facility on trade terms such as Open Account, Documentary Collection and/or Letter of Credit.

c. Examination by Authority

138. The Authority notes that the program is administered by Exim Bank. There is no law or legal regulation governing the program.
139. The Authority has already determined that EXIM Bank is a public body. Under this program, EXIM Bank provides guarantee to financial institutions against risk of non payment by their exporters (customers) because of default arising from overseas buyers. The program provides for financial contribution in the form of potential direct transfer of funds and benefit is thereby conferred. The benefit conferred on the recipient is equivalent to (i) the difference between the fee paid by the recipient for availing guarantee from EXIM Bank and the fee that would have been paid to any other

commercial bank for such guarantee and (ii) the difference between the loan repayment to the lending bank in question (owing to less than normal commercial interest rate because of EXIM bank guarantee) and the amount that would have been payable in absence of such guarantee (based on normal commercial interest rate). The subsidy program is also specific because it is contingent on export.

140. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporter.

(xx) Program No. 20: Licensed Manufacturing Warehouse (LMW)

a. Views of the Domestic Industry

141. This program was disclosed through the questionnaire response of the exporter as well as the supplementary response of GoM. The petitioner has not made any submission with respect to this plan.

b. Submission by Government/other interested parties

142. Section 65 of the Customs Act 1967 provides for storage of dutiable goods and Section 65A of the Customs Act 1967 provides for manufacturing process to be carried out in licensed warehouses. Licensed Manufacturing Warehouses (LMW) can be set up in Principal Customs Area (PCA) i.e. any part of Malaysia excluding a free zone, Labuan and Langkawi. Manufacturing operations therein are subjected to customs procedures.
143. Exemption from customs duties and sales tax is given to all raw materials/components used directly in the manufacturing process of approved products regardless of whether the finished products are meant for export or local market from the initial stage of manufacture until the finished products. This includes packaging materials and casings. Further, only machinery and equipment required for direct manufacturing process of approved final products are eligible for exemption from customs duty and sales tax.
144. Machinery/equipment used directly in the manufacturing process in the LMW is exempted from import duty/sales tax regardless of whether the finished products are meant for export or local market.

c. Examination by Authority

145. The Authority notes that the program is administered by Royal Malaysian Customs Department. The program is governed by Section 65 and Section 65A of the Customs Act, 1967.
146. The Authority notes that under this program exemption from customs duties and sales tax is given to all raw materials/components used directly in the manufacturing process of approved products. It is noted from the responses of the cooperating exporter and GoM that only machinery and equipment required for direct manufacturing process of approved final products are eligible for exemption from customs duty and sales tax under this program. Further, machinery/equipment used directly in the manufacturing process in the LMW is exempted from import duty/sales tax.
147. The Authority notes that this program provides exemption of customs duty and Sales tax on all raw materials/components used directly in the manufacturing process of approved products. The subsidy program is also specific because it is contingent on product/enterprise. Xinyi Solar (Malaysia) SDN BNHD has also admitted receiving benefit under this program. Therefore, this program is noted to be countervailable.

(xxi) Program No.21: Investment Tax Allowance under the Income Tax Act, 1967

a. Submission by the Domestic Industry

148. This program was disclosed through the questionnaire response of the exporter as well as the supplementary response of GoM. The petitioner has not made any submission with respect to this plan.

b. Submission by Government of Malaysia/other interested parties

149. Investment Tax Allowance (ITA) may be granted to any company. The incentive will be given based on merits of certain case such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country.

c. Examination by Authority

150. The Authority notes that the program is administered by Malaysian Investment Development Authority (MIDA). The program is governed by Section 65 and Section 65A of the Customs Act, 1967. Xinyi Solar (Malaysia) SDN BNHD has also admitted receiving benefit under this program. Therefore, this program is noted to be countervailable.

Producers/Exporters from Malaysia**M/s Xinyi Solar (Malaysia) SDN BHD.**

151. M/s Xinyi Solar (Malaysia) SDN BHD is a producer/exporter of subject goods in Malaysia. M/s Xinyi Solar (Malaysia) SDN BHD filed questionnaire response and provided information regarding the subsidy programs availed by them.

152. Authority has verified the information provided by M/s Xinyi Solar (Malaysia) SDN BHD and determined subsidy margin for program no. 1, 8, 20 and 21 for which benefit was received or accrued during the POI. Authority holds that these subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. The Authority further notes that with respect to Program no. 1, no claim on receipt/non receipt of subsidy on natural gas has been made by the cooperating exporter in its response whereas the Government of Malaysia has admitted that gas prices in Malaysia are regulated. However, during the desk verification, M/s Xinyi Solar (Malaysia) SDN BHD provided documents which showed that the company is availing subsidy benefits.

153. The Authority also noted the international import price of Liquefied Natural Gas in Malaysia. However, the co-operating exporter has stated that gas being supplied to them is natural gas and not the liquified gas. Accordingly, the Authority has determined the benefit under Program No. 1 for Xinyi Solar (Malaysia) SDN BHD on the basis of desk verification of data filed by the exporter duly correlated with the submissions filed by the Government of Malaysia on modalities of grant and availability of subsidies.

154. As regards Program No. 8, Xinyi Solar (Malaysia) SDN BHD has not claimed any benefit under the program. However, during the desk verification, the company presented documents which showed that the company is availing the said subsidy.

155. The table below provides name of the subsidy programs, and the corresponding subsidy margin.

Program No.	Name of the grant program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 1	Subsidies on Natural Gas	Availability of natural gas at government regulated prices	***	0-10
Program No. 8	Sales Tax Exemption	Exemption from payment of sales tax for specific person on acquisition of raw materials, components and packaging material to be used solely and directly in manufacture of taxable goods	***	0-10
Program No. 20	Licensed Manufacturing Warehouse	Exemption from custom duties and sales tax to all raw materials/components used directly in the manufacturing process of approved products regardless of whether the finished products are meant for exports or local market from the initial stage of manufacture until the finished products	***	0-10

Program No. 21	Investment Tax Allowance	Exemption of 100% on capital expenditures. The total investment cost on production facilities incurred within the period of ten (10) years from February 2015 can be used to offset the taxable profit incurred since year 2015 till the accumulated ITA is fully utilised.	***	0-10
Total			***	0-10
Total (after considering interest)			***	0-10

156. The Authority has determined the subsidy margin for all other producers/exporters from Malaysia on the basis of export price of the cooperating exporter and international import price of Liquefied Natural Gas in Malaysia.

H. INJURY ASSESSMENT AND CAUSAL LINK

H.1. Submission made by the Domestic Industry

157. The submissions made by domestic industry are as follows:

- Imports of the product under consideration from the subject country have shown massive increase over the years with a significant increase in POI. Imports have also shown increase in relation to production and consumption in India.
- Market share of the subject country in demand has been continuously increasing while there is a significant decline in the market share of the Domestic Industry. Further, the market share of the imports from other countries has also declined.
- Domestic industry prices reflect the effect of the prices that are being offered by the exporters in the domestic market.
- The market share, production, sales and capacity utilization of the Domestic Industry has been adversely affected by the dumped imports from subject country.
- The price underselling, price undercutting is positive and substantial. Further, the Domestic Industry is suffering from price depression as they are not able to increase its prices to reasonable terms.
- Performance of the domestic industry has steeply deteriorated in terms of profits. In fact, the losses of the Domestic Industry have increased significantly in the injury investigation period and the period of investigation.
- The decline in profitability of the domestic industry was due to significant increase in the subsidized import from the subject country at non-remunerative prices.
- There has been decrease in selling price despite increase in cost of production and thus the subsidized imports from the subject country are creating price suppression effect on the domestic industry.
- The domestic industry has suffered material injury in connection with subsidized imports of subject goods from the subject country. Further, the domestic industry is threatened with continued injury, should the present condition continue.

H.2. Submission by other interested parties

158. The submissions made by other interested parties with regard to injury and causal link, are as follows:

- The petition does not contain adequate evidence of injury to justify the initiation of this investigation.
- The imports from the targeted country have at no point in time during the period considered put any sort of volume pressure on the sales of the petitioner. The quantum of imports from Malaysia is very less and constitutes only 29.03% share of the total imports whereas the imports from other countries constitutes 70.65% of the total imports. The demand of the subject goods in India has been increased by more than 3 times, however, imports from subject countries constitutes a very nominal share of the same.

- c) Petitioner is increasing its capacity every year during the injury period and POI. Capacity has increased from 100 during the base year 2015-16 to 227 during the period of investigation. Accordingly, production of product under consideration has also increased sharply during the POI to 130 and 207 of uncoated and coated respectively from 100 during the base year 2015-16.
- d) Purported injury, if any, is mainly caused to the Domestic Industry because of undue/unjustified capacity. Domestic industry is not able to stabilize its capacity which results into negative impact on the overall performance of the petitioner and the capacity utilization % declined. In case, the petitioner had not increased the capacity so frequently, it must be operating on optimum capacity utilization. Such inappropriate decisions of increasing the capacity every year have caused injury to the petitioners not the imports from subject countries.
- e) The reason for the decline in the domestic selling price is not the continuous price pressure from the subject country as mentioned in the petition but the dumping of the goods from the other countries and other issues which are provided in the Annual Report of 2018-19 and 2017-18.
- f) Wages have increased during the POI with the decrease in number of employees. During the POI, the no. of employees declined from 100 to 90 as compared to the base year 2015-16, however, wages have increased substantially from 100 to 139. From the trend given by the petitioner, they are unable to understand as to how wages can increase so substantially with the decline in no. of employees.
- g) It is submitted that for the calculation of injury and causal link, the injurious effects of the subject imports must be segregated from other factors that cause injury pursuant to Article 15.5 of the SCM Agreement and Annexure I of the Anti-Subsidy Rules.

H.3. Examination by the Authority

159. In consideration of the various submissions made by the interested parties and the domestic industry in this regard, the Authority has examined injury to the domestic industry on account of subsidized imports from the subject countries.
160. Rule 13 of the Subsidy Rules deals with the principles governing the determination of injury which provide as follows:

13. Determination of injury-

(1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in India, or materially retards the establishment of an industry in India.

(2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury, threat of injury, material retardation to the establishment of an industry and the casual link between the subsidized import and the injury, taking into account inter alia, the principle laid down in Annexure I to the rule.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if –

(i) there is a concentration of subsidized imports into an isolated market, and

(ii) the subsidized imports are causing injury to the producers of almost all of the production within such market.

I. Volume Effect of subsidized imports and Impact on domestic Industry

i. Assessment of Demand

161. Demand or apparent consumption of the product concerned in India is defined as the sum of domestic sales of all Indian producers and imports from all other countries. It is seen that demand has increased over the injury period. For the purpose of injury analysis, the Authority has relied on the DGCI&S import data. The demand so assessed is as follows-

S. No	Year	2015-2016	2016-2017	2017-2018	POI
1	Domestic Industry sales (MT)	***	***	***	***
2	Sales of other domestic producers (MT)	0	0	0	0
3	Total domestic sales	***	***	***	***
4	Imports from Subject countries (MT)	1	4297	37279	41789
5	Imports from other countries (MT)	30718	85529	64190	100596
6	Total Imports (MT)	30719	89826	101469	142385
7	Total demand (MT)	***	***	***	***
8	Trend	100	227	265	349
9	Market share of Domestic sales in demand	30-40	10-20	20-30	10-20
10	% Share of Subject countries in demand	0	0-10	20-30	20-30
11	% share of other countries in demand	60-70	70-80	40-50	50-60

162. It is noted from the above that:

- The demand of the subject goods has increased by around 3.5 times.
- The share of the subject country in demand has increased from almost negligible in the base year to around *** in the POI.
- The market share of the Domestic Industry in demand has decreased from *** in the base year to around *** in the POI.
- The market share of the other countries in demand has decreased from *** in the base year to around *** in the POI.

ii. Imports volumes and share of the imports from subject country

163. With regard to volume of the subject imports, the Authority is required to consider whether there has been a significant increase in subsidized imports either in absolute terms or relative to production or consumption in India. The volume of imports of the subject good from the subject country to both DTA and SEZ units has been analyzed as under-

S. No.	Year	2015-2016	2016-2017	2017-2018	POI
1	Imports from Subject countries (MT)	1	4297	37279	41789
2	Imports from other countries (MT)	30718	85529	64190	100596
3	Total Imports (MT)	30719	89826	101469	142385
4	Trend	100	292	330	464
5	Domestic Industry sales (MT)	***	***	***	***
6	Sales of other domestic producers (MT)	0	0	0	0
7	Total domestic sales	***	***	***	***
8	Trend	100	118	156	157
9	Total demand (MT)	***	***	***	***
10	Trend	100	227	265	349
11	Share in imports				
12	Imports from Subject countries (MT)	0%	5%	37%	29%
13	Imports from other countries (MT)	100%	95%	63%	71%
14	Share in Demand				
15	Market share of Domestic sales in demand	30-40	10-20	20-30	10-20
16	% Share of Subject countries in demand	0	0-10	20-30	20-30
17	% share of other countries in demand	60-70	70-80	40-50	50-60

164. After segregating the imports by SEZ units and non-SEZ units, the imports of PUC in non-SEZ units are as under:

S. No.	Year	2015-2016	2016-2017	2017-2018	POI
1	Imports from Subject countries (MT)	0	348	6218	21521
2	Imports from other countries (MT)	16261	44241	34843	32912
3	Total Imports (MT)	16261	44589	41061	54433
4	Trend	100	274	253	335
5	Domestic Industry sales (MT)	***	***	***	***
6	Sales of other domestic producers (MT)	0	0	0	0
7	Total domestic sales	***	***	***	***
8	Trend	100	155	224	218
9	Total demand (MT)	***	***	***	***
10	Trend	100	223	240	285
11	Share in imports				
12	Imports from Subject countries (MT)	0%	1%	15%	40%
13	Imports from other countries (MT)	100%	99%	85%	60%
14	Share in Demand				
15	Market share of Domestic sales in demand	40-50	30-40	40-50	30-40
16	% Share of Subject countries in demand	0	0-10	0-10	20-30
17	% share of other countries in demand	50-60	70-80	50-60	40-50

165. Based on actual export data submitted by the cooperating exporter/producer, the above data is modified as under:

S. No.	Year	2015-2016	2016-2017	2017-2018	POI
1	Imports from Subject countries (MT)	0	348	6218	24352
2	Imports from other countries (MT)	16261	44241	34843	32912
3	Total Imports (MT)	16261	44589	41061	57264
4	Trend	100	274	253	352
5	Domestic Industry sales (MT)	***	***	***	***
6	Sales of other domestic producers (MT)	0	0	0	0
7	Total domestic sales	***	***	***	***
8	Trend	100	155	224	218
9	Total demand (MT)	***	***	***	***
10	Trend	100	223	240	295
11	Share in imports				
12	Imports from Subject countries (MT)	0%	1%	15%	43%
13	Imports from other countries (MT)	100%	99%	85%	57%
14	Share in Demand				
15	Market share of Domestic sales in demand	40-50	30-40	40-50	30-40
16	% Share of Subject countries in demand	0	0-10	0-10	20-30
17	% share of other countries in demand	50-60	70-80	50-60	30-40

166. It is noted that there has been an increase in the absolute volume of imports from subject country in POI as compared to the previous years.

167. The share of subject country in total imports has increased from almost negligible in 2015-16 to 30% in the POI, whereas for non-SEZ units, the same has increased from negligible to 43% in the POI. Similarly, the market share of imports from subject country in total demand for non-SEZ units has increased from 0% in 2015-16 to ***% in the POI, whereas the share of domestic industry sales in total demand for non-SEZ units has decreased from ***% in 2015-16 to ***% in POI. Thus, volume of imports from the subject country have increased in absolute terms in relation to imports made only to non-SEZ units whereas the sales of domestic industry has decreased.

J. Price effect of subject imports and impact on domestic industry

168. With regard to the effect of subsidized imports on prices, the Authority has considered whether there has been a significant price undercutting by the subsidized imports as compared with the price of the like product in India, or whether the effect of such subsidized imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred, to a significant degree. For the purpose of this analysis, the Cost of Production, Net Sales Realization (NSR) and the Non-injurious price (NIP) of the domestic industry have been compared with the landed cost of imports from subject country. This analysis, is however, limited to imports of subject goods by non-SEZ units and Domestic Industry sales also to non-SEZ unit.

iii. Price Undercutting

169. Price undercutting has been worked out by comparing the landed price of imports with the selling price of the domestic industry for the investigation period. The price undercutting has been determined separately for each PCN produced by the domestic industry and thereafter for the product under consideration as a whole.

Particulars - Total PUC	Unit	2015-2016	2016-2017	2017-2018	POI
Landed price of imports	Rs/MT	30132	32993	32593	36484
Net selling price	Rs/MT	***	***	***	***
Price undercutting	Rs/MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	40-50	30-40	20-30	10-20

170. The Authority notes that the price undercutting is positive throughout the injury investigation period including the period of investigation.

iv. Price underselling / Injury Margin

171. The Authority has worked out non-injurious prices of the subject goods and compared the same with the landed values of the imported goods to arrive at the extent of price underselling. The price underselling/ injury margin has been determined separately for each coated and uncoated glass and thereafter for the product under consideration as a whole.

Price underselling	Unit	POI
NIP	Rs/MT	***
Landed price of imports	Rs/MT	36484
Price underselling	Rs/MT	***
Price underselling	%	***
Price underselling	Range	10-20

172. It is noted from the above table that the price underselling/ injury margin is positive, indicating that the imports have entered the market at injurious prices.

v. Price suppression and depression

173. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the Authority has examined the changes in the landed price of imports, and costs & prices of the domestic industry over the injury period.

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Cost	Rs. /MT	***	***	***	***
2	Trend	<i>Indexed</i>	100	100	97	100
3	Selling price	Rs./MT	***	***	***	***
4	Trend	<i>Indexed</i>	100	102	99	101
5	Landed Price	Rs./MT	30132	32993	32593	36484
6	Trend	<i>Indexed</i>	100	109	108	121

174. It is seen that the cost of the Domestic Industry has remained more or less same during the injury investigation period. However, there has been a decline in the selling price of the Domestic Industry. The Domestic Industry has stated that the low priced subsidized imports from the subject country have prevented the Domestic Industry from increasing their prices. It is noted that the landed price of imports from the subject country have remained below the cost and selling price of the Domestic Industry. This shows that the imports are suppressing the prices of the domestic industry and are preventing the price increases, which otherwise would have occurred.

K. Economic parameters relating to the domestic industry

175. The Rules require that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, performance of the domestic industry has been examined over the injury period.

i. Production, capacity, capacity utilization and sales

176. The position of the domestic industry over the injury period with regard to production, capacity, capacity utilization, domestic sales and export is as under:

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Capacity	MT	***	***	***	***
2	Production	MT	***	***	***	***
3	Capacity Utilization	%	***	***	***	***
4	Domestic Sales	MT	***	***	***	***
5	Capacity Utilization	<i>Indexed</i>	100	117	77	73

177. The Authority notes that-

- To keep up with the demand, the Domestic Industry has continuously increased its capacity throughout the injury investigation period.
- The capacity utilization of the Domestic Industry has declined in the POI.
- The production of the domestic industry has increased over the injury period. The domestic sales of the domestic industry have also increased in the POI.

ii. Market Share

178. The details of imports (non SEZ units), domestic sales and market share of the domestic industry is as below:

SN	Market Share	Unit	2015-2016	2016-2017	2017-2018	POI
1	Sales of Domestic Industry	%	40-50	30-40	40-50	30-40
2	Sale of Other Producers	%	0	0	0	0
3	Subject Countries	%	0	0-10	0-10	20-30
4	Other Countries	%	50-60	70-80	50-60	40-50
5	Total Demand	%	100%	100%	100%	100%

179. It can be seen that the market share of the domestic industry and other countries in demand have declined whereas share of subject country import has increased significantly.

iii. Profit or loss, cash profits and return on capital employed

180. The profit position of the domestic industry in terms of profit or loss, cash profits and return on investment is as under:

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Cost	Rs./MT	***	***	***	***
2	Selling price	Rs./MT	***	***	***	***
3	Profit/(Loss)	Rs./MT	***	***	***	***
4	Profit/(Loss)	Rs. Lacs	***	***	***	***
5	ROCE	%	***	***	***	***
6	ROCE	<i>Indexed</i>	-100	-83	-106	-111

181. The Authority notes that:

- The losses of the Domestic Industry have increased in the POI.
- Profit and return on capital employed of the domestic industry have followed the similar trend.

iv. Inventories

182. The data relating to inventories of the subject goods is as follows-

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Average Stock	MT	***	***	***	***
2	<i>Trend</i>	<i>Indexed</i>	100	18	20	184

183. It is noted that the average inventories have increased in the POI as compared to the previous years.

v. Employment, wages and productivity

184. The situation of the domestic industry with regard to employment, wages and productivity during the injury period is as under:

SN	Particulars	Unit	2015-2016	2016-2017	2017-2018	POI
1	Wages	Rs	***	***	***	***
2	Wages	<i>Indexed</i>	100	117	105	139
3	Employment	Nos	***	***	***	***
4	Employment	<i>Indexed</i>	100	94	101	90

185. It is seen that the number of employees has declined over the injury period with an increase in wages and the productivity per employee and per day.

vi. Growth

186. There was negative growth of the domestic industry in terms of sales, production, profits, cash profit as well as ROI despite significant increase in demand. The Domestic industry has contended that they were not able to achieve positive growth due to the presence of the subsidized imports.

vii. Factors affecting domestic prices

187. The Authority notes that the imports are undercutting the prices of the domestic industry. The market share of subject imports has increased over the period, whereas that of the domestic producers has declined. This shows that the imports are penetrating the market with low prices.

viii. Ability to raise capital investment

188. It is seen that the domestic industry has enhanced capacity for the subject goods over the period, making capital investment. However, despite increase in demand, the capacities are lying significantly underutilized.
189. It is noted that the volume parameters of the domestic industry have shown growth. However, they have not been able to keep up with increase in demand. Further, there has been deterioration in price parameters. The profits, cash profit and return on capital employed have also shown a significant decline over the injury period. The profitability of the domestic industry has declined over the injury period.

L. Conclusions on Injury

190. The Authority notes that the imports have increased significantly in absolute terms as well as in relation to production and consumption in India. The imports are undercutting the prices of the domestic industry and have had a suppressing effect on the prices of the domestic industry. The price underselling is also positive. While the market share of subject imports has increased significantly, that of domestic producer has declined. The capacity utilization of the domestic industry has declined. Even though performance of the domestic industry has improved in terms of production and sales, the same was not proportionate to the increase in demand. Further, domestic sales and capacity utilization have declined; it is seen that the domestic industry is suffering from underutilized capacities. Further, the losses of the domestic industry have increased and its cash profits, PBIT and return on investment have followed the same trend. The Authority takes note of the fact that apart from the cooperating exporter, anti-dumping duties are in place against the subject goods from subject country. However, the subject goods continue to be imported at injurious prices. Accordingly, the Authority concludes that the domestic industry has suffered material injury.

M. Causal Link

191. The Authority has examined whether other known factors could have caused injury to the domestic industry as follows:

a. Volume and prices of imports from third countries

192. Imports of the product under consideration from each country other than Malaysia and countries already attracting anti-dumping duty in the POI are below 3% of the total imports.

b. Contraction of demand and changes in the pattern of consumption

193. The Authority notes that there is no contraction of demand. On the contrary, overall demand for subject goods has shown significant increase over the injury period. Further, there have been no changes in the pattern of consumption which could have caused injury to the domestic industry.

c. Trade restrictive practices of and competition between the foreign and domestic producers

194. There is no known trade restrictive practice which could have contributed to the injury to the domestic industry.

d. Developments in technology

195. None of the interested parties has furnished any evidence to demonstrate any change in the technology that could have caused injury to the domestic industry.

e. Export performance of the domestic industry

196. The injury information has been considered separately for domestic and exports, to the extent the same could be segregated.

f. Performance of other products being produced and sold by the domestic industry

197. The Authority has considered data only in relation to the product under consideration.

N. Factors relevant for causal link

198. The authority notes as under:-

- a. The imports of subject goods in the country are at lower prices than the domestic industry prices.
- b. Subsidized imports from subject country are coming into India in substantial volumes.
- c. The imports are undercutting the prices of the domestic industry which lead to the decline of the selling price of the domestic industry as the imports are suppressing the prices of the domestic industry and prevented price increases, which otherwise would have occurred.
- d. There is decline in market share of domestic producers due to the positive price undercutting.
- e. Consequent impact of subsidized imports on the domestic industry has been significantly adverse.

O. Post Disclosure Comments

199. The Authority issued a disclosure statement on 25.11.2020 disclosing essential facts of the case and inviting comments from all the interested parties. The post-disclosure submissions have been received from the interested parties. Majority of the issues raised have already been raised earlier and also addressed appropriately. Additional submissions to the extent deemed relevant have been examined as under.

Submissions made by Domestic Industry

200. The Authority proposes to grant individual subsidy margin to the cooperating exporter despite the fact that the disclosure statement itself categorically reveals that information with regard to the availing of certain subsidy programs was not revealed either by the exporter or the Government of Malaysia.
201. The Authority invariably rejects the response that are found to be deficient or incomplete in respect of important information. It may be pertinent to point out that in the recent final finding issued by your good self [Anti-dumping investigation concerning imports of “New pneumatic radial tyres of rubber for buses and lorries, with or without tubes and/or flaps” (F.No. 6/30/2019-DGTR dated 27.11.2020)], they were found to be deficient, in this case where there is absolutely no doubt about the wilful suppression of facts and falsification of information by the Malaysian exporter as well as the Government of Malaysia, the disclosure statement appears to be inclined to accept their responses.
202. The disclosure statement further suggests that the so-called cooperating exporter may be granted individual subsidy margin which shall be contrary to the legal position as well as the established practices of the DGTR. Further, this undue benefit proposed to be given to them in the disclosure statement despite such conduct would tantamount to denial of the legitimate interests of the Domestic Industry.
203. As regards program no. 1 (Gas Subsidy); both, the Government of Malaysia (GoM) and the so-called cooperating exporter had declined that the said subsidy is available to the industrial users in Malaysia. The response of GoM though admits that the gas prices for Industrial users are regulated in Malaysia. Later, the verification reveals that the invoices of the exporters themselves state the existence of gas subsidies. The Authority has recognized the fact that the GoM and the exporter has wilfully tried to suppress information regarding this subsidy in its examination under paras 42, 114 and 115. Further, the Authority proposes to grant benefit to the Malaysian exporter by using the half-baked information submitted by the said exporter instead of a benchmark price which is uninfluenced by government intervention. While the Authority has recognised the falsification and suppression of information by the Malaysian exporter and the GoM, undue benefit is proposed to be given to them by not rejecting the responses of the said parties. The disclosure statement further suggests that the so-called cooperating exporter may be granted individual subsidy margin which shall be contrary to the legal position as well as the established practices of the DGTR.

204. As regards subsidized electricity due to gas subsidy; there is absolutely no information/submission either by the GoM or the cooperating exporter with respect to the benefit received by electricity companies in the form of gas subsidies which in turn leads to cheaper electricity cost and prices. While the Authority has recognised the submission of the Domestic Industry in para 33, in its examination, the Authority has not dealt with the submission of the Domestic Industry nor even mentioned the impact of gas subsidies on the cost of electricity. The subsidy on natural gas, while providing the industries in manufacturing sector access to cheap gas, leads to reducing the cost of electricity production. The electricity so produced at cheap rates leads to substantial overall cost reducing the cost reduction. Therefore, it was obligatory for the interested parties to have provided the relevant information to the Authority, in the absence of which their responses ought to be rejected.
205. As regards program no. 8 (Sales Tax Exemption); both, the GoM and the cooperating exporter had declined that the said subsidy is available to the industrial users in Malaysia. It was only after the lies of the exporter were caught during verification, some document was provided by the exporter thereby admitting that benefit had indeed been received by them. Till date, there is no response of GoM on the said subsidy scheme nor have they provided information to certify that information provided by the exporter is correct. The Authority has recognised the fact the GoM and the exporter has suppressed information regarding this subsidy in its examination under the following para; 154. *As regards program No. 8, Xinyi Solar (Malaysia) SDN BHD has not claimed any benefit under the program. However, during the desk verification, the company presented documents which showed that the company is availing the said subsidy.* While the Authority has recognised the falsification and suppression of information by the Malaysian exporter and the GoM, undue benefit is proposed to be given to them by not rejecting their response. Further, without there being confirmation from the GoM that the information given by the cooperating exporter is correct, the Authority could not have accepted the information supplied by the cooperating exporter. The response of the Malaysian exporter and the GoM should have been rejected on this ground alone.
206. As regards acceptance of the responses of the GoM and the Malaysian exporter; the Authority while clearly noted the falsification suppression of information in the responses of GoM and Malaysian exporter and has proposed to accord the Malaysian exporter individual dumping margin contrary to its own past practices and the expressed provision of law. Further, the Authority has recognised the fact that the GoM and the exporter had not provided the information regarding two subsidy schemes in its examination under paras 42, 114, 115 and 154. The Authority, despite clear findings regarding falsification and suppression of information by GoM and Malaysian exporter has proposed to accord the Malaysian exporter individual dumping margin contrary to its own past practices and the expressed provision of law. This is contrary to the consistent approach of the Authority to reject the responses of the parties who have either not provided complete information or have provided incorrect information.
207. Domestic Industry is not provided with the names of the schemes under which the foreign exporter has availed benefits.
208. It may be noted that while the Authority was able to identify the active lies of the exporter with respect to program 1 and 8, there still is no response of either the Malaysian exporter or the Government of Malaysia with respect to such schemes.
209. The examination of the Authority in an anti-subsidy investigation cannot be reduced to a “ball-chasing” event where the Authority is required to make sure that all the benefits received by the exporter has indeed been correctly reported in the response of the relevant exporter and the Government
210. The Domestic Industry further submits that to determine countervailability of a particular program or the benefit received under such program, it is imperative for the Authority to have complete information from the producer/exporters of the subject country and the Government of the subject country. It is for this very reason that the Authority has consistently refused to grant individual subsidy margin to the producers/exporters when no/incomplete response is received from the Government of such country.

211. The Government of Malaysia as well as the responding exporter has consciously and proactively provided false information to the Authority and have suppressed vital information and, that there is no response of Government of Malaysia to back-up the information provided by the responding exporter with respect to Program No. 1 and Program No. 8.
212. Even in anti-dumping duty investigation, the same responding exporter provided incorrect information with respect to their related party information. The same was found to be incorrect and at the fag-end of that investigation, the responding exporter changed its stance on insistence of Domestic Industry and after direct evidence was provided by the Domestic Industry clearly indicating that the information provided by the responding exporter was incorrect.
213. Responding Malaysian exporter, Xinyi Solar has not disclosed the existence of their related company in Malaysia. However, there is absolutely no discussion of this issue in the disclosure statement. As the Authority is aware that certain benefit received by subsidies are fungible and can be easily utilized by the group companies and, therefore, it is of utmost importance that the analysis of all the related companies is carried out appropriately.
214. In the countervailing investigation, initiated against India, Indian exporters face strict scrutiny about related party transactions and benefit availed by them. Even Government of India's response is rejected on finding small discrepancy in their data. We humbly request that if not more, at least the same level of scrutiny should be made against the exporters of subject goods from Malaysia. Surprisingly, we propose to reward such behaviour of the Government of Malaysia and the so-called cooperating exporter.

○ **Comments on specific subsidy schemes**

Program No. 1: Subsidies on natural gas

215. Having recognised that the price of natural gas in Malaysia itself is distorted, the import price of natural gas in Malaysia cannot and should not be used for setting the benchmark prices of natural gas for the purpose of subsidy computation. It is submitted that once the Authority has reached the conclusion that the price of natural gas in Malaysia itself is distorted, there is every reason to consider the import prices in Malaysia also as distorted on account of distorted domestic market prices. In such a situation and in the absence of any information from either the Government of Malaysia or the exporter, the Domestic Industry humbly requests the Authority to kindly set the benchmark prices at *** USD/MMBtu on the basis of the unsubsidized domestic prices in India as such prices are neither subsidized nor influenced by the Government intervention.
216. The Domestic Industry has not been provided with any information with respect to the benchmarked prices used for computing subsidy margin for non-cooperating Malaysian exporter. Such a benchmark price cannot be kept confidential from the Domestic Industry as the same is based on international import prices in Malaysia and does not pertain to confidential information provided by any party.
217. The Domestic Industry reiterates that the subsidy on natural gas, while providing the industries in manufacturing sector access to cheap gas, leads to reducing the cost of electricity production. The electricity so produced is thereafter supplied to the manufacturing industries at cheap rate leading to substantial overall cost reduction. Gas and electricity are critical components of manufacturing process in glass industry. Around 54% of the Malaysia's electricity generation comes from thermal sources with 54 percent of total generation coming from gas-fired plants.¹ Having found that natural gas pricing is distorted in Malaysia on account of government subsidization, the Authority should have also examined the impact of gas subsidies on the electricity provided to the Malaysian exporter. However, no such exercise has been carried out by the Authority.

Program No. 8: Sales Tax Exemption

218. While the Authority has recognised the falsification and suppression of information by the Malaysian exporter and the Government of Malaysia with respect to this program, undue benefit is proposed to be given to them by not rejecting the responses of the said parties. Further, without there being information from the Government of Malaysia that the information given by the cooperating exporter is correct, the Authority could not have accepted the information supplied by the cooperating exporter.

¹ <https://www.export.gov/apex/article2?id=Malaysia-Energy>

Program No. 17: Allowance for Plant & Machinery

219. With respect to Program No. 17, the Authority has found that this scheme is not countervailable. However, the said findings of the Authority are based on incorrect and misleading information submitted by the Government of Malaysia and the responding exporter. In this regard, the Government of Malaysia on page 106, point (f) of their submission has clearly stated that “government does not exercise discretion as to which firm is eligible to benefit”. However, contrary to the said submission of the Government of Malaysia, para 80 and 81 of schedule 3 of Income Tax, Act of Malaysia provides absolute discretion to the Minister to grant benefit under the scheme to any person who is otherwise eligible to get benefit under this scheme. Such an absolute and unguided discretion to the Minister leads to making the present program countervailable subsidy in terms of Article 2.1(c) of the SCM Agreement.
220. The detailed computation of NIP provided to the Domestic Industry reveals that the NIP of the Domestic Industry has been computed on the basis of optimized capacity utilization of the Domestic Industry. However, the total capacity of *** MT taken for this purpose is the total tempering capacity of the Domestic Industry. The Domestic Industry submits that the Product under Consideration is manufactured by tempering Annealed glass. The production capacity of the Domestic Industry is limited to the production capacity of Annealed Glass. Therefore, instead of taking the tempering capacity of *** MT, the Authority should have taken the production capacity of Annealed glass which is *** as the Domestic Industry cannot manufacture the subject goods beyond the production of Annealed glass.
221. The Domestic Industry requested for the certain essential information from the Authority through its email dated 26.11.2020 and 27.11.2020. However, apart from point Detailed NIP, no response has been received from the Authority.

Views of Other Interested Parties

222. Xinyi Solar submitted that although the Government of Malaysia (GoM) has admitted Gas prices are regulated by Government, the gas price offered to Malaysian users is higher than in other Asian markets and India as well.
223. In determination whether the Gas Program is countervailable, the DGTR has evaded talking about the specificity of the programs. The GoM has stated in the Questionnaire response that the industrial users of gas in Malaysia are charged based on tariff category and enterprises within the same category will be charged same price. Therefore, Program No.1 is not specific and thus cannot be regarded as countervailable.
224. Under Gas Cost Pass-Through (GCPT) mechanism, gas pricing is adjusted every 6 months in order to match with market price and is expected to reach market price in 2020. In fact, GCPT mechanism has ended at the end of 2019. The gas supplier, Gas Malaysia Berhad has made company announcement regarding the change of gas price.
225. Xinyi Solar submitted that no subsidy was granted to Gas suppliers in Malaysia since January 2020. Starting from January 2020 the gas bill no longer has GCPT section or **"Government subsidies" ("Subsidi Oleh Kerajaan Persekutuan" in Malay)** which proved that GCPT mechanism has ended and the assistance has been cancelled since then.
226. Xinyi Solar has submitted that the “Program No. 8- Sales Tax Exemption is not applicable because LMW has eased the process of claim back import duty & sales tax, draw back action not required”.
227. During the most recent tax audit carried out by Malaysia Tax Authority, it has been concluded that Xinyi Solar has failed to meet one of the conditions. As a result, Malaysia Tax Authority had decided to withdrawn the ITA benefit and impose a tax payable for year of assessment 2018 amounting to MYR 17,072,972.88 attached with penalty amount MYR 2,560,945.93. One of the important conditions for availing ITA benefit was that the applicant should not have employed more than 20% of unskilled foreign workers.
228. The adoption of 8 year as Average Useful Life (AUL) does not match with actual average AUL of the company. The Authority should adopt AUL on the basis of average life of assets claimed and adopted in its Annual Report to work out the depreciation which meets the requirement of GAAP

229. The notional interest on gas subsidy and sales tax/customs duty and investment tax allowance shall be based on average of the POI i.e. 6 months and not one year. It is submitted that the average interest rate applicable during the POI was 4.06%, but the Authority has applied a notional interest cost on total subsidy worked out @ 6.5%. which is incorrect.
230. Based on the confidential version of the computation of Subsidy Margins, it has been observed that DGTR has considered impact of Investment Tax Allowance twice for the period of investigation. First impact has been considered based on actual utilization of ITA during the POI, the other one is by adding impact of notional impact of ITA by dividing closing balance of ITA as on 31st December 2018. The notional impact has been worked out by dividing the closing balance of ITA by AUL i.e. 8 years. When the ITA for the poi has been duly absorbed/utilized and accounted for computation of subsidy, there is no logic for working out additional impact of ITA on notional basis for the poi again in respect of closing balance of ITA. This accounts for double counting and should be rectified.
231. The Disclosure does not show that the DI has suffered any material injury during the POI on account of alleged subsidized imports of PUC from Malaysia;
232. Imports in the present case are primarily due to very significant demand supply gap and quality issues at the end of the petitioner. Alleged subsidy is not the reason for increase in imports as alleged;
233. Imports made by SEZ unit needs to be segregated for both volume and price parameters while conducting injury examination which is done only for volume parameters now.
234. Thus, the Disclosure does not show any concrete evidences of countervailable subsidy and consequential injury to the domestic industry in the export of PUC from Malaysia which should lead to the termination of the present investigation

P. Examination by the Authority

235. The Authority notes that the various cases referred to by the Domestic Industry for rejection of an incomplete response by an exporter including the recent case of *New pneumatic radial tyres (AD investigation)*. The participating exporter in the pneumatic tyre anti-dumping case had not provided many appendices pertaining to data. In the instant CVD case, the producer/exporter in the questionnaire response provided details of subsidies as availed by them. The Authority had also obtained response from the Government of Malaysia. The recently cited case of AD investigation on rejection of participating exporter is in fact materially different from the present case. Any CVD case needs to be investigated by referencing both the responses of the producer/exporter and the Government of the exporting country. In case some data of benefit of subsidy travelling to the producer/exporter is not provided in producers/exporters response, which may be on account of non-availability of the pertinent information with him but may be countervailable as a subsidy, the Authority in that event is obligated to correlate the same with the response of the Government. In the instant case, the information provided by the Malaysian Government and the producer/exporter has been correlated during the process of investigation to compute the countervailable subsidy margin. Therefore, it may happen in certain cases that the data provided by the producer/exporter may alone not be adequate and may require supplementation by the response of the Government to ensure that quantum of countervailable subsidy could be properly assessed. This is important since some subsidies could be computed directly on the basis of exporter's data while in some cases the pass through effect may need to be gauged.
236. The Authority notes that the Government of Malaysia in its response to schemes had specifically highlighted details of eligibility criteria and whether a benefit was received by the company under investigation among other details. In this regard the Government of Malaysia stated that the benefit was received by the exporter/producer under investigation on schemes Nos. 11,17,20 & 21 as stated Para 31 onwards of this finding. Further, the comments of the Government of Malaysia on other schemes including natural gas are specifically stated in Part F4 of this finding.
237. With regards to the submissions regarding certain specific subsidy schemes, the Authority notes the following -

Investment Tax Allowance (ITA)

238. The Authority notes the claim made regarding ITA by the cooperative producer/exporter on the Average Useful Life (AUL). The claim of the producer/exporter based on company as a whole and further with the audit report wherein the AUL is demonstrated between 10 and 15 years has been noted. In this regard the Authority notes that in the exporter questionnaire instructions (section C, Program Specific Questions, para 4), the indicative AUL has been mentioned as 10 years. The Authority therefore has not considered the exporter's claim of 10-15 years but has adopted the AUL of 10 years.
239. The Authority notes the post disclosure submission of the producer/exporter stating rejection of their ITA claims and its consequential refund along with penalty to the Government of Malaysia (GoM). The Authority holds that the claim of refund is not verifiable at this stage for reasons of its non admissibility or its restoration to the producer/exporter later. The Authority notes that the cooperating exporter has also post filing of their comments to the disclosure have in continuation of their earlier comments submitted an ITR return of 2019 and copies of relevant cheques to confirm that ITA has been discontinued to them. Therefore, this aspect may be filed by producer/exporter later under a review in accordance with relevant rules. The Authority has held ITA countervailable as has been stated in the disclosure statement and by considering the actual and the notional annualised allowance on the basis of AUL. The producer/exporter has also submitted that the interest rate adopted for various computations as 6.5% needs to be considered as 4.06% for which evidence has been furnished. The Authority has considered the same.

Licensed Manufacturing Warehouse (LMW)

240. The Authority notes that as regards the countervailability of Licensed Manufacturing Warehouse (LMW), there is no double counting as was clarified in the disclosure statement and also in the aforesaid relevant paras. The Authority reiterates that under this scheme the Custom duty foregone on import of plant and machinery has been countervailed and sales tax foregone both on plant and machinery and on domestic sales has been captured in the Program 8.

Sales Tax

241. The Authority notes that while input sales tax on plant/machinery/other inputs has already been addressed in the disclosure, the output sales tax pertaining to sales in the domestic Malaysia market has also been considered as countervailable. The Authority has therefore noting the submissions by various interested parties has also evaluated the subsidy available on account of exemption of GST on domestic sales during the POI and included in the total quantum of subsidy.

Natural Gas Subsidy

242. The Authority notes the submissions of the domestic industry, the cooperative exporter and the Government of Malaysia regarding the availability quantification including mechanism of subsidy granted on natural gas to various entities.
243. The Government of Malaysia has provided the mechanism of gas pricing in their response. They have claimed that currently the regulated gas price is slightly lower than the market price. The participating exporter during desk verification has explained that subsidy for the Federal Government shown in the invoice raised by the gas supplying company is the gas price difference between the export price of gas from Malaysia and the gas price for their domestic customers. The Authority notes that the invoices raised by the Gas company to the exporter the amount of subsidy from the Federal Government is depicted. While examining the annual report of the gas supplying company, it has been found that a further grant has also been given by the Government to this company. The same has also been considered as part of the subsidy. The Authority notes the submissions made by the domestic industry, stating that since the exporter filed the questionnaire response falsely, his response should be rejected. The Authority has dealt with this issue in the foregoing paras. As regards, domestic industry's submission that the import price of LNG into Malaysia is the appropriate benchmark for quantification of subsidy, the Authority notes that this claim on benchmarking is not appropriate as it is not an apple to apple comparison and that the HS Code of LNG and NG are also different. However, for the non-cooperative/residual producers/exporters the Authority has adopted this benchmark approach, keeping in view adverse fact approach.

244. During the course of data verification of the producer/exporter it emerged that natural gas was sourced from the gas company by M/s Xinyi Energy Smart (Malaysia) Sdn. Bhd., a related entity of M/s Xinyi Solar. It was then invoiced by M/s Xinyi Energy Smart to M/s Xinyi Solar at the same price. The Authority noting the relationship between the two companies has included the subsidy applicable to M/s Xinyi Solar in the quantum of subsidy evaluated for M/s Xinyi Solar.
245. In this regard the Authority also notes submission of the domestic industry regarding analysis of related companies of the cooperating exporter. The Authority therefore confirms that while computing the amount of subsidy in natural gas availed by the cooperating exporter, the Authority has in fact considered the subsidy accorded to its related company i.e. M/s Xinyi Energy Smart (M) Sdn Bhd and has adopted the same for M/s Xinyi Solar Malaysia SDN BHD.
246. The Authority notes that the Non confidential version of the exporter questionnaire response did not have names of subsidy schemes availed by the cooperating exporter. The Authority after due examination has addressed the concerns in the disclosure statement by providing the same.
247. The Authority notes the submission of the domestic industry regarding willful suppression of the facts and providing false information to the Authority and has addressed these concerns in the foregoing paragraph.
248. NIP has been worked out by optimising the capacity of Textured Tempered Glass by following due procedure as laid down vide Annexure III of CVD Rules.
249. As regards submissions of the domestic industry regarding data pertaining to SEZ and non SEZ units the Authority notes the same has been provided in the disclosure statement and is also contained in this final finding.

Q. Conclusions

250. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings, the Authority concludes that:
 - i. The product under consideration has been exported to India from subject countries at subsidized prices
 - ii. The domestic industry has suffered material injury due to subsidization of the product under consideration.
 - iii. The material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject countries.

R. Indian Industry's Interests And Other Issues

251. The Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of countervailing duty would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.
252. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidized subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and create level playing field.

S. RECOMMENDATION

253. The Authority notes that the investigation was initiated and notified to all interested parties including Government of Malaysia and adequate opportunity was given to provide information/evidence on the aspect of subsidization, injury and causal links in favour or against thereof. Having initiated and conducted the investigation into subsidization, injury and causal links in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic

industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from the subject country in the form and manner described hereunder.

254. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury for a period of five (5) years, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, definitive countervailing duty as mentioned in Col No.7 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of the subject goods from the subject country.

Duty Table:

Sl. No.	Heading/Sub-heading	Description of Group	Country of origin	Country of export	Producer	Duty Amount as % of CIF value
1.	70071900	Textured Tempered Glass whether Coated or Uncoated	Malaysia	Malaysia	Xinyi Solar (Malaysia) Sdn. Bhd.	9.71
2	-do-	-do-	Any country other than Malaysia	Any	Xinyi Solar (Malaysia) Sdn. Bhd.	10.14
3	-do-	-do-	Any country other than Malaysia	Any country other than Malaysia	Any other than Sl no. 1 above	10.14

255. Landed value of imports for the purpose of this Notification shall be the assessable value as determined under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

T. Further Procedure

256. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

B. B. SWAIN, Spl. Secy. & Designated Authority

क्र. सं.	शीर्ष	वर्णन	मूलता का देश	निर्यातक देश	उत्पादक	राशि	मुद्रा	यूनिट
		स्टीयरिंग नकल			कोई उत्पादक			
11	87081090 87085000	भारी और मध्यम वाणिज्यिक वाहनों के प्रयोग के लिए स्टीयरिंग नकल	चीन जन. गण. से इतर कोई देश	चीन जन. गण.	हुबेई ट्रियरिंग फोर्जिंग कंपनी लिमिटेड	0.47	यूएस डॉलर	किलोग्राम
12	87081090 87085000	भारी और मध्यम वाणिज्यिक वाहनों के प्रयोग के लिए स्टीयरिंग नकल	चीन जन. गण. से इतर कोई देश	चीन जन. गण.	हुबेई ट्रियरिंग फोर्जिंग कंपनी लिमिटेड को छोड़कर अन्य कोई उत्पादक	1.09	यूएस डॉलर	किलोग्राम

आगे की कार्य प्रक्रिया

133. इन निष्कर्षों से उत्पन्न होने वाली केंद्र सरकार के आदेश के खिलाफ एक अपील सीमा शुल्क, अधिनियम, 1975 के संबंधित प्रावधानों के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष प्रस्तुत होगी।

बी. बी. स्वेन, विशेष सचिव एवं निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(DIRECTORATE GENERAL OF TRADE REMEDIES)

NOTIFICATION

New Delhi, the 24th December 2020

FINAL FINDINGS

Case No. SSR-10/2020

Subject: Final Findings in Second Sunset Review (SSR) Anti-dumping investigation concerning imports of 'Front Axle Beam' and 'Steering Knuckles' meant for heavy and medium commercial vehicles originating in or exported from China PR.

F. No. 7/26/2020-DGTR.—Having regard to the Custom Tariff Act, 1975 as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, THEREOF:

I. BACKGROUND

- WHEREAS** on the basis of an application filed by a domestic producer of the “Front Axle Beam” (FAB) and “Steering Knuckles” (SK) meant for heavy and medium commercial vehicles (herein after referred to as subject goods), the Designated Authority (hereinafter “Authority”) had initiated an antidumping investigation into the imports of the subject goods originating in or exported from China PR vide Notification No. F. No. 7/26/2020-DGTR dated 18th August 2020.
- The imports of “Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles”, originating in or exported from China PR are, at present, subject to anti-dumping measures following an original investigation undertaken by the Designated Authority which was completed in 2010, and thereafter, reaffirmed subject to the first Sunset Review Investigation in 2015. The Original definitive anti-dumping duties were imposed vide Customs Notification No. 50/2010 -Customs dated 12th April 2010 against all imports of Front Axle Beam and Steering Knuckles from China PR. The duties imposed by this Customs Notification were further

extended for application vide Customs Notification No.49/2015-Customs (ADD) dated 21st October 2015, after an elaborate sunset review examination and is in force up to 20th October 2020. At present, pursuant to the initiation by the Designated Authority of the current sunset review investigation, the Ministry of Finance issued Customs Notification No. 31/2020-Customs (ADD) dated 16 October 2020 extending the anti-dumping duties in force up to 30 November 2020.

4. Whereas, M/s Bharat Forge Ltd., the domestic producer of the subject goods, has filed a duly substantiated application before the Authority, in accordance with the Act and the Rules, alleging likelihood of continuation or recurrence of dumping of the subject goods, originating in or exported from China PR and consequent injury to the domestic industry and requested for initiation of a second sunset review investigation for continuation of the anti-dumping duties, imposed on the imports of the subject goods, originating in or exported from China PR.
5. The scope of the present sunset review covers all aspects of the previous investigation concerning imports of the subject goods, originating in or exported from the subject country.

II. PROCEDURE

6. The procedure described below has been followed with regard to the subject investigation:
 - i. In terms of sub-Rule 5 of Rule 5, the Authority notified the Embassy of the subject country in India about the receipt of the application for initiation of sunset review antidumping investigation.
 - ii. The Embassy of the subject country in New Delhi was also informed about the initiation of the investigations in accordance with Rule 6(2).
 - iii. The Designated Authority sent copies of initiation notification dated 18 August 2020 to the Embassy of the subject country in India, known exporters from the subject country, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file questionnaire responses and make their views known in writing within prescribed time limit. Copies of the forwarding letter, petition and questionnaire sent to the exporters, were also sent to the Embassy of subject country along with a list of known exporters/ producers with a request to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time.
 - iv. Copies of the non-confidential version of the petition filed by the domestic industry were made available to the known exporters and the Embassy of the subject country in accordance with Rules 6(3) supra.
 - v. Exporters' Questionnaires were sent to the following known exporters from subject country in accordance with the Rule 6(4) to elicit relevant information.
 - a. M/s Hubei Tri-Ring Forging Co Ltd.
 - b. M/s Hubei Tri-Ring Auto Axle Co Ltd.
 - c. M/s Hubei Tri-Ring Motor Steering Co. Ltd.
 - d. M/s Tianrun Crankshaft Co Limited
 - e. M/s Chongqing Qingling Forging Co., Ltd
 - vi. The People's Republic of China being a Non Market Economy Country, the Authority informed the known exporters from China PR to furnish necessary information/ evidence, as mentioned in sub-paragraph (3) of paragraph 8 of the Annexure-1 to the Rules to enable the Authority to consider whether market economy treatment should be granted to such cooperating exporters/producers who could demonstrate that they operate under market economy conditions.
 - vii. The following producers/exporters exporting the subject goods originating in or exported from the subject country have filed questionnaire responses:
 - a. M/s Hubei Tri-Ring Forging Co Ltd.
 - b. M/s Hubei Tri-Ring Auto Axle Co Ltd.
 - viii. Questionnaires were sent to the following known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4):
 - a. M/s Ashok Leyland Ltd.
 - b. M/s Mahindra Trucks and Buses Ltd.
 - c. M/s VE Commercial Vehicles Ltd.
 - d. M/s Tata Motor Ltd.
 - e. M/s AMW Motors Ltd.

- ix. None of the importers / consumers of the subject goods originating in or exporter from China PR have filed their questionnaire responses or other comments.
- x. The Authority has relied upon the transaction-wise import data reported by Directorate General of Commercial Intelligence and Statistics (DGCI&S) for the period of injury and the POI in the present investigation.
- xi. The Authority made available non-confidential versions of the evidence presented by interested parties in the form of a public file kept open for inspection by the interested parties. Post the outbreak of COVID-19, all interested parties were advised, vide notice dated 06.08.2020 uploaded on DGTR's website, to exchange non-confidential versions (NCV) of their submissions among themselves through email.
- xii. Optimum cost of production and cost to make and sell the subject goods in India, based on the information furnished by the petitioner and on the basis of Generally Accepted Accounting Principles (GAAP), was worked out so as to ascertain a "non-injurious price".
- xiii. The confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated as confidential.
- xiv. The Authority held a public hearing on 11.11.2020 to hear the interested parties orally, which was attended by representatives of the domestic industry and other interested parties. All the parties were asked to file their written submissions and rejoinders thereon. The written submissions and rejoinders received from interested parties were considered in the Disclosure Statement issued on 23rd November, 2020.
- xv. The Authority carried out table verification of the data submitted by the domestic industry to the extent considered necessary and feasible, particularly in view of the ongoing pandemic.
- xvi. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for the findings were disclosed to the interested parties vide the Disclosure Statement issued on 23rd November, 2020 and comments received thereon have been considered in this Final Findings.
- xvii. Investigation was carried out for the period starting from 1st April, 2019 to 31st March, 2020 (POI). However, the injury investigation covers the period 2016-17, 2017-18, 2018-19 and the POI.
- xviii. *** in this Final Findings represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
- xix. The Authority has taken weighted average exchange rate for the POI (April 2019- March 2020) as Rs 70.38 = 1 US\$.

III. SCOPE OF PRODUCTS UNDER CONSIDERATION AND LIKE ARTICLE

A. Submissions made by Producers / Exporters / other interested parties

7. None of the exporters, importers or consumers has offered any views with regard to product under consideration.

B. Submissions made by Domestic Industry

8. The Domestic Industry has relied on the findings of the Authority in the previous sunset review investigation to define the PUC and the like article. No specific claims in this regard have been raised by the domestic industry.
9. The domestic industry has claimed that imported product under consideration and the goods manufactured by the domestic industry are "like articles" within the meaning of the term as per the Rules. It has been claimed that the Designated Authority has come to the same conclusion in the final findings of the original investigation and the previous sunset review investigation. Since the present investigation is a sunset review investigation, the Domestic Industry has submitted that the scope of the products under consideration should be the same as that of original investigation.

C. Examination by the Authority

10. The products under consideration in the original investigation and as notified in the initiation notification in this second sunset review investigation are "Front Axle Beams (FAB) and Steering Knuckles (SK) used in medium and heavy commercial vehicles, whether forged or machined".
11. Front axle beam is a safety critical item as it carries the load of the vehicle and also keeps the steering in place. The function of the Front axle beam is to carry the front weight of the vehicle, to carry the horizontal and vertical loads on bumpy roads and acts as a cushion through spring leaves for a comfortable ride. The steering knuckle is a very critical component and fits on the axle beam through the arms to control the steering of the vehicle.
12. Front axle beam and Steering knuckles are in the category of "parts or accessories of vehicles" falling under

Chapter 87 of the Customs Tariff Act under subheading 8708.10.90. These products are also imported under several other customs classifications also. Therefore, the customs classifications given here are only indicative, and are no way binding on the scope of the investigation.

13. As seen in the previous Sunset Review Final Findings for the subject goods, the products, FAB and SK, are first forged out of the steel billets/bars and then machined into the finished product to be fitted into the vehicles. However, the products are sold to the vehicle manufacturers both in forged or machined conditions. While the machined products go directly to be fitted in the vehicles, if the product is supplied in forged conditions, the customer / vehicle manufacturer has to get the forged product machined before fitting into the vehicles. The only difference between the forged and machined product types is the additional machining which is done on the forged product.
14. Therefore, the Authority finds that front axle beams and steering knuckles manufactured and supplied by the domestic industry and imported from the subject country are like articles for the purpose of this sunset review investigation.
15. Front Axle Beams and Steering Knuckles are supplied by the producers and consumed in the automobiles in terms of numbers. However, weight of various types of FABs and SKs vary depending upon type of Automobiles and design specifications and therefore, the cost per piece/unit varies to a very significant extent though per unit cost in terms of weight tends to remain more or less same. Therefore, the Authority had, in the earlier investigations, considered weight as the appropriate common unit of measurement for the purpose of various determination and fair comparison. Same method has been adopted in this investigation also.

IV. DOMESTIC INDUSTRY AND STANDING

A. Submissions made by Producers / Exporters / other interested parties

16. None of the exporters, importers or consumers has offered any views with regard to the standing of the Domestic Industry.
17. The foreign producers / exporters, Hubei Tri-Ring Auto Co. Ltd. ("HTRA") and Hubei Tri-Ring Forging Co. Ltd. ("HTRF"), have submitted that no data has been received from the "supporter" company, M/s. Ramkrishna Forgings Ltd. Reference has been made to the requirement under Trade Notice No. 13/2018 dated 27th September 2018, which mandates certain information from the supporter in prescribed formats regarding the economic parameters of the supporter. It is claimed that the failure of the Petitioner to bring the data of the supporter company on record vitiates the Petition under investigation.

Total Indian Production

Name of Domestic Producer	Unit	Production Per Annum					
		FAB	SK	FAB %	SK%	Total	Total %
Total Installed Capacity in India	Kgs	110267156	50415764	-	-	160682920	-
Bharat Forge Ltd.	Kgs	***	***	***	***	***	***
Radhakrishna Forgings Ltd.	Kgs	***	***	***	***	***	***
MM Forgings	Kgs	***	***	***	***	***	***
Happy Forge	Kgs	***	***	***	***	***	***
Other Producers Total	Kgs	***	***	***	***	***	***
Total Indian Production	Kgs	6,42,48,800	2,44,08,860	100	100	88657660	100%

B. Submissions made by Domestic Industry

18. The Domestic Industry has made the following submissions regarding its standing:
 - a. The Petitioner, M/s. Bharat Forge Limited, accounts for about 40- 60% of the total Indian production of the products under consideration. The Petition has also been supported by M/s Ramkrishna Forgings Ltd. The Petitioner and the supporter named command more than 50% of the total production of the subject goods in India.
 - b. None of the other Indian producers have registered any objection to the filing of this review.
 - c. The Petitioner is a major producer of the subject goods and commands the standing and is eligible to file the present application in terms of Rule 2(b) of the Anti-dumping Rules.

- d. With respect to the lack of data from the supporting company, the Petitioner has claimed inability to bring on record the data of a competitor company. Such an expectation is untenable and unfounded in law. It has been submitted that the Supporting Company's failure to provide its data to the Authority cannot prejudice the Petition. The participation or non- participation of the supporting company in terms of the requirements of the Trade Notice issued by the Authority cannot determine the legality of the Petition in this case.

C. Examination by the Authority

19. The petition has been filed by M/s Bharat Forge Ltd., Pune. The applicant is one of the leading manufacturers of the subject goods in India and supplies the goods to several countries. Other than the petitioner, M/s Ramkrishna Forgings Ltd., M/s MM Forgings and M/s Happy Forge also produce the subject goods.
20. With respect to the standing of the Petitioner itself, no claims appear to have been raised by the interested parties.
21. With respect to the eligibility of M/s Ramkrishna Forgings Ltd. to be considered a "supporting" company for the purposes of the present petition, certain challenge has been raised by the interested parties.
22. The Authority notes that the petitioner domestic producer is one of the major producers of the subject goods in India. Even discarding the submissions / representation of M/s Ramkrishna Forgings Ltd., the Petitioner would still command a major proportion of the domestic production without any opposition from any other domestic producer for the review application. Accordingly, for the purpose of examination of injury and likelihood of continuation or recurrence of injury the petitioner i.e. M/s Bharat Forge Limited may duly constitute domestic industry in terms of Rule 2(b).

V. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

23. Section 9A (5) of Customs Tariff Act, 1975 provides that,

"The anti-dumping duty imposed under this Section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension;

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the Anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year."

24. Accordingly, in a sunset review investigation the Authority is required to examine:
- Whether the dumping continues after imposition of the antidumping duty and if so, whether it is likely to continue;
 - In cases where dumping did not continue, whether the dumping would recur in the event of revocation of anti-dumping duties;
 - Whether the domestic industry continued to suffer material injury and if so, whether injury to the domestic industry is likely to continue if the duties are removed;
 - In cases where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti-dumping duties.
25. Therefore, the Authority will first proceed with the examination of whether dumping of the subject goods continues from the subject country and whether the domestic industry continues to suffer material injury on account of such dumped imports before examining whether dumping is likely to continue or recur if the duties are revoked, and injury is likely to continue or recur in such a situation.

VI. EXAMINATION OF CONTINUATION OF DUMPING: DETERMINATION OF NORMAL VALUES, EXPORT PRICES AND DUMPING MARGINS

26. The Authority notes that two producing exporters from China have submitted their questionnaire responses but

have not claimed market economy status. The views of the exporters with regard to determination of dumping margins have been summarized below.

A. Submissions made by Producers / Exporters / other interested parties

27. The submissions made by the participating producers / exporters are summarized below:

- a. The Authority should grant “market economy status” to the Respondents based on the development of market economy of China. In this regard, it is submitted that Section 15(a) (ii) of the Protocol of Accession of the People’s Republic of China to the World Trade Organization expired on 11th December 2016. India no longer has a legal basis under the WTO’s legal framework to treat China PR as non-market economy and thereby determine normal value in anti-dumping investigations concerning imports from China PR using the non-market economy methodology.
- b. The methodology of the Petitioner for determination of Normal Value is inconsistent with the methodology prescribed in the AD Rules. In this regard, reliance was placed on the observation of the Hon’ble Supreme Court in *Shenyang Matsushita S. Battery Co. Ltd. v. Exide Industries Ltd. and others*, (2005) that the Designated Authority can resort to the last alternative in Para 7 of Annexure I of the AD Rules, only when the first two methods have been exhausted. Therefore, the Designated Authority is mandated to arrive at normal value in cases of exports from non-market economy countries such as China in this case, by first exhausting the main options of using the price or constructed value in a market economy third country or the price from such a third country to other countries including India. Only when the first two options have been exhausted, the Designated Authority may apply any other reasonable basis to arrive at the normal value including prices paid or payable in India giving due account to reasonable adjustments.

B. Submissions made by Domestic Industry

28. The Domestic Industry has made the following submissions:

- a. China PR is a non-market economy country and is treated as such by various countries including India. Though the provisions of Article 15 of the accession protocol of China to WTO has expired in December 2016, the provisions under Article 2.2.1.1 of ADA read with Article 15(a)(i) of the Accession protocol require certain criteria in para 8 of the Antidumping Rule of India to be satisfied for claiming market economy status by the responding exporters from China PR.
- b. The participating foreign producers / exporters have not filed the necessary questionnaire for claiming market economy treatment.
- c. The normal value for China PR is required to be determined as per procedure described in Para 7 of Annexure I to the Anti-dumping Rules as has been done by the Authority in all recent investigations.
- d. The imports during the POI are low and not very significant to enable a reasonable assessment of the export price, or dumping margin, which may be adopted by the exporters in the event of withdrawal of the antidumping duties. Reference is made to *Final Findings dated 14th October 2014 in the First Sunset Review Investigation of Anti-Dumping Duty against imports of “Digital Versatile Discs-Recordable of all kinds (DVD-R and DVDRW)” originating in or exported from China PR, Hong Kong and Chinese Taipei*, vide, wherein imports from Hong Kong were NIL and imports from China and Chinese Taipei were low, the Authority held that “the volume of imports of the subject goods being low during the POI and considering the fact that the duty was in force during this period, the dumping margin calculations based on the actual imports or nil imports during the POI may not reflect the true picture of the likely scenario if the duties are revoked.” Thus, focus must be on the examination of the likelihood parameters.
- e. The volume of imports in the instant case are low because of (i) imposition of the antidumping duty which has been effective in containing the dumping, and (2) the market situation of the automobile industry in general and medium and heavy vehicles in particular during the injury period. Therefore, it would be appropriate for the Authority to follow the above principles and focus on the likelihood of recurrence of dumping and injury rather than the current dumping and injury.
- f. The Petitioner has constructed the Normal Value only for the purposes of indicating estimates of dumping margins. The Authority may review the same and construct the Normal value on the basis it deems appropriate, after verification of the Questionnaire Response filed by the Respondents.

C. Examination by the Authority

29. The Authority notes that as per analysis of the import data of DGCI&S, the volume of imports from China PR of Front Axle Beams is only *** MTs and of Steering Knuckles is only *** MTs to India during the POI.

30. M/s Hubei Tri-ring Forging Co. Ltd. (HTRF) has filed the questionnaire response as an exporter of Steering Knuckles and M/s. Hubei Tri-ring Auto Axle Co. Ltd. (HTRA) has filed a questionnaire response as exporter of Front Axle Beams. Both the producing exporters are related but have not filed Market Economy Treatment Questionnaire Response claiming MET for determination of normal value on the basis of sales in the home market. During the POI HTRF has exported *** MT of Steering knuckles to India and HTRA has exported *** MT of Front axle beam to India.
31. Since no MET Questionnaire has been filed by the two related producers / exporters, the Authority notes that the cost and prices of the Company in the domestic market are not reliable and may not reflect market economy conditions. In any case, due to the failure to file MET Questionnaire, the data of the producers / exporters cannot be used for determination of normal values of the subject goods in China.

VII. DETERMINATION OF NORMAL VALUES

32. Since the Authority considers that the cost and prices of the responding exporters in their domestic market may not reflect true market situation, the Authority has considered other alternative provisions in the Rules for determination of the Normal Values in China.

33. Para 7 of the Annexure I to the Anti-dumping Rules. Para 7 of Annexure-I reads as follows:

“7. In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner keeping in view the level of development of the country concerned and the product in question and due account shall be taken of any reliable information made available at the time of selection. Account shall also be taken within time limits, where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”

34. In this connection, the Authority notes the arguments of the interested parties that the Authority should first examine the first and second option in Para 7 of Annexure-I of the AD Rules before exercising the third alternative. In this regard the Authority notes that none of the interested parties have provided any meaningful information for selection of an appropriate third country as a surrogate for construction of the normal value on the basis of cost and prices in that country or price from such country to other countries, including India, as the normal value in China as per the first two alternatives in the Para-7 referred above. The Authority also notes that there is no / insignificant import of the subject goods from any other country during the POI. Therefore, prices from no other country could be adopted for determination of the Normal value in China as per the above provision.
35. In view of the above, the Authority has determined the normal value in China as per the third alternative provided in the Rules referred above.
36. Accordingly, the Normal value for FAB and SK imported during the POI has been determined after due consideration of the consumption norms of the responding exporters and the domestic industry's most efficient norms achieved during the injury period for the imported FAB and SK in machined conditions. The raw material purchase prices of the domestic industry have been adopted. Cost of utilities has been considered as per the best consumption norms of the domestic industry. All other elements of cost are based on the optimum production of the domestic industry. A normal profit of 5% on constructed cost has been provided to arrive at the Constructed Normal Value as per the consistent practice of the Authority.

VIII. EXPORT PRICES EXPORT PRICE OF M/S HUBEI TRI-RING AUTO AXLE CO., LTD., CHINA PR (HTRA)

37. During the POI HTRA had exported only Machined Front Axle Beams directly to India and *** pieces of FAB weighing *** MT were exported to India. The reported transactions and the adjustments required to bring them to ex-works were verified from the questionnaire response. Accordingly, the net ex-works export price for FAB has been determined based on the data provided by HTRA.

IX. EXPORT PRICE OF M/S HUBEI TRI-RING FORGING CO., LTD., CHINA PR (HTRF)

38. During the POI, HTRF had exported only Machined Steering Knuckles to India*** Pcs of Steering Knuckles weighing *** MT were exported during the POI. The reported transactions and the adjustments required to bring them to ex-works were verified from the questionnaire response. Accordingly, the net ex-works export price for

FAB has been determined based on the data provided by HTRA.

X. DUMPING MARGIN

39. The ex-works constructed normal values and the net-ex-works export prices have been compared to determine the dumping margin for the responding exporters from China as follows:

a. For HTRA (FAB):

	NV US\$/MT	EP US\$/MT	DM US\$/MT	DM%	DM Range
HTRA (FAB)	***	***	***	***	(10)-1

b. For HTRF (SK):

	NV US\$/MT	EP US\$/MT	DM US\$/MT	DM%	DM Range
HTRF (SK)	***	***	***	***	20-30

XI. DUMPING MARGIN FOR OTHER EXPORTERS FROM CHINA PR

40. Dumping Margins for other exporters from China PR has been determined on facts available basis as follows:

	NV US\$/MT	EP US\$/MT	DM US\$/MT	DM%	DM Range
FAB	***	***	***	***	0-10
SK	***	***	***	***	90-100

XII. DETERMINATION OF INJURY, LIKELIHOOD OF INJURY AND CAUSAL LINK

41. As seen earlier, in a sunset review investigation, with regard to injury examination, the Authority is required to examine:
- Whether the domestic industry continued to suffer injury and if so, whether injury to the domestic industry is likely to continue;
 - In cases where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti-dumping duties.
42. The domestic industry has *inter alia* submitted that there is continued dumping of the product under consideration from China PR though the volume of dumped imports is low as a result of current anti-dumping duties and dumping is likely to intensify should the current anti-dumping duty be revoked.
43. Therefore, the Authority has first examined whether the domestic industry continues to suffer material injury on account of dumped imports from the subject country before proceeding to examine the likelihood of continuation or recurrence of injury to the domestic industry in the event of revocation of the duties from the subject country. Examination of material injury to the domestic industry is in accordance with the Article 3 of the AD Agreement and Annexure II to the AD Rules, 1995.
44. Rule 11 of Antidumping Rules read with Annexure –II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....*”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
45. The Authority notes that the application for continuation of antidumping duty has been filed by M/s Bharat Forge Limited, who commands a major proportion of total production of the subject goods in India. In terms of Rule 2(b) of the Rules, the petitioner has been treated as the domestic industry for the purpose of this investigation. Therefore, for the purpose of this determination the cost and injury information of the petitioner, constituting the domestic industry, as defined in Rule 2(b), is being examined.

A. **Submissions made by Producers / Exporters / other interested parties**

46. The interested parties have, *inter alia*, argued that:

- a. the petitioner has failed to substantiate likelihood of continuation or recurrence of dumping & injuries in future, if the anti-dumping duties are revoked.
- b. Authority has to assess increase in dumped imports, in absolute or relative to production or consumption in India.
- c. The data pertaining to imports makes it abundantly clear that the volume of subject imports have reduced in both absolute and relative terms.
- d. The Petitioner's submission that foreign producers decreased exports to India in view of the upcoming sunset review is incorrect. Rather, since the subject goods are required for producing commercial vehicles ("CV") such as trucks and lorries, the exports to India have declined in line with the slide in demand for new commercial vehicles in the POI as a result of weakening economic and market conditions in India.
- e. The Authority must obtain statistics of production and sales of commercial vehicles from the Society of Indian Automotive Manufacturers (SIAM) to verify the demand statistics and establish that the demand for the subject goods has declined due to decline in demand for commercial vehicles. Similar information also emerges from the Petitioner's Annual Reports.
- f. It is commercially and strategically imprudent for any producer/exporter to reduce the exports to a trickle for one whole financial year, especially to a huge market such as India, merely for the purposes of shaping the outcome of the present investigation. Such an allegation is unfounded and deserves to be set aside.
- g. The volume of subject imports have reduced to a trickle and are absolute insignificant to cause any injury to the domestic industry. The Authority must conclusively hold that there is no volume effect by the subject imports and terminate the investigation accordingly.
- h. The Authority is required to examine whether the dumped imports have caused significant price undercutting; or significant price suppression or depression by the dumped imports.
- i. To determine price effect, price undercutting has to be significant. The price undercutting w.r.t FAB became positive only in the POI only, and then too, only after a decline in landed prices of FAB by Rs. 2.50/- per kg. However, even then, the price undercutting is in the range of 0-10%. Further, price undercutting with respect to SK is merely *** %, which is not "significant".
- j. There is no price underselling / injury margin in the present case. As per the lesser duty rule, anti-dumping duty imposed should be the lesser of the dumping margin or injury margin.
- k. The Petitioner itself has not claimed the subject imports are causing price suppression or depression.
- l. The domestic industry's capacity utilization, domestic production and domestic sales have continuously improved in the years preceding the POI in both FAB and SK. The decline is only in the POI owing to the decline in demand for the subject goods.
- m. The market share of the subject imports have declined significantly in the POI in case of both FAB and SK. At the same time, though the domestic industry's market share has not increased during the POI, its competitors/other Indian producers have performed well in the same market conditions as the Petitioner. Therefore, injury to the domestic industry is not being caused by the subject country imports.
- n. In spite of the decline in the domestic industry's operational parameters, the domestic industry's financial parameters have performed really well in the injury period.
- o. In the case of SK, the domestic industry has reversed all its losses and started to make profits in the POI and the year preceding the POI. In the case of FAB, the domestic industry has not only been profitable throughout the injury period but profitability has sharply increased in the injury period, particularly in the POI.
- p. In the case of FAB, the Petitioner's ROCE has continuously and significantly increased throughout the injury period. In the case of SK, the domestic industry's ROCE has improved and turned positive in 2018-19 and the POI.
- q. In the light of predicted potential increase in demand for the subject goods in India, declining volume of subject imports at increasing prices, strong market position of the Petitioners within the domestic

industry and its significantly increased profitability over the injury period, the domestic industry is unlikely to be affected financially. Thus, its ability to raise capital investments will not be affected by the cessation of anti-dumping duties on the miniscule quantity of imports of the subject goods from China PR.

- r. Rule 11 read with Annexure II, paragraph V of the Anti-Dumping Rules requires the Authority to also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Rule 23 of the AD Rules makes it amply clear that Rule 11 is mutatis mutandis applicable in the case of a sunset review. Therefore, causal link can and must be examined by the Authority in a sunset review investigation.
- s. It is the consistent practice of the Authority to examine causality in the case of sunset reviews. Previous three sunset review investigations for NBR originating in or exported from Korea RP cited.
- t. Annexure II, paragraph V of the Anti-Dumping Rules provides that the Authority must examine if dumped imports through the effects of dumping cause injury to the domestic industry. Coincidence between imports, price undercutting and performance parameters of the domestic industry is to be evaluated to determine causal link.
- u. The domestic industry's capacity utilization, domestic production and domestic sales increased in the same period as imports. However, the domestic industry's profitability had first declined in 2017-18 from the base year before turning positive in 2018-19. Price undercutting had remained at the same levels in 2017-18 and 2018-19. Thus, there was no correlation between the subject imports and performance of the domestic industry, the economic parameters of the domestic industry would have declined in the 2017-18 and 2018-19 in light of increasing imports but instead improved, which shows that there is no correlation between the subject imports and the domestic industry's economic performance. Neither did the domestic industry's economic performance improve when subject imports declined.
- v. The automotive industry has been facing a slowdown since 2019. Front axle beams and steering knuckles are a major component of the chassis used in medium and heavy commercial vehicles, and such a slowdown has affected business volumes and margins across the world.
- w. As per the Petitioner's own submissions in the updated petition, a report prepared by ICRA for the India Commercial Vehicles ("CV") market suggests that the domestic CV demand has witnessed significantly volatility over the past 4-6 quarters as purchase considerations of fleet operators have been significantly influenced by series of factors including demonetisation, implementation of BS- IV emission norms, implementation of Goods & Services Tax (GST), enforcement of overloading norms and more recently regulations related to implementation of blower systems. This is confirmed by the Petitioner's own Annual Reports also.
- x. Any future likelihood of injury would also be due to macro changes going on in the automotive landscape.
- y. No case is borne out for continued injury to the domestic industry. The Authority must conduct a holistic assessment of the likelihood of recurrence of dumping and injury. The Authority has historically relied on the provisions for determination of threat of injury for determination of likelihood of recurrence of injury.
- z. With respect to likelihood of recurrence of dumping and injury, it is submitted that the volume of subject goods imported from the subject country in absolute terms and in relation to both production and consumption declined when comparing data from 2016-17 to POI (2019-20).
- aa. Petitioner has acknowledged in their updated petition as well as oral submissions that the decline in imports is due to the global slowdown in the auto sector and the production and sales volumes of the subject goods have decreased drastically in view of decline in Commercial Vehicles segment. The auto industry slowdown has been made worse by COVID-19 pandemic.
- bb. the Petitioners' cost has reduced, and their selling price has increased while achieving higher profits. This shows that the Petitioners' pricing is unaffected by the trends of pricing of the subject imports. From the data, it is submitted that the imports from the subject countries are not entering India at prices that have a significant depressing or suppressing effect and neither is there any likelihood that such imports would, in the future, enter India at such suppressive or depressive prices. Based on the observed pricing trends, it appears that the pricing policy of the subject countries does not affect the pricing policy of the petitioners.
- cc. The selling price of the DI has been higher than the cost of sales throughout the injury period.

- dd. "Excess capacity" does not refer to any capacity over and above the domestic demand in a particular country. Rather, it refers to idle capacities that may be engaged, in the future, for production and sale of subject goods to the Indian markets at dumped prices.
- ee. In the case of Hubei Tri-Ring Axle Co. Ltd., capacities have been increased to cater to increased demand of the subject goods from other countries. Since the increased capacities are geared towards exports to other markets, the possibility of utilization of capacity for exporting to India is very unlikely.
- ff. In the case of Hubei Tri-Ring Forging Co. Ltd, most of their production is geared towards catering to the domestic market. With the gradual easing of COVID-related restrictions and improving of the economic situation, domestic demand for PUC in China PR is expected to further increase. Therefore, existing capacities itself will be utilized for catering to domestic demand in China PR and not for exports to India.
- gg. A perusal of questionnaire responses of the Respondents would demonstrate that inventory levels have declined. The Respondents do not hold much inventory of the subject goods, but rather sell the same in the domestic market and / or third country export markets. It is submitted that, based on this parameter, there is no likelihood of recurrence of dumping and injury to the domestic industry.
- hh. The Respondents made nil exports to India during the post-POI period. The Designated Authority must determine whether the revocation of anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. To do so, the Designated Authority analyses the present level of dumping and injury and also the likelihood of continuation or recurrence of dumping and injury by assessing the post-POI data, which is more essential in a sunset review investigation. However, in the present investigation, the Petitioner has not provided any post POI data to indicate the likelihood of the continuation or recurrence of dumping and injury, even though data of the post POI 3 months could easily have been supplied.
- ii. The Petitioners have attempted to set up a claim that the producers and exporters in the subject countries are highly export dependent and therefore, in case of revocation of duties, exports to India would surge. The statements made are extremely generic in nature and in case of the Respondents are factually incorrect. The Petitioner's statements are without any supporting evidence. The Respondents are oriented towards domestic sales and to some extent exports to third countries. As such, no claim is made out for likelihood of dumping and injury to the Indian domestic producers.

B. Submissions made by Domestic Industry

47. The Domestic Industry has made the following submissions with respect to injury likelihood of injury and causality:
- a. The volume of the dumped imports from the subject country is low, but it is not negligible considering that duties are currently in force and have been for 10+ years.
 - b. The Domestic Industry has been able to improve its performance only due to the anti-dumping duties in force, and despite the automotive market in India facing a demand crunch. Thus, continuation of duties is critical to the survival of the domestic industry.
 - c. The trend of the volume of imports shows that as the period of the present investigation approached, the producers/exporters from the subject country strategically dropped the volume of their exports to India. Naturally, since Sunset Review Investigations occur periodically, all interested parties are able to predict the timing and manage their exports accordingly. This is evidenced by the fact that while the volume of imports was significant in the first two years of the injury investigation period, the same drastically declined during the last two years.
 - d. The volume of dumped imports has remained low during the injury investigation period and therefore, its share in demand etc. will not provide a clear picture about its volume impact on the domestic industry. Authority must examine the potential i.e. likely imports in the event of removal of duty and its likely impact on the domestic industry.
 - e. It is notable that anti dumping duties have been in force against imports from China PR for 10 years. Yet, the majority of imports into India continue to be from China PR only. It is clear that India is an attractive market, and Chinese producers have continued to retain their presence in the Indian market despite duties being in force for 10 years to be able to re-enter this market in greater volume once the duties are removed.
 - f. The pricing of the products under consideration, from China PR, have shown a sharp and unnatural increase in the year prior to the POI, which supports the view that the exporters in China were

artificially strategizing their exports in anticipation of a sunset review the period of which is predictable.

- g. With respect to price undercutting in case of FAB, it is evident that price undercutting without inclusion of ADD is positive in the POI. This shows that in case of revocation of duties, the imports from China PR are likely to undercut the domestic prices of FAB.
- h. With respect to price undercutting in case of SK, it is evident that price undercutting without inclusion of ADD is positive throughout the injury period and even in the POI. This shows a definitive trend that in case duties are revoked, the imports from China PR are going to continue undercutting the domestic prices of SK.
- i. Further, the current price undercutting is determined from very limited export sales. As the volume grows, the impact of these low prices will become significant and materially injury the domestic industry.
- j. In the previous investigation the Authority seen that certain OEM manufacturers in India continued to source small quantities of the subject goods in China to retain a viable source of supply and a small volume of imports during this period is a testimony of that fact. Therefore, the price of these imports is not a critical factor but the capacity of the producers in the subject country to increase their volume and likely price scenario in that case needs to be examined in this sunset review investigation.
- k. With respect to price underselling in the case of FAB as well as SK, it is evident that there is significant underselling. In case of FAB, it is seen that price underselling excluding the quantum of ADD currently in force is significant, in the range of 15 - 25%. In case of SK, there is significant underselling, regardless of whether quantum of ADD is included or not. The price underselling including or excluding the quantum of ADD currently in force is in the range of 100- 200%.
- l. Based on the price effect analysis, it is evident that even though the anti-dumping duties are currently in force, the pricing behaviour of the Chinese producers / exporters continues to be injurious to the Domestic Industry.
- m. There is low volume of Chinese imports in the POI and therefore, their impact in terms of suppression / depression of domestic prices is not evident. However, given the significant levels of dumping, and the price trends as shown in the Petition, it is evident that in case duties are revoked, the import volumes from China PR would soar causing significant injury to the Domestic Industry.
- n. The domestic industry has been able to retain its market share solely due to prevention of unfair imports from China PR by virtue of the anti-dumping duties in force. In the given down turn in general economic condition in India and world over, the Petitioner would face significant losses in case the duty protections were revoked / discontinued.
- o. The Petitioner does not hold significant inventories of the products under consideration. Rather, since the products are made to order, upon specifications of the users / buyers, therefore, the loss of market is better seen in lower capacity utilization rather than in high inventories.
- p. The risk of dumped imports taking over the domestic market being real and foreseeable has acted to curb liberal movement of pricing, in line with general functioning of freely competitive markets. If the imports increase and prices drop in the domestic market due to dumped imports from the subject country the thin margin will further erode leading to financial losses.
- q. The Petitioner has faced poor returns on capital employed, which can be seen from the data as provided in Format H / Performa IV A.
- r. The production and sales of the subject goods have remained significantly suppressed and shows significant drop in the POI due to several factors including the presence and threat of increased presence of dumped imports into the market.
- s. The trend of imports from China PR shows a likelihood of increased imports, particularly in case of duty revocation. The volume of imports from China PR has steadily increased upto 2018-19, despite the antidumping duty and then nose-dived in the POI. Additionally, the POI contains a period of zero imports due to the national lockdown in China PR owing to the pandemic COVID 19.
- t. The situation of growing imports is compounded by the unique post-pandemic situation, wherein China PR has factories and industry back in motion while Indian producers continue to deal with restrictions on production and marketing owing to continued pandemic situation.
- u. HTRA and HTRF continue to be major producers of the subject goods and there are new capacities that have been added in China as per the market intelligence gathered by the Petitioner and also the

Questionnaire Response of the Respondents.

- v. The new capacities have been added without matching increase in domestic consumption or exports to third countries. Therefore, there is an imminent possibility of these capacities being utilised to dumping in India in significantly increased quantities.
- w. The public information pertaining to capacity in China PR has been made available along with the Petition.
- x. The Petitioner has claimed that inventories held by the producers / exporters in China PR would be indicative of likelihood of dumping in India. Further, based on the Questionnaire response filed by the Respondents, it has been submitted that the inventories held by HTRA and HTRF have increased significantly.
- y. While the Chinese producers hold significant capacities, due to present economic condition in China after the US-China Trade war and impact of the Pandemic there is a likelihood of significant drop in the medium and heavy commercial vehicles in the Chinese domestic market in last several months and is likely to continue for some time.
- z. General export dependence of the Chinese economy is well known. Chinese producers are highly export dependent and India has been a target market for Chinese manufacturers for a long time. China has emerged as India's largest trading partner with imports accounting for close to 14% of the total imports into India. Of auto-components, China alone accounts for nearly 20% of the total imports into India for the item 8708 5000, which includes a wide range of products including the products under consideration.
- aa. In view of the current global economic contraction, the global auto industry in general and Chinese auto sector in particular is expected to undergo a significant contraction. It is estimated that Chinese demand for autos would decline by about 10-20% in the year 2020-21. Resultantly demand for the subject goods would also contract while there is a significant capacity built up in China in the recent years. Therefore, in the absence of a demand from the global auto markets and plummeting domestic market in China, the Chinese producers will have a lucrative market in India to dump their goods as the post COVID outlook of Indian auto market is positive as per news reports.
- bb. It is a settled position of law that causal link analysis is not mandatorily required in sunset review investigations. Reference is made to WTO Appellate Body decision in the case of *Oil Country Tubular Goods from Mexico* (WT/DS282/AB/R dated 2 November 2005). This is so because in sunset review investigations, import volumes and pricing parameters are under the impact of the duties currently in force and it is far too easy for the producers in the exporting country to manipulate volumes and prices during the period of investigation in such a way as to defeat any causality assessment.
- cc. In any case causality is evident from the fact that the subject goods are predominantly imported from China PR only. This shall continue to be so because of the peculiar nature of the product where there is a direct linkage of the vendor and OEMs to establish capacities dedicated to the OEM though a quick switch over is possible.
- dd. As per ICRA Report, the demand for Commercial Vehicles (CVs) fluctuated on QoQ basis for the past four to six quarters. Nevertheless, FY 2018 witnessed healthy recovery in demand for CVs, especially Medium and Heavy Commercial Vehicle (M&HCV) Trucks & Light Commercial Vehicles (LCVs). Apart from favorable regulatory developments, pent-up demand from infrastructure sector would also continue to support demand for tippers, a segment which has outperformed the industry during the current fiscal. The first nine months of FY2019 saw the M&HCV goods segment raced ahead as a result of sustained replacement demand, higher economic activities, government spend on the infrastructure sector. While the next three months' sales were a tad slow, the overall numbers for the fiscal were a new record high, up by 15 percent year on year. This clearly pegs India as one of the largest heavy truck markets and with growing demand.
- ee. After a good growth in 2017-18 and 2018-19, 2019-20 saw a significant drop in demand in M&HCVs on the truck side because of BS-VI introduction and the pre-buy of BS-IV and also a marginal slowdown in the economy. 2020 is expected to see another big drop in demand as compared to 2019 because of the economic slowdown due to Covid-19. Therefore, the demand situation in the country shows a complex pattern. In such a case, presence of the dumped imports in the domestic market is the worst thing that can happen to the domestic industry.
- ff. Given the sensitivity of demand in this sector, the price of the goods determines the choice of supplier. The imported goods and the domestically produced goods are like articles and are used for the same applications/end uses. Pricing is the most important factor for purchasing the article either

from imported sources or domestic sources. Since the dumped goods are being introduced in the domestic market and are likely to be introduced in the domestic market at significantly low price if the duties are revoked, the prices and profitability of the petitioning domestic industry would be adversely affected. The domestic industry will be expected to match the dumped prices offered by the importers from the subject country.

- gg. The Respondents' EQR was not shared with the Petitioner until 10th November 2020. In this regard, the Petitioner submits that it was incumbent upon the Respondents to serve a copy of their filing, vide email (given the current pandemic situation).
- hh. The belatedly filed EQR suffers from excessive confidentiality which defeats the practice of serving a non-confidential version of the EQR. The Respondents have claimed confidentiality with respect to, *inter alia*, the accounting period in China, the *names* of raw material / input material, public marketing documents such as brochures, the exchange rate relied upon for conversion from RMB to USD or from USD to INR. The basis of such confidentiality is unclear since the Respondents have not provided any rationale for the same. The Appendix-C, a Declaration by the Legal Representative, has been filed unsigned and therefore, cannot be considered a declaration made in good faith regarding the veracity of the submissions contained in the EQR itself.
- ii. HTRF and HTRA are major producers of the subject goods in China PR and are one of the biggest exporters of the subject goods to India. The information provided by these producer/exporters from China, who have been the only participants in the previous SSR investigation and in the original investigation as well, gives an irrefutable indication of excess capacities in China and the general orientation of Chinese producers towards the Indian market over the last 10-12 years.
- jj. As per data in the EQR, HTRA's capacities are underutilized and liable to be directed towards the Indian market in case of revocation of anti-dumping duties in force. It increased its capacity over the period of injury from 100 indexed units in 2017 to 114 in 2018. Thus, in the POI, the capacity increased by at least 14% compared to 2017. The capacity utilization did not increase commensurately. This indicates that HTRA holds surplus capacity and is currently underutilizing its present capacity.
- kk. Further, trend of sales of HTRA to India increased significantly in the period leading up to the POI and then nosedived right in time for the SSR. HTRA increased production from 100 indexed units in 2017 to 116 indexed units in 2019. Notably, the Sales to the domestic market show a steady trend, from 100 indexed units in 2017 to 138 in 2018 and 134 in 2019. However, the sales to the Indian market show a variable curve, increasing almost 350% between 2017 and 2018 and then declining rapidly and suddenly in 2019 (unsurprisingly, as the SSR period becomes imminent) to a mere 22 indexed units. This aligns with Petitioner's claims regarding the general behaviour of Chinese producers / exporters, as a sunset review examination becomes imminent.
- ll. The data with respect to POI may be tainted by the commercial conditions in China PR as the first country to face lockdowns and national shutdown owing to COVID-19. However, since 2019 data represents a major part of the POI, the same may be noted.
- mm. HTRA's inventories show an increase over the injury period from 100 indexed units in 2017 to 133 indexed units by 2019. Importantly, the increased inventories are held at a cost of significant drop in exports to India as the sunset review period approaches, and without an equal sharp decline in the domestic market or global markets other than India. It is also relevant to note that the inventories held have increased by 33 per cent. This is a significant increase. Further, in the post-COVID scenario, these inventories may be even higher.
- nn. Further HTRA's sales value from domestic sales leading upto the POI, in 2018, is growing at a slower pace than the sales value from export sales to India or other markets. The export sales to other markets has increased by 253% indicating serious export orientation of the producers in China on the face of declining domestic sales in China. It also supports the general information that the Chinese Auto industry is facing a serious demand slide resulting in significant spare capacities with the Chinese producers to produce the subject goods and dump them in India if the duties are lifted. Further, with respect to the trend of sales realisations per unit, the sales realisation per unit of export sales to India shows a higher trend over the injury period and the POI as compared to the sales realisation per unit of domestic sales thus confirming the demand slide in China and price attractiveness of the Indian market to enable intensified dumping in India if the duties are revoked.
- oo. It is unclear why there is different trends in costing information of HTRA with respect to the products meant for domestic consumption and those meant for the Indian markets, with the cost trend for the export products showing a decline during 2018 while the domestic cost shows an increase. It is unclear how the cost calculation has been done, such as to show a different pricing trend for goods

meant for domestic consumption vis-à-vis goods meant for the Indian market.

- pp. Appendix 1 of the HTRF's EQR shows that the Respondent has increased its capacity over the period of injury, has significantly increased its sales to India in the period leading up to the POI (with no sales of the subject goods to any other global market) and held significant inventories over the period of injury and in the POI.
- qq. HTRF's capacity increased over the period of injury from 100 indexed units in 2017 to 105 indexed units in 2019 and POI. However, production of the subject goods has not been scaled up to match the capacity expansion. In fact, the significant decline in the capacity utilization from 100 indexed units in 2017 to 86 indexed units in the POI. Thus, recent capacity expansion read with reduced capacity utilization is indicative of surplus and excess capacity held in reserve by HTRF. This data corroborates the Petitioner's claim that in case of revocation of duty, the surplus capacity would be utilized and is likely to be diverted to India.
- rr. HTRF's Sales to the domestic market show a steady trend, from 100 indexed units in 2017 to 107 in 2018 and 104 in 2019 and then decline to 96 in POI indicating slow down in demand in China. However, the sales to the Indian market show a variable curve, increasing almost 250% between 2017 and 2018 and then declining rapidly and suddenly in 2019 (unsurprisingly, as the SSR period becomes imminent) to a mere 19 indexed units and further lower in the POI.
- ss. HTRF's inventories increased significantly over the injury period from 100 indexed units in 2017 to 253 indexed units by 2019. Importantly, the increased inventories are held at a cost of significant drop in exports to India as the sunset review period approaches, and without an equal sharp decline in the domestic market. It is also relevant to note that the inventories held have increased by almost 230%. This is a significant increase which establishes the fact that there is some serious demand-supply issue in the domestic market. Further, in the post-COVID scenario, these inventories may be even higher and revocation of duty will result in offloading of this inventory and surplus capacity in the Indian market given the fact that this producer-exporter does not have any other market as is evident from its data.
- tt. Finally, the data supplied by the Respondent shows the export orientation of the Respondent and its reliance on Indian markets to deal with its excess capacity and inventory. The data also shows price attractiveness of the Indian market. HTRF does not sell the subject goods to any other country apart from India. Thus, declining domestic demand can only be addressed by way of increase in exports to India, specially in view of capacity expansion by HTRF and high inventories. HTRF's price trends, as can be seen from sales realisation from exports to India have remained stable in the face of declining price trends in the domestic market of China. Therefore, not only are the producers export oriented (specifically and only to India), but it is also evident that the producers have good reason to export to India only as the prices in India remain stable.

C. Examination by the Authority pertaining to Injury parameters

- 48. The Authority notes the arguments of the interested parties and various issues raised therein with regard to the claims of injury and causal link and the counter arguments of the domestic industry on the issues raised by the interested parties. All relevant issues as stated below have been considered in the Final Findings.
- 49. Before proceeding to a detailed assessment of the continued injury or likelihood thereof, the Authority considers it reasonable to note the following:
 - a. As regards the contention that the petition did not contain evidence of post-POI data, the Authority notes that post POI data analysis is though additionally desirable for likelihood is considered in warranting situation. The developments in the injury investigation period and the period of investigation are relevant in a sunset review determination. However, the information for the post POI period has been verified from the DG systems data and it has been found that there are no imports of subject goods from the responding exporters into India in the said period.
 - b. As regards the contention that the present volume of imports is low and does not support the need for continuation of anti-dumping duty, the Authority notes that in sunset review likelihood of continuation or recurrence of dumping and injury is to be examined. Even if import volumes are low at present, the same may not imply absence of any likelihood of dumping and injury in the event of cessation of anti-dumping duty.
 - c. As regards increase in market share of other domestic producers, the Authority notes that in the present scenario of declining demand and continued imposition of anti-dumping duties, changes in market share may not provide a clear position with regard to likelihood parameters. The Authority also notes that the domestic industry has not claimed that it has suffered injury solely because of Chinese imports in India. The present investigation is to examine the likelihood of continuation or

recurrence of dumping and injury in the event of cessation of anti-dumping duty taking into account all other factors also which will be addressed in the Final Findings.

- d. As regards absence of causal link claimed by the interested parties, the Authority notes that absence of causal link in the present period is relevant only in a situation where the Authority concludes that the present injury to the domestic industry is because of current dumped imports into the country. The findings in this regard would examine the situation of continued dumping and injury as well as likelihood of dumping and injury to the domestic industry in the event of cessation of anti-dumping duty.
- e. The Authority has noted the claim of the interested parties that many of the injury parameters of the domestic industry show improvement and domestic industry remained in profits / grew profits despite decline in demand due to contraction of demand from the downstream automobile sector. However, Authority notes that it needs to evaluate likelihood of dumping and injury in a SSR investigation.

50. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant rate of increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
51. For the examination of the impact of the dumped imports on the domestic industry in India, all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments have been considered in accordance with Annexure II of the Rules. All economic parameters affecting the Domestic Industry as indicated above have been examined as under:

XIII. Volume Effects of Dumped imports

a) Import volumes & market share

52. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant rate of increase in dumped imports, either in absolute terms or relative to production or consumption in India. The Authority has examined the volume of imports of the subject goods from the subject country and other countries based on the transaction-wise import data provided by DGCI&S, and as correlated with the cooperative producer/exporter.
53. The Authority notes that as per DGCI&S reports and the questionnaire response filed by the cooperating exporters from China, who are reportedly the only exporters from that country, only machined products have been exported to India during the POI. Therefore, the import weight has been converted taking into account the unit weight of the machined products as reported by the exporters. Accordingly, volume of imports of the subject goods are as follows:

Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Front Axle Beam					
Imports from China PR	MT	1013,11	1,587.60	2,155.97	182.34
Imports from Other Countries	MT	-	-	-	-
Total Imports	MT	1,013.11	1,587.60	2,155.97	182.34
Steering Knuckle					
Imports from China PR	MT	864.71	1,301.83	1,930.52	127.01
Imports from Other Countries	MT	-	0.68	2.70	1.21

Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Total Imports	MT	864.71	1,302.51	1,933.23	128.21

54. The data shows an increasing trend between the periods 2016-17 to 2018-19. Thereafter, during the POI, the imports from the subject country has decreased dramatically.

a) *Assessment of Demand/Apparent Consumption and Market Share in demand*

55. Demand or apparent consumption of the product in India has been assessed based on the domestic sales of the Domestic Industry, other Indian producers, and imports from all sources. Accordingly, estimated demand for FAB in the domestic market is as follows:

FAB					
Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Imports from China PR	MT	1013.11	1587.6	2155.97	182.34
	Trend	100	157	213	18
Total Domestic Sales	MT	***	***	***	***
	Trend	100	114	112	59
Demand	MT	***	***	***	***
	Trend	100	115	115	58
Imports from China PR in relation to demand	%	***	***	***	***
	Trend	100	136	186	31
Imports from China PR in relation to Domestic Production	%	***	***	***	***
	Trend	100	134	182	21

56. The estimated demand for SK in the domestic market is as follows:

SK					
Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Imports from China PR	MT	864.713	1301.83	1930.52	127.008
	Trend	100	151	223	147
Total Domestic Sales	MT	***	***	***	***
	Trend	100	110	101	71
Demand	MT	***	***	***	***
	Trend	100	112	108	67
Imports from China PR in relation to demand	%	***	***	***	***
	Trend	100	134	206	22
Imports from China PR in relation to Domestic Production	%	***	***	***	***
	Trend	100	140	211	15

57. The foregoing data shows that the demand for the subject goods (FAB & SK) in India increased between 2016-17 and 2017-18. Further, in 2018-19 the demand remained at the same level as 2017-18. In the POI, however, the demand for the subject goods declined considerably.

58. The data shows significant rate of increase in volumes of imports from China PR in relation to growth of sales of

the Domestic Industry or other Indian producers as well as significant growth in relation to Indian Demand.

59. Effects of the dumped imports on the domestic sales and market shares have been considered for FAB & SK and on a combined basis. It is seen that the demand of the subject goods has increased during the injury period upto 2018-19 and declined in the POI.
60. As far as FAB is concerned, the market share of the petitioner increased initially in 2017-18 compared to 2016-17 and then declined, hitting a point lower than the base year during the POI. At the same time, imports of FAB from China PR increased throughout the period of injury, upto 2018-19 and crashed in the POI.
61. As far as SK is concerned, the market share of the petitioner increased initially in 2017-18 compared to 2016-17 and then declined, hitting a point lower than the base year during the POI. At the same time, imports of SK from China PR increased throughout the period of injury, upto 2018-19 and crashed in the POI.

XIV. Price Effect of the Dumped imports on the Domestic Industry

62. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. Therefore, both price undercutting and underselling effects of dumped imports have been examined though the volume of import is low.

a) Price undercutting

63. For the purpose of examination of the price undercutting effect of dumped imports, the net sales realization of the domestic industry for both the products have been compared with the landed values of imports of the corresponding products as per DGCI&S data. Only machined form of the products has been imported from China and therefore, selling price of machined products produced and sold by the domestic industry has been considered for determining price undercutting.
64. The price undercutting effect of dumped imports of FAB from the subject country have been examined as follows:

FAB					
Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Import Volume	MT	1,013.11	1,587.60	2,155.97	182.34
Assessable Values	Rs Lacs	***	***	***	***
Assessable Price	Rs/Kg	***	***	***	***
Landed price of Imports	Rs/Kg	141.85	139.34	151.60	153
Net Selling Price	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting %	%	***	***	***	***
	Range	(0-10)	(0-10)	(0-10)	0-10

65. It is noted that price undercutting without inclusion of ADD is positive in the POI. For the prior years, even without inclusion of ADD, the price undercutting is negative. When considered with the quantum of ADD included, there is no price undercutting caused by the dumped imports throughout the period of injury or in the POI.
66. The price undercutting effect of dumped imports of SK from the subject country have been examined as follows:

SK					
Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Import Volume	MT	864.71	1,301.83	1,930.52	127.01
Assessable Values	Rs Lacs	***	***	***	***
Assessable Price	Rs/Kg	***	***	***	***
Landed price of Imports	Rs/Kg	121.57	121.68	131.29	131.12

SK					
Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Net Selling Price	Rs/Kg	***	***	***	***
Price Undercutting	Rs/Kg	***	***	***	***
Price Undercutting %	%	***	***	***	***
	Range	35-45	35-45	35-45	45-55

b) *Price suppression/depression*

67. To examine the price suppression or depression effects of the dumped imports on the domestic prices the trend of net sale realization of the domestic industry has been compared with the cost of production of the domestic industry and the landed price of the dumped imports for machined products, as follows:

Front Axle Beam					
Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Cost of Sales	Rs/Kg	***	***	***	***
	Trend	100	107	113	99
Selling Price	Rs/Kg	***	***	***	***
	Trend	100	103	110	123
Landed Price from China PR	Rs./Kg	141.85	139.34	151.60	153
	Trend	100	98	107	105
Steering Knuckle					
Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Cost of Sales	Rs/Kg	***	***	***	***
	Trend	100	91	87	115
Selling Price	Rs/Kg	***	***	***	***
	Trend	100	100	109	121
Landed Price from China PR	Rs./Kg	121.57	121.68	131.29	131.12
	Trend	100	100	108	108

68. The above data indicates that in case of FAB, the cost of production had increased upto 2018-19 and then declined significantly in the POI. Overall, the cost of sales between 2016-17 and the POI remained almost the same. The landed price of imports have gone up by about 5% compared to the base year but closed the gap between the domestic industry's selling price and itself, to end up being lower than the selling price of the domestic industry.

69. As far as Steering Knuckles are concerned, Authority notes that the cost of sales of the Domestic Industry increase by about 15% in the POI, compared to the base year. At the same time, even selling price increased. However, selling price has remained lower than cost of sales throughout most of the period of injury and in the POI. It is also relevant that the landed price from China PR did not show a parallel trend, but rather increased at a much slower pace. In the end, it is seen that the landed price (without ADD) undercuts the selling price of the Domestic Industry.

70. Both the Domestic Industry and the interested parties have argued that low volume of imports may not exhibit price suppressed or depression effect. However, the Domestic Industry emphasis on the likely effect in case of increase in volumes of imports, in the event of duty revocation while the interested parties simply limit themselves to this claim.

XV. **Examination of Economic parameters relating to the domestic industry**a) *Actual and Potential Impact on Capacity, Production, Capacity Utilization and Sales*

71. Information on capacity, production, capacity utilization and sales volume of the domestic industry is given in the table below:

Particulars	Unit Currency	UOM	2016-17	2017-18	2018-19	POI
Installed Capacity	MT	Indexed	90-100	90-100	90-100	90-100
Production Quantity	MT	Indexed	100	124	133	97
Capacity Utilization Percentage	%	Indexed	100	124	135	106

72. The capacity and production data of the domestic industry has been reviewed and corrected, as pointed out by the interested parties, taking into account the revised data filed by the domestic industry the non-confidential summary of which was also provided to all the interested parties by the domestic industry.
73. The Authority notes that since the volume of imports of the subject goods during the injury investigation is low, the actual impact of imports on the above parameters may not be significant.

b) *Actual and Potential Impact on Profitability, Profits, return on investment and cash flow*

74. On the basis of the detailed examination of the cost of production and other associated costs as well as selling prices carried out by the Authority, profits earned by the domestic industry from the sales of the subject goods in the domestic market has been worked out as follows:

Front axle beam	Unit	2016-17	2017-18	2018-19	POI
Profit/loss (Machined)	Rs/Kg	***	***	***	***
	Trend	100	(3021)	(2243)	13550
Cash Profit	Rs/Kg	***	***	***	***
	Trend	100	104	96	355
Profit before Interest	Rs/Kg	***	***	***	***
	Trend	100	121	118	455
Return on Capital Employed	%	***	***	***	***
	Trend	100	154	125	220
Steering knuckles	Unit	2016-17	2017-18	2018-19	POI
Profit/loss (Machined)	Rs/Kg	***	***	***	***
	Trend	(100)	(14.86)	110.16	(57.99)
Cash Profit	Rs/Kg	***	***	***	***
	Trend	(100)	(56)	129	122.13
Profit before Interest	Rs/Kg	***	***	***	***
	Trend	(100)	(63)	26	19
Return on Capital Employed	%	***	***	***	***
	Trend	(100)	(90)	(19)	5

75. The Interested parties have stated that the Petitioner's ROCE has continuously and significantly increased, with respect to FAB. Similarly, with respect to SK, the Domestic Industry's ROCE has improved and turned positive.
76. The above data indicates that in case of FAB profit, cash profit, profit before interest and return on capital employed increased sporadically, with definitive growth in time for the POI.
77. In case of Steering knuckles, the domestic industry was in losses throughout the period of injury and in the POI,

though the loss per unit has declined over the period of injury. The cash profit, profit before interest and return on capital employed have shown improvement throughout the injury period and in the POI.

c) *Actual and potential impact on Market Share*

78. As indicated earlier, market share of the domestic industry in demand for subject goods has declined from the base year to the POI. The Authority notes that the volume of imports from China has been very low during the injury investigation period which appears to be due to imposition of antidumping duty

d) *Actual and potential impact on Employment, Productivity and Wages*

FAB	Unit	2016-17	2017-18	2018-19	POI
No of Employees- Company	Nos	***	***	***	***
	Trend	100	106	54	51
Salaries & Wages	Rs. Lacs	***	***	***	***
	Trend	100	117	124	16
SK	Unit	2016-17	2017-18	2018-19	POI
No of Employees- Company	Nos	***	***	***	***
	Trend	100	106	54	51
Salaries & Wages	Rs. Lacs	***	***	***	***
	Trend	100	111	118	8

e) *Actual and potential impact on Inventories*

79. The products under consideration are made to order items,

f) *Factors affecting domestic prices*

80. The examination of data indicates that the dumped imports from the subject country, though low in volume, are still entering the Indian market at prices much below the cost of production and selling prices of the domestic industry causing price undercutting and underselling in the Indian market during the POI, when considered excluding the quantum of ADD. There is a significant decline in demand due to general conditions of the automobile sector globally.

g) *Actual and potential impact on Growth*

81. The Authority notes that in a situation of significant decline in demand, growth in various physical and financial parameters need to be properly evaluated would not provide any meaningful guidance on determination of injury on account of dumped imports. This, coupled with the fact that the duties are currently in force, makes it hard to isolate the impact of the dumped imports on growth parameters.

h) *Ability to raise capital investments*

82. The Authority notes that the petitioner is a multi-product company covering several forged and machined products across sectors. Therefore, while their ability to raise capital may not be affected by the performance the production line of the subject goods alone. The company's capacity for fresh investment and expansion of the production line of subject goods is likely to be affected in the current and potential scenario of dumping, coupled with the recession in the auto sector.

i) *Level of dumping & dumping margin*

83. The margin of dumping as a factor for determination of injury indicates that dumping margins of the dumped imports of steering knuckles determined for the subject country are above *de minimis* level and significant. The Authority notes the likelihood of dumping and injury for FAB as well.

XVI. Overall Assessment of current Injury and Causal links

84. The Authority has assessed the impact of the foregoing parameters after receiving the Comments on the Disclosure Statement.

85. The Authority has also examined other factors in the light of the issues raised by the interested parties to evaluate if factors other than imports are responsible for the injury to the domestic industry.

a) *Volume and prices of imports from other sources*

86. It is noted from import data that the subject goods have been imported from the subject country only. The volume of imports from other countries, with respect to FAB, are negligible and with respect to SK are non-existent.

b) *Contraction in demand and / or change in pattern of consumption*

87. As seen above, the demand scenario and pattern of consumption for the subject goods in the domestic market shows there has been a significant decline in demand of the products concerned over the injury period which has been attributed to various factors, including demonetization, recession in the automobile sector, introduction of BS-IV standards, etc. The interested parties have argued that the injury, if any, is due to the decline in the demand and not because of the insignificant import from the subject country.

88. The Authority notes that there was a global slowdown in the automobiles industry and production and consumption of the commercial vehicles in India had also declined during the injury investigation period leading to a decline in demand for the subject products. Therefore, demand is one of the major factors affecting the physical performance of the domestic industry in terms of production volume and sales. The Authority has examined both volume and price injury during the injury period and its likelihood.

c) *Trade restrictive practices and competition between the foreign and domestic producers*

89. The Authority notes that there are few other producers of the subject goods in India who are also producing and selling in the domestic market. The interested parties have not argued that the impact on the Domestic Industry is owing to factors such as *inter se* competition in the Indian market. Further none of the other producers have reported their data to the Authority or opposed the Petition, the Authority has examined available data and submissions by the interested parties.

90. There is no allegation of unfair competition between the domestic producers or any trade restrictive practices in the domestic market which could have contributed to the injury to the domestic industry.

d) *Development in technology*

91. Neither the Domestic Industry nor the interested parties have cited any change in technology for the production of the subject goods.

e) *Export performance of the domestic industry*

92. Petitioner has significant export of the products under consideration during the injury investigation period as per the table given below. The interested parties have not alleged that any injury to the domestic industry could be a result of poor export performance or increased focus on the export markets, at risk to the domestic market.

Export Sales	Unit	2016-17	2017-18	2018-19	POI
Front Axle Beams	MT	***	***	***	***
Trend	Index	100	135	144	103
Forged	MT	***	***	***	***
Machined	MT	***	***	***	***
Steering Knuckles	MT	***	***	***	***
Trend	Indexed	100	129	153	137
Forged	MT	***	***	***	***
Machined	MT	***	***	***	***

93. The Authority notes that the exports of FAB and SK produced by the petitioner increased over the injury period and in the POI. The Authority has noted that the injury to DI is on account of its domestic sales without any impact of export sales.

f) *Magnitude of injury and injury margin*

94. For determination of injury margin the Authority has determined the Non-Injurious Price (NIP) for the domestic industry as per Annexure III of the Anti-Dumping Rules. The Non-injurious price so determined has been compared with the weighted average landed value of the goods imported during the POI as per DGCI&S data.

Accordingly, the margins of injury for the products under consideration imported from the subject country are as follows:

Particulars	Unit	HTRA FAB	Non-cooperative exporters for FAB	HTRF SK	Non-cooperative exporters for SK
Landed Price of Imports from China PR without ADD	Rs./Kg	***	***	***	***
NIP	Rs./Kg	***	***	***	***
Injury Margin without ADD	Actual	***	***	***	***
	%	***	***	***	***
	Range	(30)-(20)	(20)-(10)	10-20	40-50

95. The Authority also notes that since this is a sunset review investigation, and the total volumes of imports from the subject country as well as volume exported by the responding exporters during the period of investigation are low, therefore, for assessment of dumping and injury margins both imports into India and the exports by the respondent producer/exporter to third country needs to be referenced.

96. The Authority notes that this being a sunset review investigation while the duties were in force, the current injury margin may not provide a clear indication of the future level of injurious imports because the dumping margins estimated are significantly positive though volumes are low. Therefore, the Authority has looked at the likelihood aspects of continuation or recurrence of dumping and injury through various other parameters as stated in the following paragraphs.

XVII. Examination by the Authority pertaining to Likelihood of Injury parameters

97. Despite the Anti-dumping duty on imports of Steering Knuckles from China PR is in place, it is noted that dumping margin and injury margin for injury period is positive and quite significant. Since no other exporter/producer responded, Authority holds the aforesaid observation even for non-cooperative exporters.

98. As regards Front Axle Beam, Authority has examined likelihood of dumping and injury by examining following parameters:

- Significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- Inventories of the article being investigated.
- Total and surplus capacities of Products under Consideration in the subject countries during the proposed POI and 3 years prior thereto;
- Quantities and Prices of exports by producers / exporters in the subject countries to countries other than India. In case individual data for producers / exporters especially for whom individual assessment has been done is not available, aggregated information for the subject country may be provided;
- Export orientation of producers / exporters in subject countries. In case data for producers / exporters for which individual assessment has been done is not available, aggregated information for the subject country may be given;
- Justification as to why the Indian market would be chosen as a destination for exports notwithstanding (a) to (c) above, after withdrawal of anti-dumping duties. The attractiveness of the Indian market to be justified;

99. To examine these parameters, following data of respondent producer/exporters has been referenced.

A. Export Orientation:

Export Orientation of HTRA for FAB

Particulars	% Of Sales	2016-17	2017-18	2018-19	POI
Production Capacity	Pieces	***	***	***	***
	Indexed	100	114	114	114
Capacity Utilization	%	***	***	***	***
	Indexed	100	94	101	88
Total Sales	Piece	***	***	***	***
Domestic Sales	Piece	***	***	***	***
Sales to Domestic Market	%	***	***	***	***
Export Sales to Third Countries	Piece	***	***	***	***
	%	***	***	***	***
Export sales to India	Piece	***	***	***	***
	%	***	***	***	***
Export Sales to India as a % of total exports	%	***	***	***	***
	% Range	35-55	35-55	5-15	5-15

Export Orientation of HTRF for SK					
Particulars	Unit	2016-17	2017-18	2018-19	POI
Installed Capacity	Pieces	***	***	***	***
	Indexed	100	102	105	105
Capacity Utilization	%	***	***	***	***
	Indexed	100	96	95	86
Total Sales	Pieces	***	***	***	***
Domestic Sales	Pieces	***	***	***	***
Sales to Domestic Market	%	***	***	***	***
Export Sales to India	Pieces	***	***	***	***
Export Sales to India	%	***	***	***	***
Export Sales to Third Countries	Pieces	0	0	0	0
Export Sales to Other Countries	%	0	0	0	0
Export Sales to India as a % of total exports	% Range	80 - 100%	80 - 100%	80 - 100%	80 - 100%

Capacities of other known producers/exporters

Particulars	Unit	Forging Capacity (POI)	2021-2022	2022-2023
Chongqing Qingling Forging Co., Ltd	MT	***	***	***
TIANRUN CRANKSHAFT CO., LTD	MT	***	***	***
M/s Hubei Tri-ring Auto-Axle Co., Ltd	MT	***	***	***
M/s Hubei Tri-ring Forging Co., Ltd	MT	***	***	***
Total Capacity in China		3,03,888	3,03,888	3,03,888
Source: Annexure N of Petition and Exporter Questionnaire responses				

100. The Authority notes that the DI has provided the capacities of various producers/exporters in the petition. It is further noted that the disposable capacity of the respondent producer/exporters have increased in the injury period.

B. Third country exports:

101. On the basis of unit price available, it is noted that third country prices are higher which indicates the dumping of subject goods into India. To evaluate the dumping behavior of respondent producer/exporters, Authority notes that as no information regarding the Ist two options, to determine the Normal Value, has been provided, Authority has adopted Constructed Normal Value to evaluate the dumping. However, it is also important to note that the export price trend of respondent producer/exporter to third country other than India indicates that the export prices of subject goods to third countries are higher than India.

Particulars	Unit	2016-17	2017-18	2018-19	2019-20 (POI)
Front Axle Beam- HTRA					
Sales in Domestic Market	RMB/Piece	***	***	***	***
Export to India	RMB/Piece	***	***	***	***
Export to Other Countries	RMB/Piece	***	***	***	***

C. Diversion of Exports to India:

102. Authority notes that the respondent producer/exporter's inventories are high coupled with India as an attractive destination. During the injury period, the share of exports of FAB from China PR in total demand is 4-5%. Given the surplus capacities and export orientation of the respondent producer/exporter and also keeping in view the consistent high share of exports of respondent producer/exporter to India in the years prior to POI, the Authority considers that there is diversion of exports of subject goods from third countries to India in event of cessation of AD duty.

103. The Authority notes that the consistently high share of imports from subject country in the years prior to POI, availability of high unutilized capacities and high resultant inventories will have significant impact towards the likelihood of recurrence of injury and dumping from imports from China. It is also noted that the increase in volume of import from subject country is likely to erode the market share of domestic industry if AD duty is rescinded.

Particulars	UOM	2017	2018	2019	POI
Inventory for HTRA	Piece	***	***	***	***
	Indexed	100	115	133	74
Inventory for HTRF	Piece	***	***	***	***
	Indexed	100	254	253	230

104. The inventories of subject goods for respondent producers are noted to be extremely high.

XVIII. Post Disclosure Comments

Comments by domestic industry

Disposable Capacities / Surplus Capacities in China PR

105. As noted by Authority, HTRA and HTRF continue to be major producers of the subject goods and there are new capacities that have been added in China as per the EQR filed by these Respondents and data submitted by Applicant clearly establishes that there is surplus capacity in China PR.
106. However, the price behaviour of the exporters from China in the previous investigations and the capacities to produce and export on marginal cost pricing basis has a potential to significantly undercut and undersell the domestic industry in the Indian market to capture the market if the duties are revoked to utilise their spare capacities.

Inventories

107. The Authority has noted that inventories held by the producers / exporters in China PR are indicative of likelihood of dumping in India. In the present matter, both HTRA and HTRF have reported significant volumes of inventory (particularly in the period of declined sales to India, i.e., 2019). This is indicative of the likelihood of a surge of imports from China PR in case of revocation of duties.
108. Further, it may be noted that while the Chinese producers hold significant capacities, due to present economic condition in China after the US-China Trade war and impact of the Pandemic there is a likelihood of significant drop in the medium and heavy commercial vehicles in the Chinese domestic market in last several months and is likely to continue for some time.

Export Orientation of Chinese producers & Attractiveness of the Indian Market

109. The Authority has noted that share of imports from subject country is consistently high in the years prior to POI, availability of high unutilized capacities and high resultant inventories will have significant impact towards the likelihood of recurrence of injury and dumping from imports from China.
110. Further the Applicant submits that information submitted in previous submissions clearly establishes that there is an imminent likelihood of recurrence of dumping in large volume in the event of withdrawal of the duties. Any significant increase in volume of imports will adversely affect the delicate situation in which the domestic is operating in view of the condition of the domestic auto market at the moment. In a contracting global market, an increased volume of dumped import will cause significant volume and price impact on the domestic industry.
111. Further, as noted by Authority the participating exporter data shows clearly that HTRA had increased its export volumes to India by about 300% while HTRF had increased its export volumes to India by about 250% in 2018 compared to 2017. This, coupled with the fact that these increases to India are significantly greater than their export orientation towards other global markets (HTRF has NIL sales of subject goods to other markets), shows the export orientation of Chinese producers particularly targeting the Indian market.
112. The Authority may take cognizance of fact that the current pandemic situation has created serious demand crunch in the global auto sector, including India and China and in such a situation revocation of duty will irreparably injure the domestic industry if the antidumping duty is revoked. Authority has made an assessment that there is continuation of dumping, though the volume of imports are low due to the antidumping duty in force, and the performance of the domestic industry has also remained affected by several factors, including the presence of dumped imports from the subject country, the continuation, intensification and/or recurrence of dumping and injury to the domestic industry is likely and imminent.

Comments by responding exporters

113. The data regarding sales by the Respondents shows that their exports to India have been declining while exports to other countries and sales in the domestic market have been increasing. Also, the subject goods are made-to-order and customized depending on the requirements of the customers. Thus, it would not be possible to easily substitute one product for another and export a product intended for one customer to another. In any case with the decline in demand from the user segment in India, the Respondents have been more geared towards exporting to other countries and also demand from their own domestic market.
114. Even the existing customer base in India with the Respondents is limited to just one customer, with demand by other customers from the Respondents having dried up due to the antidumping duties in force for the past ten years. Even if the anti-dumping duty is lifted, it would be difficult for the Respondents to gain market share with the domestic industry and other producers dominating the market. Thus, the Respondents are not only not oriented towards increasing their exports to India but also will not be able to increase their exports to India if anti-dumping

duties on the subject imports are lifted.

115. In Para 100, the Authority has provided a table containing capacities of other known producers/exporters to assess capacities in China PR, which includes Tianrun Crankshaft Co., Ltd. The Respondents however submit that this particular producer does not manufacture the subject goods in China PR and the same can be understood from the public website of the said company itself, accessible at <http://www.tianrun.com/en/channels/57.html>. In fact, they are manufacturers of crankshafts, which is fitted in engines and is totally different from the subject goods. Therefore, capacity of this company must be removed from the total capacities of the subject goods in China PR.

Excess Capacity

116. In Para 101, the Authority has noted that the disposable capacities of the Respondents have increased in the injury period. The Respondents however submit that this assessment is incorrect and reiterate their previous submissions that their capacity utilizations are at optimal levels. No producer of the subject goods, including the domestic producers in India such as the Petitioner, will use their entire capacity. Therefore, the Authority's assessment that there is surplus capacity with the Respondents is wholly incorrect.
117. The Respondents further submit that in the case of HTRA, capacities have been increased to cater to increased demand of the subject goods domestically and from other countries. Since the increased capacities are geared towards domestic sales and exports to other markets, the possibility of utilization of capacity for exporting to India is very unlikely. In the case of HTRF, most of their production is geared towards catering to the domestic market. With the gradual easing of COVID related restrictions and improving of the economic situation, domestic demand for PUC in China PR is expected to further increase. Therefore, existing capacities itself will be utilized for catering to domestic demand in China PR and not for exports to India.
118. The Respondents further submit that, given the availability of other export markets in Europe and the United States, disposable capacities available with Respondents in China PR are oriented towards domestic sales and third country exports. There is no likelihood of recurrence/continuance of dumping (if any) if anti-dumping duties are allowed to cease.

Third country exports

119. In Para 102, the Authority has noted that the export price trend of respondent producer/exporter to third country other than India indicates that the export prices of subject goods to third countries are higher than India. The Respondents respectfully submit that this does not imply that the subject goods are being dumped into India by the Respondents, in case the Authority were to arrive at this conclusion in the final findings.
120. The Respondents submit that an apple-to-apple comparison between the exports to India and exports to other countries cannot be made since the subject goods are made-to-order, which are customized according to the customer's needs, as noted by the Authority in the Disclosure Statement itself. Some of these exports to third countries require a higher and different type of machining. Further, since the other countries to whom the Respondents export the subject goods are further away from India, the export prices are bound to be higher on account of higher ocean freight, warehousing costs, and insurance costs. As a result, there is bound to be a marked difference in the prices of the goods exported to various customers in various countries. Thus, export prices to other countries are not relevant for analyzing export prices to India. The Respondents also submit that the Authority must rely on the data provided in the questionnaire response which would clearly show that the subject goods exported to the third countries are of a different variation.

Diversion of exports to India

121. In Paras 103 and 104, the Authority has noted that the consistently high share of imports from subject country in the years prior to POI, availability of high unutilized capacities and high resultant inventories with the Respondents' coupled with attractiveness of the Indian market will have significant impact towards the likelihood of recurrence of injury and dumping from imports from China PR. As a result, the Authority has proposed to consider the diversion of exports from third countries to India in case of cessation of duty. The Respondent submits that they don't agree with the Authority in this regard.
122. With regard to imports from the subject country, the Respondents submit that it has already been noted that the volume of subject imports in relative to demand in India have been low over the injury period. The domestic industry and other domestic producers occupy the major proportion of the market share. With the domestic industry and other domestic producers dominating the market already, the increase in the Respondents' market share upon cessation of anti-dumping duty is very unlikely. Thus, the Authority may please reconsider its findings in this regard.
123. Without prejudice to the aforesaid submissions, the Respondents submit that the domestic industry has already been granted sufficient protection by way of anti-dumping duties for the last ten years. Despite such protection, the Domestic Industry has failed to cater to the demand for specific grades by certain consumers in India. Therefore, even otherwise, existence of inventory with the Respondents does not indicate that the exports to India

will increase in the event of cessation of duty.

124. Additionally, the inventories of both HTRA and HTRF have declined in the POI. The decline in HTRA's inventory was very drastic. However, the relatively higher inventory level of HTRF was propelled by HTRF's higher domestic sales in China PR. As a result, the Authority's assertions in Para 104 about the Respondents having "extremely high" inventory levels is incorrect.
125. The Respondents also submit that the volume of exports to third countries and domestic sales of the PUC has actually increased. So there is no likelihood of diversion of exports to India if anti-dumping duty is discontinued.

XIX. Examination by the Authority

126. Authority notes the submission on capacity of DI and has corrected the same in view of petition revised by DI and the capacity adopted for NIP computation. Noting the submissions of responding producer/exporter that terms of import price has not been correctly mentioned/captured, Authority has corrected the error based on the submissions and relevant records.
127. The Authority notes the post disclosure comments by the interested parties regarding the issue of likelihood of dumping and injury on cessation of existing AD duty. The Authority notes that imports of Steering Knuckles in POI have been found to be dumped and also injurious, though the imports have reduced significantly in POI and are nil in post POI as per DG systems data. As regards Front Axle Beam, both dumping margin and injury margin are noted to be negative in POI and imports being significantly lowered. Further in post POI, imports of Front Axle Beam are nil as per DG systems data. The Authority however had observed in the disclosure that imports of front axle beam are undercutting the DI's prices in POI. The 3rd country exports by the responding producer/exporter indicate that their prices are higher than those exported to India and thus there exists a likelihood of dumping on a likely diversion of exports to India on cessation of existing AD duty. The responding producer/exporter has refuted the aspect of dumping based on their third country exports but not substantiated the same with any evidence and data. The Authority noted that in the original investigation concluded in 2010, the share of Front Axle Beam in total demand was about 25%. As per data provided by the responding producer/exporter, though their domestic sales is 90% of total production, the exports which account for 10% includes India as a preferred destination with the India's share being even 50% in one of the years of injury period. Therefore, if the diversion of exports to India happens post cessation of existing AD duty and the original levels of exports are attained by the subject country, there could be a significant market erosion of Domestic Industry if 25% of the demand is captured by the subject country.
128. The Authority also notes that the demand of subject goods including sales of Domestic Industry have decreased over the Injury period due to slowdown of automobile industry. Keeping in view that one of the subject goods, that is, Steering Knuckles continues to be dumped and injurious and the other, that is, Front Axle Beam is undercutting the domestic prices with likelihood of diversion of subject goods in near future on account of easing logistics post pandemic and cessation of duty, the Authority holds that it may be appropriate to recommend continuance of AD Duty on Steering Knuckles on the basis of dumping margin/injury margin evaluated for POI as per Lesser Duty Rule and continuation of existing AD duty on Front Axle Beam for a period of 30 months from the date of levy of the recommended duty.
129. Imports have reduced significantly in POI and have become nil in post POI and further keeping in view that it is the 2nd SSR, tenure of 30 months of continued measure is proposed. In past cases also, Authority has curtailed the terms of extended duty.

XX. Conclusion

130. Having regard to the submissions made in the investigation, the post disclosure comments and facts available, the Authority concludes that:
- Steering knuckles exported from the subject country are at prices below their normal value, thus resulting in its dumping into India. The imports of Steering knuckles are undercutting the prices of the domestic industry in the market. Both dumping and injury margin for steering knuckles are positive in POI.
 - Dumping margin and injury margin for Front Axle Beam (FAB) are negative during POI. However, there is a likelihood of recurrence of dumping and consequential injury to the domestic industry, if anti-dumping duties are rescinded.
 - There is a strong likelihood of recurrence of Injury to the domestic industry in the event of cessation of anti-dumping duty because of continued dumped imports from the subject country;
 - The Authority thus considers it necessary to recommend continuation of definitive ADD on imports of the subject goods from the subject country.

XXI. Recommendations

131. Having concluded as above, the Authority is of the view that the antidumping measure is specified in the duty

table below.

132. Having regard to the lesser duty rule, the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury on imports of Steering Knuckles from the subject country evaluated for POI. Further, the Authority recommends continuation of anti-dumping duty on imports of Front Axle Beam as notified under Customs Notification No. 50/2010-Customs dated 12th April 2010. Accordingly, the anti-dumping duty equal to the amount indicated in the column no. 7 of table below is recommended to be imposed by the Central Government on the imports of the Front Axle Beam (FAB) and Steering Knuckles (SK) used in medium and heavy commercial vehicles originating in or exported from the subject country, **for 30 months** from the date of levy of the recommended duty.

Duty Table

S. No.	Heading/Sub-Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty Amount	Currency	Unit
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	8708109087089400	Front Axle Beam used in medium and heavy commercial vehicles	China PR	China PR	Hubei Tri-ring Auto Axle Co. Ltd.	0.35	US\$	KG
2.	8708109087089400	Front Axle Beam used in medium and heavy commercial vehicles	China PR	China PR	Any other producer except Hubei Tri-ring Auto Axle Co. Ltd	0.63	US\$	KG
3.	8708109087089400	Front Axle Beam used in medium and heavy commercial vehicles	China PR	Any Country other than China PR	Hubei Tri-ring Auto Axle Co. Ltd.	0.35	US\$	KG
4.	8708109087089400	Front Axle Beam used in medium and heavy commercial vehicles	China PR	Any Country other than China PR	Any other producer except Hubei Tri-ring Auto Axle Co. Ltd	0.63	US\$	KG
5.	8708109087089400	Front Axle Beam used in medium and heavy commercial vehicles	Any Country other than China PR	China PR	Hubei Tri-ring Auto Axle Co. Ltd.	0.35	US\$	KG
6.	8708109087089400	Front Axle Beam used in medium and heavy commercial vehicles	Any Country other than China PR	China PR	Any other producer except Hubei Tri-ring Auto Axle Co. Ltd	0.63	US\$	KG
7.	8708109087085000	Steering Knuckles (SK) used in medium and heavy commercial vehicles	China PR	China PR	Hubei Tri-ring Forging Co. Ltd.	0.47	US\$	KG
8.	8708109087085000	Steering Knuckles (SK)	China PR	China PR	Any other producer	1.09	US\$	KG

		used in medium and heavy commercial vehicles			except Hubei Triring Forging Co. Ltd.			
9.	8708109087085000	Steering Knuckles (SK) used in medium and heavy commercial vehicles	China PR	Any Country other than China PR	Hubei Triring Forging Co. Ltd.	0.47	US\$	KG
10.	8708109087085000	Steering Knuckles (SK) used in medium and heavy commercial vehicles	China PR	Any Country other than China PR	Any other producer except Hubei Triring Forging Co. Ltd.	1.09	US\$	KG
11.	8708109087085000	Steering Knuckles (SK) used in medium and heavy commercial vehicles	Any Country other than China PR	China PR	Hubei Triring Forging Co. Ltd.	0.47	US\$	KG
12.	8708109087085000	Steering Knuckles (SK) used in medium and heavy commercial vehicles	Any Country other than China PR	China PR	Any other producer except Hubei Triring Forging Co. Ltd.	1.09	US\$	KG

XXII. FURTHER PROCEDURE

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

B. B. SWAIN, Spl. Secy. & Designated Authority

क. सं. (1)	शीर्ष/ उप शीर्ष (2)	समूह का विवरण (3)	मूलता का देश (4)	निर्यात का देश (5)	उत्पादक (6)	सीआईएफ मूल्य के % के रूप में शुल्क की राशि (7)
4	- वही -	- वही -	मलेशिया के अलावा कोई देश	मलेशिया	कोई भी	4.02%

1. सीआईएफ मूल्य से तात्पर्य आकलन योग्य मूल्य से है, जो सीमा शुल्क अधिनियम 1962 की धारा 14 (1962 का 52) के तहत यथा निर्धारित है।
2. प्राधिकारी यह भी नोट करते हैं कि एशियन फ्री ट्रेड एग्रीमेंट के कारण आधारभूत सीमा शुल्क शून्य है और इसीलिए पहुंच मूल्य और सीआईएफ राशि समान होगी।
3. यह स्पष्ट करने के लिए कि पाटनरोधी शुल्क और सब्सिडीरोधी शुल्क, दोनों कैसे संचालित होंगे, इसके लिए नीचे एक उदाहरण दिया गया :-

❖ यदि जिन्यी द्वारा विचाराधीन उत्पाद के लिए भारत को किए गए निर्यातों का सी आई एफ/ पहुंच मूल्य यूएस डॉलर 250/ मी. टन है तो जिन्यी को 22.87 यूएस डॉलर/ मी. टन (यू एस डॉलर 272.87/ मी. टन घटा (-) 250 यूएस डॉलर/ मी. टन) पाटनरोधी शुल्क के रूप में और 24.35 यूएस डॉलर/ मी. टन (250 यूएस डॉलर/ मी. टन का 9.74%) प्रतिसंतुलनकारी शुल्क के रूप में भुगतान करना है। निर्यात की इसी कीमत के साथ, अन्य उत्पादकों और निर्यातकों को एडीडी के रूप में 76/मीट्रिक टन (यूएस \$ 326/मीट्रिक टन ऋण यूएस \$ 250/मीट्रिक टन) और सीवीडी के रूप में यूएस \$ 10.05/मीट्रिक टन का भुगतान करना होगा।

आगे की प्रक्रिया

263. इन जांच परिणामों के कारण केंद्रीय सरकार के आदेश के खिलाफ कोई भी अपील, सीमा शुल्क टैरिफ अधिनियम के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपील न्यायाधिकरण के समक्ष की जा सकेगी।

बी. बी. स्वेन, विशेष सचिव एवं निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(DIRECTORATE GENERAL OF TRADE REMEDIES)
NOTIFICATION
(Final Findings)

New Delhi, the 29th December, 2020

(CASE No. CVD 04/2019)

Subject : Countervailing/Anti-subsidy investigation on the imports of Clear Float Glass originating in or exported from Malaysia.

A. BACKGROUND

1. **F. No.6/14/2019-DGTR-** Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and Rule 18 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as the “Rules” or the “Countervailing Duty/ CVD Rules”) thereof:
2. Whereas, M/s Asahi India Glass Ltd., M/s Gold Plus Glass Industry Ltd., M/s Saint-Gobain Glass India Ltd. and M/s Sisecam Flat Glass India Ltd. (hereinafter also referred to as “the Applicants” had filed an application before the Designated Authority (hereinafter also referred to as “the Authority”) in accordance with the Customs Tariff Act, 1975 as amended from time to time

(hereinafter also referred to as “the Act”) and the Countervailing Duty Rules, as amended from time to time for imposition of countervailing/anti-subsidy duty on imports of “Clear Float Glass” (hereinafter also referred to as “subject goods”) originating in or exported from Malaysia (hereinafter also referred to as the “subject country”).

3. And, Whereas, the Authority, on the basis of sufficient evidence submitted by the applicant, issued a Notification No. 6/14/2019-DGTR dated 1.10.2019, published in the Gazette of India, initiating the subject investigation in accordance with Rule 5 of the above Rules to determine existence, degree and effect of the alleged subsidy of the subject goods, originating in or exported from Malaysia, and to recommend the amount of anti-subsidy duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

4. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
 - i. The Authority, under the above Rules, received a written application from the Applicants on behalf of the Domestic Industry, alleging subsidy of Clear Float Glass from Malaysia.
 - ii. The Authority notified the Government of Malaysia, through its High Commission in India about the receipt of the anti-subsidy application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 6 of the Countervailing Duty Rules.
 - iii. The Authority invited the Government of Malaysia for consultation with the aim of clarifying the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement on subsidies and countervailing measures. The consultation was held on 17.9.2019 in New Delhi, which was attended by the representatives of the Government of Malaysia (hereinafter also referred to as “GOM”). The issues clarified by the GOM were taken on record.
 - iv. The Authority issued a notification dated 1.10.2019 published in the Gazette of India Extraordinary, initiating anti-subsidy/countervailing investigation concerning imports of the subject goods from Malaysia.
 - v. A copy of the public notice was forwarded by the Authority to all known exporters of the subject goods, the Government of the subject country through their High Commission in India, and other interested parties about the initiation of the subject investigation in accordance with Rule 7(2) of the Rules.
 - vi. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, and to the Government of Malaysia, through its High Commission and to other interested parties who made a request therefore in writing in accordance with Rule 7(3) of the Rules supra. A copy of the non-confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested. Also, in view of the global pandemic and physical inaccessibility, request was made to all the interested parties to share the non-confidential versions of their submissions with other interested parties via email.
 - vii. The Authority forwarded a copy of the public notice initiating anti-subsidy investigation to the known producers / exporters in the subject country, and other interested parties and provided them an opportunity to file response to questionnaire in the form and manner prescribed within time limit as prescribed in the initiation notification or extended time limit, and make their views known in writing in accordance with the Rules. The Authority sent Exporter’s Questionnaire to the following known producers/exporters to elicit relevant information in accordance with the Rules:
 - a. Kibing Group (M) Sdn. Bhd. (“Kibing”)
 - b. Xinyi Energy Smart (Malaysia) Sdn. Bhd. (“Xinyi”)
 - c. Sipex Glass
 - viii. The Governments of Malaysia, through their High Commission in India was also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the known producers/exporters was also sent to the High Commission along with the names and addresses of the known producers/exporters from the subject country.

- ix. In response to the notification, following producers/exporters responded by filing Exporter's Questionnaire responses.
 - a. Government of Malaysia
 - b. Kibing Group (M) Sdn. Bhd. (Producer / Exporter)
 - c. Xinyi Energy Smart (Malaysia) Sdn. Bhd. (Producer / Exporter)
- x. The Authority forwarded a copy of the public notice initiating anti-subsidy investigation along with Importer's Questionnaire to the following known importers/users/user associations (whose names and addresses were made available to the authority) of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 7(4):
 - a. Atlantic Trading – Mumbai
 - b. Kanch Ghar – Mumbai
 - c. Fishfa Glass – Mumbai
 - d. Samarth Industries – Mumbai
 - e. Prashanth Trading – Mumbai
 - f. Asmi Traders – Mumbai
 - g. Rajat Glass Traders – Karad
 - h. Chandan Glass Traders – Pune
 - i. Kochhar Glass Traders – Bhopal
 - j. Ganeriwala Brothers Pvt Ltd – Kolkata
 - k. Sure Safe Group/ Ganeriwala Glass Traders- Kolkata
 - l. M S Glass Traders- Kolkata
 - m. Glaze Architecture Pvt Ltd. - Kolkata
 - n. Glaze Infrastructure P Ltd.- Kolkata
 - o. Saraf Glass P Ltd. - Kolkata
 - p. GSC - Noida
 - q. Shiv Shakti - Roorkee
 - r. Ridhi Sidhi - Jaipur
 - s. Banaras Glass - Lucknow
 - t. T. L. Verma - Chandigarh
 - u. Jagdamba Glass - Delhi
 - v. Sheesh Mahal Tuff - Rohtak
 - w. Nutan Glass Hs(P) Ltd. - Bangalore
 - x. Mahaveer Glass Hs - Bangalore
 - y. Karnataka Metal Company - Bangalore
 - z. Impact Safety Glass (P) Ltd - Bangalore
 - aa. Southern Auto Products (P) Ltd. - Bangalore
 - bb. Tough Glass India- Bangalore
 - cc. Yesho Float Glass (P) Ltd. - Hyderabad
 - dd. Bhandari Glass Co. - Hyderabad
 - ee. Prakash Glass - Hyderabad
 - ff. Mahaveer Glass - Chennai

- gg. Mahaveer Mirror - Vishakhapatnam
- hh. Uma Industries – Bangalore
- ii. Jai Mirror Industries – Chennai
- xi. The Authority sent Importer's Questionnaire to the following known Association of subject goods in India for circulation & calling necessary information in accordance with Rule 7(4) of the Rules:
 - a. All India Flat Glass Manufacturers Association (AIFGMA)
 - b. ASSOCHAM
 - c. FICCI
 - d. CII
- xii. In response to the above, none of the importers/users have filed their submissions/representations in the above matter.
- xiii. The Authority made available non-confidential versions of the evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
- xiv. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and from DG-Systems, Central Board of Indirect Taxes and Customs (CBIC) to provide the transaction-wise details of imports of subject goods for the injury period. The exporters, during the discussions, submitted that they have exported float glass of various thicknesses under a particular invoice. However, the DGCI&S data has reported entire such quantity of that invoice under only one thickness head. This has impacted the CIF prices of their exports to India. After analysis of DG Systems data and exporters' questionnaire response, credence was found in the request of the exporters. In view thereof, after due examination of the transactions and required analysis, DG Systems data has been relied upon for computation of the volume and value of imports to correlate quantum of exports from specified exporters and validate responses filed, to the extent feasible.
- xv. The Non-injurious Price (NIP) based on the optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules has been worked out so as to ascertain whether Anti-Subsidy duty lower than the injury margin would be sufficient to remove injury to the Domestic Industry.
- xvi. The period of investigation (POI) for the purpose of present investigation is from 1st April 2018 to 31st March 2019 (12 months). However, the injury investigation period covers the data of previous three years, i.e. April 2015 to March 2016, April 2016 to March 2017, April 2017 to March 2018 and POI.
- xvii. In accordance with Rule 7(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 08.01.2020. Subsequently, another oral hearing was held on 15.07.2020 in view of the change of the Designated Authority, as per the judgment of the Hon'ble Supreme Court in the matter of Automotive Tyre Manufacturers' Association (ATMA) vs. Designated Authority, in Civil Appeal No. 949 of 2006 on 07.01.2011. All the parties who attended and presented their views in the oral hearings were requested to file written submissions of their views expressed orally. The parties were also advised to collect written submissions made by the opposing parties and were provided an opportunity to submit their rejoinders thereafter. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed in these final findings.
- xviii. In accordance with the Rules the Authority disclosed the essential facts of the case that would form the basis of its findings in the form of a disclosure statement on 11.12.2020 and the interested parties were allowed time up-to 17.12.2020 to comment on the same. The comments of the interested parties, to the extent relevant, have been considered by the Authority and have been addressed in this finding.
- xix. The submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered in this final finding.

- xx. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the confidentiality claims have been accepted wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xxi. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, such parties have been considered as non-cooperative and disclosure statement has been recorded on the basis of the facts available.
- xxii. ‘***’ in these final findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxiii. The exchange rate adopted for the subject investigation is US\$1 = ₹70.85.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 5. At the stage of initiation, the product under consideration (PUC) for the purpose of present investigation was defined as “Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive)”, the nominal thickness being as per BIS 14900:2000, originating in or exported from Malaysia.
- 6. Clear Float Glass is used in construction, refrigeration, mirror, solar energy industries etc. The product is a superior quality of glass. Due to its inherent strength, high optical clarity, distortion free smooth surface etc., the applications of the product have been increasing for different purposes.
- 7. Float Glass is classified under Chapter Heading 70 “Glass and glassware”. However, the subject goods are also being imported under tariff sub-headings 7003, 7004, 7005, 7009, 7013, 7015, 7016, 7018, 7019 and 7020. However, the customs classification is indicative only and in no way binding on the scope of this investigation.

Submissions made by producers/exporters/importers/other interested parties

- 8. No submission has been made by the producers/exporters with regard to the scope of the product under consideration and like article.

Views of the Domestic Industry

- 9. The product under consideration (PUC) for the purpose of present investigation is “Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive)”, the nominal thickness being as per BIS14900:2000.
- 10. Clear Float Glass is used in construction, refrigeration, mirror and solar energy industries etc. The product is a superior quality of glass. Due to its inherent strength, high optical clarity, distortion free smooth surface etc., the applications of the product have been increasing for different purposes.
- 11. Float Glass is classified under Chapter Heading 70 “Glass and glassware”. However, the subject goods are also being imported under tariff headings 7003, 7004, 7005, 7009, 7013, 7015, 7016, 7018, 7019 and 7020. It is also submitted that the custom classification is indicative only and in no way binding upon the product scope of the Customs Tariff Act, 1975.
- 12. There is no known difference in the subject goods produced by the domestic industry and that imported from Malaysia. The subject goods produced by the domestic industry and the subject goods imported from subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods. The applicants have claimed that the subject goods, which are being coming into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end-uses of the subsidized imports and the domestically produced subject goods and the product under consideration manufactured by the applicants. The two are technically and commercially substitutable and hence should be treated as ‘like article’ under the Rules.

Examination of the Authority

13. The product under consideration for the purpose of present investigation is “Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive)”, the nominal thickness being as per BIS14900:2000 (hereinafter referred to as the “subject goods”).
14. Clear Float Glass is used in construction, refrigeration, mirror and solar energy industries etc. The product is a superior quality of glass. Due to its inherent strength, high optical clarity, distortion free smooth surface, etc., the applications of the product have been increasing for different purposes and classified under Chapter Heading 70 “Glass and glassware”. The classification at the 8-digit level is 70051090 even though the same are being classified and imported under various sub-headings like 7003, 7004, 7005, 7009, 7013, 7015, 7016, 7018, 7019 and 7020 etc. The custom classification is indicative only and in no way binding upon the product scope of the Customs Tariff Act, 1975.
15. With regard to like article, Rule 2(ca) of the Anti-subsidy Rules provides as under:
"like article" means an article which is identical or alike in all respects to the article under investigation or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation."
16. It is noted that there is no known difference in the subject goods produced by the Indian industry, and product under consideration exported from Malaysia. Subject goods produced by the Indian industry and imported from Malaysia are comparable in terms of characteristics such as physical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The subject goods produced by the domestic industry are like article to the product under consideration imported from Malaysia within the scope and meaning of Rule 2(d) of anti-subsidy Rules.
17. No other argument has been made by any interested party on the product under consideration and like article issue. Therefore, it is confirmed that the scope of the product under consideration in the present investigation remains the same as mentioned in the initiation notification.

D. DOMESTIC INDUSTRY AND STANDING

18. The current application has been filed by M/s Gold Plus Glass Industry Ltd., M/s Asahi India Glass Ltd., M/s Saint-Gobain Glass India Ltd. and M/s Sisecam Flat Glass India Ltd., who collectively command 85% share in Indian production of the subject goods during the period of investigation. As per the information available with the Authority there is only one other known producers of the product under consideration in the country i.e., M/s Gujarat Guardian Ltd. It is also noted that the said company has neither supported nor opposed to the present investigation.
19. As per the available information, the Applicants have neither imported the subject goods from Malaysia nor are they related to any other producer/exporter of subject goods in Malaysia or any importer in India. Further, the Applicants account for a major proportion in Indian production of the subject goods.
20. In view of the above, and since none of the interested parties has made any submissions in relation standing of the Domestic Industry, the Authority the Applicants constitute domestic industry within the meaning of Rule 2(b) of the Rules and considers that the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

E. CONFIDENTIALITY**Submissions made by exporters/importers and other interested parties**

21. The exporters/importers and other interested parties have claimed that the responses filed by them are as per the Trade notice. It is further claimed that they have filed the exact replica of the confidential version in the non-confidential version. Therefore, allegation of the Domestic Industry that they have not filed the proper non-confidential version is incorrect.
22. The application suffers from excessive confidentiality as Domestic Industry has claimed all the costing formats as confidential.

Submissions made by the domestic industry

23. Various submissions made by the domestic industry with regard to confidentiality claims of the exporters/importers and other interested parties are as follows:
- i. Excessive confidentiality has been claimed by the exporters in as much as the non-confidential versions of the questionnaire response were not the exact replica of the confidential version filed by the exporters as required under the Rules and the instructions on the issue.
 - ii. Exporters / importers have even claimed confidentiality on the narrative portion of their response, which has made impossible for the Domestic Industry to defend their legitimate interest or to assist the Authority in the best possible manner.
 - iii. As far as their submissions of Applicants are concerned, confidentiality has been claimed in accordance with the provisions of Rule 7 of the Anti-subsidy Rules and the Trade Notices issued in this regard. Therefore, the claims of interested parties that the Applicants have claimed excessive confidentiality, are baseless.

Examination by the Authority

24. With regard to confidentiality of information, Rule 8 of Countervailing Duty Rules provides as follows:

“Confidential information: (1) Notwithstanding anything contained in sub-rule (1), (2), (3) and (7) of rule 7, sub-rule (2) of rule 14, sub-rule (4) of rule 17 and sub-rule (3) of rule 19 copies of applications received under sub-rule (1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”

25. Non-confidential version of the submissions by various interested parties were made available to the all the other interested parties through inspection of the Public file maintained by the Authority for the same and also through circulation via e-mail for their comments and record.
26. As regards the contentions with regard to confidentiality of information, it is noted that information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidence submitted by various interested parties in the form of public file. The information related to imports, performance parameters and injury parameters of domestic industry has been made available in the public file. Business sensitive information has been kept confidential as per practice. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

F. Assessment of subsidy – Methodology, Parameters, Countervailability and Subsidy margins

27. The petition filed by Domestic Industry provided prima facie evidence of existence of countervailable subsidies in the subject country to initiate the instant investigation prior to initiation of investigation. Government of Malaysia was invited for consultation on 17.9.2019 in New Delhi. The producers and exporters from Malaysia were advised to file response to the questionnaire and

were given adequate opportunity to provide verifiable evidence on the existence, degree and effect of alleged subsidy program for making an appropriate determination of existence and quantum of such subsidies, if any.

28. The following producers/exporters from Malaysia including the Governments of Malaysia have filed questionnaire responses.
- Government of Malaysia
 - Kibing Group (M) Sdn. Bhd. (Producer / Exporter)
 - Xinyi Energy Smart (Malaysia) Sdn. Bhd. (Producer / Exporter)

General overview of the alleged Subsidy Programs

Submissions made by domestic industry

29. The following submissions have been made by the domestic industry:
- Response of Kibing Group cannot be accepted, as they have not provided the complete information of their related parties situated in Malaysia namely Kibing Energy Saving Glass Co., Ltd and CS Eco Glass (M) Sd. Bhd. Domestic Industry has further submitted that unless the data of Kibing Energy Saving Glass Co., Ltd and CS Eco Glass (M) Sd. Bhd. are not examined, the Authority would not be in a situation to calculate the total subsidy benefit availed by Kibing Group.
 - Response of Xinyi Smart Energy cannot be accepted, as they have not provided the information of their related companies situated in Malaysia namely Xinyi Solar (Malaysia) Sdn. Bhd. (Xinyi Solar) and Xinyi Photovoltaic (Malaysia) Co., Ltd. (Xinyi Photovoltaic). Domestic Industry has further submitted that unless the data of Xinyi Solar and Xinyi Photovoltaic are examined, the Authority would not be in a situation to calculate the total subsidy benefit availed by Xinyi Smart Energy.
 - Exporters have stated "not applicable" in most of the schemes on the grounds that the company did not avail the specified programs. However, when a company is eligible for a program, there is no reason to believe that it would not have benefited under the alleged programs. Thus, either the company should show absence of eligibility or must demonstrate why it has not availed benefit that is available under the program.
 - The response filed by the Government of Malaysia should also not be accepted as they have not cooperated to the best of their ability. In this context, it is submitted that the Government of Malaysia has simply stated that information should be collected from the exporters, without providing specific information requested in the response.
 - In their response Government of Malaysia has not provided information relating to the companies under investigation as to which companies have applied for, claimed, received or used assistance stated. Moreover, information about their related companies and benefits availed by them also not been disclosed by the Authority. This non-submission of information relating to exporters of subject goods and their related entities vitiate the whole purpose of collecting response from Government of exporting country.
 - Government of Malaysia and exporters of the subject goods from Malaysia have not participated with clean hands and therefore, their responses need to be rejected and Domestic Industry should be protected to the full level of subsidy margins.

Submissions by the other interested parties

30. The following submissions have been made by the other interested parties:
- Article 11.3 of the SCM Agreement requires an investigating authority to review the accuracy and adequacy of the evidence provided in a petition in order to determine whether it is "sufficient" to justify the initiation of an investigation.
 - It must be noted that "prima facie" and "sufficient" are two completely distinct terms, imply different standards and are not interchangeable. Further, the petitioner could not establish the existence of the three elements comprising a countervailable subsidy, i.e. financial contribution by a government or public body; benefit; and specificity.

- c. The GOI's consistent use of a lower standard of assessment and its failure to first determine that the petition provides "sufficient evidence" of subsidization of the subject goods by exporting producers and resulting injury to the Indian industry is a fatal error.

Examination by the Authority

31. The Authority notes that the investigation was initiated for 20 schemes for which *prima facie* evidences were provided by the applicant to shows that the producers and exporters of the subject goods in Malaysia have benefited from a number of subsidies granted by the Government of Malaysia directly or indirectly. The alleged subsidies consist of direct transfer of funds and potential direct transfer of funds or liabilities; Government revenue that is otherwise due is foregone or not collected; Provision of goods and services for less than adequate remuneration; etc. In addition to 20 schemes, the exporter has provided one more scheme namely Licensed Manufacturing Warehouse Scheme. The Authority has thus analyzed the countervailability of all 21 schemes in the following paragraphs.

I. Schemes Identified as Grants

1. Subsidies on Natural Gas
2. The Market Development grant

II. Schemes Identified as Tax Incentive

3. Pioneer Status
4. Incentive for manufacturing and manufacturing related service in East Cost Economic Corridor
5. Investment Tax Allowance
6. Accelerated Capital Allowance
7. Double deduction for promotion of Malaysian brand
8. Draw back on Import duty, Sales tax and Excise duty
9. Sales Tax Exemption
10. Exemption from Import Duty and Sales Tax for Outsourcing Manufacturing Activities.
11. Exemption from Import Duty and Sales Tax on Spares and Consumables
12. Exemption from Import Duty and Sales Tax on Machinery and Equipment
13. Exemption from Import Duty on Raw Materials/Components
14. Double Deduction for Promotion of Exports
15. Double Deduction for Promotion of Export Cargo
16. Allowance for Increased Export
17. Tariff Related Incentive
18. Allowance for plants and Machinery

III. Schemes Identified as Export Credit and Export Financing

19. Export Credit Refinancing
20. Buyer Credit Guarantee

IV. Scheme Claimed by the Exporter

21. Licensed Manufacturing Warehouse
32. The Authority has examined the claims and counterclaims of all the interested parties with respect to specific schemes below:

Calculation Methodology

33. Article 14 of ASCM, provides guidelines and methodology for calculating the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 and further provides that any method used by the investigating authority to calculate the benefit to the recipient shall be transparent and adequately explained. Further, any method used by the investigating authority to calculate the benefit to the recipient shall be provided for in their national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. In accordance with the requirement, the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 lays down the methodology of determination of quantum of subsidization. The determination in this investigation is in accordance with these guidelines.

Schemes related information:**Program No. 1: Subsidies on Natural Gas****a. Submission of the Domestic Industry**

34. The Petitioner submitted that under this program, natural gas is provided at subsidized rate by the gas providing company to manufacturing sector and electricity producers. The Domestic Industry further submitted that this this subsidy is available for the industries engaged in manufacturing activities as well as to the electricity producers. This, in turn, while providing the industries in manufacturing sector access to cheap gas, leads to reducing the cost of electricity production. As per the petitioner, the electricity so produced is thereafter supplied to the manufacturing industries at cheap rate leading to substantial overall cost reduction. They submitted that Gas and electricity are critical components of manufacturing process in glass industry and thus, this scheme confers benefit upon the Malaysian producers. As per the petitioner, the gas company is compensated by the government to the extent of subsidization.
35. As evidence of existence of the program, Petitioners relied on:
- Annual report of the Gas company “Gas Malaysia Berhad”
 - Regulated and unregulated gas prices published by the energy commission of Malaysia.
 - Investment act, 1986

b. Submission by Government of Malaysia/other interested parties

36. Prior to the Asian Financial Crisis of 1997-98, the gas price to downstream consumers in Malaysia was based on market value. Contractually, gas prices were linked to a substitute petroleum product. As part of the overall stimulus and recovery package implemented by the Government in response to the crisis, domestic gas prices were subsequently regulated. In October 2002, the Government began regulating the gas pricing for industrial sector where the gas prices for industrial sector were lower than the market price.
37. The price adjustments for industrial sector experienced eleven cycles of price revisions since 2014, with an increase of RM1.50/million British thermal unit (MMBtu) every six months. As of March 2019, the average gas tariff for industrial sector was RM***/MMBtu. The regulated gas price is expected to reach market price in 2020. In that note, current regulated gas price is slightly lower than the market price.
38. Currently, there are two categories of gas prices in Malaysia that are collectively referred to as the two-tiered pricing mechanism, namely regulated gas price and market-based LNG-indexed price. Under the regulated gas price regime, which only applies to customers with pre-existing contracts, the Government regulates the price of the gas supplied by PETRONAS and Gas Malaysia Berhad (GMB). On the other hand, LNG indexed pricing is applicable for all new volumes, including additional volumes from customers with pre-existing contracts.
39. In addition, the government has also prescribed the Incentive Based Regulation (IBR) framework which sets the base tariff for industrial customers for three years from January 2017 to December 2019. This IBR framework allows changes in the gas costs to be passed through via the Gas Cost Pass-Through (GCPT) mechanism every six months. GCPT is the mechanism to pass through the

gas cost differential which incurred due to the difference between gas cost forecasted in base tariff and actual gas cost. GCPT is implemented every 6 months in January and July. The rate will be either a rebate or surcharge.

40. The gas price charged to industrial customers is based on tariff category. All the customers in the same tariff category will be imposed the same price. Since this program is not available for industrial customers, no application process is applicable.
41. The exporters have further submitted that no subsidy is granted to the Gas suppliers since January 2020 and the same is verified from the invoices of the Gas companies. They have further submitted that all the existing Gas Malaysia Berhad (GMB) consumers will enjoy a fixed gas price for 2 years starting 1st January 2020 until 31st December 2021. The Government has fixed the consumer gas price at the average price of RM***/Mmbtu for the year 2020.
42. The exporters have further claimed that that Program No.1 cannot be regarded as countervailable, as GCPT is no longer applicable and the regulated gas prices have been matched with the unregulated gas price since January 2020 and hence no subsidy is given by the Government of Malaysia to Gas companies. Since Gas prices will not be regulated by GOM starting 1st January 2022, hence, no margin should be applied on account of Program No. 1.

c. Examination by the Authority:

43. Authority notes that this program is governed by Gas Supply Act, 1993. The subsidy program allows regulated, more favourable rates of natural gas prices for industrial sector including the electricity sector. It is noted that the GOM admittedly provides subsidies to the gas supplying companies namely, PETRONAS and Gas Malaysia Berhad (GMB) which in turn supplies gas to the exporter at reduced rates. The difference is then recovered by the said company from the GOM. Thus, the Authority is of the view that there is a direct financial contribution by the GOM. Further, the response of GOM itself states that:

“The government has also prescribed the Incentive Based Regulation (IBR) framework, which sets the base tariff for industrial customers for three years from January 2017 to December 2019. This IBR framework allows changes in the gas costs to be passed through via the Gas Cost Pass-Through (GCPT) mechanism every six months. GCPT is the mechanism to pass through the gas cost differential which incurred due to the difference between gas cost forecasted in base tariff and actual gas cost. GCPT is implemented every 6 months in January and July. The rate will be either a rebate or surcharge”

44. As regards the contention of the GOM that the program is not available to the industrial customers, the Authority observes that the GOM has also not denied the existence of the subsidy element in the gas pricing mechanism which is supplied to the industrial producers. The Authority notes that it is not necessary for a subsidy to be countervailable that it should be made available to the concerned enterprise directly. In this context, it would be appropriate to refer to the definition of “subsidy” under Section 9(1) of the Customs Tariff Act, 1975, which reads as under:

9(1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if –

- (a) *there is financial contribution by a Government, or any public body [in the exporting or producing country or territory], that is, where –*
 - i. *a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;*

- ii. *Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);*
 - iii. *a Government provides goods or services other than general infrastructure or purchases goods;*
 - iv. *a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or.....*
45. From the above, it is clear that if a government ‘entrusts or directs a private body to carry out one or more of the type of functions illustrated in points (i), (ii) and (iii) which would normally be vested in the government, and the functioning, in no real sense, differs from functions normally carried out by governments in terms of paragraph i-iii of Section 9(1)(a) of the Customs Tariff Act, 1975, then it is deemed to be a subsidy. These provisions mirror Article 1.1(a)(1)(iv) and (iii) of the SCM Agreement. Therefore, any program which allows even the private bodies to provide Gas for less than adequate remuneration to the industry, is covered by the definition of “subsidy” in terms of the above provisions.
46. The Authority further notes that the exporters initially denied any knowledge about the existence of the subsidy relating to natural gas. However, during the investigation, the Authority took note of the fact that subsidy element was mentioned on the Gas invoices raised by the Gas supplier to the exporters. The Authority, thereafter, checked the invoices for the relevant period and noticed that subsidy was indeed availed by the exporters of the subject goods.
47. The Authority has examined the countervailability of the scheme below:
- a. The response submitted by the GOM states that the gas prices in Malaysia are regulated by the Government.
 - b. The response submitted by the GOM acknowledges that there is a price differential in the market prices of gas and the prices of gas for industrial users.
 - c. Further, the response of GOM also states that the gas price charged to industrial customers is based on tariff category, indicating consumption-based tariff system.
 - d. The Authority notes that this scheme provide benefit to large numbers of the enterprises. However, while examining the scheme, the Authority observes that the Government of Malaysia’s natural gas regulation predominantly benefits the industries who uses gas as major input for manufacturing their product. Since Natural Gas is major input used in the furnace for melting raw material in Float Glass industry, the Authority considers this scheme to have been granted to a limited number of persons engaged in the manufacture or production of the product under consideration. It is also noted that natural gas constitutes substantial part of the total cost. The inherent characteristics of natural gas limits the possible use of the subsidy to few industries, but this does not mean that, in order to be specific, the subsidy must be further limited to a subset of any industry. It is therefore specific under Article 2 of the ASCM.
48. In view of the aforesaid, the Authority determines that the above program is countervailable and the element of the benefit is to be included in the overall subsidization.

Program No. 2: Market Development Grant (MDG)

a. Views of the Domestic Industry

49. The Petitioner submitted that the scheme is introduced by Malaysian Investment Development Authority (MIDA) for SMEs to promote export promotional activities. The maximum grant for an SME under the MDG program is RM 200,000. The SME should have been incorporated under the Companies Act, 1965 with at least 60% Malaysian equity ownership. The evidence and the legal basis are General Policies, Facilities, and Guidelines for Market Development Grants (MDG)-2016.

b. Submission by Government of Malaysia/other interested

50. It is a continuous program structured under the 11th Malaysia Plan (2016 - 2020) for increasing the SME’s participation in export promotional activities.

51. The MDG provides an opportunity for Malaysian SMEs to apply for a reimbursable grant up to RM200,000 for participation in export promotional activities namely International Trade Fairs, Trade & Investment Missions /Export Acceleration Missions, International Conferences Overseas and Listing Fees for Made-in-Malaysia Products in supermarkets, hypermarkets or retails centers overseas.
- c. Examination by the Authority**
52. The Authority notes that Market Development Plan (MDP) was introduced in 2002. It is part of the 11th Malaysian Plan (2016-20). It is intended to increase participation of SMEs in export promotional activities. The MDP provides SMEs a reimbursable grant up to RM 2,00,000 for their participation in export promotional activities such as International Trade Fairs, Trade & Investment Missions /Export Acceleration Missions, International Conferences Overseas and Listing Fees for Made-in-Malaysia Products in supermarkets, hypermarkets or retails centres overseas.
53. The subsidy program provides for financial contribution in the form of direct transfer of funds and benefit is thereby conferred to the recipient. The subsidy program is also specific because is contingent on export. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporters.

Program No.3: Pioneer Status

a. Submission by the Domestic Industry

54. The Domestic Industry has submitted that under this program a company granted Pioneer Status will enjoy tax exemption from corporate income tax. The program encourages investments in promoted activities/products in the manufacturing sector that can contribute to development and growth of economy. It applies to both local and foreign investors for approved promoted products/activities in the manufacturing sector. Five-year partial exemption is provided from payment of income tax. A company pays tax on 30% of its statutory income, with exemption period commencing from its Production Day. Unabsorbed capital allowances and accumulated losses incurred during the pioneer period can be carried forward and deducted from post pioneer income of company. As evidence of existence of the program, petitioners have relied on:
 - Promotion of Investment Act, 1986
 - New and full notification pursuant to article xvi:1 of the GATT 1994 and article 25 of the Agreement on Subsidies and Countervailing measures-Malaysia dt. 5 October, 2017
 - <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
 - List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986
 - Laws of Malaysia Act 327 of Promotion of Investment act, 1986 Part-II Sec 5,6,7, deals with pioneer status
 - Web Report: EXIM Bank's Export Credit Refinancing
 - US Extruded through Malaysia

b. Submission by Government of Malaysia/other interested parties

55. Companies are required to submit the applications for the Pioneer Status program to the Malaysian Investment Development Authority (MIDA), an agency under Ministry of International Trade and Industry (MITI). The company will then be required to get the Pioneer Certificate from MIDA. This is to ensure that the company has complied with the conditions imposed. After MIDA is satisfied that the company has complied with the conditions, MIDA will determine the production date for the company and determine the start and ending date of the program. Later, companies approved with the program submit their claims to the Inland Revenue Board together with their annual tax returns containing the calculation of claim for the tax deductions. The applicants will need to go through the Approval Committee also.
56. The major tax incentives for companies investing in the agricultural and manufacturing sectors are the Pioneer Status and Investment Tax Allowance. These incentives are mutually exclusive. Sections 5-25 Promotion of Investments Act 1986 are evidence of the same. The benefit is an exemption from taxes owed. Also, losses can be carried forward.

57. The eligibility criteria for the Pioneer Status is based on criteria such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country.

c. Examination by Authority

58. The Authority notes that Sections 5 to 25 of the Promotion of Investment Act 1986 provides for pioneer status program. The program provides for tax incentives in the form of exemption from income tax. Losses incurred during the exemption period can be carried forward for subsequent years to offset taxable income/net profit. It is noted from the responses on record that the eligibility is based on criteria such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country
59. The program provides for financial contribution in the form of revenue foregone, which is otherwise due, and benefit is thereby conferred. The program is also specific as it is based on criteria listed above. In addition to that, the GOM stated that, *“The applicants will still need to go through the Approval Committee. Reasons for rejection can vary from applicants not able to meet the criteria stated above & some other relevant criteria set up by the Government.”* The Authority therefore, notes that the discretion of ‘setting up of some other relevant criteria’ exercised by the Government for selection or rejection of any company clearly lends specificity to the enterprises who get benefit under this scheme. Accordingly, the Authority determines this scheme as specific and countervailable.
60. However, the benefit under this program is not availed by the cooperating exporters.

Program No.4: Incentives for Manufacturing and manufacturing related services in East coast Economic Corridor

a. Submission by the Domestic Industry

61. The Domestic Industry has submitted that under this program, various tax exemptions-revenue foregone are given to a company, situated in East Coast Economic Corridor, involved in manufacturing of selected and agro-based products and manufacturing related services.
62. Customized incentives based on merit of each case, or, Income Tax exemption of 100% for 10 years starting from year company derives statutory income or Income Tax exemption of 100% on the qualifying capital expenditure for 5 years is given. Stamp duty exemption on land or building acquired for development and Import duty and sales tax exemption on machinery and consumables that are produced locally and used directly in the activity are also available.

b. Submission by Government of Malaysia/other interested parties

63. Tax Exemption may be granted to any company intending to participate in a promoted activity or to produce a promoted product including an activity/product which is of national and strategic importance to Malaysia.
64. Companies are required to submit the applications for the tax exemption program to the East Coast Economic Region Development Council (ECERDC), an agency under MOF. The company will then be required to get the verification of compliance letter from ECERDC upon the company receiving the first statutory income for tax exemption will be issued upon the company meet all the conditions. After ECERDC is satisfied that the company has complied with the conditions, it will issue the said letter of which the company then can enjoy the incentive for the period of 10 years. Later, companies approved with the program will submit their claims to the IRB together with their annual tax returns containing the calculation of claim for the tax exemption. The assistance is an exemption from taxes owed. There is a provision of losses and carry forward is allowed. Not all individuals/firms who applied and met eligibility criteria will be approved of the program. The applicants will need to go through Approval Committee.
65. The eligibility criteria for the program are:
- project is located in East Coast of Malaysia;
 - value added; and
 - level of technology as measured by the Managerial, Technical and Supervisory (MTS) Index.

c. Examination by Authority

66. The Authority notes that full income tax exemption is granted under this program to the company whose project is located in the east coast economic corridor and is intending to participate in a promoted activity or to produce a promoted product including an activity/product which is of national and strategic importance to Malaysia.
67. The program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific because it is limited to promoted products and also specific to region i.e. enterprise whose project is located in east coast economic corridor. Therefore, Authority holds that this scheme is a countervailing program. However, the benefit under this program is not availed by the cooperating exporters.

Program No.5: Investment Tax Allowance**d. Submission by the Domestic Industry**

68. The Petitioner submitted that under this program, a company granted Investment Tax Allowance (ITA) is entitled to offset this allowance against the statutory income for each year of assessment. The program encourages investments in promoted activities/products in the manufacturing sector, that can contribute to development and growth of economy. It applies to both local and foreign investors for approved promoted products/activities in the manufacturing sector. An allowance of 60% on its qualifying capital expenditure incurred within 5 years from the date the first qualifying capital expenditure is incurred is given. Company can offset this allowance against 70% of its statutory income for each year of assessment. Remaining 30% of its statutory income will be taxed at the prevailing company tax rate. As evidence of existence of the program, Petitioners have relied on:
- Promotion of Investment Act, 1986
 - New and full notification pursuant to article xvi:1 of the GATT 1994 and article 25 of the Agreement on Subsidies and Countervailing measures-Malaysia dt. 5 October, 2017
 - <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
 - List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986

e. Submission by Government of Malaysia/other interested parties

69. Investment Tax Allowance (ITA) may be granted to any company intending to participate in a promoted activity or to produce a promoted product including an activity/product which is of national and strategic importance to Malaysia. Promoted activities and promoted products are determined and gazetted by the Minister of International Trade and Industry. Sections 26 – 29 of the Promotion of Investments Act 1986 (Act 327) are evidence of the same.
70. The allowance is only given on capital expenditure incurred on industrial buildings, plant and machinery directly used for promoted activities or the production of the promoted products. Companies are required to submit the applications for ITA program to MIDA, an agency under MITI. The company will then be required to establish the commencement of ITA period which is on the incurrence of the first capital expenditure duly certified by MIDA. Later, companies approved with the program submit their claims to the Inland Revenue Board (IRB) together with their annual tax returns containing the calculation of claim for the tax deductions.
71. The eligibility criteria for the ITA are value added (VA) percentage and level of technology as measured by the MTS Index.
72. Not all individuals/firms who applied and met all the eligibility criteria are approved. The applicants will need to go through the Approval Committee. The assistance is a deduction from taxable income. The allowance can be carried forward until fully utilized.
73. A company can elect to receive Pioneer Status but not receive the Investment Tax Allowance, or can elect to receive the Investment Tax Allowance, but not Pioneer Status.

f. Examination by Authority

74. Authority notes that Sections 26 to 29 of the Promotion of Investments Act 1986 provides for Investment Tax Allowance program. Promoted activities and promoted products are granted capital allowance. Value addition and technological requirements are also to be fulfilled. Out of the total capital expenditure, 60% of the capital expenditure is granted as allowance and can be deducted against 70% of statutory income for 5 years. Remaining income can be taxed at normal income tax rate. It is noted from the responses on record that the eligibility is based on criteria such as capital intensive, capable of generating significant linkages, import substitution, high value added, technology, green technology, job creation, contribution to the development of manufacturing support services and spillover effect to the country.
75. The program provides for financial contribution in the form of revenue foregone, which is otherwise due, and benefit is thereby conferred. The program is also specific as it is based on criteria listed above. In addition to that, the GOM stated that, *“The applicants will still need to go through the Approval Committee. Reasons for rejection can vary from applicants not able to meet the criteria stated above & some other relevant criteria set up by the Government.”* The Authority, therefore, notes that the discretion of ‘setting up of some other relevant criteria’ exercised by the Government for selection or rejection of any company clearly lends specificity to the enterprises who get benefit under this scheme. Accordingly, the Authority determines to treat this scheme as specific and countervailable.
76. The Authority further notes that under this scheme, Xinyi Energy Smart (Malaysia) Sdn. Bhd. has got income tax exemption and therefore, the Authority is of the view that countervailing duty should be imposed against this subsidy programs for Xinyi Energy Smart. Accordingly, the Authority determines this scheme as specific and countervailable. It is further noted that although the allowance can be carried forward until fully utilized, this scheme is valid only for the period of 10 years and accordingly, the Authority has calculated the benefit under this scheme. It is noted that the benefit under this program is not availed by the M/s Kibing, the cooperating exporter.

Program No. 6: Accelerated Capital Allowance**a. Submission by Petitioners**

77. The Domestic Industry has submitted that under this program a special allowance, where the capital expenditure is written off within 3 years, i.e. an initial allowance of 40% and an annual allowance of 20%, is given. After the 15-year period of eligibility for Reinvestment Allowance, companies that reinvest in the manufacture of promoted products are eligible to apply for Accelerated Capital Allowance. Applications have to be submitted to the IRB accompanied by a letter from MIDA certifying that the companies are manufacturing promoted activities/products. As evidence of existence of the program, Petitioners have relied on:

- Promotion of Investment Act, 1986
- <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>
- List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment act, 1986

b. Submission by Government of Malaysia/other interested parties

78. Accelerated Capital Allowance (ACA) provides allowances to write off the capital expenditure within three years, i.e., an initial allowance of 20 percent in the first year and an annual allowance of 40 percent. This program is available to all companies and the IRB applies objective criteria in granting ACA. Program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available. The assistance is an accelerated capital allowance to be deducted from taxable income. The allowance can be carried forward. Generally, to be eligible for accelerated capital allowance (ACA), a person must meet the following conditions:

- He was carrying on a business during the basis period
- He has incurred qualifying expenditure in the basis period
- The asset was used for purposes of a business, and
- At the end of the basis period, he was the owner of the asset and the asset was in use

79. The companies under investigation will be eligible to claim ACA if they fulfil the criteria and government doesn't exercise discretion as to which firm is eligible to benefit.

c. Examination by Authority

80. Authority notes that the program provides for capital allowance i.e. deduction of capital expenditure from statutory income to promoted activity after the expiry of 15 years of reinvestment allowance period. The program allows to write off the total capital expenditure within three years, i.e., an initial allowance of 20 percent in the first year and an annual allowance of 40 percent in the next two years.
81. Authority notes that the program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific because it is available to certain enterprise carrying out promoted activity that qualify for using this allowance and does not qualify for re-investment allowance on account of expiry of 15 years period of eligibility. Therefore, Authority holds this program as countervailing program.
82. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporters.

Program No 7: Double deduction for promotion of Malaysian Brand

a. Submission by Petitioners

83. The Domestic Industry has submitted that under this program, expenditure incurred on advertising local brand products domestically is allowed double deduction i.e. expenses incurred on certain activities can be set off twice as against taxable profits. The local brand must be owned more than 50% by the registered proprietor of the Malaysian brand name which should be owned by a company that's locally incorporated with at least 70% Malaysian owned and registered in Malaysia or overseas. The deduction can only be claimed by one company in a year of assessment. As evidence of existence of the program, Petitioners have relied on
- Promotion of Investment Act, 1986
 - Income tax promotion of export rules 1986
 - Inland Revenue Board of Malaysia Public Ruling No.1/2013
 - Malaysian External Trade Development Corporation

b. Submission by Government of Malaysia/other interested parties

84. Expenditure for qualifying advertisements in advertising Malaysian brand name goods is eligible for a double deduction in arriving at adjusted income from a business. Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002 are given in evidence. Applicant companies are required to make the claim for the incentive by completing forms and substantiate the claims together with copies of business receipts pertaining to the expenses incurred within Malaysia for advertising Malaysian brand goods. The original supporting documents must be retained by the company for audit purposes by the IRB. The claim can be made in the annual tax returns for the fiscal year (basis period) in which the expenditure is incurred. The companies under investigation will be eligible to claim the deductions if they fulfill the criteria. The assistance is a deduction from taxable income. The deduction can be carried forward. No changes are anticipated to the program.

c. Examination by Authority

85. The Authority notes that this program is governed by Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 2002. Under this program, expenditure incurred in advertising Malaysian brand is eligible for double deduction from business income. To qualify for this double deduction, the company must have 70% Malaysian equity and the brand name should be of goods of export quality.
86. The program provides for financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is available to enterprise that incur expenses on advertising Malaysian brand. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporters.

Program No. 8: Drawback on Import duty, Sales tax and Excise duty**a. Submission by the Domestic Industry**

87. The Domestic Industry has submitted that under this program, drawback on import duty, sales tax and excise duty that have been paid may be claimed by a manufacturer if the parts, raw materials or packaging materials are used in the manufacture of goods for export within a year based on conditions stipulated in the acts. As evidence of existence of the program, Petitioners have relied on
- Section 99 of the Customs Act 1967
 - Section 29 of the Sales tax Act 1972
 - Section 19 of the Excise Act 1976

b. Submission by Government of Malaysia/other interested parties

88. Program provides for Duty Import Refund on imported goods that are subsequently reexported. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). No changes are anticipated to the program. Companies are required to submit the applications for Drawback under sections 93, 95, 99 of Customs Act 1967 to Royal Malaysian Customs Department (RMCD). Then the companies are required to provide proof of import/export declaration and relevant import/export documents. RMCD will verify the documents before refund is made or disapprove.

c. Examination by Authority

89. Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides import duty refund on goods that are subsequently reexported. It is however, noted that the Government of Malaysia has not indicated the mechanism of providing duty drawback. Therefore, this program is noted to be countervailable. However, the benefit under this program is not availed by the cooperating exporters.

Program No. 9: Sales Tax Exemption**a. Submission by the Domestic Industry**

90. The Domestic Industry has submitted that in order to reduce cost of doing business and enhance competitiveness the government has exempted the sales tax. This program is approved and administrated by RMCD and established in 1.9.2018. The Domestic Industry has submitted that under this scheme manufacturers with an annual sales turnover of less than RM 100,000 are exempted from licensing and are thus exempted from paying sales tax on their output. However, these manufacturers can opt to be licensed and obtain sales tax exemption on their inputs instead.

b. Submission by Government of Malaysia/other interested parties

91. The program provides exemption from payment of sales tax. There are persons or manufacturers who are exempted from paying sales tax on importation and purchase of locally manufactured goods under Sales Tax (Person Exempted from Payment of Tax) Order 2018. Exemptions are classified into three (3) schedules as below:
- i. Schedule A - Class of persons that meets the criteria and conditions;
 - ii. Schedule B - Manufacturer of specific non-taxable goods exemption of tax on the acquisition of all goods excluding petroleum to be used solely and directly in manufacturing non-taxable goods activities;
 - iii. Schedule C - Registered manufacturer of taxable goods exemption of tax on the acquisition of raw materials, components and packaging materials to be used solely and directly in manufacturing of taxable goods.

c. Examination by Authority

92. Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, who meets the eligibility criteria and conditions as submitted by the Government. This program provides exemption of Sales tax due to the exporters which is otherwise due. The program is also specific because it is available to certain

enterprise who meet the eligibility criteria. Therefore, this program is noted to be countervailable. It is also noted that both the cooperating producers and exporters have availed this benefit.

Program No. 10: Exemption from Import duty and Sales Tax for Outsourcing Manufacturing Activity

a. Submission by Domestic Industry

93. The Domestic Industry has submitted that under this program, to reduce cost of doing business and enhance competitiveness, import duty and sales tax exemption are given to Malaysian brands with at least 60% Malaysian equity who outsource manufacturing activities. Import duty and sales tax exemption on raw materials and components used in manufacturing of finished products by their contractual manufacturers locally/abroad and import duty and sales tax exemption on semi-finished goods from their contract manufacturers abroad to be used by their local contract manufacturers to manufacture finished products are available. As evidence of existence of the program, Domestic Industry have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

94. The program provides import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD, MIDA and IPC. Section 14(2) Customs Act 1967 is given as evidence. All manufacturers which meet the eligibility criteria will benefit from scheme and the authorities do not exercise discretion. No changes are anticipated to the program.

95. This program is not countervailable since it conforms with the provisions of Annex I, II and III of the SCM Agreement (Exception to the subsidy definition).

96. To qualify for the exemption,

- Imported raw materials and components which are used to manufacture finished products with nil import duty.
- Semi-finished products which are imported from contract manufacturers abroad and are used in the manufacture of finished products by local contract manufacturers.

c. Examination by Authority

97. Authority notes that Section 14(2) Customs Act 1967 governs the administration of the program. The program is administered by Malaysian Investment Development Authority. The program provides import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. Raw materials which are used in the production of exported product and semi-finished goods which are imported from contract manufacturers for use by local manufacturers qualify for this exemption. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi have not availed any benefit under this scheme.

Program No. 11: Exemption from Import Duty and Sales Tax on Spares and Consumables

a. Submission by the Domestic Industry

98. The Domestic Industry has submitted that since it is the policy of the government not to impose taxes on spares and consumables used directly in manufacturing process where import duties are nil process and not produced locally, tax exemption-Revenue forgone is given where imported spares and consumables are taxable but not available locally. Full exemption is given on import duty and sales tax. As evidence of existence of the program, Petitioners have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

99. The program provides import duty exemption on spares and consumables to qualified manufacturer. MIDA issues a letter to confirm the status of the manufacturer. The program involved evaluating import duty exemption on raw materials, components and/or semi-finished products for outsourcing manufacturing activities. A committee on duty exemption is established

with members comprised of representatives from MoF, MITI, RMCD, MIDA and IPC. All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. No changes are anticipated to the program. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The laws and regulations governing this program are contained in Customs Duties (Exemption) Order 2017.

c. Examination by Authority

100. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on spares and consumables. The program is administered by Malaysian Investment Development Authority (MIDA). The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is subject to fulfillment of certain criteria. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi have not availed any benefit under this scheme.

Program No. 12: Exemption from Import Duty and Sales Tax on Machinery and Equipment

a. Submission by the Domestic Industry

101. The Domestic Industry has submitted that since it is the policy of the government not to impose taxes on machinery and equipment used directly in manufacturing process and not produced locally, tax exemption-Revenue forgone is given where imported machinery and equipment are taxable but not available locally. Full exemption is given on import duty and sales tax. For locally purchased machinery and equipment full exemption is given on sales tax. As evidence of existence of the program, Petitioners have relied on MIDA's tariff related incentives.

b. Submission by Government of Malaysia/other interested parties

102. The program provides import duty exemption on machinery and equipment to qualified manufacturer. MIDA issues a letter to confirm the status of the manufacturer. The manufacturer then claims for exemption. To qualify for the exemption, the machinery and equipment must be new, unused and directly used in the manufacturing process of the finished product at the approved manufacturer's premise(s). All manufacturers which meet the eligibility criteria will benefit from this scheme and MIDA does not exercise discretion. No changes are anticipated to the program. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The laws and regulations governing this program are contained in Customs Duties (Exemption) Order 2017.
103. The companies under investigation conformed with the eligibility criteria which are under MIDA's purview.

c. Examination by Authority

104. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on new and unused machinery and equipment to qualified manufacturer. There is no exemption from sales tax during the POI because Sales Tax Act 1972 [Act 64] was repealed with the enactment of the Goods and Services Tax Act 2014 [Act 762] entered into force 1 July 2014. The program is administered by Malaysian Investment Development Authority.
105. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to certain enterprises that import new machinery and equipment for manufacturing activity. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

Program No. 13: Exemption from Import Duty on Raw Materials/Components

a. Submission by the Domestic Industry

106. The Domestic Industry has submitted that under this program, full exemption from import duty on raw materials/components is normally granted, provided raw materials/components are not

produced locally or if produced locally, they aren't of acceptable quality and price. This is regardless of whether the finished products are meant for export or domestic market. The eligibility is that the companies should be involved in manufacturing activities.

b. Submission by Government of Malaysia/other interested parties

107. Authority notes that the program is governed by Customs Duties (Exemption) Order 2017. It provides for import duty exemption on raw material and components. A committee on duty exemption is established with members comprised of representatives from MoF, MITI, RMCD and MIDA. This program is not countervailable since it conforms with the provisions of Annexes I, II and III of the SCM Agreement (Exception to the subsidy definition). The companies under investigation conformed with the eligibility criteria which are under MIDA's purview

c. Examination by Authority

108. Authority notes that the program is governed by Section 14(2) of Customs Act 1967. The program provides for import duty exemption to the qualified manufacturer on raw materials / component that are not locally available.
109. The program provides financial contribution in the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The program is also specific because it is limited to an enterprise that uses raw material that are not locally available. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi have not availed any benefit under this scheme.

Program No. 14: Double Deduction for Promotion of Exports

a. Views of the Domestic Industry

110. The Domestic Industry has submitted that under this program tax deduction is given to exporters for expenses which are aimed at promoting exports and supply of goods overseas, cost of maintaining office overseas for purpose of promotion of services, publicity and advertisements in any media outside Malaysia for promotion of export of services and Page 59 of 139 export market research. As evidence of existence of the program, Petitioners have relied on:
- Section 41 of Promotion of Investment Act, 1986
 - Income tax promotion of export rules 1986
 - WT/TPR/S/292
 - WTO-Notification-G/SCM/N/3/MYS-1995
 - US carbon steel wire rod from Malaysia

b. Submission by Government of Malaysia/other interested parties

111. The program which is provided under section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) read together with rule 4(2) of the Income Tax (Promotion of Exports) Rules 1986 is applicable to all resident trading, manufacturing or agricultural companies in respect of expenses incurred in the basis period primarily and principally for the purpose of seeking opportunities, or in creating or increasing a demand for the export of Malaysian manufactured goods or agricultural products. This program's focus is on supporting Malaysian companies' participation in eligible export promotional activities, not on their goods' export performance or on the use of domestic good. All firms which can meet the eligibility criteria can benefit from this program. The companies under investigation will be eligible to claim the deductions if they fulfil the criteria. There are no anticipated changes to the program. The deduction can be carried forward.
112. Applicant companies are required to make the claim for the incentive by completing forms and substantiate the claims together with copies of business receipts pertaining to the expenses incurred overseas for advertising, travelling and related export promotional expenditure. The original supporting documents must be retained by the company for audit purposes by the IRB.
113. In the case of participation in an international trade fair, companies are required to get a letter of approval from MATRADE.

c. Examination by Authority

114. Authority notes that the program is governed by Section 41 of the Promotion of Investments Act (PIA) 1986 (Act 327) & Rule 4(2) of the Income Tax (Promotion of Exports) Rules 1986. Under this program double deduction from income to enterprise involved in manufacturing, trading and agricultural activities is available for expenses incurred for promotion of export. Expenses incurred by a company for increasing demand for exports are allowed for double deduction.
115. The Authority notes that the program provides for financial contribution the form of revenue foregone, which is otherwise due and benefit is thereby conferred. The benefit is the difference between the amount of income tax paid after double deduction and the amount of income tax that would have been payable in absence of such double deduction. The program is also specific because it is contingent on export performance and is limited to enterprise engaged in export promotion activity. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi have not availed any benefit under this scheme.

Program No. 15: Double Deduction for Promotion of Export Cargo**a. Submission by the Domestic Industry**

116. The Domestic Industry has submitted that under this program an exporter may make a deduction from taxable income for premium insurance on export cargo and regional tax deduction for tax insurance. As evidence of existence of the program, Petitioners have relied on
- Promotion of Investment Act, 1986
 - Income tax promotion of export rules 1986
 - Tax incentives for Companies
 - Other Authority findings

b. Submission by Government of Malaysia/Other interested parties

117. A double deduction is allowed to a person who incurs premium on the insurance of cargo exported from Malaysia provided that the risks are insured with an insurance company incorporated in Malaysia. The premium paid must be in accordance to section 33 of Income Tax Act 1967. The assistance is a deduction from taxable income. The deduction can be carried forward.
118. This program has been revoked since 2016. Income Tax (Deductions of Insurance Premiums for Exporters) (Revocation) Rules 2012 is given as evidence.

c. Examination by Authority

119. The Authority notes that the program was governed by Income Tax (Deductions of Insurance Premiums for Exporters) Rules 1995 and is revoked by Income Tax (Deductions of Insurance Premiums for Exporters) (Revocation) Rules 2012 since 2016.

Program No. 16: Allowance for Increased Export**a. Submission by the Domestic Industry**

120. The Domestic Industry has submitted that this program is a form of tax incentive granted to companies under section 154(1) of Income Tax Act 1967 and Rule 3 of Income Tax (Allowance for increased exports) Rules 1999 and Income Tax (Allowance for increased exports) amendment Rules 2003. An exporter can avail 70% tax deduction from taxable income for increased exports. Also, if the said allowance is not used during the earned year that can be forwarded to the following assessment year. As evidence of existence of the program, Petitioners have relied on:
- Promotion of Investment Act, 1986
 - Income tax act 1967
 - Customs Act 1967
 - Sales tax Act 1972
 - Excise Act 1976
 - Free zones act 1990

b. Submission by Government of Malaysia/other interested parties

121. A resident manufacturing company or agricultural company that exports manufactured products or agricultural produce is to be given an allowance for increased exports. The assistance is an exemption from taxable income. The allowance can be carried forward. There are no anticipated changes to the program. Income Tax (Allowance for Increased Exports) Rules 1999 is given in evidence. The Rules contain the following definitions:

- a. agricultural produce means fresh and dried fruits, fresh and dried flowers, ornamental plants and ornamental fish, frozen raw prawn or shrimp, frozen cooked and peeled prawn and frozen raw cattle fish and squid;
- b. export means direct exports not including sales to Free Industrial Zones and Licensed Manufacturing Warehouses; Page 62 of 139
- c. value added means the sale price of goods at ex-factory price less the total cost of raw materials; and
- d. value of increased export means the difference of the Free-On-Board (FOB) value of products exported in the basis period and that of the immediately preceding period. FOB value will exclude the freight charges and insurance cost.

122. The allowance is determined as follows:

a. Manufactured products

- ❖ 10% of the value of increased exports of the manufactured products by the company where the products exported attained at least 30% of value added;
- ❖ 15% of the value of increased exports of the manufactured products by the company where the products exported attained at least 50% of value added.

b. Agricultural products

- ❖ 10% of the value of increased exports of agricultural produce by the company.

123. The allowance will be given against seventy per cent of statutory business income of the company. Any export allowance not set off would be carried forward to be set-off against seventy per cent of the statutory income in future years.

c. Examination by Authority

124. Authority notes that a resident manufacturing company or agricultural company that exports manufactured products or agricultural produce is to be given an allowance for increased exports. The allowance is equivalent to 10% or 15% of the value of increased exports of the manufactured products by the company. Allowance will be given against 70% of the statutory business income.

125. The program provides for financial contribution in the form of revenue foregone, which is otherwise due. The program is also specific because it is contingent on export performance. Therefore, Authority holds that this scheme is a countervailing scheme. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

Program No. 17: Tariff Related Incentive**a. Submission by the Domestic Industry**

126. The Domestic Industry has submitted that under this program, full exemption from import duty on raw materials/components is normally granted, provided raw materials/components are not produced locally or if produced locally, they aren't of acceptable quality and price. This is regardless of whether the finished products are meant for export or domestic market. The eligibility is that the companies should be involved in manufacturing activities.

b. Submission by Government of Malaysia/other interested parties

127. The subsidy program is same as program No. 13. (Double Deduction for Promotion of Exports)

c. Examination by Authority

128. The Authority notes that the program is administered by Director General of Customs. The program provides import duty exemption on raw material / component to qualified manufacturer. Exemption is granted when the raw materials / components are not locally available and used directly in the production of the finished product at the approved manufacturer's premise(s).
129. The Authority notes that the program provides financial contribution in the form of revenue foregone, which is otherwise due. The program does not qualify to be permissible duty remission program because it provides exemption from import duty for raw material used in all kinds of manufacturing activities and not only for raw materials used in exported products, as provided in footnote 1 of the SCN Agreement and Section 9B(b) of the Customs Tariff Act. The program is specific because it is limited to enterprise that use raw materials that are not available locally. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

Program No. 18: Allowance for plants and Machinery**a. Submission by Domestic Industry**

130. The Domestic Industry has submitted that Capital allowance is to give relief for wear and tear of fixed assets for business. It is further submitted that the expenditure must be capital in nature and used for business purpose. Costs of assets used in business such as plants and machinery, office equipment, furniture, fittings, motor vehicles etc.
131. Under this scheme initial allowance is fixed at 20% based on the cost of the asset at the time when the capital expenditure is incurred. Annual allowance is a flat rate given every year based on the original cost of the asset and varies accordingly.

b. Submission by Government of Malaysia/other interested parties

132. Capital allowance (CA) is deductions for qualifying expenditure on machinery or plant. CA is given only in respect of a business source and the person who incurs the qualifying expenditure is eligible to claim the allowance. CA is calculated for a year of assessment and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method on the basis of a prescribed rate of allowance. All companies that meet the eligibility criteria can claim the CA. This program is available to all companies and the IRB applies objective criteria in granting CA. Thus, this program does not constitute a countervailable subsidy because it is not linked to export conditions, not specific and it is generally available

c. Examination by the Authority

133. The Authority notes that the program is administered by Inland Revenue Board of Malaysia. According to the record companies / person carrying business or incurs capital expenditure on plant and machinery or the plant and machinery must be used in that business and owner of the plant and machinery at the end of basis period can avail benefit under this scheme. The benefit is the additional capital allowance claimed by the company. To the extent of the capital allowance, the cost will be more, profit will be low. Therefore, the incidence of the tax will be lower. The program is also specific because it is available only on fulfillment of certain eligibility conditions and not to all the companies. Therefore, Authority holds that this scheme is a countervailing scheme
134. Authority notes that capital allowance provides deductions for qualifying expenditure on machinery or plant. It is given to enterprise that incurs the qualifying expenditure. It is calculated for a year of assessment and is deducted from the adjusted income from the business in arriving at the statutory income. It is calculated on a straight-line method based on a prescribed rate of allowance.
135. Authority notes that this program does not provide countervailable benefit because it provides for normal deduction of depreciation on plant and machinery as per straight line method to all enterprise. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

Program No. 19: Export Credit Refinancing**a. Submission by the Domestic Industry**

136. The Domestic Industry has contended that this scheme is in the form of export credit. It is a short term and post shipment financing to direct and indirect exporters. Exporters can obtain financing up to 95% of the value of their export order.

b. Submission by Government of Malaysia/other interested parties.

137. Export Credit Refinancing (ECR) scheme is used to promote Malaysia's exports and international trade in the form of Pre-shipment and Post-shipment financing. ECR is available to all companies incorporated in Malaysia and involved in export activity.
138. The operational procedure of the ECR Scheme is governed by the ECR Guideline which is issued by EXIM Bank.

c. Examination by the Authority

139. The Authority notes that the program is administered by Export-Import Bank of Malaysia (EXIM Bank). Export credit refinancing program provides loan to enterprise to finance export of products. The program is governed by Export Credit Refinancing guideline issued by the Bank, which provides for eligibility criteria including eligibility of product (negative list of products which is maintained by bank) for the purpose of the program. The subsidy program is not restricted to any particular sector and is available to all companies incorporated in Malaysia.
140. EXIM Bank is a government-owned Development Financial Institution. It is a wholly owned subsidiary of the Minister of Finance Incorporated (Inc.). As an agency under the purview of the Ministry of Finance, EXIM Bank's mandated role is specified by the Government. It is to provide credit facilities to finance and support exports and imports of goods, services and overseas projects with emphasis on non-traditional markets, providing export credit insurance services, export financing insurance, overseas investments insurance and guarantee facilities.
141. The Authority determines that EXIM Bank is a public body because it is owned by Government and is vested with the Government Authority to carry out governmental functions. Accordingly, the loan provided by EXIM Banks are financial contribution in the form of direct transfer of funds by a public body. The benefit conferred on the recipient is in the form of difference between the amount of interest charged by the EXIM bank and the amount of interest charged by the comparable commercial loan. The program is also specific because it is contingent on export. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

Program No. 20: Buyer Credit Guarantee**b. Views of the Domestic Industry**

142. The Petitioner submitted that under this program the overseas buyers are backed by EXIM Bank's unconditional and irrevocable guarantee in which lending bank is guaranteed repayment of due and interest amount. Malaysian exporter can help the overseas buyer to secure a long-term financing with a lender using the BCG. Malaysian exporter is paid as if he has a cash contract, whilst the overseas buyer has time to pay the contract through financing secured from the lender which is backed by EXIM Bank's guarantee. The evidence given is Buyer Credit Insurance by EXIM Bank. The loan amount under this program must be minimum value of RM 2mn in support of a cash contract and the repayment period should be at last 2 years and maximum 15 years.

b. Submission by Government/other interested parties

143. Bankers Trade Credit Takaful (BTCT) is a Credit Takaful designed to protect the Islamic Financial Institutions (IFIs) against risk of non-payment by their exporters arising from Page 45 of 139 default by the overseas buyers. It's available against a trade finance facility on trade terms such as Open Account, Documentary Collection and/or Letter of Credit.

c. Examination by Authority

144. The Authority notes that the program is administered by Exim Bank. There is no law or legal regulation governing the program.
145. The Authority has already determined that EXIM Bank is a public body. Under this program, EXIM Bank provides guarantee to financial institutions against risk of non-payment by their exporters (customers) because of default arising from overseas buyers. The program provides for financial contribution in the form of potential direct transfer of funds and benefit is thereby conferred. The benefit conferred on the recipient is equivalent to (i) the difference between the fee paid by the recipient for availing guarantee from EXIM Bank and the fee that would have been paid to any other commercial bank for such guarantee and (ii) the difference between the loan repayment to the lending bank in question (owing to less than normal commercial interest rate because of EXIM bank guarantee) and the amount that would have been payable in absence of such guarantee (based on normal commercial interest rate). The subsidy program is also specific because it is contingent on export. Therefore, this program is noted to be countervailable. However, the Authority notes that both the exporters Kibing and Xinyi has not availed any benefit under this scheme.

Program No. 21: Licensed Manufacturing Warehouse (LMW)**a. Views of the Domestic Industry**

146. This program was disclosed through the questionnaire response of the exporter as well response of GOM. The Domestic Industry has further submitted that since this scheme provides benefit of duty exemption, which is not recorded in the books of the company and therefore, proper documents and information should be called for from the Government of Malaysia and Xinyi Smart. If the finds any mismatch, the response of this scheme should be rejected, and the Authority should use best facts available to calculated subsidy duty for this program.

b. Submission by Government/other interested parties

147. Section 65 of the Customs Act 1967 provides for storage of dutiable goods and Section 65A of the Customs Act 1967 provides for manufacturing process to be carried out in licensed warehouses. Licensed Manufacturing Warehouses (LMW) can be set up in Principal Customs Area (PCA) i.e. any part of Malaysia excluding a free zone, Labuan and Langkawi. Manufacturing operations therein are subjected to customs procedures.
148. Exemption from customs duties and sales tax is given to all raw materials/components used directly in the manufacturing process of approved products regardless of whether the finished products are meant for export or local market from the initial stage of manufacture until the finished products. This includes packaging materials and casings. Further, only machinery and equipment required for direct manufacturing process of approved final products are eligible for exemption from customs duty and sales tax.
149. Machinery/equipment used directly in the manufacturing process in the LMW is exempted from import duty/sales tax regardless of whether the finished products are meant for export or local market.

c. Examination by Authority

150. The Authority notes that the program is administered by Royal Malaysian Customs Department. The program is governed by Section 65 and Section 65A of the Customs Act, 1967.
151. The Authority notes that under this program exemption from customs duties and sales tax is given to all raw materials/components used directly in the manufacturing process of approved products. It is noted from the responses of the cooperating exporter and GOM that only machinery and equipment required for direct manufacturing process of approved final products are eligible for exemption from customs duty and sales tax under this program. Further, machinery/equipment used directly in the manufacturing process in the LMW is exempted from import duty/sales tax.
152. The Authority notes that this program provides exemption of customs duty and Sales tax on all raw materials/components used directly in the manufacturing process of approved products. The subsidy program is also specific because it is contingent on product/enterprise. Therefore, Authority holds that this scheme is a countervailing scheme

153. Xinyi Energy Smart (Malaysia) Sdn. Bhd. Has also admitted receiving benefit under this program and therefore, the Authority confirms receipt of benefit under this Program for Xinyi. It is however noted that Kibing has not availed any benefit under this scheme.

Producers Exporters from Malaysia

Xinyi Energy Smart (Malaysia) Sdn. Bhd

154. Xinyi is cooperating producer / exporter of the subject goods from Malaysia and export the subject goods directly to India. Xinyi has filed responses to the questionnaire, and has provided information regarding the subsidy programs availed by them.
155. The Authority has verified the information provided by both the companies and determined subsidy margin for programs mentioned in the Table below for which benefit was received or accrued during the POI. The Authority has also determined that the subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. As a result, benefit was conferred to both Xinyi as a recipient of following program. Subsidy program was also specific because they were limited to certain enterprise including Xinyi.
156. The Authority further notes that with respect to Program no. 1, no claim on receipt/non-receipt of subsidy on natural gas has been made by the cooperating exporter in its response whereas the Government of Malaysia has admitted that gas prices in Malaysia are regulated. However, during the desk verification, Xinyi provided documents which showed that the company is availing subsidy benefits.
157. The Authority has considered the subsidy amount specifically mentioned in invoices raised by the gas companies to both Xinyi and Kibing for computing the amount of subsidy margin for Gas subsidy. The total subsidy amount was then determined for the POI, which was then divided by the total sales quantity of the respective companies to arrive at subsidy amount per MT. This per MT subsidy margin was divided by the CIF price per MT of the respective companies to arrive at the subsidy as a % of CIF price to India for both the cooperative companies. Since no other producer / exporter has participated in the investigation, the Authority has applied best facts to arrive at the subsidy margin for all other Malaysian producers of the subject goods.
158. With respect to Program no. 9, the Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, who meets the eligibility criteria and conditions. The Authority has also noted that Float Glass was not under the specific exempted list published as 'SALES TAX (GOODS EXEMPTED FROM TAX) ORDER 2018 DISIARKAN OLEH/PUBLISHED BYJABATAN PEGUAM NEGARA/ATTORNEY GENERAL'S CHAMBERS'. The Authority notes that Xinyi is situated in designated tariff area. Since this tax exemption is provided because Xinyi is situated in a particular geographical location, it renders the tax exemption to be specific and, therefore, the Authority has computed subsidy margin by considering exemption of sales tax on their domestic sales. For working out the subsidy amount, the Authority has divided the sales tax exemption amount by the total sales quantity of the Xinyi to arrive at subsidy amount per MT. This per MT subsidy margin was then divided by the CIF price per MT to arrive at the subsidy as a % of CIF price to India for Xinyi. The subsidy margin so determined is given in the Subsidy margin table below.
159. In relation to Program no. 5 pertaining to tax allowance, it is noted that since Xinyi Energy Smart is getting tax exemption under this scheme, the amount equal to the income tax not paid is a direct subsidy. The amount of investment tax allowance utilized by the company, is then divided by the total sales quantity of the Xinyi Energy Smart to arrive at subsidy amount per MT. This per MT subsidy margin was then divided by the CIF price per MT to arrive at the subsidy as a % of CIF price to India for Xinyi Energy Smart. The Authority has computed subsidy from the income tax return submitted by Xinyi for the year 2018. It is further noted that as per information available on record the benefit is available for the period of 10 years i.e., from 2015 to 2025. Since the benefit available in POI can be utilized for next 8 years including POI, the Authority has computed the subsidy margin for POI accordingly.

160. For Program no. 21, Xinyi Energy Smart (Malaysia) Sdn. Bhd has admitted receiving benefit under this program. The table below provides name of the subsidy programs, and the corresponding subsidy margins.

Xinyi

Program No.	Name of the grant program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 1	Subsidies on Natural Gas	Availability of natural gas at government regulated prices	***	0-10
Program No. 3	Investment Tax Allowance	Exemption of 100% on capital expenditures. The total investment cost on production facilities incurred within the period of ten (10) years from February 2015 can be used to offset the taxable profit incurred since year 2015 till the accumulated ITA is fully utilised.	***	0-10
Program No. 9	Sales Tax Exemption	Exemption from payment of sales tax on their output (Sales Tax (Person Exempted from Payment of Tax) Order 2018)	***	0-10
Program No. 21	Licensed Manufacturing Warehouse	Exemption from custom duties and sales tax to all raw materials / components used directly in the manufacturing process of approved products regardless of whether the finished products are meant for exports or local market from the initial stage of manufacture until the finished products	***	0-10
Total			***	0-10

Kibing Group (M) Sdn. Bhd.

161. Kibing is cooperating producer / exporter of the subject goods from Malaysia and export the subject goods directly to India. Kibing has filed responses to the questionnaire, and has provided information regarding the subsidy programs availed by them.
162. The Authority has verified the information provided by the company and determined subsidy margin for programs mentioned in the Table below for which benefit was received or accrued during the POI. The Authority has also determined that the subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. As a result, benefit was conferred to Kibing as a recipient of following program. Subsidy program was also specific because they were limited to certain enterprises including Kibing.
163. The Authority further notes that with respect to Program no. 1, no claim on receipt/non receipt of subsidy on natural gas has been made by the cooperating exporter in its response whereas the Government of Malaysia has admitted that gas prices in Malaysia are regulated. However, during the desk verification, Kibing provided documents which showed that the company is availing subsidy benefits.

164. The Authority has considered the subsidy amount specifically mentioned in invoices raised by the gas companies to Kibing for computing the amount of subsidy margin for Gas subsidy. The total subsidy amount was determined for the POI, which was then divided by the total sales quantity of the Kibing to arrive at subsidy amount per MT. This per MT subsidy margin was divided by the CIF price per MT of the respective companies to arrive at the subsidy as a % of CIF price to India for both the cooperative companies.
165. With respect to Program no. 9, the Authority notes that the program is administered by the Royal Malaysian Custom Department. The program provides exemption from payment of sales tax, who meets the eligibility criteria and conditions. The Authority has also noted that Float Glass was not under the specific exempted list published as 'SALES TAX (GOODS EXEMPTED FROM TAX) ORDER 2018 DISIARKAN OLEH/PUBLISHED BYJABATAN PEGUAM NEGARA/ATTORNEY GENERAL'S CHAMBERS'. Since Kibing Group has got this benefit, it shows that this exemption is specifically provided to them. This program provides exemption of Sales tax due to the exporters which is otherwise due. For working out the subsidy amount, the Authority has divided the sales tax exemption amount by the total sales quantity of the Kibing to arrive at subsidy amount per MT. This per MT subsidy margin was then divided by the CIF price per MT to arrive at the subsidy as a % of CIF price to India for Kibing. The subsidy margin so determined is given in the Subsidy table below.
166. The table below provides name of the subsidy programs, and the corresponding subsidy margin

Kibing

Program No.	Name of the grant program	Brief Description/Comment	Subsidy margin %	Subsidy Margin Range %
Program No. 1	Subsidies on Natural Gas	Availability of natural gas at government regulated prices	***	0-10
Program No. 9	Sales Tax Exemption	Exemption from payment of sales tax on their output (Sales Tax (Person Exempted from Payment of Tax) Order 2018)	***	0-10
Total			***	10-20

For other non-participating Producers / Exporters from Malaysia

167. Countervailing duty for all other producers/exporters from Malaysia has been determined based on the highest of the subsidy margins for the cooperating parties, and based on facts available for other subsidy programs. The subsidy margin so determined is ***% [Subsidy Margin Range (10-20) %].

METHODOLOGY FOR INJURY ASSESSMENT AND EXAMINATION OF INJURY AND CAUSAL LINK

a. Submissions made by the Domestic Industry

168. The following are the injury related submissions made by the domestic industry during the course of the present investigation and considered relevant by the Authority:
- Domestic Industry has requested to issue preliminary findings in the instant investigation, as they are continuing to suffer injury during the interim period.
 - Domestic industry has submitted that it is currently going through a deep crisis due to the prolonged lockdown in India. They have further submitted that Float glass production is a continuous process, and therefore, the Domestic Industry has no choice but to continuously produce the subject goods despite poor off-take in the market. According to the Domestic Industry, Xinyi and Kibing continue to export the subject goods in export markets including India and once the current Covid-19 crisis gets over, India will become the hot destination for exports of the subject goods from Malaysia particularly in view of the fact that their major markets including the European Union have been severely affected by the Covid-19 crisis.

Contention of the Domestic Industry is based on the market information provided by it according to which imports in February 2020 (13622 MT) increased by around 85% (6264MT) as compared to January 2020 (7358 MT) imports from Malaysia

- iii. Imports of the product under consideration from Malaysia have shown massive increase in the POI as compared to previous year, which has caused injury to the Domestic Industry.
- iv. Market share of Malaysia in demand has become significant in POI. Imports from Malaysia have not only taken the share of Domestic Industry but also of other countries in a short span of time. Market share of the Domestic Industry has decreased in the POI as compared to the base year.
- v. With reduction in the prices by the foreign producers, the only choice available to the Indian producer is to either realign their prices with the changes in the import prices or to lose orders. Hence the market share reduced during the entire injury investigation period.
- vi. Domestic industry prices reflect the effect of the prices that are being offered by the exporters in the domestic market. The Domestic Industry has also firmly contended that exporters are giving post sales discount to Indian customers to make their offers more attractive to them. Domestic Industry has requested to insist upon the importer to provide factual information about their contracts with their foreign suppliers and also with their customers along with the payment receipts to ascertain the actual import price.
- vii. The price underselling, price undercutting is positive and substantial. Further, the Domestic Industry is suffering from price depression as they are not able to increase its prices to reasonable terms.
- viii. Performance of the domestic industry has steeply deteriorated in terms of profits. In fact, the profitable situation of the Domestic Industry has turned into losses and return on investments and cash profits have also followed the same trend.
- ix. The decline in profitability of the domestic industry was due to significant increase in the import volume at non-remunerative prices from Malaysia.
- x. The increase in selling price was lower than the increase in cost of production and thus the subsidized imports are creating price suppression effect on the domestic industry.
- xi. The domestic industry has suffered material injury in connection with subsidy of subject goods from Malaysia. Further, the domestic industry is threatened with continued injury, should the present condition continue.

b. Submissions made by the producers/exporters/importers/other interested parties

169. The following are the injury related submissions made by the producers/exporters/importers/other interested parties during the course of the present investigation and considered relevant by the Authority.

- i. There is no volume effect, as the market share of the Domestic Industry has increased in the POI as compared to previous year.
- ii. Domestic Industry has increased its capacity during the POI and this increased capacity, has resulted into higher capital employed, negative return on capital employed, and huge losses.
- iii. The Domestic Industry is not suffering any injury, as their balance sheet is showing significant profits. Moreover, no injury can be attributed to the imports from Malaysia.
- iv. Interested parties requested the Authority to critically examine the injury parameters and other factors causing injury to the Domestic Industry.

c. Examination by the Authority

170. The Authority has taken note of the arguments and counterarguments of the all the interested parties with regard to injury to the Domestic Industry. The injury analysis so made by the Authority hereunder addresses the various submissions made by the interested parties.

171. As regards the profitability of the company, it is noted that the Applicants are multi-product company and to compare profitability of the company with profitability of the product under

consideration is incorrect. Further, the Authority is required to examine the performance of the Domestic Industry with respect to domestic like product and not for the company as a whole. The Authority has, therefore, analyzed the data accordingly. Therefore, the contention of the interested parties based on total profitability of the company is not correct.

172. As regards the issues of analysis of the injury parameters, it is noted that the same are addressed in the subsequent paragraphs while making injury analysis.
173. As regards the issue of capacity expansion, it is noted that the Domestic Industry has increased its capacity to cater the increased demand in the country. However, the sudden increase in POI is because of the fact that one of the constituents of the Domestic Industry started its operations during the injury investigation period (December 2017). In view thereof, the contention of the interested parties in relation to sudden increase in capacity is appropriately analyzed and taken care during the injury analysis. Therefore, no prejudice is caused to any interested parties.
174. Rule 13 read with Annexure-I of the Rules provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry. In considering the effect of the subsidized imports on prices, it is necessary to examine whether there has been a significant price undercutting by the subsidized imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the subsidized imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of subsidy, etc. have been considered in accordance with Annexure-II of the Rules. The Authority has taken note of various submissions of the domestic industry and the exporters / importers / traders / users on injury to the domestic industry and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.

I. Volume Effect of Subsidized Imports and impact on the Domestic Industry

i. Assessment of Demand

175. For the purpose of the present investigation, demand or apparent consumption of the subject goods has been defined as the sum of domestic sales of the Applicants and imports from all sources. The demand so assessed is given in the table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Imports from Malaysia	MT	–	–	1,29,794	1,92,379
Imports from Other Countries attracting ADD	MT	1,22,768	1,54,210	75,604	33,263
Imports from Other Countries	MT	24,071	62,776	56,517	10,628
Total Imports	MT	1,46,839	2,16,986	2,61,915	2,36,270
Sales of Domestic Industry	MT	7,99,041	8,15,669	8,75,931	10,13,390
Trend	Indexed	100	102	110	127
Sales of Other Domestic Producers	MT	1,43,650	1,44,500	1,90,000	2,30,000
Trend	Indexed	100	101	132	160
Total Domestic Sales	MT	9,42,691	9,60,169	10,65,931	12,43,390
Trend	Indexed	100	102	113	132
Demand	MT	10,89,530	11,77,155	13,27,845	14,79,660
Trend	Indexed	100	108	122	136

176. From the above, it is noted that the demand of the subject goods has been on the increasing trend throughout the injury investigation period.

ii. Imports volume and share of the imports from Malaysia

177. With regard to the volume of subsidized imports, the Authority is required to consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in India. The volume of imports of the subject goods from Malaysia has been analyzed as under:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Imports from Malaysia	MT	-	-	1,29,794	1,92,379
Imports from Other Countries	MT	1,46,839	2,16,986	1,32,121	43,891
Total Imports	MT	1,46,839	2,16,986	2,61,915	2,36,270
Total PUC Production	MT	11,87,674	11,86,379	12,96,914	17,05,946
Demand of Subject goods in India	MT	10,89,530	11,77,155	13,27,845	14,79,660
Imports from Malaysia in relation to					
Production	%	-	-	10.01%	11.28%
Trend	Indexed	-	-	100	113
Consumption	%	-	-	9.77%	13.00%
Trend	Indexed	-	-	100	133
Total Imports	%	-	-	49.56%	81.42%
Trend	Indexed	-	-	100	164

178. From the above table, it is noted that-

- Imports of subject goods from Malaysia have increased significantly during the injury period in absolute terms.
- The imports from Malaysia have increased significantly in relation to total imports and consumption in India.

iii. Price Effect of Subsidized Imports on the Domestic Industry

179. With regard to the effect of the subsidized imports on prices, it is required to be analyzed whether there has been a significant price undercutting by the subsidized imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the subsidized imports from the subject country has been examined with reference to the price undercutting, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from Malaysia.

a. Price Undercutting

180. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry as below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Landed price from Subject Country	Rs/MT	–	–	17,980	18,124
Net selling price of Domestic Industry	Rs/MT	–	–	22,755	21,206
Price undercutting	Rs/MT	–	–	4,775	3,082
Price undercutting	%	–	–	27%	17%
Price undercutting	Range	–	–	20-30	10-20

181. It is noted that the landed value from Malaysia is below the selling price of the Domestic Industry during the POI and immediately preceding years. This has created huge pressure on the Domestic Industry.

b. Price Suppression and Depression

182. In order to determine whether the imports from Malaysia are suppressing or depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the Authority has considered the changes in the costs and prices over the injury period, as detailed below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Cost of Sales	Rs/MT	22,253	21,519	20,346	21,365
Trend	Indexed	100	97	91	96
Selling Price	Rs/MT	24,246	24,001	22,755	21,206
Trend	Indexed	100	99	94	87
Landed Value from Malaysia	Rs/MT	0	0	17,980	18,124
Trend	Indexed	0	0	100	101

183. From the above table, it is noted that the landed value of imports from Malaysia was below the selling price and cost of sales of the Domestic Industry in the POI and immediately preceding years. This has depressed the prices of the Domestic Industry to a significant degree. It is also noted that both the selling price as well as cost of sales of subject goods have declined during the injury period. However, the decline in the selling price is much more than decline in the cost of production, indicating that the domestic industry has also suffered price suppression.

c. Price Underselling

184. The Authority has also examined price underselling if any, suffered by the domestic industry on account of subsidized imports from Malaysia. After examination, it is determined that the domestic industry has suffered price underselling during the POI.

Particulars	Unit	Malaysia
Non-Injurious Price (NIP)	Rs/MT	***
Landed price of imports from subject country	Rs/MT	18,124
Price underselling	Rs/MT	***
Price underselling	%	***%
Price underselling	Range	30-40

iv. Economic Parameters of the Domestic Industry

185. Annexure-I to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of subsidized imports on domestic producers of such products. With regard to consequent impact of subsidized imports on domestic producers of such products, the Rules further provide that the examination of the impact of the subsidized imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of subsidy; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The various injury parameters relating to the domestic industry are discussed herein below

v. Sales Volume and Value

186. The sales volume and value of the Domestic Industry is given in the table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Sales Quantity	MT	7,99,041	8,15,669	8,75,931	10,13,390
Trend	Indexed	100	102	110	127
Sales Value	Rs. Lacs	1,93,734	1,95,771	1,99,322	2,14,898
Trend	Indexed	100	101	103	111
Sales Price	Rs. /MT	24,246	24,001	22,755	21,206
Trend	Indexed	100	99	94	87

187. It is noted from the above table, that the sales volume and value of the subject goods have increased during the POI as compared to the preceding years. However, during the same time the selling price of the subject goods decreased. Domestic Industry has submitted that in order to retain the customers, they had no option but to reduce the selling price of the subject goods.

vi. Production and Capacity Utilization:

188. The details of production and capacity utilization are given in the table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Capacity	MT	14,11,700	14,08,900	14,99,264	19,95,360
Total Production	MT	11,87,674	11,86,379	12,96,914	17,05,946
Production PUC only	MT	8,93,924	9,10,076	10,17,204	12,61,606
Capacity Utilization (Total Production)	%	84.13%	84.21%	86.50%	85.50%

189. It is noted from above table that the Domestic Industry have sufficient capacity to cater the need of the domestic demand. It is further noted that the capacity utilization has declined marginally during the POI as compared to previous year.

vii. Market share:

190. The details of imports, domestic sales and the market share of the domestic industry is as below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Imports from Malaysia	MT	–	–	1,29,794	1,92,379
Imports from Other Countries attracting ADD	MT	1,22,768	1,54,210	75,604	33,263
Imports from Other Countries	MT	24,071	62,776	56,517	10,628

Particulars	UoM	2015-16	2016-17	2017-18	POI
Total Imports	MT	1,46,839	2,16,986	2,61,915	2,36,270
Sales of Domestic Industry	MT	7,99,041	8,15,669	8,75,931	10,13,390
Trend	Indexed	100	102	110	127
Sales of Other Domestic Producers	MT	1,43,650	1,44,500	1,90,000	2,30,000
Trend	Indexed	100	101	132	160
Total Domestic Sales	MT	9,42,691	9,60,169	10,65,931	12,43,390
Trend	Indexed	100	102	113	132
Demand	MT	10,89,530	11,77,155	13,27,845	14,79,660
Trend	Indexed	100	108	122	136
Share in Demand of					
Imports from Malaysia	%	0%	0%	10%	13%
Imports from Other Countries attracting ADD	%	11%	13%	6%	2%
Imports from Other Countries	%	2%	5%	4%	1%
Total Imports	%	13%	18%	20%	16%
Sales of Domestic Industry	%	73%	69%	66%	68%
Sales of Other Domestic Producers	%	13%	12%	14%	16%
Total Domestic Sales share in Demand	%	87%	82%	80%	84%

191. From the above, it is noted that imports of the subject goods from Malaysia has increased in the POI as compared to the previous year. It is further noted that the market share of the Domestic Industry has decreased during the period of investigation over the base year despite increase in the demand over the same period.

viii. **Productivity:**

192. The productivity of the Domestic Industry is given in table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Employees	Nos	2,722	2,847	3,671	3,812
Average no. of Working Days	Days	365	365	365	365
No. of Man Days	Man Days	9,93,530	10,39,155	13,39,915	13,91,380
Productivity	MT/man-days	0.90	0.88	0.76	0.91
Trend	Indexed	100	97	84	101

193. It is noted from the above table that the productivity in terms of total production per man-days has remained in the same band. However, the same has increased as compared to the preceding two years.

ix. Inventories:

194. The inventory of the subject goods is shown in the following table.

Particulars	UoM	2015-16	2016-17	2017-18	POI
Average Inventory	MT	51,113	59,186	94,046	1,40,794
Trend	Indexed	100	116	184	275

195. From the above table, it is noted that the inventory has increased substantially during the POI as compared to any of the previous year. This increased inventory indicates the injurious impact of imports from subject country.

x. Employment and Wages:

196. The position with regard to employment and wages is given in table below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Employees	Nos	2,722	2,847	3,671	3,812
Trend	Indexed	100	105	135	140
Wages	Rs. Lacs	9,108	10,228	12,057	14,153
Trend	Indexed	100	112	132	155
Wages/employee (Rs. per annum)	Rs/Nos	3,34,596	3,59,265	3,28,450	3,71,284
Trend	Indexed	100	107	98	111

197. It is noted from above table that the number of the employees and wages paid to them has increased during the POI. It is further noticed that the wages paid to the employees has increased, although such increase in wages paid has been commensurate to the increase in wages in the country in general.

xi. Profitability:

198. The Profits, return on investment and cash flow of the domestic industry has been examined as below:

Particulars	UoM	2015-16	2016-17	2017-18	POI
Selling Price	Rs./MT	24,246	24,001	22,755	21,206
Trend	Indexed	100	99	94	87
Cost of Sales Price	Rs./MT	22,253	21,519	20,346	21,365
Trend	Indexed	100	97	91	96
Profit & Loss	Rs. Lacs	15,927	20,250	21,109	-1,610
Trend	Indexed	100	127	133	-10
Profit & Loss	Rs./MT	1,993	2,483	2,410	-159
Trend	Indexed	100	125	121	-8
Cash Profit	Rs./MT	3,916	4,454	4,069	1,345
Trend	Indexed	100	114	104	34
Return on Capital Employed (ROCE)	%	7.2%	8.8%	7.0%	-0.5%
Trend	Indexed	100	123	98	-7

199. As noted earlier that due to the subsidized and low-priced imports, the performance of the domestic industry has been adversely affected in the period of investigation. This is essentially on account of the subsidized imports from Malaysia coming at lower prices due to which the domestic industry has been forced to reduce its prices to match the low prices of imports. This price pressure on the Domestic Industry has adversely affected the profitability of the Domestic Industry which turned negative during the POI. The ROCE has also followed the same trend as of profitability.

xii. Growth

200. There was negative growth of the domestic industry in terms of sales price and market share in the POI. Similarly, profits, as well as ROI turned into negative from profitable situation. The Domestic industry has contended that they were not able to achieve the same due to the presence of the subsidized imports from Malaysia.

Particulars (Year on year)	2015-16	2016-17	2017-18	POI
Selling Price	–	-1.01%	-5.19%	-6.81%
Profitability	–	25%	-3%	-107%
Return on investment	–	1.6%	-1.8%	-7.5%
Capacity utilization	–	0.1%	2.3%	-1.0%
Inventory	–	16%	59%	50%

xiii. Magnitude of Subsidy:

201. Magnitude of subsidy is an indicator of the extent to which the subsidized imports can cause injury to the domestic industry. The data shows that the subsidy margin determined against Malaysia is above *de minimis* and significant.

xiv. Ability to raise Capital Investment:

202. The Authority notes that the performance of the domestic industry has deteriorated considerably and subsidy of the product under consideration may adversely impact the ability of the domestic industry to raise capital investment.

xv. Factors affecting domestic prices

203. Consideration the import prices from Malaysia, change in the cost structure, competition in the domestic market, factors other than subsidized imports that might be affecting the prices of the Domestic Industry in the domestic market show that the landed value of imported material from Malaysia is significantly below the selling price of the domestic industry, causing significant price undercutting in the Indian market. The domestic industry contended that benchmark for the domestic prices are the import prices from the subject country. It is also noted that the demand for the subject goods was showing increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, it can be concluded that the principal factor affecting the domestic prices is the landed value of subject goods from subject country.

xvi. Injury Margin

204. The Authority has determined Non-Injurious Price (NIP) for the domestic industry on the basis of principles laid down in the Rules read with Annexure-III to the Rules, as amended from time to time. The NIP of the domestic like product has been determined by adopting the verified information/data relating to the cost to make and sell for the period of investigation. The NIP of the domestic industry has been worked out in accordance with Annexure III to the Rules. For determining NIP, the best utilization of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been done with the utilities. The best utilization of production capacity over the injury period has been considered. The production in POI has been calculated considering the best capacity utilization and the same production has been considered for arriving per unit fixed costs. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. Average Net Fixed Assets plus Average Working Capital) for the product

under consideration was allowed for recovery of interest, corporate tax and profit to arrive at the NIP as prescribed in Annexure-III and being consistently followed by the Authority. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries to determine the injury margin.

Country	Producer	Non-Injurious Price (US\$/MT)	Landed Value (US\$/MT)	Injury Margin US\$/MT	Injury Margin (%)	Injury Margin % (Range)
Malaysia	Kibing Group (M) Sdn. Bhd	***	***	***	***%	30-40
	Xinyi Energy Smart (Malaysia) Sdn. Bhd.	***	***	***	***%	30-40
	Others	***	***	***	***%	60-70

xvii. Conclusion on Material Injury

205. An examination of the various parameters of injury along with the volume and price effects of imports reveals that there is an increase in the volume of imports of subject goods from the subject country during the POI in absolute terms as well as in relation to the total imports, domestic production and total demand in the country. With regard to price effect, it is noted that imports of the subject goods from the subject country are undercutting the selling price of the domestic industry. The domestic industry has also suffered price depression on account of subsidized imports of subject goods from subject country as selling price of subject goods has decreased during the injury period. It is also noted that both the selling price as well as cost of sales of subject goods have declined during the injury period. However, the decline in the selling price is much more than decline in the cost of production, indicating that the domestic industry has also suffered price suppression.
206. With regard to impact of volume and price effect on the domestic industry, it is noted that selling price, inventory and market share of the domestic industry has been adversely affected. Further, it is also noted that profitability and ROCE of the domestic industry has been adversely affected on account of subsidized imports of subject goods from the subject country.
207. On the basis of above analysis, it is concluded that due to injurious effect of the subsidized imports, the domestic industry has suffered injury.

xviii. Non-Attribution Analysis

208. As per the AD Rules, the Authority, inter alia, is required to examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors may not be attributed to the subsidized imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at subsidized prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than subsidized imports could have contributed to the injury to the domestic industry.

xix. Volume and price of imports from third countries

209. The imports from the countries other than Malaysia and countries already attracting anti-subsidy duties are not significant in volume terms so as to cause or threaten to cause injury to the Domestic Industry. Imports from other countries accounted for less than 5% in total imports and 1% of total demand/consumption in India. Thus, it cannot be said that imports from other countries are currently causing injury.

xx. Export Performance

210. It is noted that the injury information examined by the Authority is for domestic operations and therefore possible changes in exports volume have not caused injury to the Domestic Industry.

xxi. Development of Technology

211. None of the interested parties have furnished any evidence to demonstrate significant changes in the technology that could have caused injury to the domestic industry. It is further noted that technology for production of the product concerned has not undergone any change. Thus, development in technology is not a factor causing injury to the domestic injury.

xxii. Performance of other products of the company

212. The Authority notes that the performance of other products being produced and sold by the Domestic Industry does not appear to be a possible cause of injury to the domestic industry.

xxiii. Trade Restrictive Practices and Competition between the Foreign and Domestic producers

213. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. No evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

xxiv. Productivity of the Domestic Industry

214. It is noted that the productivity of the domestic industry in terms of production per employee as well as production per day has marginally increased over the period.

xxv. Contraction in Demand and Changes in pattern of consumption

215. It is noted that the demand of the subject goods has increased consistently over the entire injury period. Thus, it can be concluded that the injury to the Domestic industry was not due to contraction in demand.

xxvi. Examination by the Authority on injury and causal link:

216. It is thus noted that listed known other factors do not show that the domestic industry could have suffered injury due to these other factors. The Authority examined whether the subsidy of the product has caused injury to the domestic industry. The following parameters show that injury to the domestic industry has been caused by subsidized imports:
- Imports of the subject goods from the subject country has increased in absolute terms during the POI as compared to the immediately preceding year i.e., 2017-18. Imports of the PUC from the subject country has also increased in absolute terms as well as increased relative to production and consumption in India.
 - The domestic industry has not been able to increase its production and sales commensurate with the increase in demand.
 - Market share of the Domestic Industry has decreased from during the injury period even though demand for the subject goods has been rising in India during the same period. This is due to the reason that imports have aggressively captured the increase in demand.
 - The imports of subject goods from subject countries were significantly undercutting the prices of the domestic industry in the market. Resultantly, the domestic industry was forced to reduce its prices. The price depression suffered by the domestic industry is primarily because of subsidy of the product in the country.
 - The domestic industry was forced to reduce its prices even below its cost causing financial losses. The price depression caused by the subsidized imports from subject country has thus resulted in negative profit from positive profit during the POI.
 - Performance of the domestic industry with regard to profits, cash flow and return on investments deteriorated as a result of price depression. Thus, subsidy of the product has led to deterioration in performance of the domestic industry in terms of profits, cash flow and return on investments.

POST-DISCLOSURE SUBMISSIONS

217. The post disclosure submissions have been received from the interested parties, and it is noted that the most of the issues raised are reiterations and have already been raised earlier and also addressed appropriately. Additional submissions have been analyzed as under:

Submissions of the Other Interested Parties**Program No. 1. Subsidies on Natural Gas****Submission by Government of Malaysia**

218. The specificity element essentially required for this program to be subjected to any countervailing measure undoubtedly does not exist. The non-specific element has been clearly demonstrated from the following information:
- i. Regulated gas price is made available to all GMB customers. The GOM did not explicitly limits access of this program to certain enterprises and therefore the specificity principle in Article 2.1(a) of the WTO SCM Agreement is not applicable.
 - ii. Gas price charged to customers is according to tariff categories which is based on the customers' average annual gas consumption. The GOM further explained that no application is required for the customers to apply for a specific tariff category. This conforms with Article 2.1(b) of the WTO SCM Agreement where GMB established objective criteria or condition which are neutral and do not favour certain enterprise over others. The tariff category based on average annual gas consumption is also economic in nature and horizontal in application.
219. It is submitted by GOM that the Designated Authority has inaccurately concluded that this program has been granted to a limited number of persons engaged in the manufacture or production of the product under consideration. Further, it is submitted that the Designated Authority plainly overlooked the evidence provided by the Petitioner itself with regards to GMB's gas volume distribution. The Petitioner has furnished GMB's Annual Report 2017 as the legal basis evidence on the program which was duly acknowledged by the Designated Authority in paragraph 33 of the Disclosure Statement. It is clearly evidently from page 42 of GMB's Annual Report 2017 that Malaysia has a diverse and wide range of industries utilizing natural gas in their operation. It is also obviously illustrated that glass products manufacturers with only 8% of total natural gas consumed were not the bulk consumer of natural gas in Malaysia. The GOM is highly astonished that the Designated Authority has neglected this imperative information and erroneously made an arbitrary conclusion on the specificity of natural gas distribution in Malaysia has only benefiting the manufacturers of the product under consideration.

Submission by Xinyi

220. That although the Government of Malaysia (GOM) has admitted Gas prices are regulated by Government, the gas price offered to Malaysian users is higher than in other Asian markets and India as well.
221. DGTR has also not analyzed the specificity of the programs. The GOM has stated in the Questionnaire response that the industrial users of gas in Malaysia are charged based on tariff category and enterprises within the same category will be charged same price. Therefore, Program No.1 is not specific and thus cannot be regarded as countervailable.
222. It is further submitted that under Gas Cost Pass-Through (GCPT) mechanism, gas pricing is adjusted every 6 months in order to match with market price and is expected to reach market price in 2020. In fact, GCPT mechanism has ended at the end of 2019. The gas supplier, Gas Malaysia Berhad has made company announcement regarding the change of gas price.
223. Xinyi Energy Smart submitted that no subsidy was granted to Gas suppliers in Malaysia since January 2020. Starting from January 2020 the gas bill no longer has GCPT section or "Government subsidies" ("Subsidi Oleh Kerajaan Persekutuan" in Malay) which proved that GCPT mechanism has ended and the assistance has been cancelled since then. However, it is further submitted that the Government of Malaysia has now fixed the gas price at the average price of RM ***/Mmbtu for the year 2020. The price for the year 2021 shall be reviewed and set by the GOM before end of 2020.

Submission by Kibing

224. There is no gas subsidy given by the Government to Kibing. The amount shown in the Gas Invoices represent the difference between Export Price of Gas from Malaysia and Gas Price charged from the buyers.
225. That there is a change in Gas Pricing Mechanism from Jan 2020 and since then no such amount is mentioned on the Gas Invoices. No specificity has been claimed by the Domestic Industry and also the Authority could not establish any specificity in this Program. Hence this Program is not countervailable.

Program No. 3 Pioneer Status Program**Submission by Government of Malaysia**

226. GOM has submitted that it has approved either Pioneer Status or ITA to the participating Malaysian producers. However, because of certain criteria/requirements which have not been met by these companies, they are yet to receive any benefit from the Program. Further, it has been submitted that if the tax exemption were claimed by the companies during the Period of Investigation (POI), the tax exemption amount will be reflected in the companies' annual tax return of the corresponding assessment year.
227. Kibing has never utilized the Pioneer Status program since the approval by the GOM dated 29 January 2016. A company is required to apply for Pioneer Certificate (PC) in order to avail its benefits under this program. As such, Kibing has not applied for, accrued, or received benefit from this program. The Designated Authority would be able to verify this information from Kibing's audit report and annual tax return of the corresponding years.

Submission by Kibing

228. Kibing has submitted that since it has not completed the procedural requirements, hence, no benefit is availed under this scheme during POI and therefore, no benefit under Pioneer Scheme/Investment Tax Allowance can be applied to them. It was further clarified that assumption of Capital Allowance shown in the Income tax Return of the Company for 2018 as Investment Tax Allowance/Pioneer Status is totally incorrect as both these schemes are independent. Further, since the Authority has concluded that Capital Allowance indicated in Income Tax Return is not countervailable, no benefit for not paying income tax is accrued to them. Annual Reports of Kibing for 2016, 2017, 2018 and 2019 also do not reflect any benefit from these schemes received by Kibing.
229. It is also submitted that permission for Pioneer Scheme has been converted into Investment Tax Allowance only in May 2019. However, Kibing has not yet notified the MITI about date of commencement of the program, hence no benefit has accrued or received by Kibing under this program

Program No. 5 Investment Tax Allowance**Submission by Government of Malaysia**

230. GOM has submitted that it has approved either Pioneer Status or ITA to the participating Malaysian producers. However, because of certain criteria/requirements which have not been met by these companies, they are yet to receive any benefit from the Program. Further, it is submitted that if the tax exemption were claimed by the companies during the Period of Investigation (POI), the tax exemption amount will be reflected in the companies' annual tax return of the corresponding assessment year.

Submission by Xinyi

231. It is submitted that during the most recent tax audit carried out by Malaysia Tax Authority, it has been concluded that Xinyi Energy Smart has failed to meet one of the conditions. As a result, Malaysia Tax Authority had decided to withdraw the ITA benefit to the company. One of the important conditions for availing ITA benefit was that the applicant should not have employed more than 20% of unskilled foreign workers. Xinyi has failed to meet such condition for period in question.

232. It is also submitted that the adoption of 6 years as Average Useful Life (AUL) does not match with actual average AUL of the company. The Authority should adopt AUL on the basis of average life of assets claimed and adopted in its Annual Report to work out the depreciation which meets the requirement of GAAP.
233. Xinyi Energy Smart has submitted that “Xinyi” (Malaysia) is enjoying tax incentive of Investment Tax Allowance (ITA) whereby the total investment cost on production facilities incurred within the period of ten (10) years from January 2015 can be used to offset the taxable profit incurred since the year 2015 till the accumulated ITA is fully utilized. However, as the ITA won’t be utilized until Capital Allowance amount has been fully utilized, the ITA utilized for Year of assessment 2018 is MYR 0. During the year of Assessment 2017 and 2018, the statutory income of Xinyi Energy Smart was both zero, therefore, the amount of ITA that had been actually utilized was zero as well. Therefore, Xinyi Energy Smart submits no subsidy margin shall be calculated since Xinyi Energy Smart did not actually avail any ITA benefits during the POI and pre-POI.

Program No.9. Sales Tax Exemption

Submission by Kibing

234. It is submitted that Sales Tax Charge to Customer is not an income to Kibing. It is further submitted that Kibing manufactures float glass and sells float glass to its customers. The float glass is a raw material/material to the customers. If a customer who has obtained the Sales Tax exemption from the Royal Malaysian Custom Department (RMCD), the customer is exempted to pay the sales tax on the materials they purchased from Kibing. For those customers who did not get the Sales Tax Exemption from the RMCD, Kibing is required, under the Sales Tax Order 2018, to collect the Sales Tax from the customers, on behalf of the RMCD, and make payment to the RMCD according to the prescribe schedule.

Program No. 11 Exemption from Import Duty and Sales Tax on Spares Part

Submission by Kibing

235. Kibing has stated that the amount mentioned in Exhibit-9 as Exemption of Import Duty and Sales Tax on Spares and Consumables is totally incorrect and unfounded. In fact, SST1 and SST represents the amount of goods sold for during the period when SST was applicable. It is not the SST Exemption of Import Duty and Sales Tax on Spares and Consumables but value of goods sold with sales tax exemption applied by Kibing’s customers to RMCD and approval given to Kibing’s customers. In fact, Sales Tax paid on input is set off against Sales Tax collected in respect of domestic sales. The same is shown in the Sales Tax Return for the respective periods. Hence the assumption that the amount shown in Exhibit-9 of the Questionnaire Response of Kibing is the Exemption of Import Duty and Sales Tax on Spares and Consumables is totally incorrect. The Amounts indicated in Exhibit-9 under SST1 and SST 3 reflect amount of Goods sold during the period Sept 2018 to April 2018. The same is duly reflected in the Sales Tax Returns for the said period.

Program No. 12 Exemption from Import Duty and Sales Tax on Machinery and Equipment

236. Kibing has stated that the amount mentioned in Exhibit-9 as Exemption of Import Duty and Sales Tax on Machinery and Equipment is totally incorrect and unfounded. In fact, PTC1 and PTC2 represents the amount of SST on certain inputs purchased during the period when SST was applicable. It is not the SST exemption amount on Exemption of Import Duty and Sales Tax on Machinery and Equipment. In fact, Sales Tax paid on input is set off against Sales Tax collected in respect of domestic sales. The amount is shown in the Sales Tax Return for the respective periods. Therefore, the assumption that the amount shown in Exhibit 9 of the Questionnaire Response of Kibing is the Exemption of Import Duty and Sales Tax on Machinery and Equipment is totally incorrect.
237. The exporters have further submitted that the adoption of 8.5 years as Average Useful Life (AUL) does not match with actual average AUL of the company. The Authority should adopt AUL on the basis of average life of assets claimed and adopted in its Annual Report to work out the depreciation which meets the requirement of GAAP.

Submissions of the Domestic Industry:

238. The so-called cooperating Malaysian exporters namely M/s Xinyi Smart Energy (Malaysia) Sdn. Bhd. (Xinyi) and M/s Kibing Group (M) Sdn. Bhd. (Kibing) as well as the Government of Malaysia (GOM) have willfully and unjustifiably suppressed the information which has direct bearing on the quantum of the subsidy duties.
239. That the GOM has specifically stated that the present scheme is not available for industrial users, and the Malaysian exporters, Xinyi and Kibing, also denied availing any benefit under the present scheme. However, at the time of the verification of documents, the Authority was able to figure out that the Malaysian exporters have indeed availed benefit under the present scheme and therefore, the Authority should reject the exporters.
240. That in an anti-subsidy investigation, the Authority is predominantly dependent upon the information and documents submitted by the concerned parties, any misrepresentation, willful suppression of facts, or failure to provide full and sufficient questionnaire response by the parties to the investigation has to be taken very seriously. Therefore, the Authority has been consistently rejecting the entire response of the parties in trade remedy investigations even when there is a suspicion that the said party has not come out clean before the Authority or if any part of the questionnaire response filed by it is incomplete. In the instant, investigation, both the exporters have not provided information about their related parties and therefore, their responses are liable to be rejected.
241. It is further submitted that the responding Malaysian exporters have apparently provided some half-baked information after their lies with respect to gas subsidy program was found by the Authority during verification, the Authority should use best facts available to determine their subsidy.
242. Domestic Industry has further submitted that the US Investigating Authority in the Countervailing Duty Investigation concerning imports of Fine Denier Polyester Staple Fiber from India [C-533-876 dated 16.1.2018], has used facts available for that scheme (TUFS) despite the fact that Indian producer had provided complete information during verification about the scheme in question taken by textile company and not the company producing PSF despite the fact that the company had also refunded back the amount to the bank with interest and, therefore, no subsidy should be added. US Authority imposed Adverse Facts only because information about that scheme was not disclosed prior to the verification.
243. The submissions of the responding exporters and GOM with respect to the countervailable schemes found to be existing in Malaysia cannot be accepted since it has specifically been found by the Authority that the said exporter and the Government of Malaysia has willfully suppressed material information from the Authority and provided incorrect information.
244. That the disclosure statement fails to record that certain benefit received by subsidiaries are fungible in nature and can be utilized by the group companies and, therefore, it is of utmost importance that the analysis of all the related companies is carried out appropriately. Since the Malaysian exporters did not provide the names of related parties and schemes availed by them, their responses should be rejected.

Examination by the Authority,

245. The Authority notes that most of the submission made by interested parties are repetitive in nature and were already addressed earlier in the disclosure statement. The finding above ipso facto deal with these arguments of parties. Further, the Authority has examined submissions of interested parties herein below to the extent relevant and not addressed elsewhere.

Natural Gas Subsidy

246. The Authority notes the submissions of the domestic industry, the cooperative exporter and the Government of Malaysia regarding the availability and quantification including mechanism of subsidy granted on natural gas to various entities. The Government of Malaysia has provided the mechanism of gas pricing in their response. However, despite request they have not been able to either explain GCPT mechanism or provide minutes of the meeting for GCPT mechanism during the course of the investigation. This has restricted the ability of the Authority to understand the

mechanism. It is further noted that the GOM has accepted that the prices of Gas are regulated in the market. Further, the participating exporters during desk verification have also shown actual invoices, wherein amounts of gas subsidy received are clearly mentioned, despite initially denying the existence of gas subsidy. The Authority after finding actual amount of gas subsidy on the invoices produced by the exporters have calculated the subsidy margin accordingly. Therefore, the Authority confirms the amount of subsidy received by the exporters under this Program.

Pioneer status programme (PS)

247. In relation to PS, it is noted that the Authority had proposed to countervail this scheme in the disclosure statement. However, after analyzing the post disclosure comments made by Kibing and GOM regarding Pioneer Status Program, the Authority notes that the company had not paid income tax because of capital allowance available to them, which is already decided as a non-countervailable scheme in this investigation. It is further noted that since Kibing has not completed the procedural requirements, hence, no benefit is availed by them under this scheme during POI and therefore, no benefit under Pioneer Scheme can be applied to them. In view thereof, it is noted that despite this scheme being countervailable, no subsidy amount is being recommended for Kibing, as the same has not been availed by them.

Investment Tax Allowance (ITA)

248. In relation to the submission made by Xinyi regarding the fact that no benefit was available under the ITA, it is noted that in post disclosure submissions, the methodology used by the Authority for reaching the benefit amount for POI was contested. In this context, it is noted that the Authority has, in light of the post disclosure comments, re-examined the benefit. While analyzing, it is confirmed that Xinyi has indeed availed benefit under this scheme as the same was reflected in their Annual Report as well as ITR filed by them. The Authority has relied upon the Annual Report and Income Tax return submitted by Xinyi.
249. In this connection, it is further noted that the company has reflected the amount of RM *** that is brought forward from the previous year and RM *** for the current year totaling to RM *** which the company could not utilize, and the amount was carried forward to be utilized in subsequent years. Since the scheme is available for a period of 10 years from 29 January 2015 to 28 January 2025 and effectively only six years are left for utilizing the carried forward amount of RM ***, accordingly the unutilized amount of investment allowance reflected in the ITR has been spread over a period of six years, and accordingly the subsidy margin has been calculated.
250. In relation to the submission of Xinyi regarding their ITA claims and its consequential refund along with penalty to the GOM, the Authority holds that the claim of refund is not verifiable at this stage for reasons of its non-admissibility or its restoration to the producer/exporter later. The Authority notes that the cooperating exporter has in continuation of their earlier comments, submitted that ITA has been discontinued to them. However, the Authority could not verify the claims at this late stage. Further, complete details of the same have also not been explained. Therefore, the Authority notes that if the exporter would not get any benefit under this scheme in future, the exporter may file a review in accordance with relevant rules. In view of the above, the Authority holds that Xinyi has got benefit under this scheme.

Sales Tax Exemption

251. The Authority has taken note of the submissions made by Kibing and GOM in relation to Program No 9, 11 and 12 and the margin calculated thereunder. The Authority has taken due cognizance of their explanation and submissions, which ought to have been clarified / submitted at the stage of verification process. The Authority has made efforts to understand the submissions made by the exporter in this regard and have accordingly accepted the clarification submitted by the exporter regarding 'SST1 and SST3' and 'PTC1 and PTC2'. The Authority has re-examined Exhibit-9 in the light of the post disclosure statement comments and found that the amount mentioned in Sales Tax Exemption category under the head 'POI Actually Received Subsidy' is the actual subsidy received by the exporter and claimed by them in Exhibit-9. Since the exporter has himself admitted the subsidy received during the POI under Sales Tax Exemption, the Authority has determined subsidy margin for Sales Tax Exemption based on the subsidy amount claimed by Kibing in questionnaire response.

Exemption from Import Duty and Sales Tax on Spares and Consumables

252. The Authority has examined the response filed by Kibing in relation to this Program and has taken note of explanation of the terms 'SST1' and 'SST3' and the corroborative documents submitted along with the post disclosure comments in this regard. Since the terms 'SST1' and 'SST3' are not related to Sales Tax on Spares and Consumables, as was explained by the exporter, the Authority has decided not to countervail this scheme for Kibing and accordingly, no subsidy margin is calculated for this scheme in these final findings.

Exemption from Import Duty and Sales Tax on Machinery and Equipment

253. The Authority has examined the response filed by Kibing in relation to this Program and has taken note of explanation of the terms 'PTC1' and 'PTC2' and the corroborative documents submitted along with the post disclosure comments in this regard. Since the terms 'PTC1' and 'PTC2' are not related to Sales Tax on Machinery and Equipment, as was explained by the exporter, the Authority has decided not to countervail this scheme for Kibing and accordingly, no subsidy margin is calculated for this scheme in these final findings.

254. The Authority notes the submission of the domestic industry regarding willful suppression of the facts and providing false information to the Authority and has addressed these concerns in the foregoing paragraph.

Conclusion

255. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings, the Authority concludes that:

- i. The product under consideration has been exported to India from Malaysia at subsidized price.
- ii. The domestic industry has suffered material injury due to subsidization of the product under consideration.
- iii. The material injury' has been caused by the subsidized imports of the subject goods originating in or exported from Malaysia.

Indian Industry's Interests and Other Issues

256. The Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of countervailing duty would not restrict imports from the subject country in any way and, therefore, would not affect the availability of the products to the consumers. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidized subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and create level playing field.

RECOMMENDATION

257. It is noted that the Authority has already recommended anti-dumping duties on the same product under consideration vide final findings F. No. 6/15/2018-DGTR dated 20.8.2020. The same was accepted by Ministry of Finance vide notification No. 37/2020-Customs (ADD) dated 11.11.2020. It is further noted that in terms of Section 9B(1)(a) of the Act, no article shall be subject to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization. Considering the above provision, the Authority has taken due care that the product under consideration should not be subject to both anti-dumping and export subsidy. In this context, it is important to highlight that the subsidy margin quantified by the Authority in relevant paragraphs above pertains to subsidies other than export subsidies. Therefore, the current subsidy duties are in accordance to the Act and Rules. Further, there will be no double protection to the Domestic Industry and will cause no prejudice to any interested party whatsoever.

258. It is further noted that anti-dumping duty was recommended on reference-price based on the factual matrix of the case. Therefore, now the anti-dumping is only payable if the subject goods will be landing below the reference price notified vide notification No. 37/2020-Customs (ADD) dated 11.11.2020 and the amount of ADD would be to the extent of difference between the landed value of subject goods, and the reference price indicated in column 7 of the duty table of the above Notification.
259. In addition to above, it is further noted that since the POI of anti-dumping and countervailing duty is same, the Authority has also taken due precaution of the fact that the anti-dumping margin and anti-subsidy margin should not exceed the injury margin calculated for the Domestic Industry for the POI. The same is also reflected in the Table below:

Particulars	Dumping Margin in the AD investigations	Dumping Margin% in the AD investigations	Subsidy Margin	Subsidy Margin %	Dumping Margin + Subsidy Margin		Injury Margin	
					USD/MT	%	USD/MT	%
Xinyi Energy Smart (Malaysia) Sdn. Bhd.	***	***	***	***	***	***	***	***
Kibing Group (M) Sdn. Bhd.	***	***	***	***	***	***	***	***
Others	***	***	***	***	***	***	***	***

260. From the above, it is clear that the injury margin which is same for both the anti-dumping investigation and anti-subsidy investigation because of same POI, is significantly higher than the sum of both dumping margin and subsidy margin taken together for both the cooperating producers and exporters. Since injury margin percentage determined for other producers and exporters is lower than sum of dumping and subsidy margin percentages, the anti-subsidy duty is restricted to the amount by which injury margin exceeds dumping margin i.e., ***%.
261. The Authority notes that the investigation was initiated and notified to all interested parties including Government of Malaysia and adequate opportunity was given to provide information/evidence on the aspect of subsidization, injury' and causal link. Having initiated and conducted the investigation into subsidization, injury and causal link in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from the subject country in the form and manner described hereunder.
262. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury for a period of five (5) years, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, definitive countervailing duty as mentioned in Col No.7 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of the subject goods from the subject country.

Duty Table:

S.no. (1)	Heading/ Sub- heading (2)	Description of Group (3)	Country of origin (4)	Country of export (5)	Producer (6)	Duty Amount as % of CIF value (7)
1.	7005	Clear Float Glass of nominal thicknesses ranging from 4 mm to 12 mm (both inclusive), the nominal thickness being as per BIS14900:2000	Malaysia	Any country including Malaysia	Xinyi Energy Smart (Malaysia) Sdn. Bhd.	9.74%
2	-do-	-do-	Malaysia	Any country including Malaysia	Kibing Group (M) Sdn. Bhd.	11.15%
3	-do-	-do-	Malaysia	Any country including Malaysia	Any other than Sl no 1 & 2	4.02%
4	-do-	-do-	Any country other than Malaysia	Malaysia	Any	4.02%

1. CIF value means the assessable value as determined under section 14 of Customs Act, 1962 (52 of 1962).
2. The Authority further notes that due to ASEAN Free Trade Agreement, the basic custom duty is zero and therefore, landed value and CIF amount will be same.
3. To clarify how both anti-dumping and anti-subsidy duty will operate, an illustration is provided below:

❖ *If the CIF / Landed Value of exports to India by Xinyi for PUC is USD 250/MT, Xinyi has to pay USD 22.87 / MT (USD272.87/MT minus USD 250 / MT) as Anti-dumping duty and USD 24.35 / MT (9.74% of USD 250/MT) as countervailing duty. With the same price of exports, the other producers and exporters would be paying US\$ 76/MT (US\$ 326/MT minus US\$250/MT) as ADD, and US\$10.05/MT as CVD.*

Further Procedure

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

B. B. SWAIN, Spl. Secy. & Designated Authority

2	29173500	फथेलिक एनहाइड्राइड	रूस को छोड़कर अन्य कोई देश	रूस	कोई भी	159.43	मी.टन	यूएसडा.

ण. आगे की प्रक्रिया

112. केन्द्र सरकार के इस आदेश, जो इस सिफारिश के कारण हो सकता है, के विरुद्ध अपील इस अधिनियम के संगत प्रावधानों के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष होगी।

बी. बी. स्वेन, विशेष सचिव एवं निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(DIRECTORATE GENERAL OF TRADE REMEDIES)

NOTIFICATION
FINAL FINDINGS

New Delhi, the 5th January, 2021

Case No. ADD-SSR-07/2020

Subject : Sunset Review of anti-dumping investigation concerning imports of "Phthalic Anhydride" originating in or exported from Japan and Russia.

F. No. 7/11/2020 – DGTR.—Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the 'Act'), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the 'Rules' or 'AD Rules') thereof;

A Background of the case

1. The Designated Authority (hereinafter referred to as the Authority) initiated an antidumping investigation in respect of imports of "Phthalic Anhydride" (hereinafter also referred to as "PAN" or the "subject goods" or "PUC" or "Product Under Consideration") originating in or exported from Japan and Russia on 9th May 2014 and after conducting the investigation recommended imposition of definitive duty vide Final Findings Notification No. 14/6/2014-DGAD dated 3rd November, 2015. On the basis of recommendations made by the Authority in the final findings, definitive anti-dumping duty was imposed by the Central Government vide Notification No. 56/2015-Customs (ADD) dated 4th December 2015.
2. Section 9A (5) of the Act, inter alia, provides that anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the domestic industry, as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.
3. Rule 23(1B) of the Rules provides as follows:

"...any definitive anti-dumping duty levied under the Act shall be effective for a period not exceeding five years from the date of its imposition, unless the Designated Authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry."

4. M/s IG Petrochemicals Limited, M/s Thirumalai Chemicals Limited and M/s SI Group India Private Limited (hereinafter referred to as "applicants" or "domestic industry") filed a duly substantiated application on behalf of the domestic industry, in accordance with the Act and the Rules alleging likelihood of continuation or recurrence of dumping of the subject goods, originating in or exported from subject countries and consequent injury to the domestic industry and have requested for review and continuation of the anti-dumping duties, applicable on the imports of the subject goods, originating in or exported from Russia and Japan.
5. Based on the application filed on behalf of the domestic industry in accordance with Section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules with prima facie evidence of likelihood of dumping and injury, the Authority initiated the sunset review investigation vide Notification No. F. No. 7/11/2020-DGTR (SSR No. 07/2020) dated 11th May, 2020 to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry and whether there is a need for continued imposition of antidumping duty in respect of the subject goods originating in or exported from Russia and Japan .
6. The scope of the present review covers all aspects of the previous investigations concerning imports of the subject goods, originating in or exported from the subject countries.

B Procedure

7. The procedure described below has been followed with regard to the investigation:
 - i. The Authority notified the embassy of the subject countries in India about the receipt of the present application before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the AD Rules.
 - ii. The Authority issued a Notification dated 11th May, 2020, published in the Gazette of India Extraordinary, initiating investigation concerning imports of the subject goods from the subject countries.
 - iii. The Authority sent a copy of the initiation notification to the Embassy of the subject countries in India, known producers/exporters from the subject countries, known importers/users and the domestic industry as per the addresses made available by the applicants and requested them to make their views known in writing within 60 days of the initiation notification in accordance with Rule 6(2) of the AD Rules.
 - iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, known importers and to the embassy of the subject countries in India in accordance with Rule 6(3) of the AD Rules.
 - v. The Embassy of the subject countries in India were also requested to advise the exporters/producers from the subject countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
 - vi. The Authority sent exporter's questionnaire to the following known producers/ exporters in the subject countries, whose details were made available by the applicants, to elicit relevant information in accordance with Rule 6(4) of the Rules:
 - a. Gazprom Neftekhim Salavat, Russia
 - b. JSC Ural Chemical Co, Russia
 - c. West-Siberian Steel, Russia
 - d. Angarsk Petrochemical, Russia
 - e. Polymer Pack Go, Russia
 - f. Uralkhimprom Podlesnaya, Russia
 - g. Rosplast Ooo LLC, Russia
 - h. OJSC Kamtex-Himprom, Russia

- i. JFE chemical corporation, Japan
- j. New japan chemical Co. Limited, Japan
- k. Nippon Shokubai, Japan
- l. C-Ghem Co., Limited, Japan
- vii. None of the producers/exporters from the subject countries have filed exporter's questionnaire response.
- viii. The Authority forwarded a copy of the Initiation Notification to the following known importers/users/user associations, whose names and addresses were made available to the authority, of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 6(4):
 - a. M/s KLJ Plasticizers Limited
 - b. M/s Mazda Colors Limited
 - c. M/s Pck Oil & Solvents Limited
 - d. M/s Lona Industries Limited
 - e. M/s Silvassa Plast Private Limited
 - f. M/s Aarti Industries Limited
 - g. M/s Mechemco Industries Private Limited
 - h. M/s Rachna Plasticizers
 - i. M/s Micro Inks Limited
 - j. M/s Phthalo Colors & Chemicals (I) Limited
 - k. M/s Heubach Colour Private Limited
 - l. M/s Ramniklal S. Gosala & Co.
 - m. M/s Sanman Trade Impex Private Limited
 - n. M/s Pertochem Middle East (India) Private Limited
 - o. M/s A-One Chem Trade Private Limited
 - p. M/s Amjey Chemicals Trade Private Limited
 - q. M/s Sanjay Chemicals (India) Private Limited
 - r. M/s Hazel Mercantile Limited
 - s. M/s Indian Plastics Federation
 - t. M/s Indian Plasticizers Manufacturers Association
 - u. M/s Indian Paint Association
 - v. M/s Chemical Industries Association
 - w. M/s Indian Chemical Council
- ix. The following importers or consumers of the product have filed the importer's questionnaire response in the prescribed format:
 - a. M/s KLJ Plasticizers Limited
 - b. M/s Payal Polyplast Private Limited
- x. M/s Indian Plasticizers Manufacturers Association (IPMA) and Government of Russia filed letters of participation in response to the initiation notification. The Government of Japan filed written submission as well.

- xi. Exporters, foreigner producers and other interested parties who have not responded to the Authority, or not supplied information relevant to this investigation, have been treated as non-cooperating interested parties.
- xii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xiii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by all interested parties. A list of all interested parties was uploaded on DGTR's website along with the request therein to all of them to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic.
- xiv. The period of investigation for the purpose of the present investigation has been considered from April, 2019 to March, 2020 (POI). The injury investigation period has been considered as the period from April 2016 to March 2017, April 2017 to March 2018 and April 2018 to March 2019 and POI. The Authority has also considered April 2020 to August 2020 as the post - POI for the purpose of examining likelihood of continuation or recurrence of dumping and injury.
- xv. Additional/supplementary information was sought from the applicants and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the investigation.
- xvi. The Non-injurious Price (NIP) is based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules. It has been worked out so as to ascertain whether duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xvii. Information obtained from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) on transaction-wise import data for the past three years, and the period of investigation has been adopted for determination of volume and value of imports of product concerned in India.
- xviii. In accordance with Rule 6(6) of the Rules, the Authority provided opportunity to all interested parties to present their views orally in the oral hearing held on 11th November, 2020, which was attended by various parties. The oral hearing was held through video conferencing in view of the special circumstances arising out of the COVID- 19 pandemic. All the parties who presented their views in the oral hearing were requested to file written submissions of these views, in order to enable opposing interested parties to file rejoinders thereafter.
- xix. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in these final findings.
- xx. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded these final findings on the basis of the facts available.
- xxi. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 18th December, 2020 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.

- xxii. *** in these final findings represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxiii. The exchange rate adopted by the Authority during the POI for the subject investigations is 1 US\$= Rs. 71.65

C Product under consideration

8. The product under consideration in the present investigation is "Phthalic Anhydride" (PAN). Phthalic Anhydride (PAN) is an anhydride of Phthalic Acid and is commercially produced by catalytic oxidation of Ortho-xylene or Naphthalene. It is a colourless solid, variously referred as Phthalic Anhydride flakes, Phthalic Anhydride (98% min.), Phthalic Acid Anhydrous, Phthalic Anhydride (99.8% min), etc. Specifications of Phthalic Anhydride includes its physical appearance, colour of solid flakes, colour of molten product, solidification point, Phthalic Anhydride content by weight, other anhydrides & organic impurities' content by weight and acidity index.

C.1 Submissions of the domestic industry

9. The domestic industry has submitted as follows with regard to product under consideration and like article:
- Product under consideration in the present petition is 'Phthalic Anhydride', the principal commercial form of Phthalic Acid
 - Since the present investigation is a sunset review investigation, the scope of product under consideration remains the same as in the original investigation.
 - The domestic industry is producing a like article to product under consideration.

C.2 Submissions of other interested parties

10. Other interested parties have not made any submissions with regard to product under consideration and like article.

C.3 Examination by Authority

11. The product under consideration in the original investigation as well as in the present sunset review is Phthalic Anhydride. In the previous investigation, the product under consideration was defined as under. The Authority has considered the same scope of the product under consideration for the present purposes:

The product under consideration in the present investigation is "Phthalic Anhydride". Phthalic Anhydride, also referred as PAN or PA, is an anhydride of Phthalic Acid, and is commercially produced by catalytic oxidation of Ortho-xylene or Naphthalene. It is a colourless solid, variously referred as Phthalic Anhydride flakes, Phthalic Anhydride (98% min.), Phthalic Acid Anhydrous, Phthalic Anhydride (99.8% min), etc. The product is produced only in one grade. As regards different applications, it does not have distinguishable different types of forms. It is mainly used in the production of phthalate esters, which functions as plasticizers. It is an important chemical intermediate in plastic industry. It is also used in making of the products like Polyester Resins, Alkyd Resins used in paints and lacquers, Unsaturated Polyester Resins, Polyester Polyols, Dyes and Pigments, Halogenated Anhydrides, Polyetherimide Resins, Isatonic Anhydride, Insect Repellents etc.

Phthalic Anhydride is an organic chemical classified under customs sub-heading No. 29173500 under the Custom Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

12. The subject goods produced by the domestic industry and that imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the same, the product under consideration produced by the domestic industry is treated as like article to the product under consideration imported from subject countries.

D Domestic industry and standing

13. Rule 2(b) of the AD rules defines domestic industry as under:

"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term, 'domestic industry' may be construed as referring to the rest of the producers."

D.1 Submissions of domestic industry

14. Following submissions have been made by the domestic industry with regard to standing and scope of the domestic industry:

- i. All the three producers in India are participating in the investigation.
- ii. Applicants have not imported the subject goods and are not related, either directly or indirectly, to any exporter in the subject countries or any importer of the dumped article within the meaning of Rule 2(b).
- iii. The application satisfies the requirement of the rules.

D.2 Submissions of other interested parties

15. The other interested parties have not made any submissions with regard to domestic industry and its standing.

D.3 Examination by the Authority

16. The present application has been filed by M/s IG Petrochemicals Limited, M/s Thirumalai Chemicals Limited and M/s SI Group India Private Limited. There is no other existing producer in India. Therefore, the applicants account for entire production in India. These applicants have provided relevant information as per the prescribed format and the applicants are eligible domestic industry within the meaning of Rule 2(b) of the Rules. The application satisfies the criteria of standing in terms of Rule 5(3) of the Rules, even though standing within the meaning of Rule 5(3) is not required to be established in a sunset review initiated under Rule 23.

E Miscellaneous submission**E.1 Submissions of domestic industry**

17. Following miscellaneous submissions have been made by the domestic industry:

- i. Profits of the domestic industry have dried up and the industry has suffered from extremely poor returns. Allegation of high price charged by the domestic industry should be completely ignored.
- ii. Demand and supply gap cannot justify dumping.
- iii. KLJ Plasticizers Limited is in the process of installing PAN plant with capacity around 200 KT. These capacities will become operational by 2024 tentatively. The capacity after the expansions will be much more than the projected demand in India.
- iv. Extension of duties will not prevent imports. Imports can continue to happen from subject countries as well as other countries. Even the domestic industry would have to compete which will keep domestic industry's prices in check.
- v. BIS will bring standards. It is improper to consider that it is used to monopolize market and such allegation amounts to levelling serious allegations against Govt. functioning and decision making.
- vi. As regards the application filed by domestic industry with different period of investigations, it is submitted that the application for sunset review as well as fresh investigation are filed with the same period of investigation. Applicants have already stated that domestic industry is suffering injury in the period of investigation due to dumping from fresh countries and there is a likelihood of injury from the subject countries in this sunset review application.

- vii. As regards argument with respect to bilateral safeguard measures on imports from South Korea, it is submitted that in bilateral safeguard case, it is Korean imports which has been identified as the cause of injury. The domestic industry is conscious and well aware that it will not get protected beyond injury margin.
- viii. There need not be one sole reason for the injury to the domestic industry. The authority needs to only assess if there is a "genuine and substantial relationship of cause and effect" of dumping and injury.

As regards the claim of report from TecnonOrbiChem being claimed confidential, it is submitted that report is based on third-party information which the applicants are not permitted to disclose. However, the figures adopted from the report have been disclosed. It is these figures which shall form the basis for determination.

- ix. As regards the claim that the duty will lead to closure of phthalate plasticizer industry, it is submitted that no information on number of users which have shut down plants in past on account of antidumping or safeguard duty has been given by other interested parties.
- x. Consumption of PAN shows healthy growth of downstream industry even when antidumping duty or safeguard duty were in force. Duties were imposed after due examination of public interest.

E.2 Submissions of other interested parties

18. Other interested parties have made following miscellaneous submissions.

- i. There is a demand and supply gap.
- ii. The Indian producers charge high prices by misusing trade remedial measures.
- iii. PAN manufacturers are blocking imports of Phthalic Anhydride by anti-dumping duty, safeguard duty or pushing for BIS specifications so that they can monopolize the market.
- iv. Applicants are presenting different period of investigation and conflicting cause of injury before the Authority in different investigations.
- v. To support claims of excess capacities, a report from TecnonOrbiChem has been used but is held confidential.
- vi. Continuation of anti-dumping duty will open flood gates for imports of Phthalate Plasticizers which is also being imported with zero basic custom duty.
- vii. Value addition in converting Phthalic Anhydride into phthalate plasticizers is very low and with low value addition, increase in raw material price will make it difficult to compete with imported phthalate plasticizer.
- viii. Anti-dumping duty will lead to closure of phthalate plasticizer industry down the line and leading to loss of employment.
- ix. Government of India has revoked antidumping duties applicable on imports of PTA and Acrylic Fibre which are key inputs for various sectors. Same should be done in the present case as well.
- x. PAN being a key input for many units employing thousands of people, it is essential that such input is made available to units at fair prices and at required volume.
- xi. Authority must take affidavit from producers on factual position of capacity expansions since such claims have been made in many recent investigations but the expansions are never complete.

E.3 Examination by the Authority

- 19. The Authority made non-confidential version of the information provided by various interested parties available to all interested parties for inspection through the public file containing non-confidential version of evidence submitted by various interested parties.
- 20. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed

accordingly. The Authority notes that the information provided by the interested parties on confidential basis was duly examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

21. The Authority notes that the demand supply gap in the country does not bar a domestic industry from seeking redressal from dumped imports. Demand-supply gap does not justify dumping. The information on record shows that the domestic industry is undergoing capacity expansion. In fact, the domestic industry has enhanced capacity and has made investment towards the same. Further, documentary evidence has been provided showing that KLJ Plasticizers Limited is in the process of setting up capacity of around 200 KT. The domestic industry contended that considering the capacity expansions undertaken, the capacity of the domestic industry will be significantly higher than the demand in country. The foreign producers can always meet the Indian demand by selling the product at undumped prices. Even after the imposition of antidumping duty, the imports are not restricted in the country. Therefore, there is no basis for the claim that imposition of ADD can lead to shortage of the raw material for the downstream industry. The Authority notes that imposition of anti-dumping duty provides level playing field and does not prevent fair competition in the market. The Authority also notes the submission of the domestic industry that subject goods is produced and exported by many countries. The users are free to import the subject goods from any source.
22. The Authority notes that the trade remedial measures have been imposed in past on the imports of the subject goods from various sources. These measures are invoked after following a quasi-judicial investigation with participation of all interested parties, and after due examination of merits, and in due compliance with the law and examination of the public interest. The applicant has given evidence of likelihood of increase in imports of the subject goods from the subject countries. Contrarily, the other interested parties have not provided any justification/evidence for the claim of likelihood of increase in imports of downstream product. Therefore, there is no reason to believe that the present continuation of anti-dumping will lead to an increase in imports of the downstream industry.

F Determination of NORMAL value, export price and dumping margin

F.1 Normal Value

23. Under Section 9A (1)(c) of the Act, normal value in relation to an article means:
 - i. *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting countries or territory as determined in accordance both the rules made under sub-section (6); or*
 - ii. *When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting countries or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exploring countries or territory, such sales do not permit a proper comparison, the normal value shall be either-*
 - a. *comparable representative price of the like article when exported from the exporting countries or territory or an appropriate third countries as determined in accordance with the rules made under sub-section (6); or*
 - b. *the cost of production of the said article in the countries of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

F.2 Submissions of domestic industry

24. The submissions made by the domestic industry with regard to normal value, export price and dumping margin are as follows: -
- i. Evidence of prices of subject goods in the domestic market of Russia and Japan or the price lists of the producers is not available in public domain.
 - ii. Exports from Russia to Poland have highest share in the exports from Russia. Similarly, exports from Japan to Malaysia have highest share in the exports from Japan. Exports prices from the subject countries to these two countries can be considered appropriate for determination of normal value.
 - iii. Export price can be calculated after due adjustments in the DGCI&S transaction wise data for ocean freight, marine insurance, commission, bank charges, port expenses and inland freight expenses.
 - iv. Dumping margin determined on the basis of above is not only positive but is significant.
 - v. Even if normal value is constructed, the resulting dumping margin is significant.
 - vi. Since none of the producers from the subject countries have participated, the claims of dumping margin are undisputed.
 - vii. Positive dumping even when duties are imposed shows likelihood of dumping when duties will expire.
 - viii. As regards submission that normal value proposed does not justify facts, it is submitted that user association was free to provide relevant information, rather than merely drawing conclusions.
 - ix. As regards submission regarding appropriate surrogate country, the association is under belief that there is a need to identify surrogate country even in case of market economy countries. The requirement is “comparable representative price” of the like article when exported from the exporting country or territory to an appropriate third country.

F.3 Submissions of other interested parties

25. The submissions made by the other interested parties with regard to normal value, export price and dumping margin are as follows: -
- i. No justification has been given for considering export price from Russia to Poland as normal value.
 - ii. Source of information for adjustment claimed to arrive at normal value has not been provided.
 - iii. Proposal of domestic industry for determination of normal value should not be accepted since proposed methodology is not justified.
 - iv. Poland and Malaysia cannot be treated as surrogate countries for India.

F.4 Examination by Authority

26. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. None of the producers/exporters have co-operated in this investigation by filing the prescribed questionnaire responses.

F.4.1 Normal Value determination**Russia**

27. The Authority notes that none of the producers/exporters from Russia have filed exporter's questionnaire response. Since the applicants have not provided any detailed justification for considering Poland as an appropriate third country, the same has not been considered for determining

the normal value. The Authority has thus determined normal value on the basis of facts available in terms of Rule 6(8).

Japan

28. The Authority notes that none of the producers/exporters from Japan have filed exporter's questionnaire response. Since the applicants have not provided any detailed justification for considering Malaysia as an appropriate third country, the same has not been considered for determining the normal value. The Authority has thus determined normal value on the basis of facts available in terms of Rule 6(8).

F.4.2 Export Price

29. Since no response has been received from any producer/exporter from the subject countries, the Authority has determined export price as per "facts available" in terms of Rule 6(8) of the AD Rules in respect Russia and Japan. The export price has been determined on the basis of weighted average import price in India. Since this price is CIF export price, the same has been adjusted on account of ocean freight, insurance, commission, bank charges, port expenses and handling charges, based on facts available, in view of non-cooperation by the producers/exporters concerned.

F.4.3 Calculation of Dumping Margin

30. Considering the normal value and export price determined, as explained above, it is noted that the dumping margin for both Russia and Japan is more than the *de minimis* limit prescribed under the Rules.

S.No.	Particulars	Normal value	Export price	Dumping margin	Dumping margin	Range
		USD/MT	USD/MT	USD/MT	%	%
1	Japan	***	***	***	***	20-30%
2	Russia	***	***	***	***	20-30%

G METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

31. Rule 11 of the Rules read with Annexure-II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "*.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
32. Rule 23 of the Rules provides that the provisions of Rule 6,7,8,9,10,11,16,18, 19 and 20 shall apply mutatis mutandis in case of a review. The Authority in its examination has evaluated the injury parameters which are required under Rule 11 and Annexure II of the Rules and has also examined as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.
33. The Authority notes that the application for imposition of antidumping duty has been filed by M/s IG Petrochemicals Limited, M/s Thirumalai Chemicals Limited and M/s SI Group India Private Limited. In terms of Rule 2(b) of the Rules, the Applicants have been treated as the domestic industry for the purpose of this investigation. Therefore, the cost and injury information of the Applicants, constituting the domestic industry as defined in Rule 2(b), have been examined.

G.1 Submissions of domestic industry

34. The submissions of the domestic industry with regard to injury and causal link are as under:

- i. Volume of imports from the subject countries have declined over the injury period due to imposition of anti-dumping duty and dumping from other countries.
- ii. Present injury to domestic industry is not due to imports from subject countries.
- iii. Domestic industry is expanding its capacities and once capacity expansion is undertaken, domestic industry will be able to meet entire demand for the product in the country.
- iv. Considering the significant investments planned and made, it is necessary that the Indian market is protected from the unfair trade practice of dumping.
- v. Performance of the domestic industry has deteriorated in respect of parameters such as production, capacity utilization sales, inventories, market share, profits, cash profits and return on investment during the current injury period.
- vi. Domestic industry was faced with idle capacities in the period of investigation despite demand and supply gap.
- vii. Domestic industry suffered decline in sales and faced piling of inventories.
- viii. Faced with significant high inventories and lack of demand domestic industry had to undertake significant exports at distress prices.
- ix. Domestic industry had to compromise not only on its sales opportunities in the domestic market, but also on margins.
- x. Catalyst is changed in every 27-30 months. The year in which it is changed, witnesses high efficiency in plant in terms of production and utilization of raw material and utilities, which subsequently starts declining. Therefore, considering higher production and lower consumption for such a year for determination of NIP will not be appropriate.
- xi. Present deterioration in performance of domestic industry was largely due to dumping from China, Indonesia, Korea RP and Thailand. It nevertheless establishes likelihood of injury to domestic industry from subject imports in the event of cessation of anti-dumping duty.
- xii. Domestic industry is operating with idle capacities, high inventories and was constrained to export significant volumes. There is no reason why it would stop responding to customer queries unless prices expected are abysmally low and unreasonable.
- xiii. Injury margin may be compared by adding freight as consumers decide their purchases and negotiate the prices with the suppliers on the basis of comparison of landed price of imports in their factory warehouse.
- xiv. As regards the submission of the other interested parties that the negative price undercutting shows high price is charged by the domestic industry, the domestic industry submitted that negative price undercutting means domestic industry prices were lower than import prices. Further, had domestic industry charged higher prices, domestic industry profitability would not have been deteriorated and would not have been adverse.
- xv. Applicants have clearly written in application that they are not requesting determination of NIP at customers' level by adding freight. The NIP may be determined at ex-factory level. However, the injury margin should be determined by adding associated freight. Consumers have not disputed the claim of the applicant.
- xvi. As regards the claim of injury due to OX, it is submitted that domestic industry has faced no issues in availability of raw material during period of investigation. It is respondent's own claim that raw material is available at nil custom duty. The domestic industry needs to align its prices to raw material but could not do due to dumped imports.
- xvii. Adverse performance in exports is on account of injury due to dumped imports in country and could be considered as one of factors showing injury to the domestic industry.
- xviii. As regards the claim that domestic industry enjoys advantages, it is submitted that even when domestic industry has these "advantages", its performance is poor which shows vulnerability to dumped imports.

- xix. As regards submission on TCL plant, it is submitted that it is customary to continuously invest in technology and improve efficiency. Statements made in Annual Report are in reference to such technological investments made. Technical performance of TCL in all aspects is on par with other producers globally.

G.2 Submissions of other interested parties

35. The submissions of other interested parties with regard to injury and causal link are as under:

- i. Most of factors of economic parameters of the domestic industry show a positive trend reflecting that the domestic industry is not suffering injury and there is no justification for continuation of hefty duties.
- ii. The performance of the domestic industry has suffered because of the flood of low-priced imports from China PR, Indonesia, Korea RP, Thailand and Taiwan.
- iii. Applicants have admitted that domestic industry did not suffer any continued injury on account of import of subject goods from subject countries.
- iv. Difference in price between Orthoxylene and final product and availability of OX has greatest influence on the performance of PAN manufacturers in India.
- v. Domestic industry is a regular exporter which impacts demand supply situation in India. Manufacturers are selling PAN overseas at a lower price compared to domestic selling price without claiming any kind of injury.
- vi. Proposal to add freight to both NIP and landed price to determine the injury margin is against Annexure III.
- vii. Applicant has presented transaction wise DM/IM by zeroing negative margins, which is not a method adopted by the Authority.
- viii. Major sources of imports are already probed under trade measures. Insignificant imports from subject countries should be freed from anti-dumping duty.
- ix. TCL is operating with a very old plant and technology which causes frequent shutdowns and other issues. Injury is due to such factors.
- x. Producers have other reasons which are influencing their performance but are attributing them to imports in their annual reports in order to take undue advantage of trade remedial measures.
- xi. Domestic industry has a natural advantage on account of nil energy cost and custom duty benefit on imports of raw material. Therefore, they cannot suffer injury.
- xii. PAN manufacturers are not responding to customer inquiries and are quoting arbitrarily high prices.
- xiii. Imports from subject countries constituted barely 1% of Indian demand which shows negligibility of such imports.
- xiv. Imports from Japan are below the threshold limit of 3% across the entire injury period and therefore Japan should be excluded.

G.3 Examination by Authority

36. The Authority has taken note of the submissions made by the interested parties. Annexure-II of the Anti-Dumping Rules provides for objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in domestic market for the like articles; and (b) the consequent impact of these imports on domestic producers of such products.
37. According to Section 9(A)(5) of the Customs Tariff Act, 1975, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time-to-time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of the order of such extension.

38. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject countries.
39. The Authority notes that it is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration, while some others may not. The Authority considers all injury parameters and, thereafter, concludes whether the domestic industry has suffered injury or is likely to suffer injury due to dumping. The Authority has examined the injury parameters objectively considering the facts and arguments submitted by the domestic industry and other interested parties.
40. The Authority has taken note of various submissions made by the Domestic Industry and other Interested parties on injury and causal link and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority in the succeeding paras addresses submissions made by the domestic industry and other interested parties.

G.3.1 Assessment of demand

41. The Authority has determined demand or apparent consumption of the product in India, as the sum of domestic sales of the Indian Producers, and imports from all sources.

S.No.	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Sales of domestic industry	MT	2,23,200	2,35,591	2,37,924	2,28,046
2	Sales of other producers	MT	24,000	6,000	-	-
3	Imports from subject countries	MT	5,866	10,037	11,171	5,732
4	Imports from other countries	MT	86,184	1,20,402	1,33,488	1,68,723
5	Total demand/consumption	MT	3,39,251	3,72,030	3,82,583	4,02,500

42. It is seen that the demand of the subject goods has continuously increased over the injury period including POI.

G.3.2 Volume effect of dumped imports.

i. Import volume and share of subject countries

43. The effects of the volume of dumped imports from the subject countries as well as imports from other countries have been examined by the Authority.

S.No.	Particulars	Unit	2016-17	2017-18	2018-19	POI
1	Subject Countries	MT	5,866	10,037	11,171	5,732
A	Japan	MT	350	-	-	300
B	Russia	MT	5,516	10,037	11,171	5,432
2	Other countries	MT	86,184	1,20,402	1,33,488	1,68,723
3	Total	MT	92,051	1,30,439	1,44,660	1,74,454
4	Subject countries import in relation to -					
A	Indian production	%	1.98%	3.47%	4.06%	2.13%
B	Demand	%	1.73%	2.70%	2.92%	1.42%
C	Total imports	%	6.37%	7.69%	7.72%	3.29%

44. It is seen that the volume of dumped imports of product under consideration from subject countries increased till 2018-19 but has declined sharply thereafter in the period of investigation.

G.3.3 Price effect of dumped imports.

45. In terms of Annexure II (ii) of the Rules, the Authority is required to consider the effect of the dumped imports on domestic prices in terms of price undercutting, price underselling, price suppression and price depression, if any.

a. Price Undercutting

46. With regard to the effect of dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared to the price of the like product in India or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, a comparison has been made between the landed value of the product from the subject countries and the average selling price of the domestic industry, net of all rebates and taxes, at the same level of trade.

S.No.	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Net Sales Realisation	Rs/MT	***	***	***	***
2	Subject countries as a whole					
a	Landed Price	Rs/MT	53,098	66,901	73,712	65,562
b	Price Undercutting	Rs/MT	***	***	***	***
c	Price Undercutting	%-Range	20-30%	0-10%	0-10%	0-10%
3	Japan					
a	Landed Price	Rs/MT	51,027	-	-	60,985
b	Price Undercutting	Rs/MT	***	-	-	***
c	Price Undercutting	%-Range	30-40%	-	-	10-20%
4	Russia					
a	Landed Price	Rs/MT	53,230	66,901	73,712	65,815
b	Price Undercutting	Rs/MT	***	***	***	***
c	Price Undercutting	%-Range	20-30%	0-10%	0-10%	0-10%

47. It is seen that price undercutting is positive in respect of imports from both the countries.

b. Price Suppression/Depression

48. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority notes the changes in the costs and prices over the injury period.

S.No.	Particulars	Unit	2016-17	2017-18	2018-19	POI
1	Cost of Sales	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>94</i>	<i>117</i>	<i>113</i>
2	Selling Price	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>119</i>	<i>101</i>

3	Landed Price from subject countries	₹/MT	53,098	66,901	73,712	65,562
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>126</i>	<i>139</i>	<i>123</i>

49. It is seen that both cost of sales of domestic industry and selling price have declined in the period of investigation. However, the decline in selling price is much higher than decline in the cost of sales. The period of investigation has also seen a decline in the landed price of imports. However, considering the insignificant imports made in the period of investigation from the subject countries, the decline in selling price of the domestic industry cannot be attributed to the decline in landed price of imports. Therefore, while the prices of domestic industry are suppressed, they are not due to imports from the subject countries.

c. Price Underselling

50. The price underselling has been evaluated by comparing the non-injurious price with the landed price of the subject imports.

S.No.	Particulars	Non-injurious price (NIP)	Landed price	Price Underselling	Price Underselling	Range of Price Underselling
		RS/MT	RS/MT	RS/MT	%	%
1	Japan	***	60,985	***	***	0-10%
2	Russia	***	65,815	***	***	0-10%

51. It is seen that the price underselling is positive in respect of dumped imports from both the subject countries.

G.3.3 Impact on economic parameters of the domestic industry

52. Annexure - II to the Anti-Dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. The Anti-Dumping Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity: factors affecting domestic prices, the magnitude of the margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, various injury parameters relating to the domestic industry are discussed herein below.

a. Capacity, Production, Capacity Utilization and Sales

53. The Authority has considered capacity, production, capacity utilization and sales volume of the domestic industry over the injury period.

S.No.	Particulars	Unit	2016-17	2017-18	2018-19	POI
1	Capacity	MT	3,17,110	3,17,110	3,17,110	3,17,110
2	Production	MT	2,72,561	2,83,491	2,75,492	2,69,640
3	Capacity Utilisation	%	86%	89%	87%	85%
4	Domestic sales	%	2,23,200	2,35,591	2,37,924	2,28,046

54. It is noted that –

- a. The capacity of the domestic industry has remained constant throughout the injury period.

- b. The production and capacity utilization of the domestic industry has increased till 2017-18 but declined thereafter.
- c. Domestic sales of the product under consideration has increased till 2018-19 but decreased during the period of investigation.

b. Market share of the domestic industry in demand.

55. The effects of the dumped imports on the market share of the domestic industry have been examined.

S.No.	Particulars	Unit	2016-17	2017-18	2018-19	POI
1	Domestic industry	%	66%	63%	62%	57%
2	Other Producers	%	7%	2%	0%	0%
3	Subject Countries	%	2%	3%	3%	1%
4	Other Countries	%	25%	32%	35%	42%

56. It is seen that market share of the domestic industry and subject countries has declined over the injury period. Other countries have seen a significant increase in the market share.

c. Inventories

57. The Authority has considered capacity, production, capacity utilization and sales volume of the domestic industry over the injury period.

S.No.	Particulars	Unit	2016-17	2017-18	2018-19	POI
1	Average inventory	MT	5,904	3,564	3,429	4,934

58. It is seen that the average inventory level of the domestic industry has shown decreasing trend till 2018-19 and has increased thereafter in the period of investigation.

d. Profit or loss, cash profits and return on investment

59. Performance of the domestic industry has been examined in respect of profits, cash profits and return on capital employed.

S.No.	Particulars	Unit	2016-17	2017-18	2018-19	POI
1	Cost of sales	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>94</i>	<i>117</i>	<i>113</i>
2	Selling price	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>119</i>	<i>101</i>
3	Profit / Loss	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>203</i>	<i>138</i>	<i>4</i>
4	Profit / Loss	₹ Lacs	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>215</i>	<i>147</i>	<i>4</i>
5	Cash profits	₹ Lacs	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>198</i>	<i>143</i>	<i>23</i>
6	Profit before interest & tax	₹ Lacs	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>197</i>	<i>139</i>	<i>15</i>
7	Return on capital employed	%	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>150</i>	<i>106</i>	<i>11</i>

60. It is seen that the domestic industry was earning good profits till the preceding year. However, the profits of the domestic industry have declined sharply in the period of investigation. Resultantly, the cash profits and the return on investment have also been impacted.

e. Employment, wages and productivity

61. The situation of the domestic industry with regard to employment, wages and productivity was examined.

S.No.	Particulars	Unit	2016-17	2017-18	2018-19	POI
1	No of employees	Nos	695	757	783	775
2	Salary & wages	₹ Lacs-Trend	100	121	127	130
3	Productivity per day	MT/Day	779	810	787	770
4	Productivity per employee	MT/Nos	392	374	352	348

62. It is seen that employment levels of domestic industry have fluctuated over the injury period and wages paid have increased over the injury period. The productivity per employee and per day increased in 2017-18 but declined thereafter with a decline in production.

f. Growth

63. Examination of growth parameters of the domestic industry during the injury period is shown below –

S.No.	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Production	Y/Y	-	4%	-3%	-2%
2	Capacity Utilization	Y/Y	-	4%	-3%	-2%
3	Domestic Sales	Y/Y	-	6%	1%	-4%
4	Profit/(Loss) per unit	Y/Y	-	103%	-32%	-97%
5	Inventory	Y/Y	-	-40%	-4%	44%
6	Market Share	Y/Y	-	-4%	-2%	-9%
7	Profit/(Loss) in Rs Lakhs	Y/Y	-	115%	-31%	-98%
8	Cash Profit in Rs Lakhs	Y/Y	-	98%	-28%	-84%
9	PBIT in Rs Lakhs	Y/Y	-	97%	-29%	-89%
10	ROI %	Y/Y	-	50%	-29%	-90%

64. It is seen that most of the performance parameters of the domestic industry show a negative growth in the period of investigation.

g. Magnitude of dumping

65. It is seen that the dumping margin in the imports from the subject countries is not only positive but also significant

h. Ability to raise fresh investment

66. Considering performance of the domestic industry in the period of investigation, it is seen that the ability of the company to raise fresh investments is likely to be impaired. If the domestic industry is earning profits at these levels.

i. Factors affecting domestic prices

67. It is seen that the selling price of the domestic industry are affected as it is unable to earn adequate returns. Imports from subject countries are not a factor affecting the domestic prices.

j. Observations on injury

68. Considering various parameters relating to material injury, it is seen overall performance of the domestic industry is poor. There is a sharp decline in the volume of dumped imports from the subject countries, in absolute terms and in relation to production and consumption in India. There is presence of suppressing effect on the domestic selling prices but it cannot be attributed to dumped imports. Performance of the domestic industry has deteriorated in respect of capacity utilisation, production, sales, market share, profits, cash profits and return on investment. The domestic industry has suffered injury and the situation of the domestic industry is fragile.

H CAUSAL LINK

69. As per the AD Rules, the Authority, inter alia, is required to examine any known factors other than dumped imports which are injuring or are likely to cause injury to the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. While the present investigation is a sunset review investigation and causal link has already been examined in original investigation, the Authority examined whether other known listed factors have caused or are likely to cause injury to the domestic industry. It was examined whether other factors listed under the AD Rules could have contributed or are likely to contribute to the injury suffered by the domestic industry

a. Volume and price of imports from third country

70. It is seen that the volume of imports from China, Indonesia, Korea RP, Thailand and Taiwan are above di-minimis limits. Applicant claimed that imports from these countries are at dumped prices. The Authority has initiated investigation in respect of imports from China, Indonesia, Korea RP and Thailand vide notification no. 6/16/2020 dated 21st May 2020. Further, the Authority has recommended bilateral safeguard measures by removal of concession over custom duty payable on imports of Korea RP. Imports from Taiwan are above the non-injurious price of the domestic industry and therefore cannot be a cause of injury to the domestic industry.

b. Contraction in Demand and / or Change in Pattern of Consumption

71. The demand of the subject goods has increased as compared to base year. The pattern of consumption with regard to product under consideration has not undergone any change. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.

c. Development of Technology

72. The Authority notes that technology for production of the product has not undergone any change. Developments in technology are, therefore, not a possible factor of injury.

d. Trade restrictive practices

73. The Authority notes that there is no trade restrictive practice, which could have caused injury to the domestic industry.

e. Export performance

74. The applicant has contended that it has been forced to undertake exports in the period of investigation due to dumped imports in the domestic market. The applicant contended that the exports made by the domestic industry – both in terms of volume and price – should be considered a result of dumping in the country. It is seen that export sales of the domestic industry have increased sharply in the period of investigation and profitability in exports was far less as compared to domestic sales. The domestic industry has suffered financial losses in exports. While the Authority has relied on segregated data for domestic and export operations, to the extent the same could be, for the purpose of injury analysis of the domestic industry, the fact that the domestic industry was forced to export at significantly low and unremunerated prices is a reflection of adverse impact of imports on the domestic industry. Further, since export volumes and profits have been segregated, possible decline in export performance is not cause of the injury considered hereinabove.

f. Performance of other products

75. The Authority has considered the data relating to the performance of the subject goods only. Therefore, performance of other products produced and sold by the applicants are not a possible cause of the injury to the domestic industry.

I MAGNITUDE OF INJURY MARGIN

76. The injury margin has been evaluated by comparing the non-injurious price with the landed price of the subject imports.

S.No.	Particulars	Non-injurious price (NIP)	Landed price	Injury margin	Injury margin	Range
		RS/MT	RS/MT	RS/MT	%	%
1	Japan	***	60,985	***	***	0-10%
2	Russia	***	65,815	***	***	0-10%

77. It is seen that the injury margin is positive in respect of dumped imports from both the subject countries.

J LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

78. In a review investigation, the Authority has to determine whether the subject goods are continuing to enter or likely to enter the Indian market at dumped prices and whether injury to the domestic industry is likely to continue or recur due to these dumped imports if the duty is removed.

J.1. Submissions by Domestic industry

79. The submissions of the domestic industry with regard to likelihood of injury are reproduced herein below:
- Producers in both the subject countries are currently operating with idle capacities.
 - Demand as a percentage of production in both the subject countries is considerably low which shows that the significant production is accounted for exports.
 - Significant exports to third countries are at dumped and injurious prices.
 - The volume of imports which are at dumped and injurious prices constitutes significant share of Indian demand.
 - There are significant volumes of exports which can be diverted to India because of attractive Indian market, in case of revocation of duties.
 - Future projections for capacity and production in the next three years show that the capacities in both the countries will remain idle.
 - India has been a primary market for Russian producers in past as it has held around 34% share in exports.
 - Imports from Japan enjoy concessional duty and users will always be incentivised to import from Japan.
 - If domestic industry is forced to match its prices with price of imports from subject countries, it will bleed in losses and a negative return.
 - Price undercutting without anti-dumping duty is positive in case of both the subject countries which shows likelihood of injury.
 - Landed price of imports from both Japan and Russia is reasonably below the landed price of imports from China, Indonesia, Korea RP and Thailand which are causing an injury to the domestic industry.

- xii. Volume of imports in post period of investigation from Japan are at a highest level considering the present injury period.
- xiii. Imports from Russia have recorded a significant jump in the post period of investigation.
- xiv. Increasing imports in the post period of investigation is also a likelihood of injury to the domestic industry.
- xv. Imports from both the countries are above di-minimis limits in post period of investigation (even though de-minimis provision does not apply in case of a review). Mere increase in prices without examining the movement in prices of raw material is misleading.
- xvi. As regards the submission that subject imports were never a major source of imports, before duties were recommended, it is submitted that imports from both the subject countries were above di-minimis limits leading to present duties.
- xvii. Average export price to a large number of third countries in fact has no meaning as prices are decided for individual sale transactions and weighted average would only present distorted picture. As regards the submission that the domestic industry has increased its prices in the post period of investigation, it is submitted that no verifiable evidence has been provided.

J.2 Submissions by other interested parties

80. The submissions of other interested parties with regard to likelihood of injury are reproduced herein below:
- i. Applicants have admitted that domestic industry did not suffer any continued injury on account of import of subject goods from subject countries.
 - ii. Share of subject countries imports is negligible and duty needs to be terminated.
 - iii. Prices from subject countries have increased from Rs 49.37/Kg to Rs 60.76/- in the period of investigation.
 - iv. Reduction in volume and increase in price shows that exporters are not under any pressure to export at lower prices.
 - v. Positive price undercutting in the present matter could be on account of very high price charged by the domestic industry.
 - vi. PAN has a balanced demand supply situation in the world and the subject countries are not a major source of supply.
 - vii. Subject countries were not major source of imports prior to imposition of anti-dumping duty. Even if import goes back to pre-duty levels, it would be very negligible.
 - viii. Injury margin and dumping margin on third countries exports shows a misleading situation.
 - ix. Performance of domestic industry in post period of investigation is very robust and published results of IGPL and TCL shows significant increase in profits.
 - x. Selling price of product under consideration in domestic market has increased by 25 to 30% without any proportionate increase in raw material prices.
 - xi. Claims of likelihood are unsubstantiated

J.3 Examination by Authority

81. The Authority has examined the likelihood of continuation or recurrence of injury considering the requirement laid down under Section 9A(5), Rule 23 and parameters relating to the threat of material injury in terms of Annexure - II (vii) of the Anti-dumping rules, and other relevant factors brought on record by the interested parties. The Authority notes as under.
82. The present investigation is a sunset review of duties imposed on the imports of subject goods from Japan and Russia. Under the Rules, the Authority is required to determine whether cessation of existing duty is likely to lead to continuance or recurrence of injury to the domestic industry. Further,

the Authority has also examined other relevant factors which could have a bearing on the likelihood of continuation or recurrence of dumping and consequent injury to the domestic industry

83. The Authority notes that the applicants have relied on the Tecnon Orbi Chem Report for information with respect to capacities, production and demand in the subject countries. None of the producers from the subject countries have participated in the investigation and other interested party have not brought forward any justifiable information/evidence disputing the claims made by the domestic industry. While Govt. of Russia has participated in the present investigations, no verifiable information has been provided by them with regard to likelihood of continuation or recurrence of dumping and injury to the domestic industry.

J.3.1 Capacities in subject countries

84. Information with respect to unutilised capacities is given below.

S.No.	Particulars	2016	2017	2020	2023
1	Capacity (in kT)	457	457	457	457
a	Russia	282	282	282	282
b	Japan	175	175	175	175
2	Production (in kT)	274	282	299	309
a	Russia	124	131	139	144
b	Japan	150	151	160	165
3	Utilization in %	60%	62%	65%	68%
a	Russia	44%	46%	49%	51%
b	Japan	86%	86%	92%	94%
4	Idle capacities	183	175	158	149
a	Russia	158	151	143	138
b	Japan	25	24	15	11

85. It is seen that significant capacities of the producers in subject countries are unutilised in case of Russia, while the capacities are significantly utilised in case of Japan. Further, projections for next few years show that the capacities in Russia will remain significantly unutilised, whereas the capacities in Japan would be increasingly utilised.

J.3.2 Export orientation

86. Information with regard to the surplus production over demand in the subject countries is as under:

S.No.	Particulars	2016	2017	2020	2023
1	Total Production (in kT)	274	282	299	309
A	Russia (in kT)	124	131	139	144
B	Japan (in kT)	150	151	160	165
2	Total Consumption (in kT)	193	195	201	207
A	Russia (in kT)	88	89	95	99
b	Japan (in kT)	105	105	106	109
3	Consumption as a % of production	70%	69%	67%	67%
a	Russia	71%	68%	68%	69%
b	Japan	70%	70%	66%	66%
4	Consumption as a % of capacity	42%	43%	44%	45%

a	Russia	31%	32%	34%	35%
b	Japan	60%	60%	61%	62%

87. It is seen that the current demand in the subject countries is less than 70% of the production. Further, consumption as a percentage of capacity is low in Russia, while the same is high in case of Japan.

J.3.3 Third country dumping and injury

88. The table below shows volume of exports by these exporters to third countries at dumped, attractive and injurious prices.

SN	Particulars	Exports from Russia to third country	Exports from Japan to third country
1	Volumes below NIP	29,259	36,662
2	Volumes above NIP	26,953	8,185
3	Volumes below normal value	47,638	44,484
4	Volumes above normal value	8,573	363
5	Volumes below Indian prices	37,244	42,111
6	Volumes above Indian prices	18,968	2,736
7	Demand in India	4,02,500	4,02,500
8	Exports in relation to demand		
a	Volume below normal value (dumped) in %	11.84%	11.05%
b	Volume below NIP (injury) in %	7.27%	9.11%
c	Volume below Indian price in %	9.25%	10.46%

89. Analysis of exports from Japan and Russia to third countries out of total exports shows as follows: -
- Exports at price below normal value constitute 11.84% (Russia) and 11.05% (Japan) of Indian consumption.
 - Exports at price below non-injurious price of the domestic industry were 7.27% (Russia) and 9.11% (Japan) of Indian demand.
 - Exports at price below Indian price were 9.25% (Russia) and 10.46% (Japan) of Indian demand.

J.3.4 Post-POI Analysis

90. Authority has also conducted an analysis for the post period of investigation (April 2020 to August 2020) for the purposes of determining likelihood of continuation or recurrence of dumping and injury. It is seen that the volume of imports from both the subject countries have increased sharply in the period post the period of investigation which shows that there is a likelihood of further increase in imports, if duty is allowed to expire. Further, the Authority notes that the performance in the post POI in any case is not likely to be representative due to country wide lockdown in India due to Covid pandemic.

S.No.	Particulars	2016-17	2017-18	2018-19	POI	Post POI (A)
1	Subject imports	5,866	10,037	11,171	5,732	17,841
2	Japan	350	-	-	300	3,888
3	Russia	5,516	10,037	11,171	5,432	13,953

91. It is seen that the volume of imports from both the subject countries have increased sharply in the period post the period of investigation which shows that there is a likelihood of further increase in imports.

J.3.5 Likely performance of the domestic industry if duties are not extended

92. The applicant has claimed that if it was forced to match its selling prices with the imports, it would have suffered significant losses. The Authority has compared the landed price of imports from the subject countries and cost of domestic industry. It is seen that the landed price of imports from the subject countries is below the cost of domestic industry. If there is an increase in imports from the subject countries, domestic industry would be forced to match its prices with the imports which would result in losses.

K POST DISCLOSURE SUBMISSIONS

93. The Authority notes that most of the submissions made by the interested parties in response to the disclosure statement are repetitive in nature and the interested parties have largely reiterated their earlier submissions, which have already been examined and addressed by the Authority.

Following are new submissions made by the domestic industry and other interested parties on the disclosure statement issued by the Authority.

K.1 Submissions by domestic industry

94. Following submissions have been made by the domestic industry:
- i. Complete disclosure of non-injurious price including Format B, D, expenses allowed/disallowed, optimum capacity utilisation used and capital employed details is requested. Even though the non-injurious price has been determined based on the data of the domestic industry, the calculations have not been provided and domestic industry is unable to comment on non-injurious price determined.
 - ii. Authority has ignored freight in calculating the injury margin.
 - iii. The same quantum of duty may be extended as current duties are serving purpose of protecting the domestic industry against the continued dumped imports.
 - iv. Rosplast OOO LLC, Russia participated in the original investigation but has not responded to the current investigation. This may be noted while recommending duty.
 - v. Imports from subject countries in September 2020 shows a similar increase.
 - vi. Dumping from subject countries has continued even when duties are in place which shows that producers are likely to continue or even intensify dumping in the absence of duties.
 - vii. Positive price undercutting further substantiates that it is the anti-dumping duty in force which has prevented imports from causing injury to the domestic industry.
 - viii. Positive price underselling or injury margin from both the subject countries shows that the imports are injurious to the domestic industry.
 - ix. Pakistani National Tariff Commission has initiated an antidumping investigation on imports of subject goods from Russia. This highlights export orientation and third country dumping by Russian producers. If duties are imposed by Pakistan, it will lead to closure of another market for them.
 - x. Looking at the ratio of price of finished goods to raw material prices, it is lower for subject countries in comparison to average world level. Producers in Japan and Russia are keeping their prices lower than the market prices in order to maintain their export market.
 - xi. Users and association have made mere statements and have not been able to quantify the adverse effect of duties. No information has been provided to establish adverse effect of duty on the consumers.
 - xii. Consumption of the subject goods has significantly improved in last one decade. This clearly shows that the duties have had no adverse impact on the users.

- xiii. Commercial production in new plants of Thirumalai Chemicals and IG Petrochemicals is expected to begin soon. Capacity after expansions will be much more than the projected demand in India.
- xiv. KLJ Plasticizers Limited is setting up new plant of 2 lacs MT. Capacities in India are expected to be in the range of 7 lacs MT which will be more than the likely demand in India.
- xv. With no demand-supply gap and no reliance on imports, Indian Phthalic Anhydride industry will become a totally an AtmaNirbhar Industry.
- xvi. In past investigations, it has been repeatedly found that imposition of trade measures will not be against the public interest.
- xvii. DG Safeguards found safeguard duty (which is against fairly priced imports) in public interests. In the present case, the issue is unfair dumping of the product.
- xviii. Ministry of Finance has recently imposed bilateral safeguard measures on the imports of Phthalic Anhydride from Korea RP after recommendation from the Authority. The Authority had already found that the imposition of measures was not against public interest.
- xix. Anti-dumping duty is a redressal of unfair price discrimination by the producers in other countries, which is injurious to the industry in India. It is not a protection to the industry, but rather a means of addressing unfair pricing.
- xx. There are three producers in India and imports happening from multiple sources and there is going to be another fresh entrant in the market. There is enough inter-se competition and the domestic industry will have to keep a check on its prices.
- xxi. Public interest does not limit itself to the consumer industry alone and is in fact a much wider term which covers in its ambit the domestic industry as well.
- xxii. M/s Thirumalai Chemicals Limited and M/s IG Petrochemicals Limited have already made an investment of around Rs 135 crs and Rs 345 crs for new plants. M/s Thirumalai Chemicals Limited is further investing around Rs 450 cr. for a new green field project of subject goods. With such significant investments being undertaken, it is necessary to impose suitable measures to prevent the unfair trade practices followed by exporters from the subject countries.
- xxiii. Government of India has been promoting the Make in India campaign and the ideology of Atma Nirbhar Bharat, but the Indian Phthalic Anhydride industry user industry are heavily resorting to imports.
- xxiv. It will be seen that ratio of exports to imports has fallen over the years to such an extent that whereas exports were earlier far higher than imports, imports are now far higher than exports. The ratio of exports to Imports has fallen from about 3.93 in 2001-02 to 0.17 in the year 2019-20

K.2 Submissions by other interested parties

95. Following submissions have been made by other interested parties on the disclosure statement:

- i. The Authority has not disclosed basis of normal value in the disclosure statement, which is in violation of Rule 16.
- ii. Position taken on injury in present case is contrary to finding in safeguard matter against Korea RP.
- iii. Observation that price underselling is positive from both subject countries has no meaning in present matter as subject imports did not cause any injury.
- iv. Injury margin is not any parameter of injury as has been ruled by the Hon'ble Gujarat HC.
- v. Disclosure statement undermines the fact that imports during entire injury period from subject countries were very negligible in comparison to Indian demand and continuation of duties on such imports has no justification.

- vi. Submission of association on performance of the domestic industry in post period of investigation has not been addressed by the Authority in the disclosure statement.
- vii. If the Authority conducts post POI examination, it may conduct examination for both dumping and injury related parameters and should not restrict examination only to volume of imports which as a standalone parameter is indicative of nothing.
- viii. Information on likelihood relied upon in disclosure statement is based on uncorroborated evidence and the Authority has not verified the veracity of such data. Summary data cannot satisfy the requirements of disclosure of essential facts.
- ix. If subject countries were source of unutilized capacities and third country dumping as is projected in disclosure statement, share of imports from such countries would have been much higher.
- x. Basis of third country prices is not provided for examination of third country exports from subject countries which are above and below NIP and Normal Value.
- xi. KLJ Plasticizers Limited has plans for 100KT plant and we are unaware about the evidence of capacity expansion for 200 KT. The capacities may become operational in the next 3 plus years and it is unfair for the Authority to subject essential imports from subject countries to duty till all such capacities become operational.

K.3 Examination by Authority

- 96. The Authority notes that most of the submissions by the domestic industry and other interested parties are repetitive in nature. These submissions have already been examined at appropriate places in this finding. Further, the Authority has examined additional/new relevant submissions of the interested parties as under
- 97. The scope of domestic industry is different in the safeguard investigations concerning imports from Korea and the present sunset review investigations. M/s SI Group India Private Limited was not within the scope of domestic industry in the bilateral safeguard investigation. Therefore, the economic parameters of the domestic industry in both the investigations cannot be directly compared.
- 98. On the submission of both the interested parties on consideration of the post period of investigation data, the Authority notes that period of post period of investigation will include the period of COVID-19 pandemic and associated lock-down and therefore may not conclusively establish the need for either withdrawal or extension of duties. The performance of the domestic industry and the imports into India both were affected due to countrywide lockdown in India due to Covid pandemic.
- 99. In regard to the submission that the imports from subject countries were never a major source of imports, the Authority notes that the imports from subject countries in the original investigation were above the de-minimis limit prescribed under the Rules.
- 100. With regard to the issue raised in respect of the source of third country export data and the information on likelihood, it is noted that in the absence of participation from the foreign producers from the subject countries and non-provision of any such verifiable data from any other interested party, the Authority has relied on the facts available and has considered the customs data publicly available and provided by the Applicants.
- 101. On the submission of capacity expansion, it is noted that domestic industry had provided a document showing capacity expansion of 200 KT. The association has contended that the capacity expansion will be of 100 KT and will take 3 years to complete. It is noted that two existing producers have already expanded their capacity and the commercial production in respect of expanded capacity is going to start soon. Even if the planned capacity expansion of KLJ Plasticisers is considered as 100 KT, it is seen that the domestic producers will be able to cater to complete demand of the product in India. In any case, the users are free to import the subject goods at fair price.
- 102. On the submission made by the domestic industry concerning computation of non-injurious price and disclosure thereof, it is noted that the non-injurious price has been determined in accordance with Annexure III of the Rules. The NIP has been disclosed to the domestic industry, consistent with the practice followed in this regard.

103. On the submission with regard to examination of parameters for injury, it is noted that the Authority has examined all the parameters of injury as per its consistent practice.
104. As regards non-disclosure of normal value, it is clarified that the foreign producers have not cooperated with the authority in the present investigation and therefore the authority was constrained to determine normal value based on facts available. Further, the normal value determined includes confidential information of the applicant domestic industry. Disclosure of normal value would have therefore led to disclosure of confidential information of the applicant domestic industry.
105. It is seen that there were three import transactions of imports from Japan over the entire injury period. The import of product under consideration from Japan over the injury period was meagre 650 MT in import of 5,08,797 MT and Indian demand of 14,96,364 MT over the injury period. Consumption of product under consideration in relation to capacity is quite high in case of Japan thus showing significant domestic consumption. It is noted that the existing capacity utilisation of Japanese producer is also significantly high. Whereas Japanese producer's average capacity utilisation over the injury period was 86-92%, the average capacity utilisation of Russian producers over the period was 60-65%. It is thus concluded that Japanese producers are substantially utilising their capacities and are having significant domestic consumption. On the contrary, Russian producers' existing capacity utilisation is quite low and the consumption as percentage of capacity is also very low in Russia unlike Japan. The authority therefore concludes that while there is no likelihood of significant increase in imports from Japan, there is likelihood of significant increase in imports from Russia in the event of cessation of ADD on account of huge unutilised capacity there.

L INDIAN INDUSTRY'S INTEREST

106. The Authority notes that the purpose of ADD, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.
107. It is noted that fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the ADD is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the Domestic Industry and help maintain availability of wider choice to the consumers of the subject goods.

M CONCLUSION

108. Having regard to the contentions raised, information provided and submissions made and facts available before the Authority as recorded in the above findings and on the basis of the above analysis of the likelihood of continuation or recurrence of dumping and injury to the Domestic Industry, the Authority concludes that:
 - a. There is continued dumping of the subject goods from the subject countries.
 - b. The domestic industry has suffered injury.
 - c. Factors such as volume of imports over injury period, domestic consumption in Japan, the capacity utilisation of the Japanese producers over the period, show no likelihood of injury to the domestic industry in case the ADD in force on imports from Japan is allowed to cease.
 - d. Factors such as positive price undercutting, excess production over demand, idle production capacities in Russia, price attractiveness of Indian market, third country dumping show likelihood of dumping and injury to the domestic industry in case the ADD in force on imports from Russia is allowed to cease.
 - e. Factors such as significant capacity expansions in the country which will remove demand-supply gap, inter-se competition among Indian producers show that there may not be adverse effect of duties on the consumers or downstream industry.

N RECOMMENDATIONS

109. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link.
110. Having concluded that there is likelihood of dumping and consequent injury to the domestic industry if the existing anti-dumping duty against imports from Russia is allowed to cease, the Authority is of the view that continuation of anti-dumping duty is required on the imports of the product under consideration from Russia. However, cessation of anti-dumping duty on imports of the product under consideration from Japan is not likely to lead to injury to the domestic industry.
111. Under these circumstances, the Authority considers it appropriate to recommend continuation of existing quantum of anti-dumping duty on the imports of subject goods from Russia. The Authority, thus, considers it necessary to recommend continuation of definitive ADD equal to the amount indicated in Col. 7 of the duty table below for a period of five (5) years on all imports of the subject goods mentioned in column 3 of the duty table from Russia.

DUTY TABLE

S.No.	Heading/ Subheading	Description of subject goods	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	29173500	Phthalic Anhydride	Russia	Any country including Russia	Any	159.43	MT	US\$
2	29173500	Phthalic Anhydride	Any country other than Russia	Russia	Any	159.43	MT	US\$

O FURTHER PROCEDURE

112. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

B. B. SWAIN, Spl. Secy. & Designated Authority

4.	-वही-	-वही-	मलेशिया	मलेशिया सहित कोई देश	रॉबिन रिसोर्सेस (मलेशिया) एसडीएन. बीएचडी.	13.29	घन मीटर	यूएसडॉलर
5.	-वही-	-वही-	मलेशिया	मलेशिया सहित कोई देश	उपर्युक्त क्रम सं. 5 पर उल्लिखित उत्पादक को छोड़कर कोई उत्पादक	36.10	घन मीटर	यूएसडॉलर
6.	-वही-	-वही-	मलेशिया को छोड़कर कोई देश	मलेशिया	कोई भी	36.10	घन मीटर	यूएसडॉलर
7.	-वही-	-वही-	श्रीलंका	श्रीलंका सहित कोई देश	कोई भी	26.49	घन मीटर	यूएसडॉलर
8.	-वही-	-वही-	श्रीलंका को छोड़कर कोई देश	श्रीलंका	कोई भी	26.49	घन मीटर	यूएसडॉलर

त. आगे की प्रक्रिया

124. इन जांच परिणामों के कारण निकलने वाले केन्द्र सरकार के आदेश के विरुद्ध अपील इस अधिनियम के संगत प्रावधानों के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष की जाएगी।

बी. बी. स्वेन, विशेष सचिव एवं निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY

(Directorate General of Trade Remedies)

NOTIFICATION

FINAL FINDINGS

New Delhi, the 8th January, 2021

Case No. (SSR 05/2020)

Subject : Sunset Review anti-dumping investigation concerning imports of 'Plain Medium Density Fibre Board having thickness of 6mm or more' originating in or exported from China PR, Malaysia, Thailand and Sri Lanka.

F. No. 7/6/2020-DGTR.—Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the 'Act') and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as 'the Rules' or 'AD Rules') thereof;

A. BACKGROUND OF THE CASE

1. The Designated Authority (hereinafter referred to as the Authority) initiated an anti-dumping investigation in respect of imports of Plain Medium Density Fibre Board having thickness of 6mm or more (hereinafter also referred to as "subject goods" or "PUC" or "Product Under Consideration") originating in or exported from China PR, Malaysia, Thailand and Sri Lanka (hereinafter referred to as the "subject countries") on 6th June, 2008 and preliminary anti-dumping duty was recommended vide

Preliminary Findings Notification No. 14/12/2007 dated 2nd February, 2009. On the basis of recommendations made by the Authority in the preliminary findings, provisional anti-dumping duty was imposed by the Central Government vide Notification No. 21/2009 – Customs (ADD) dated 27th February, 2009. Thereafter, the Authority issued Final Findings recommending imposition of definitive anti-dumping duty vide Final Findings Notification No. 14/12/2007 – DGAD dated 26th August, 2009. On the basis of recommendations made by the Authority in the Final Findings, the Central Government imposed definitive anti-dumping duty vide Notification No. 116/2009 – Customs (ADD) dated 8th October, 2009. Thereafter, a Sunset Review (SSR) investigation was initiated by the Authority in respect of imports of the subject goods originating in or exported from the subject countries vide Notification No. 15/28/2013-DGAD dated 18th February, 2014. The Authority vide Final Findings Notification No. 15/28/2013-DGAD dated 17th August, 2015 concluded that the expiry of anti-dumping duty would lead to continuation or recurrence of dumping and consequent injury and recommended continued imposition of the anti-dumping duty. On the basis of recommendations made by the Authority in the final findings. The Central Government imposed duties vide Notification No. 48/2015-Customs (ADD) dated 21st October, 2015.

2. In terms of Section 9A (5) of the Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the domestic industry, as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.

3. Rule 23(1B) of the Rules provides as follows:

“...any definitive anti-dumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the Designated Authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.”

4. M/s Greenply Industries Limited / Greenpanel Industries Limited, Century Plyboards (India) Ltd. and Rushil Décor Limited (hereinafter referred to as ‘applicants’ or ‘domestic industry’) filed a duly substantiated application on behalf of the domestic industry before the Authority, in accordance with the Act and the Rules alleging likelihood of continuation or recurrence of dumping of the subject goods, originating in or exported from the subject countries and consequent injury to the domestic industry and have requested for review and continuation of the anti-dumping duties, applicable on the imports of the subject goods, originating in or exported from the subject countries.
5. Based on the substantiated application with prima facie evidence of likelihood of dumping and injury filed on behalf of the domestic industry in accordance with Section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated the sunset review investigation vide Notification No. F. No. 7/6/2020-DGTR (SSR No. 05/2020) dated 28th February, 2020 to review the need for continued imposition of the anti-dumping duty in respect of the subject goods, originating in or exported from the subject countries and to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
6. In exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act and in pursuance of Rule 23 of the Anti-Dumping Rules, the Central Government vide Notification No. 30/2020 – Customs (ADD) dated 13th October, 2020 extended the Anti-dumping duties till 20th January, 2021.
7. The scope of the present review covers all aspects of the previous investigations concerning imports of the subject goods, originating in or exported from the subject countries.

B. PROCEDURE

8. The procedure described below has been followed with regard to the investigation:
 - i. The Authority notified the embassy of the subject countries in India about the receipt of the present application before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the AD Rules.

- ii. The Authority issued a Notification dated 28th February, 2020, published in the Gazette of India Extraordinary, initiating investigation concerning imports of the subject goods from the subject countries.
- iii. The Authority sent a copy of the initiation notification to the Embassy of the subject countries in India, known producers/exporters from the subject countries, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the applicant and requested them to make their views known in writing within 30 days from the receipt of notice in accordance with Rule 6(4) of the AD Rules.
- iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, known importers and to the embassy of the subject countries in India in accordance with Rule 6(3) of the AD Rules.
- v. The Embassy of the subject countries in India was also requested to advise the exporters/producers from the subject countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
- vi. The Authority sent exporter's questionnaire to the following known producers/ exporters in the subject countries, whose details were made available by the applicants, to elicit relevant information in accordance with Rule 6(4) of the Rules:
 - a. Merbok MDF Lanka Pvt. Limited
 - b. Dongwha Fibreboard Sdn. Bhd.
 - c. Daiken Sarawak Bdh. Sd.
 - d. M/s. Evergreen Fibre Berhad (JB) Sdn. Bhd.
 - e. M/s. Evergreen Fibre Berhad (EFB)
 - f. Robin Resources (Malaysia) Sdn Bhd
 - g. M/s. Segamat Panel Boards Sdn Bhd
 - h. M/s. Advance Fibre Co.
 - i. Khon Kaen MDF Board
 - j. Vanachai Panel Industries Co., Ltd.
 - k. Siam Fibreboard Co Limited
 - l. M/s. Metro Fiber Co. Ltd.
 - m. M/s. Vanachai Group Public Co. Ltd.
 - n. M/s. Metro M.D.F. Co. Ltd.
 - o. Tomrich International Trading Limited
 - p. Nanjing ETAI Trading Co Limited
 - q. Linyi Baideli International Trade Co Ltd.
 - r. Linyi Hongfu Timber Co Limited
 - s. Wenzhou Timber Group Co. Ltd.
 - t. Shouguang Guihe Economic and Trade Co Limited
 - u. Zhanjiang Kingstar Building Material Co Limited
 - v. Guangdong Weihua Holding Co., Ltd.
 - w. Linyi Baideli International Trade Co Ltd.
 - x. Shunlong MDF-board Co. Ltd
 - y. Shanghai Sindo Panel Co. Ltd.
 - z. Shuyang New Concept Wood Co., Ltd.

- vii. The following producers/exporters from the subject countries filed exporter's questionnaire response in prescribed manner.
 - a. Panel Plus MDF Company Limited, Thailand
 - b. Robin Resources (Malaysia) SDN. BHD., Malaysia
- viii. The Authority has rejected exporter's questionnaire response filed by Advance Fibre & Wisewoods as the same was not filed in prescribed manner.
- ix. The Authority forwarded a copy of the Initiation Notification to the following known importers/users/user associations, whose names and addresses were made available to the authority, of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 6(4):
 - a. Krishna Plywood Products Private Limited
 - b. Jacsons Veneers And Panels Private Limited
 - c. Label Sales Corporation
 - d. Kalinga Imports & Exports Private Limited
 - e. Srivari Traders
 - f. Victory Plywood Distributors
 - g. Thamarapally Brothers Trading Private Limited
 - h. Mathewsons Exports & Imports Private Limited
 - i. R.J.Metals
 - j. Feroke Boards Limited
- x. However, none of the importers/users/user associations have filed any submissions or questionnaire responses in the present investigation.
- xi. The following exporters/producers have filed legal submissions and/or letters of participation in response to the initiation notification:
 - a. Metro MDF Co. Ltd., Thailand
 - b. Wisewoods Co. Ltd., Thailand
 - c. S.P.B Panel Industries Co. Ltd., Thailand
 - d. Thai Panel Product Industry Club (TPPIC)
- xii. Exporters, foreign producers and other interested parties who have not responded to the Authority, or not supplied information relevant to this investigation, have been treated as non-cooperating interested parties.
- xiii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xiv. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. Whenever they requested inspection of public file and copies of the documents therefrom were provided with the same.
- xv. The Period of Investigation (POI) for the purpose of the present investigation has been considered from 1st April 2018 to 30th September 2019 . The injury investigation period has been considered as the period from 1st April 2015 – 31st March 2016, 1st April 2016 – 31st March 2017, 1st April 2017 – 31st March 2018 and POI.

- xvi. Additional/supplementary information was sought from the applicants and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry and exporters/producers was conducted to the extent considered necessary for the purpose of the investigation.
- xvii. The Non-Injurious Price (NIP) is based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules. It has been worked out so as to ascertain whether duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xviii. Information obtained from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) on transaction-wise import data for the past three years, and the period of investigation has been adopted for determination of volume and value of imports of product concerned in India.
- xix. In accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 11th November, 2020. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
- xx. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in these Final Findings.
- xxi. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded these Final Findings on the basis of the facts available.
- xxii. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 28th December, 2020 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.
- xxiii. *** in these final findings represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxiv. The exchange rate adopted by the Authority during the POI for the subject investigation is 1 US\$= 70.79.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 9. The product under consideration for the purpose of present investigation is Plain Medium Density Fibre Board, also known as Plain MDF Board.
- 10. It is a composite wood product made out of wood waste fibres glued together with urea formaldehyde resin or melamine resin by applying heat and pressure. It is widely used for partitions, Modular furniture, cabinets etc, due to its smooth and uniform finish. MDF Board is produced in plain form and lamination is additional processing which is carried out after production of Plain MDF Board.
- 11. The laminated Medium Density Fibre Board (laminated MDF Board) is beyond the scope of product under consideration. The Plain Medium Density Fibre Board below 6MM thickness is excluded from the product scope.
- 12. The product under consideration accordingly is, "Plain Medium Density Fibre Board having thickness of 6 MM or more and are classified under Chapter 4, Custom subheading no. 44111300 and 44111400 of the Customs Tariff Act. However, the subject goods are being imported under other tariff sub-heading i.e.44111200, 44111292, 44111293 and 44111294 as well.

C.1 Views of the Domestic Industry

13. The domestic industry has submitted as follows with regard to product under consideration and like article:
- Present investigation being a sunset review investigation, product under consideration remains the same as defined in the original as well as previously conducted investigations. Further, no significant development has taken place over the period. Therefore, domestic industry refers to and relies upon the previous investigation with regard to product under consideration and like article. The domestic industry is producing the like article to the product under consideration.
 - As regards the contention of the interested party regarding PCN, the domestic industry has submitted that the issue was raised by some interested party in the previous investigation but the same was not accepted by the Authority. However, if the Authority decides, the domestic industry will provide relevant information.

C.2 Views of the other interested parties

14. The following submissions have been made by other interested parties with regard to the product under consideration and like article:
- Robin manufactures and sells three broad types of products covered in PUC i.e., E0, E1/Carb and E2 based on Formaldehyde Emission and cost and price of these grades vary significantly as is evident from the cost sheets provided. Different grades use different glue and other materials depending on the applicable standards on such grades which results in significant differences in both cost and prices of such grades. PUC covers inter se grades with significant cost and price differences which warrant separate determination of dumping and injury margin for such different grades and therefore Dumping Margin and injury Margin to be determined grade wise.
 - Justification for PCN has been provided in the response that the costs of the PCNs identified vary very significantly due to the differences in the cost of inputs used in such specific grades.
 - Robin Resources' request for a PCN wise analysis justified in view of Article 2.4 of the WTO Anti-Dumping Agreement which mandates fair comparison between export price and normal value and Article 3.6 of the WTO Anti-Dumping Agreement which states that the effect of dumped imports is to be assessed in relation to domestic production of the like product when available data permit separate identification. Data has been provided for determination of dumping margin.
 - The Authority should seek corresponding injury data/NIP from petitioners for determination on injury margin.

C.3 Examination by the Authority

15. The product under consideration in the earlier as well as present investigation resented sunset review is Plain Medium Density Fibreboard having thickness of 6mm or more. In the previous investigation, the product under consideration was defined as under:

"The product under consideration is Plain Medium Density Fibre Board, also known as Plain MDF Board. It is a composite wood product made out of wood waste fibres glued together with urea formaldehyde resin or melamine resin by applying heat and pressure. It is widely used for partitions, Modular furniture, cabinets etc, due to its smooth and uniform finish. MDF Board is produced in plain form and lamination is additional processing which is carried out after production of Plain MDF Board.

The laminated Medium Density Fibre Board (laminated MDF Board) is beyond the scope of product under consideration. The Plain Medium Density Fibre Board below 6MM thickness is excluded from the product scope. The product under consideration accordingly is, "Plain Medium Density Fibre Board having thickness of 6 MM or more."

16. The subject goods produced by the domestic industry and that imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the same, the product under consideration produced by the domestic industry is treated as like article to the product under consideration imported from subject countries.

17. As regards the arguments of the interested parties regarding the adoption of PCN in the present investigation, it is noted that same issue was earlier dealt by the Authority in case of ADD investigation for the same product wherein it was decided not to adopt PCN methodology on this basis. There does not seem to be any justification to deviate from the stand taken earlier by the Authority.
18. The present investigation, being a sunset review investigation, the scope of product under consideration remains the same as in the previously conducted investigation. The subject goods are classifiable under Chapter 4 of the Customs Tariff Act, 1975 under sub-headings 44111300 & 44111400. However, the subject goods are being imported under other tariff sub-heading i.e. 44111200, 44111292, 44111293 and 44111294 as well. These custom classifications are indicative only and in no way binding on the scope of this investigation.

D. DOMESTIC INDUSTRY AND STANDING

19. Rule 2(b) of the AD rules defines domestic industry as under:

“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term, ‘domestic industry’ may be construed as referring to the rest of the producers.”

D.1 Views of the Domestic Industry

20. Following submissions have been made by the domestic industry with regard to standing and scope of the domestic industry:
 - i. The Application for initiation of Sunset Review investigation has been jointly filed by Greenply Industries Limited/ Greenpanel Industries Limited, Century Plyboards (India) Ltd. and Rushil Decor Limited. Under Composite Scheme of Arrangement, Greenply Industries Limited was demerged to Greenpanel Industries Limited. Greenply Industries Limited/ Greenpanel Industries Limited, Century Plyboards (India) Ltd. and Rushil Decor Limited have provided all relevant information with regard to the present investigations.
 - ii. Greenply Industries Limited/ Greenpanel Industries Limited, Century Plyboards (India) Ltd. and Rushil Decor Limited have not imported the subject goods.
 - iii. Greenply Industries Limited/ Greenpanel Industries Limited, Century Plyboards (India) Ltd. and Rushil Decor Limited is not related, either directly or indirectly, to any exporter in the subject country or any importer of the dumped article within the meaning of Rule 2(b).

D.2 Views of other interested parties

21. The following submissions have been made by the exporters/other interested parties with regard to the standing and scope of the domestic industry:
 - i. It is unclear whether the petitioners have standing as no percentage is provided in Annex 2.2 for the production of petitioners compared to domestic industry in general.
 - ii. There are six other Indian producers of the goods under consideration, which are not cooperating as interested parties in the present investigation. It is questionable whether these three Applicants alone constitute the "Domestic Industry". The fact that six other Indian producers do not wish to be involved in this investigation undermines the legitimacy of the injury analysis.

D.3 Examination by the Authority

22. The Application in the present case has been jointly filed by Greenply Industries Limited/ Greenpanel Industries Limited, Century Plyboards (India) Ltd. and Rushil Decor Limited (hereinafter also referred to as applicant companies), accounting for 47% of total Indian production. These applicant companies have provided relevant information as per the prescribed format. The Authority notes that there are six other manufactures of the product under consideration namely M/s Balaji Action Buildwell, M/s Shirdi Industries Limited, M/s Mangalam Timber Products Limited., M/s Pioneer Panel Products, M/s Metro Panels Industries and M/s Ranga Particle Board Industries Limited in India. However, these producers have neither supported nor opposed the present investigation.

23. The applicant companies have not imported the product under consideration during POI. Nor are they related to any producer/exporter of the product under consideration in subject countries or importers of PUC in India.
24. Considering the information on record, the Authority holds that the production of the applicant companies, i.e. Greenply Industries Limited/ Greenpanel Industries Limited, Century Plyboards (India) Ltd. and Rushil Decor Limited account for a major proportion of the domestic production of the like article and the applicants thus are eligible domestic industry within the meaning of Rule 2(b) of the Rules. The application therefore satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

E. CONFIDENTIALITY

E.1 Submissions by the domestic industry

25. Following submissions have been made by the domestic industry with regard to confidentiality –
- i. The exporters and producers have resorted to excessive confidentiality. The non-confidential version of the responses filed do not allow a meaningful understanding of the information claimed confidential.
 - ii. The information kept confidential by the responding interested parties forms an essential part of the exporter questionnaire responses. Due to lack of such vital information in the non-confidential version, the Domestic Industry is unable to offer any meaningful submissions and assist the Authority in identifying discrepancies or misrepresentations in the responses.
 - iii. The exporters have not furnished a sufficient non-confidential version of the appendices. Even indexed information has not been made available to the domestic industry.
 - iv. The exporters have not provided information that is freely available in the public domain.
 - v. Submissions filed by the exporters, Advance Fibre and Wisewoods, are in violation of Rule 7 of the Anti-Dumping Rules. The non-confidential version of the responses contains only the write up and no appendix. Reliance is placed on the case of Argentina – Ceramic Tiles wherein the Panel held that the Authority may rely on the confidential information to make determinations only if the non-confidential versions inform the interested parties and enable them to defend their interests. The domestic industry had also relied upon CESTAT decisions in Essar Steel Ltd vs UOI and H. R. Johnson vs Designated Authority in this regard wherein it was stated that a non-confidential summary is to be furnished and if the information is not susceptible to summary, a statement of reasons is to be provided.
 - vi. For the purpose of transparency, there is an obligation on the authority to require the parties to furnish non-confidential summaries which shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, and this is an important element incorporated in Rule 7(2) of the Anti-Dumping Rules.
 - vii. The non-confidential version of the responses filed by the exporters are not a replica of the confidential information. This is in violation of the practice and procedure followed by the Authority and Trade Notice 1/2009 dated 25th March 2009, Trade notice 1/2013 dated 28th February 2020
 - viii. If the Designated Authority is of the opinion that confidentiality is not warranted or if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized form, then the Authority may choose to disregard such information and issue the findings accordingly.
 - ix. There is no questionnaire issued to the domestic industry. The domestic industry has provided detailed non confidential version of the application. Para 1 and Para 8 of the initiation notification establishes that the domestic industry is cooperative.

E.2. Submissions by other interested parties

26. Following submissions have been made by other interested parties with regard to confidentiality-
- i. The non-confidential files do not include copy of the non-confidential questionnaires of the domestic industry that should normally be made available to all interested parties in the defence of their interest.

- ii. The lack of non-confidential summary of questionnaire response pertaining to the domestic industry has impeded Thai producers to adequately exercise their rights of defence in these proceedings and this constitutes a breach of Articles 6.4 and 6.5 of the WTO Anti-Dumping Agreement..
- iii. The investigating Authority has not asked additional information or issued any deficiency letter.
- iv. It is a wrong conclusion on the part of domestic industry that the respondents suppressed information and adopted excessive confidentiality.

E.3 Examination by the Authority

27. With regard to confidentiality of information, Rule 7 of the AD Rules provides as follows:

“Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”

28. The Authority made non-confidential version of the information provided by various interested parties available to all interested parties for inspection through the public file containing non-confidential version of evidences submitted by various interested parties. A list of all interested parties was uploaded on DGTR's website along with the request therein to all of them to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic.
29. As regards the submission of non-confidential version of the questionnaire responses of the domestic industry, the Authority notes that no questionnaire is issued to the domestic industry. The domestic industry has filed the application as per the prescribed format.
30. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed accordingly. The Authority notes that the information provided by the interested parties on confidential basis was duly examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submissions by the domestic industry

31. The following miscellaneous submissions have been made by the domestic industry:
- i. The responding exporters have filed incomplete responses and have failed to furnish many vital information such as list of products sold and the details in the appendixes.
 - ii. The Authorities in Vietnam have initiated an anti-dumping duty investigation on exports of product under consideration from the subject countries, including Malaysia and Thailand.

- iii. The exporters have not co-operated sufficiently in the present investigation. No questionnaire response has been filed by any exporter from Sri Lanka and China PR. Therefore, the exporters from these countries are to be considered non-cooperative.
- iv. As regards the contention of the interested parties that the imports from subject countries cannot be of any adverse effect, it is submitted that the duty is extended by the Authority only when the legal requirements are met. The period for which the duty has been in force is not relevant. It is not for the domestic industry to justify how long it needs protection. It is for the exporter to justify how long he would resort to dumping.
- v. The dumping margin is subject to verification and it is for the Authority to determine. Further, the present investigation being a sunset review investigation, the legal requirement is whether dumping and consequent injury is likely in the event of cessation of Anti-dumping duty. The domestic industry has provided sufficient information on the basis of evidence regarding likelihood of dumping and consequent injury to the domestic industry in the event of cessation of anti-dumping duty.
- vi. The matter regarding imposition of anti-dumping duty on Robin Resources in the original investigation is sub-judice, as admitted by the interested parties. The customs notification imposing Anti-dumping duty has not been withdrawn. Further in the last sunset review, the dumping margin of the responding exporter was more than *de minimis*.

F.2. Submissions by other interested parties

32. Following miscellaneous submissions have been made by other interested parties:

- i. Duties have been in force for more than a decade and facts in the present investigation show that imports from Thailand and Malaysia cannot be of any adverse effect on the domestic industry even on expiry of existing duties.
- ii. Purpose of ADD has been met as is evident from current dumping and injury situation.
- iii. Issue regarding non-termination of original investigation despite negative dumping margin in case of exports by Robin Resources is pending before the Supreme Court. Authority rejected Robin's contention that the first SSR was not applicable since the original investigation was liable to be terminated and injury margin of USD 5.72 CBM was determined. Robin has been deprived of fair legal treatment.
- iv. Robin Resources' dumping margin was negative in the original investigation and very low in the first SSR. The injury margin determined for the company was of no consequence and meaning as the dumping jurisprudence is that any injury on account of dumping alone is addressable under the AD rules. Information pertaining to the current POI to determine dumping in the response will show that the exporter continues to sell to India at a price comparable to its domestic market and dumping is not practiced. History of absence of dumping and negligible dumping margin for the past 10-15 years is a fair ground for expiry of present ADD.
- v. Data regarding exports from Robin Resources show that the exporter did not use or misuse the absence of duty to export more to India. The exports will not go up on expiry of ADD, which is also evident from its past behaviour. It could have exported any volume to India without any duty burden if the allegations of excess capacity, inventory pressure, third country dumping etc. alleged by the petitioner were true. Certain users find Robin's products most suitable and Robin does not resort to price distortion practices to cater to them.
- vi. The present investigation is required to be terminated against Thailand where the evidences indicate neither likelihood of dumping from Thailand nor likelihood of injury to the domestic industry caused by the products exported from Thailand. This will lead to the mutual benefit of all parties involved and the favourable bilateral trade relations between the Republic of India and the Kingdom of Thailand.

F.3 Examination by the Authority

33. The Authority has noted all the arguments and counter-arguments of the interested parties and has examined all the submissions made.
- i. With regard to the issue of continuation of duty raised by the interested parties, it is noted that the recommendation for extension of anti-dumping duty is made only when the requisite legal requirements are met.
 - ii. With regard to the submissions of interested parties regarding adequacy and accuracy of the application, the Authority notes that the application contained all the information relevant for the purpose of initiation of investigation. The Authority only after satisfaction that application contained sufficient prima facie evidence to justify initiation of the investigation decided to initiate the present investigation.

G. DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**G.1. Normal Value**

34. Under Section 9A(1)(c) of the Act, normal value in relation to an article means:

- (i) *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
- (ii) *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*
 - (a) *comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - (b) *the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

G.2 Submissions by the domestic industry

35. The submissions made by the domestic industry with regard to normal value, export price and dumping margin are as follows:
- i. The applicants have calculated Normal value for Thailand, Malaysia and Sri Lanka on the basis of price reported in Market Research Report by Maia Research.
 - ii. Applicants submitted that the Designated Authority is not required to use Chinese prices or costs for the purpose of determination of normal value unless the Chinese exporters establish that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of the product under consideration.
 - iii. The Applicants have submitted that their domestic price and cost cannot be considered unless the Chinese exporters demonstrate that the costs and domestic prices are appropriate and reasonably reflect the costs and price of the product under consideration.
 - iv. The Designated Authority shall follow Para 1-6 of Annexure I for determination of normal value only if the responding Chinese companies establish that their costs and price information is such that individual normal value and dumping margin can be determined. If the responding Chinese companies are not able to demonstrate that their costs and price information can be adopted, the Designated Authority shall reject the claim of individual dumping margin.
 - v. The applicants consider New Zealand as appropriate third country for determination of normal value for China. The Applicants have calculated normal value for China on the basis of price at which goods have been sold from New Zealand to consumers in Canada.

- vi. Export price is calculated after making various adjustments based on market information and general experience and considering most conservative estimates.
- vii. Dumping margin from subject countries is not only significant, but also substantial.
- viii. The past investigations have established that the Thai producers were dumping the product under consideration in India.
- ix. As regards the Trade Map data, the domestic industry has provided information to the best of its ability.

G.3. Submissions by other interested parties

36. The submissions made by other interested parties with regard to normal value, export price and dumping margin are as follows:
- i. Exports of the goods under consideration to India during the POI is around 500-800 MT with export prices well above normal value.
 - ii. Dumping margin should be calculated grade wise based on the separate cost sheet and price for all three grades submitted by Robin Resources (Malaysia) SDN BHD
 - iii. The Dumping margin claimed in the data based on average price is misleading as it shows third country exports of 70122 MT out of which 23911MT (35%) is claimed as having the potential of triggering positive dumping margin if diverted to India. PCN wise data provided in responses will show that exports if diverted will not create any such dumping effects. Even the 23911MT claimed as having the potential of dumping effect is very low volume compared to Indian demand and even such volumes will not have any adverse effect on the Indian market.
 - iv. Dumping margin for Thailand and Malaysia provided by petitioner based on third country average export price on the basis of Trademap data is unreliable and does not ensure fair comparison.. If such trademap data was reliable, petitioners have to explain why T/T data was used instead of DGCI&S published data. Dumping Margin for POI has to be determined based on responses to ensure adequacy and accuracy of data.
 - v. Exporters do not seek to dump product in any markets. There has been no case brought against TPPIC members on unfair trade, and a recent case brought by Vietnam was terminated without measures.

G.4. Examination by the Authority

37. The Authority sent questionnaires to the known producers/exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have co-operated in this investigation by filing the prescribed questionnaire responses:
- i. Panel Plus MDF Company Limited, Thailand
 - ii. Robin Resources (Malaysia) SDN. BHD., Malaysia

Market Economy status for China PR

38. Article 15 of China PR's Accession Protocol in WTO provides as follows:

"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) *The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

(b) *In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*

(c) *The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*

Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

39. The Authority notes that while the provisions of Article 15 (a) (ii) of China PR's Accession Protocol have expired with effect from 11 December 2016, the provision under Article 2.2.1.1 of the Anti-Dumping Agreement read with obligation under 15 (a) (i) of the Accession protocol require criterion stipulated in Para 8 of the Annexure 1 of Anti-Dumping Rules to be satisfied through the information/data to be provided in the supplementary questionnaire for claiming MET status. The Authority notes that none of the producer/exporter from China PR have submitted any response. The Authority therefore considers it appropriate to proceed with para-7 of Annexure-I to the Rules for determination of normal value.

G.4.1 Normal Value determination for all producers/exporters from China PR

40. None of the producers from China PR have co-operated in the present investigation and provided any information for rebutting the non-market treatment as per Para 8(2) of Annexure 1 of the AD Rules. Therefore, the presumption of non-market economy as per Para 8(2) of Annexure 1 of the AD Rules remains un-rebutted. The Authority, therefore, has determined the Normal value in accordance with Para 7 of Annexure I to the AD Rules.
41. The Authority explored the option of construction of normal value as per the hierarchy laid down in Para 7 of Annexure-I to the Rules which provides that normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin.
42. The Authority has, constructed the normal value for China PR on the basis of cost of production in India, duly adjusted, including selling, general and administrative plus reasonable profits. The constructed normal value so determined for Chinese producers/exporters is mentioned in the dumping margin table below.

G.4.2 Normal Value determination for producers/exporters from Thailand

Panel Plus MDF Co. Ltd.

43. The Authority notes that Panel Plus MDF Co. Ltd. is a producer and exporter of the subject goods based in Thailand. Its related trader, namely, Panel Plus Co. Ltd. has also filed the questionnaire response. Panel Plus MDF Co. Ltd. has claimed normal value on the basis of sales made in the

domestic market. As per information available in the EQ response, during the period of investigation, the ordinary course of trade (80:20) test conducted on the domestic sales of Panel Plus MDF Co. shows ***% of sales as profitable. Therefore, normal value of the subject goods in the POI has been determined by taking only profitable domestic sales in the subject country. Panel Plus MDF Co. has claimed adjustments on account of inland freight and bank charges. Authority has allowed the same after due verification and normal value thus arrived is shown in dumping margin table below.

Normal value for all non-cooperative producers/exporters from Thailand.

44. Normal Value for non-cooperative producers/exporters from Thailand has been determined on the basis of facts available in terms of Rule 6(8) of the Rules. The normal value so determined is mentioned in the dumping margin table below.

G. 4.3 Normal Value determination for producers/exporters from Malaysia

Robin Resources (Malaysia) SDN. BHD.

45. The Authority notes that Robin Resources (Malaysia) SDN. BHD. is a producer and exporter of the subject goods based in Malaysia. Robin Resources (Malaysia) SDN. BHD has claimed normal value on the basis of sales made in the domestic market. As per information available in the EQ response, during the period of investigation, the ordinary course of trade (80:20) test conducted on the domestic sales of Robin Resources (Malaysia) SDN. BHD shows *** % sales as profitable. Therefore, normal value of the subject goods in the POI has been determined by taking average price of total domestic sales in the Malaysia. Robin Resources (Malaysia) SDN. BHD has claimed adjustments on account of inland freight, credit cost and bank charges. Authority has allowed the same after due verification and normal value thus arrived is shown in dumping margin table below.

Normal value for all non-cooperative producers/exporters from Malaysia

46. Normal Value for non-cooperative producers/exporters from Malaysia has been determined on the basis of facts available in terms of Rule 6(8) of the Rules. The normal value so determined is mentioned in the dumping margin table below.

G.4.4 Normal Value determination for producers/exporters from Sri Lanka

47. The Authority notes that none of the producers/exporters from Sri Lanka have filed Exporter Questionnaire Response. In view of non-cooperation from all the producers/exporters in Sri Lanka, the Authority has determined normal value on the basis of best available information in terms of Rule 6(8) and the same is indicated in the dumping margin table given below.

G4.5 Export Price

Determination of export price in respect of producers/exporters from Thailand

Panel Plus MDF Co. Ltd. (Exporter/Producer)

48. Panel Plus MDF Co. Ltd. has filed questionnaire response along with its related trader, namely Panel Plus Co. Ltd. The Authority, however, notes that Panel Plus MDF Co. has exported the product under consideration directly to India during the period of investigation. Adjustments have been made on account of inland transportation, port and other related expenses, credit cost and bank charges as claimed by the exporter in its response to the questionnaire in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for Panel Plus MDF Co. Ltd. has been determined, which is indicated in the Dumping Margin Table below.

Other producers and exporters from Thailand

49. Since no response has been received from any other producer/exporter of the subject goods from the Thailand, the Authority has determined export price as per facts available in terms of Rule 6(8) of the AD Rules in respect of other producers/exporters from Thailand.

Determination of export price in respect of producers/exporters from Malaysia

Robin Resources (Malaysia) SDN. BHD.

50. Robin Resources (Malaysia) SDN. BHD. has exported the product under consideration directly to India during the period of investigation. Adjustments have been made on account of ocean freight, insurance, inland transportation, port and other related expenses and commissions, as claimed by the exporter in its response to the questionnaire in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for Robin Resources (Malaysia) SDN. BHD. has been determined, which is indicated in the Dumping Margin Table below.

Other producers and exporters from Malaysia

51. Since no response has been received from any other producer/exporter of the subject goods from the Malaysia, the Authority has determined export price as per facts available in terms of Rule 6(8) of the AD Rules in respect of other producers/exporters from Malaysia.

Determination of export price in respect of Non-cooperative Exporters/ Producers from China PR and Sri Lanka

52. The Authority notes that none of the producers/exporters from Sri Lanka and China PR have filed Exporter Questionnaire Response. In view of non-cooperation, the Authority has determined export price on the basis of facts available in terms of Rule 6(8), in respect of exporters from China PR and Sri Lanka. The same is indicated in the dumping margin table given below.

G.4.6 Dumping Margin

53. Considering the normal value and export price as above, the dumping margins for all producers/exporters of the subject goods from the subject country is determined as below.

S.No.	Producer	Export Volume	Normal Value	Export Price	Dumping Margin	Dumping Margin%	Range
		CBM	US\$/MT	US\$/MT	US\$/MT	%	%
1.	Panel Plus MDF Co. Ltd., Thailand	***	***	***	***	***	10-20
2.	Non-cooperative producer/exporter from Thailand	***	***	***	***	***	25-35
3.	Robin Resources (Malaysia) SDN. BHD., Malaysia	***	***	***	***	***	0-10
4.	Non-cooperative producer/exporter from Malaysia	***	***	***	***	***	15-25
5.	All producers/exporters from China PR	***	***	***	***	***	Negative
6.	All producers/exporters from Sri Lanka	***	***	***	***	***	30-40

H. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

54. Rule 11 of the Rules read with Annexure-II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....*”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
55. Rule 23 of the Rules provides that the provisions of Rule 6, 7, 8, 9, 10, 11, 16, 18, 19 and 20 shall apply mutatis mutandis in case of a review. The Authority in its examination has evaluated the injury parameters which are required under Rule 11 and Annexure II of the Rules and has also examined as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.
56. The Authority notes that the application for imposition of antidumping duty has been filed by M/s Greenply Industries Limited / Greenpanel Industries Limited, Century Plyboards (India) Ltd. and

Rushil Décor Limited. In terms of Rule 2(b) of the Rules, the Applicants have been treated as the domestic industry for the purpose of this investigation. Therefore, the cost and injury information of the Applicants, constituting the domestic industry, have been examined.

H.1 Submissions by the domestic industry

57. The submissions of the domestic industry with regard to injury and causal link are reproduced herein below:
- i. Cumulative assessment of the effects of likely dumped imports in the course of their likelihood-of-injury determinations is appropriate in the present investigation.
 - ii. Demand has increased throughout the injury period and the increase has been substantial.
 - iii. Imports from subject countries have increased throughout the injury period with a slight decline during period of investigation. However, the levels of imports in period of investigation is higher than as compared to base year as well as 2016-17 despite anti-dumping duty in existence.
 - iv. The subject countries hold a significant 28% share in the total imports of the subject goods in the country.
 - v. Imports from subject countries have increased despite existence of anti-dumping duty and the increase in capacities by Domestic Industry to overcome the demand-supply gap in the country.
 - vi. Imports from all subject countries are undercutting the prices of the domestic industry. The imports from Sri Lanka and Malaysia are undercutting the prices of the domestic industry.
 - vii. The Domestic Industry is facing price suppression and depression from the prices of the dumped imports from the subject countries. During period of investigation, when the cost of the domestic industry has increased as compared to 2017-18, domestic industry has been forced to reduce its selling price due to dumped imports.
 - viii. The profitability of the domestic industry has significantly declined in the period of investigation due to presence of dumped imports. The domestic industry is faced with decline in cash profits and return on investments. In the event of cessation of duties, the profitability of the domestic industry would be further impacted.
 - ix. The inventories with the domestic industry have significantly increased throughout the injury period despite offering suboptimal prices.
 - x. While the performance of the domestic industry was reasonable during the period 2016-18 and 2017-18, the domestic industry has once again suffered deterioration in performance due to dumping from subject countries.
 - xi. The imports from the subject countries have continued at dumped prices in the POI.
 - xii. The imports from the subject countries are undercutting and depressing the prices of the Domestic Industry.
 - xiii. The producers in the subject countries have surplus capacities. In the event of cessation of anti-dumping duty, these surplus capacities will be diverted to India.
 - xiv. In the event of cessation of the duty, the consequent increase in subject imports would force the Domestic Industry to reduce its prices significantly.
 - xv. In case prices are reduced, the profitability of the Domestic Industry would be impacted. Further decline in profits would lead to a major decline in cash flow and return on investment.
 - xvi. In case the Domestic Industry chooses to maintain its normal price levels, it is likely to lead to loss of sales volumes.
 - xvii. In case the loss of sales volumes is preferred by the Domestic Industry, it would lead to much bigger injury since inventories would rise while production, capacity utilization, and productivity would decline.
 - xviii. Imports from Malaysia has significantly increased.
 - xix. On the price levels being in the overall interest of India, it is submitted that the domestic industry is responsible and responsive. The purpose of anti-dumping duties, in general, is to

eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of antidumping measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.

- xx. Public statements in the Annual Report do not alter the conclusion that dumping of the product has contributed to injury to the domestic industry. It has been wrongly assumed that dumping is the sole cause of injury. The statements in the annual report are not with regard to deterioration in performance of domestic industry over the injury period and they are concerned with overall operations of the company.

H.2 Submissions by other interested parties

58. The submissions of other interested parties with regard to injury and causal link are reproduced herein below:

- i. As noted from the public Annual Report, Indian producers are experiencing impressive growth rates even with newly installed capacities.
- ii. Export volumes from Thailand are negligible both in terms of total imports and market share.
- iii. Export from Thailand have not caused or contributed to the alleged continuation of injury.
- iv. Thai exporters are not dumping anywhere globally and believe in selling at fair prices.
- v. GreenPly Industries Ltd./ GreenPanel Industries Ltd. have witnessed strong growth in revenues with healthy profit margins in 2018 and 2019.
- vi. Relative decline in profits in 2019, is attributable to increased finance costs and these are most likely linked to increase in capacity.
- vii. Performance for CenturyPly has also seen positive growth, as per public documents.
- viii. In public documents, no mention is made of any problem due to imports and dumping of the PUC.
- ix. Actual exports from Thailand for the PUC stands at about 500-800 MT, which are lesser than the import statistics used by the petitioners.
- x. During the POI, the share of total imports is less than 1% and in terms of market share of the Indian domestic market and consumption, it is far less than 1%. Selling prices are the highest amongst the subject countries and fourth highest amongst the 21 countries that supplied the subject goods during the investigations.
- xi. Based on the Indian import statistics, Thai CIF prices are the highest amongst the exporting countries under investigation.
- xii. There is no undercutting, as acknowledged by the Petitioners. There may be a price effect, but the volumes are insignificant.
- xiii. The NIP calculations of industry would mean that almost all countries are underselling.
- xiv. Cost of production should be re-examined owing to the finance costs due to increased investments.
- xv. Petitioners made profits despite high costs for increase in capacities.
- xvi. Reduction in profits is more likely attributable to the increase in costs associated to the new investments.
- xvii. Subject imports did not cause any continued injury to the domestic Industry. Domestic Industry is not vulnerable to imports from the exporters. Volume parameters have gone up and price parameters were in the positive region. Slight dip in profitability cannot be attributed to subject imports as higher imports are taking place from other countries.
- xviii. The domestic industry seemingly seeks to increase prices when their performance has been very impressive. The interested parties have relied upon a Statement by Chairman of Century Plyboards India, Sajjan Bhajanka, wherein he has stated that the key growth driver of the

performance during year under review was the MDF business and a 65% capacity utilization was achieved in FY19, 161.11% increase in revenue from H113.11 crore in FY18 to H295.35 crore in FY19.

- xix. The injury and causal link claimed by petitioners is not true. All the volume parameters of the petitioners such as capacity, production, sales etc. have gone up and even price parameters were in the positive region and any slight dip in the profitability cannot be attributed to subject imports as imports at much higher level were taking place from other countries. The subject imports did not cause any continued injury to the domestic industry and the injury as claimed cannot be linked to the subject imports.
- xx. The domestic industry has been performing in a stable manner over the years and did not show any continued injury in the POI or in the injury period. The overall situation justifies expiry of present anti-dumping duties applicable on imports of subject goods from Thailand.

H.3. Examination by the Authority

59. The Authority has taken note of the submissions made by the interested parties. Annexure-II of the Anti-Dumping Rules provides for objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in domestic market for the like articles; and (b) the consequent impact on domestic producers of such products.
60. According to Section 9(A)(5) of the Customs Tariff Act, 1975, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time-to-time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of the order of such extension.
61. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject countries.
62. It is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration, while some others may not. The Authority considers all injury parameters and, thereafter, concludes whether the domestic industry has suffered injury due to dumping or not. The Authority has examined the injury parameters objectively taking into account the facts and arguments submitted by the domestic industry and other interested parties.

H.3.1. ASSESSMENT OF DEMAND

63. The Authority has determined demand or apparent consumption of the product in India, as the sum of domestic sales of the Indian producers, and imports from all sources. The demand so assessed is given in the table below.

Demand in India	Unit	2015-16	2016-17	2017-18	POI	
					Annualized	Actual
Sales of Domestic Industry	CBM	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>95</i>	<i>106</i>	<i>134</i>	<i>134</i>
Sales of Other Indian Producers	CBM	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>104</i>	<i>104</i>	<i>119</i>	<i>119</i>
Imports from- Subject Countries	CBM	34,287	33,391	44,423	39,446	59,170
China	CBM	179	400	466	74	112
Malaysia	CBM	12,501	18,848	27,904	30,716	46,074
Thailand	CBM	3,406	2,271	3,681	1,914	2,872
Sri Lanka	CBM	18,201	11,872	12,371	6,741	10,112

Other Countries attracting ADD	CBM	61,099	92,335	1,41,284	97,447	1,46,171	
Indonesia	CBM	16,977	6,724	856	97	145	
Vietnam	CBM	44,123	85,611	1,40,427	97,350	1,46,026	
Imports from other countries	CBM	17,881	23,094	22,302	18,306	27,459	
Total Demand in India	CBM	***	***	***	***	***	
<i>Trend</i>		100	108	123	128	128	
Market Share in Demand							
Domestic industry	%	***	***	***	***	***	
<i>Trend</i>		100	88	86	105	105	
Other Indian Producers	%	***	***	***	***	***	
<i>Trend</i>		100	97	85	93	93	
Imports from- Subject Countries	%	7	6	7	6	6	
China	%	0	0	0	0	0	
Malaysia	%	3	4	5	5	5	
Thailand	%	1	0	1	0	0	
Sri lanka	%	4	2	2	1	1	
Other Countries attracting ADD	%	12	17	23	15	15	
Indonesia	%	3	1	0	0	0	
Vietnam	%	9	16	23	15	15	
Other Countries	%	4	4	4	3	3	
Total Demand	%	100	100	100	100	100	

64. The Authority notes that the demand in India has increased throughout the injury period and in the POI.

H.3.2. VOLUME EFFECT OF DUMPED IMPORTS

65. The effects of the volume of dumped imports from the subject countries as well as imports from other countries have been examined by the Authority as follows:-

Import Volume	Unit	2015-16	2016-17	2017-18	POI	
					Annualized	Actual
Imports from Subject Countries	CBM	34,287	33,391	44,423	39,446	59,170
China	CBM	179	400	466	74	112
Malaysia	CBM	12,501	18,848	27,904	30,716	46,074
Thailand	CBM	3,406	2,271	3,681	1,914	2,872
Sri Lanka	CBM	18,201	11,872	12,371	6,741	10,112
Other Countries attracting ADD	CBM	61,099	92,335	1,41,284	97,447	1,46,171
Indonesia	CBM	16,977	6,724	856	97	145
Vietnam	CBM	44,123	85,611	1,40,427	97,350	1,46,026
Imports from other countries	CBM	17,881	23,094	22,302	18,306	27,459
Total Import Volume	CBM	1,13,267	1,48,820	2,08,008	1,55,199	2,32,799

Subject Countries Imports in relation to						
Imports	%	30.27	22.44	21.36	25.42	25.42
Production	%	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>94</i>	<i>120</i>	<i>81</i>	<i>81</i>
Consumption	%	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>122</i>	<i>149</i>	<i>107</i>	<i>107</i>

66. The Authority notes that the volume of dumped imports of the product under consideration from the subject countries has increased in 2017-18 and declined in POI. However, compared to base year 2015-16, the imports from subject countries have increased in the POI.

H.3.3. PRICE EFFECT OF THE DUMPED IMPORTS

67. In terms of Annexure II (ii) of the Rules, the Authority is required to consider the effect of the dumped imports on domestic prices in terms of price undercutting, price underselling, price suppression and price depression, if any.

i. Price undercutting

68. With regard to the effect of dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, a comparison has been made between the landed value of the product from the subject countries and the average selling price of the domestic industry, net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at ex-factory level.

Particulars	Unit	2015-16	2016-17	2017-18	POI
Net sales realization	Rs/CBM	***	***	***	***
Subject countries as a whole					
Landed price of imports without ADD	Rs/CBM	18,215	15,734	15,582	15,063
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	10-20	20-30	20-30	20-30
China					
Landed price of imports without ADD	Rs/CBM	26,495	21,588	19,495	22,214
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	Negative	Negative	10-20	Negative
Malaysia					
Landed price of imports without ADD	Rs/CBM	16,621	14,589	14,979	14,899
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	20-30	30-40	30-40	20-30
Thailand					
Landed price of imports without ADD	Rs/CBM	16,980	17,304	17,333	15,354
Price undercutting	Rs/CBM	***	***	***	***

Price undercutting	%	***	***	***	***
Price undercutting	Range	20-30	10-20	20-30	20-30
Sri Lanka					
Landed price of imports without ADD	Rs/CBM	19,461	17,054	16,274	15,651
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	10-20	20-30	20-30	20-30

69. It is noted the import prices from Malaysia, Thailand and Sri Lanka are undercutting the prices of the domestic industry. The price undercutting with respect to China is negative.

ii. **Price Suppression/ Depression**

70. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority notes the changes in the costs and prices over the injury period. The position is shown as per the table below:

Particulars	Unit	2015-16	2016-17	2017-18	POI
Cost of Sales	Rs/CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>94</i>	<i>100</i>	<i>100</i>
Selling Price	Rs/CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>99</i>	<i>102</i>	<i>90</i>
Landed Price from subject countries	Rs/CBM	18,215	15,734	15,582	15,063
<i>Trend</i>		<i>100</i>	<i>86</i>	<i>86</i>	<i>83</i>

71. It is noted that the landed price of imports from subject countries is below the cost of sales during the period of investigation. Consequently, when the cost has declined over the injury period, selling price of the domestic industry has declined more than cost decline. The imports are suppressing the prices of the domestic industry.

iii. **Price underselling**

72. The price underselling has been evaluated by comparing the non-injurious price with the landed price of the subject imports.

Particulars	UOM	China PR	Malaysia	Thailand	Sri Lanka
Import Volume	CBM	***	***	***	***
Non-Injurious Price (NIP)	Rs/CBM	***	***	***	***
Landed Price	Rs/CBM	22,213.7	14,898.8	15,354.1	15,651.4
Injury Margin	Rs/CBM	***	***	***	***
Injury Margin	%	***	***	***	***
Injury Margin	%, Range	Negative	10-20	10-20	10-20

73. It is seen that the price underselling is positive for each of the subject countries except for China PR.

H.3.4. Impact on Economic Parameters of the Domestic Industry

74. Annexure – II to the Anti-Dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. The Anti-Dumping Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, various injury parameters relating to the domestic industry are discussed herein below.

a. Capacity, Production, Capacity Utilization and Sales

75. The Authority has considered capacity, production, capacity utilization and sales volume of the domestic industry over the injury period and notes as follows:

Particulars	Unit	2015-16	2016-17	2017-18	POI	
					Annualized	Actual
Installed Capacity-Plant	CBM	***	***	***	***	***
<i>Trend</i>		100	100	137	284	284
Production Quantity-Plant	CBM	***	***	***	***	***
<i>Trend</i>		100	108	128	185	185
Capacity Utilization-Plant	%	***	***	***	***	***
<i>Trend</i>		100	108	94	65	65
Production Quantity-PUC	CBM	***	***	***	***	***
<i>Trend</i>		100	103	113	171	171
Domestic Sales-PUC	CBM	***	***	***	***	***
<i>Trend</i>		100	95	106	134	134

76. It is noted from the above table that –

- The capacity of the domestic industry has increased in 2017-18 and in the POI. The Authority considers that the increase in capacity is due to the entry of Century Plyboards and the establishment of new capacities by Greenply/Greenpanel and Century Plyboards.
- The production quantity of the domestic industry increased in 2017-18 and in the POI.
- The capacity utilization has declined in 2017-18 and thereafter in the POI.
- The domestic sales has shown the same trend as production.

b. Market Share of Domestic Industry in Demand

77. Market share of the domestic industry have been examined as below: –

Particular	Unit	2015-16	2016-17	2017-18	POI
					Actual
Domestic industry	%	***	***	***	***
<i>Trend</i>		100	88	86	105
Other Indian Producers	%	***	***	***	***
<i>Trend</i>		100	97	85	93
Imports from- Subject	%	7	6	7	6

Countries					
Other Countries attracting ADD (Vietnam & Indonesia)	%	12	17	23	15
Other Countries	%	4	4	4	3
Total Demand	%	100	100	100	100

78. It is noted that the market share of the subject countries have remained more or less same while the market share of the domestic industry has increased in the POI. The domestic industry has submitted that the increase in market share is due to capacity additions and offering suboptimal prices to sustain in the market.

c. Inventories

79. The data relating to inventory of the subject goods are shown in the following table:

Particulars	Unit	2015-16	2016-17	2017-18	POI
Inventory – Average	CBM	***	***	***	***
<i>Trend</i>		100	151	318	431

80. The Authority notes that the inventories with the domestic industry has increased substantially over the injury period and further in the POI.

d. Profit or loss, cash profits and return on investment

Particulars	Unit	2015-16	2016-17	2017-18	POI	
					Annualized	Actual
Cost of Sales	Rs/CBM	***	***	***	***	***
<i>Trend</i>		100	94	100	100	100
Selling price	Rs/CBM	***	***	***	***	***
<i>Trend</i>		100	99	102	90	90
Profit before tax	Rs/CBM	***	***	***	***	***
<i>Trend</i>		100	116	113	51	51
Total Profit before Tax	Rs.Lacs	***	***	***	***	***
<i>Trend</i>		100	111	120	68	68
Total Profit before interest	Rs.Lacs	***	***	***	***	***
<i>Trend</i>		100	105	114	77	77
Cash Profit	Rs.Lacs	***	***	***	***	***
<i>Trend</i>		100	107	133	96	96
Return on capital employed	%	***	***	***	***	***
<i>Trend</i>		100	122	76	29	29

81. Performance of the domestic industry has been examined

82. It is noted that the profitability, cash profits and return on capital employed of the domestic industry increased consistently till 2016-17 but thereafter declined in the POI.

e. Employment, wages and productivity

83. The situation of the domestic industry with regard to employment, wages and productivity was as below –

Particulars	Unit	2015-16	2016-17	2017-18	POI	
					Annualized	Actual
Employment	Nos	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>102</i>	<i>155</i>	<i>237</i>	<i>237</i>
Productivity per day	CBM	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>103</i>	<i>113</i>	<i>171</i>	<i>171</i>
Productivity per Employee	CBM	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>101</i>	<i>73</i>	<i>72</i>	<i>72</i>
Wages	Rs.Lacs	***	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>101</i>	<i>134</i>	<i>247</i>	<i>247</i>

84. It is noted that the employment, wages and productivity per day have shown a substantial increase in 2017-18 and in the POI. The domestic industry has submitted that these parameters are not reflective of the impact of dumped imports on the domestic industry.

f. Growth

85. Examination of growth parameters of the domestic industry during the injury period is shown below –

Particular	Unit	2015-16	2016-17	2017-18	POI Annualized
Production (PUC)	%	-	2.79	9.92	51.51
Domestic Sales Volume	%	-	(4.78)	11.81	25.96
Capacity utilization	%	-	8.02	(13.03)	(30.71)
Profit/Loss domestic(Per CBM)	%	-	16.09	(2.76)	(54.90)
ROI	%	-	22.03	(37.80)	(61.18)
Cash Profit	%	-	7	20	(26)

86. It is noted that the growth of the domestic industry in terms of production and sales is positive, whereas the growth in terms of capacity utilization, profits, and return on capital employed is negative.

g. Factors affecting domestic prices

87. The Authority notes that the domestic prices have been affected due to the presence of dumped imports in the country.

h. Ability to raise fresh investment

88. The domestic industry has claimed that the Domestic Industry has been operating at low capacity utilization despite significant demand in the country and it has weakened the ability of the Domestic Industry to raise capital investment.

Conclusion on injury

89. Considering various parameters relating to material injury, the Authority notes that there has been increase in the volume of dumped imports of the subject goods, in absolute terms. Imports are undercutting the domestic prices in the POI, and the domestic industry was suffering a suppressing effect on the domestic selling prices. Overall performance of the domestic industry have deteriorated in respect of various economic parameters such as capacity utilization, profits, cash profits and ROI in the POI. Inventories with the domestic industry has increased.

I. CAUSAL LINK

90. As per the AD Rules, the Authority, inter alia, is required to examine any known factors other than dumped imports which are injuring or are likely to cause injury to the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. While the present investigation is a sunset review investigation and causal link has already been examined in original

investigation, the Authority examined whether other known listed factors have caused or are likely to cause injury to the domestic industry. It was examined whether other factors listed under the AD Rules could have contributed or are likely to contribute to the injury suffered by the domestic industry.

a. Volume and price of imports from third country:

91. The Authority notes that the volume of imports of the product under consideration from other countries are either attracting Anti-dumping duty or are at higher prices.

b. Contraction in Demand and/or Change in Pattern of consumption

92. The demand of the subject goods has increased throughout the injury period. The pattern of consumption with regard to product under consideration has not undergone any change. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.

c. Export Performance

93. Applicants have exported the subject goods. However, they have claimed likelihood of injury in the domestic operations. Applicants have provided costing and injury information for domestic sales separately. Hence, likelihood of injury considered cannot be attributed to exports.

d. Development of Technology

94. None of the interested parties have raised any issue with regard to developments in technology as being the cause of injury to the domestic industry.

e. Performance of other products of the company

95. The Authority notes that no submission has been made by any of the interested parties to the effect that the performance of other products being produced and sold by the applicants is a possible cause of injury to the domestic industry.

f. Trade Restrictive Practices and Competition between Foreign and Domestic producers

96. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The domestic producers compete with the landed prices of the subject goods. The price of the domestic industry is influenced substantially by the landed prices of subject goods. Moreover, no evidence has been submitted by any interested party to suggest that the conditions of competition between foreign and domestic producers have undergone any change.

g. Productivity of the domestic industry

97. The Authority notes that no submissions have been made by either the domestic industry or any of the interested parties regarding possible injury to the domestic industry on account of productivity of the domestic industry.

J. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

98. In a review investigation, the Authority has to determine whether the subject goods are continuing to enter or likely to enter the Indian market at dumped prices and whether injury to the domestic industry is likely to continue or recur due to these dumped imports if the duty is removed.

J.1. Submissions by the domestic industry

99. The domestic industry submitted as follows with regard to likelihood of continuation or recurrence of dumping and injury –
- i. Producers in the subject countries maintain huge capacities.
 - ii. Due to excess capacities, the producers have also accumulated high inventories. The presence of these inventories in itself shows huge likelihood of increased exports to India on the event of cessation of anti-dumping duties.
 - iii. The producers/exporters from the subject countries have high export orientation. A large portion of their revenue is generated from export sales.
 - iv. The producers/exporters from the subject countries have significant unutilised capacities which can easily cater the entire demand in India.
 - v. The producers/exporters from the subject countries have freely disposable production capacities.

- vi. Producers in Thailand have either initiated capacity expansions or have proposed expansions in the recent periods. Expansions taking place despite ample capacities in Thailand.
- vii. The exporters from subject countries are prima-facie exporting the product under consideration to third countries at dumped prices.
- viii. There has been a decline in demand for the subject goods in China.
- ix. The questionnaire responses filed by exporters/producers also clearly establish that there is a likelihood of dumping and consequent injury to the domestic industry. The responses filed by the exporters show: (1) surplus and unutilized capacities with the exporters; (2) freely disposable capacities with the exporters; (3) increase in inventories; (4) significant decline in selling price of exports to India; (5) export orientation.
- x. The exporters have acknowledged their intention to export to India in their responses. They have also acknowledged that the impact of the existing ADD has forced them to export to other countries. Therefore, it is very likely that these imports will be redirected to India in the event of cessation of anti-dumping duty.
- xi. The demand of the domestic industry has declined in China PR over the period. With presence of excess capacities in China, the decline in demand in china will force the producers to look for the more lucrative markets.
- xii. There exists likelihood of continuation or recurrence of dumping and likelihood of continuation or recurrence of injury.
- xiii. The exporters have not provided any evidence to dispute the claims of the domestic industry on likelihood.
- xiv. As per the Part 2 of the questionnaire response, Panel Plus MDF Co. Ltd. has increased its capacities in the year Jan-Dec 18 by 76%. The capacity utilization of the company has declined by 45%. The inventories have increased by 53% in 2018 and 19% during period of investigation. With decline in capacity utilization by 45% shows that the exporter has significant unutilized capacities.
- xv. There is a significant increase in inventories. Increase in inventories in one of the parameters of threat analysis as well. There need not be any further analysis required for establishing likelihood. Increase in inventories of the exporter is sufficient.
- xvi. The Part 2 of the questionnaire shows that the capacity utilization of Robin Resources (Malaysia)SDN. BHD. has declined by 39% in the period of investigation, which establishes increase in unutilized capacities. If the domestic sales of the exporter have increased and still capacity utilization declined, it means that the unutilized capacities are meant for exports. However, the submissions of the exporter is contradictory to the information provided in Part 2 of the response. The submissions states that Domestic uptake was robust however response shows that domestic sales have declined by 9%.
- xvii. Now that the responding exporters have filed the responses including third country export price, the likelihood analysis can be based on the exporter's data subject to adequacy and accuracy of the information. Further, the Authority may determine likelihood both from the questionnaire response as well as from exporting countries' trade data.
- xviii. As regards distortions in capacity and production figures for Thailand, the domestic industry has provided information to the best of its abilities. Further the capacities of PUC and NPUC can be used interchangeably. Now that the exporter has provided actual information regarding their production and capacities, same may be relied upon subject to adequacy and accuracy of the information.

J.2. Submissions by other interested parties

100. Following submissions have been made by other interested parties with regard to likelihood of continuation or recurrence of dumping and injury:
- i. There is no likelihood as main focus of the producers is on domestic market, Middle East and the ASEAN market.

- ii. Capacities and utilization rates and production numbers of Thailand producers provided in the petition are inaccurate and is not clear if claim is made for PUC alone or for MDF. There is no surplus capacity that would enter India in the absence of measures. The concern of Thai exporters is to maintain the existing customer base in India, and not to be closed out from the benefits of a presence on a highly innovative market.
- iii. Out of the total capacity, a number of producers do not even produce the PUC. Capacities cannot be switched according to market demands etc.
- iv. There is no likelihood as can be established from the fact that no other country has imposed ADD on Thai exports.
- v. Based on information from Thai producers, their average export prices are about 10% above the domestic selling prices for the same specifications being exported and the same level of trade.
- vi. A large portion of the capacities is already dedicated to non-PUC and other markets like Middle East and ASEAN. The Indian market is not considered core market for Thailand, either past present or future.
- vii. In case of HS 441113, Over 59% of total imports of PUC from Thailand are destined for the Middle East and 15 % to the ASEAN. Over the period 2015 to 2019, imports to the Middle East have increased by 82,025 MT. A significant volume of these exports is for thickness of less than 5mm. Over 95% of the 12,000 MT exported to India in 2019 is not PUC.
- viii. Exports of HS 441114 to India are less than 0.3% and the exports are mostly destined for Middle East and ASEAN.
- ix. Information provided on likelihood of dumping and injury is grossly insufficient and unreliable to prove the conditions for continuation of existing anti-dumping duty in an expiry review as mandated in the Rules. The parties have relied on Rule 23 of the Anti-dumping Rules in this regard. The claimant domestic industry has to demonstrate the consequences of such an expiry based on facts and not merely on presumptions, assumptions and conjectures. Exporters have provided details to show absence of likelihood and same has to be considered.
- x. Parameters relevant to gauge the possibilities of likelihood of dumping and injury clearly shows no likelihood of dumping and injury in the event of expiry of duties on Thailand. The exporters are operating in a well-established market and the expiry of the duties will not change the behaviour of the exporters in any manner. There is no compulsion to export to India by reducing the prices in the event of expiry of duties.
- xi. The details of capacity, third country exports details etc. provided in the petition are misleading and cannot be relied upon. The Authority must use the data provided in the Responses for all determination of current and likelihood parameters.
- xii. Exports from Malaysian exporter will not go up as alleged by the petitioner in the event of expiry of duty and trend of exports after no levy of ADD in the original case. Certain users in India find its product the most suitable and the exporter does not have to resort to any price distortion practices to cater to such users.
- xiii. Claims of excess unutilized capacities are not true since the capacities remained same in POI and Post POI while capacity utilization increased and the exporter has been operating in the range of 90 – 99%. Production slightly increased with declines in exports to India and third countries. Domestic uptake was robust. Data shows that the capacity utilization of the exporter is not directly linked to its export market and domestic supplies hold the key.
- xiv. . Claims of excess unutilized capacities are not true since the exporter's capacity remained same in POI and post POI and utilization has been between a reasonable level of 75% - 85%. The real utilization at the plant level is even higher on account of the product mix.
- xv. Likelihood examination is a forward looking statement and the domestic industry has referred to the movements in parameters during the injury period. The Capacity of the Company remained same in the post POI period also. There are no threats from Panel Plus as the company is not sitting on any significant excess capacity etc.

- xvi. Participation by the party is to refute the wrong claims of the DI and it doesn't show Indian market is lucrative for exporters.
- xvii. The absence of injury from continued imports indicates absence of likelihood of injury also in the event of expiry of present duties.
- xviii. There are no threats from Robin Resources as the company is not sitting on any significant excess capacity etc. and the dumping margin determined for the company in the past was also either negative or very negligible only.
- xix. There is a lack of excess capacity that would undermine the possibility of Thai industry to increase the exports to India, in conjunction with the higher average selling price of Thai producers to major export markets comparing to domestic market.

J.3. Examination by the Authority

101. The Authority has examined the likelihood of continuation or recurrence of injury considering the requirement laid down under Section 9A(5), Rule 23 and parameters relating to the threat of material injury in terms of Annexure – II (vii) of the Anti-Dumping Rules, and other relevant factors brought on record by the interested parties. The Authority notes as under.
102. The present investigation is a sunset review of duties imposed on the imports of subject goods from the subject countries. Under the Rules, it is required to be determined whether continued imposition of antidumping duty is warranted. This also requires an examination of whether the duty imposed is serving the intended purpose.
103. Further, the Authority has also examined other relevant factors which could have a bearing on the likelihood of continuation or recurrence of dumping and consequent injury to the domestic industry. The examination of the likelihood of continuation or recurrence of dumping and consequent injury to the domestic industry is as follows:

i. **Significant production capacities with the producers/exporters in subject countries and ability of other export markets to absorb additional capacities**

104. Analysis of the questionnaire responses filed by the responding exporters shows as follows:

Particular	Unit	Robin Resources (Malaysia) Sdn. Bhd. Malaysia	Panel Plus MDF Co. Thailand
Capacity	CBM	***	***
Plant Production	CBM	***	***
Capacity Utilization	%	***	***
Production-PUC	CBM	***	***
Domestic Sales	CBM	***	***
Exports to India	CBM	***	***
Exports to Other Countries	CBM	***	***

105. Further information provided by the domestic industry with regard to subject countries shows as follows with regard to capacities.

Producer	Capacities (MT)
DARE	11,25,000
Guangdong Weihua	10,12,500
Vanachai Group Public Company Limited, Thailand	8,77,500
Panel Plus Thailand	5,02,500
Green Panel Products	3,75,000
Metro MDF Co. Ltd.	3,75,000
Advance Fiber Co. Ltd.	3,37,500

Guangzhou Huafangzhou Wood Co., Ltd.	2,62,500
M/S Dongwha Global Sales Sdn. Bhd., Malaysia	2,70,000
MDF Co. Ltd.	1,92,750
S. Kijchai Enterprises Co. Ltd.	2,10,000
DAIKEN Group	1,72,500
Wisewoods	1,80,000
M/S MerbokMDF Lanka (Private) Limited, Sri Lanka	1,35,000
M/S Robin Resources (Malaysia) Sdn Bhd., Malaysia	1,46,250
S.P.B.P. Panel Industries Co. Ltd.	1,50,000
M/S Dongwha MDF (M) Sdn. Bhd., Malaysia	97,500
Yonglin Group	90,000
Magna Foremost	75,000
Yunfu Zhenying Wood Co. Ltd.	78,750
Sagamat Panel Board SDH BHD	60,000

106. It is noted that the capacities indicated in the report furnished by the domestic industry in its application suggest capacities with these foreign producers far in excess of demand in India.

i. Increase in Inventories

107. The Authority notes that the responses from the exporters show that the inventories with the responding exporters have increased. The Authority also notes that the producers in the subject countries are export oriented. In the event of cessation of the anti-dumping duty, it is likely that the subject countries will increase their exports to India.

ii. Third country dumping and injury

108. The following exporters have filed questionnaire responses in the form and manner prescribed, including questionnaire response relevant for sunset review investigation. Therefore, the Authority has examined the questionnaire response and ascertained the volume of exports by these exporters to third countries at prices below normal value (i.e., dumped) and injurious (i.e., below NIP of the domestic industry).

- i. Panel Plus MDF Co. Ltd.
- ii. Robin Resources (Malaysia) SDN. BHD

109. The table below shows volume of exports by these exporters to third countries at dumped, attractive and injurious prices.

POI Period Robin Resources (Malaysia) SDN. BHD - Malaysia

	Exports to India CBM	Exports to Third country CBM	Total CBM
Volumes below NIP	***	***	***
Volume above NIP	***	***	***
Volumes below normal value	***	***	***
Volume above normal value	***	***	***
Demand in India	***	***	***
% in relation to demand	***	***	***
Volume below normal value (i.e., dumped) in %	***	***	***
Volume below NIP (i.e., injurious) in %	***	***	***

POI Period – Panel Plus MDF Co. Ltd Thailand

	Exports to India CBM	Exports to Third country CBM	Total CBM
Volumes below NIP	***	***	***
Volume above NIP	***	***	***
Volumes below normal value	***	***	***
Volume above normal value	***	***	***
Demand in India	***	***	***
% in relation to demand	***	***	***
Volume below normal value (i.e., dumped) in %	***	***	***
Volume below NIP (i.e., injurious) in %	***	***	***

110. It is seen that the volume of exports by Robin Resources and Panel Plus to rest of world at a price below normal value and NIP is quite significant. It is noted that whereas volume of exports to India by Robin Resources constituted ***% of its global exports; ***% of its production; and ***% of its capacity, the exports to India by Panel Plus constituted only ***% of its global exports, ***% of their production and ***% of its capacity. It is also noted that volume of exports to India by Robin Resources constituted ***% of imports from Malaysia.
111. It is seen that volume of exports to India by Panel Plus constituted ***% of imports from Thailand and ***% of imports from various sources. Imports from Malaysia and Thailand during POI constituted ***% and ***% of total imports into India during the POI. Further, the volume of exports of Panel Plus to India is quite insignificant.

K. MAGNITUDE OF INJURY AND INJURY MARGIN

112. The Authority has determined Non-Injurious Price for the domestic industry on the basis of principles laid down in anti-dumping Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The NIP of the domestic industry has been worked out and it has been considered for comparing the landed price from the subject country for calculating injury margin. For determining NIP, the best utilization of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been done with the utilities. The best utilization of production capacity over the injury period has been considered. The optimum production in POI has been calculated considering the best capacity utilization and the same production has been considered for arriving per unit fixed cost. No extraordinary or non-recurring expenses have been charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. Average Net Fixed Assets plus Average Working Capital) for the product under consideration was allowed as pre-tax profit to arrive at the NIP as prescribed in Annexure-III and being followed. The non-injurious price so determined has been compared with the landed price of imports from the subject country to determine the injury margin.
113. The non-injurious price of the subject goods produced by the domestic industry when compared with the landed value of the exports from the subject countries shows following injury margin during POI.

SN	Producer	NIP	Landed value	Injury margin	Injury margin	Injury margin
		Rs/CBM	Rs/CBM	Rs/CBM	%	Range
1.	Panel Plus MDF Co. Ltd., Thailand	***	***	***	***	Negative
2.	Non-cooperative producer/exporter from Thailand	***	***	***	***	0-10

3	Robin Resources (Malaysia) SDN. BHD., Malaysia	***	***	***	***	10-20
4	Non-cooperative producer/exporter from Malaysia	***	***	***	***	40-50
5	All producers/exporters from China PR	***	***	***	***	(15-25)
6	All producers/exporters from Sri Lanka	***	***	***	***	10-20

Conclusion on Likelihood of Dumping and Injury

114. The evidence on record show that there has been increase in the volume of dumped imports of the subject goods, in absolute terms. Imports are undercutting the domestic prices in the POI, and the domestic industry is suffering suppressing effect on the domestic selling prices. Overall performance of the domestic industry has deteriorated in respect of various economic parameters such as capacity utilization, profits, cash profits and ROI in the POI. Inventories with the domestic industry has increased. The information on record shows that the capacities with the producers in the subject countries is far higher than the domestic demand in India, and the subject countries are holding significant surplus capacities. The questionnaire responses of the exporters show high volume of exports to third countries at dumped and injurious prices. Thus, all these parameters indicate that in the event of cessation of ADD, the exporters in the subject countries are likely to intensify export of the product in India at dumped prices, leading to injury to the Domestic Industry.

L. POST DISCLOSURE COMMENTS

115. The Authority notes that most of the submissions made by the interested parties in response to the disclosure statement are repetitive in nature and the interested parties have largely reiterated their earlier submissions, which have already been examined and addressed by the Authority. Following are new submissions made by the domestic industry and other interested parties on the disclosure statement.

L.1 Submissions made by the domestic industry

116. The submissions made by the domestic industry on the disclosure statement are as follows:
- Methodology adopted by Authority in previous investigations will hold field unless interested parties establish a need for deviation. The facts regarding adoption of PCN are not new facts. The Authority had not adopted PCN in previous investigations.
 - The Authority is right in rejecting the responses filed by Advance Fibre Co. Ltd., Thailand and Wisewoods Co. Ltd., Thailand as the responses filed by them were grossly deficient.
 - Increase in imports is despite the existence of anti-dumping duty.
 - The increase in inventories is despite offering subject goods at sub-optimal prices.
 - In the event of cessation of anti-dumping duties, the profitability of the petitioning domestic industry would be further impacted.
 - Negative weighted average injury margin of Panel Plus is not sufficient to conclude absence of likelihood for Panel Plus. Significant exports made by Panel Plus are at prices below NIP.
 - Negative injury margin based on weighted average is insufficient to conclude absence of likelihood. Available information does not show export price to third countries as materially higher than export price to India. Reference is made to Kothari Sugars & Chemicals v. Designated Authority where transaction below NIP was allowed to be considered to calculate injury margin, which was also referred to in Honest Enterprises Ltd. v. Designated Authority.
 - Extension of duty has been recommended in past cases even after negative injury margin in the POI and therefore, there is no justification for withdrawal of duty on exporter merely due to negative injury margin.

- ix. The average injury margin in the present investigation is misleading and duty is required to be extended on Panel Plus, as injurious imports by Panel Plus is likely to cause injury to the domestic industry.
- x. The non-injurious price considered by the Authority is at a different level as compared to Net Sales Realization. Adjustments has to be made to either Net Sales Realization or non-injurious price in order to bring both at the same level.
- xi. There is continued dumping and injury to the domestic industry due to the presence of dumped imports from the subject countries. There also exists sufficient likelihood of dumping and injury to the domestic industry in the event of cessation of anti-dumping duty.
- xii. Extension of anti-dumping duties will not be against public interest as domestic industry has increased capacities and is capable of catering to total demand in the country. India has become self-reliant.
- xiii. The objective of dumping law is to establish a level playing field and allow fair competition for the Indian industry. It will not restrict imports or affect availability of product to consumers.
- xiv. The interested parties are producers from Thailand and Malaysia who are naturally concerned only with their own interests and not India's interests. None of the consumers have raised concerns against extension of duty.

L.2 Submissions made by other interested parties

117. The submissions of other interested parties on disclosure statement are as under:

- i. Wisewoods Co. has fully co-operated with the present investigation and provided all documents and data accurately.
- ii. Wisewoods' business activities do not cause any injury to India and hence individual duties need to be accorded rather than mixing the duty rate with companies who have not cooperated in the investigation.
- iii. With regard to the view taken by the Authority on PCN methodology for dumping and injury margin determination in para 17, it is submitted that adoption of a past practice without looking at the merit of the claim in the present case is not justified. The normal value and export price be considered taking into account the comparable product type and such comparison is a basic requirement under the AD Agreement and also under the Indian AD Rules. The Company here has provided separate cost and price details of such types showing significant differences which alone justify a PCN to PCN comparison to determine dumping and injury margin.
- iv. Meagre 47% is not a sufficient percentage to determine standing as the injury claimed by petitioners holding such meagre share cannot be treated as representative of injury having been suffered by the Indian producers.
- v. The dumping margin as determined in the disclosure is the result of an inappropriate comparison of normal value and export price and fair determination of such margin by comparing the identical types would give a nil or very negligible dumping margin.
- vi. The petitioners did not face any adverse effects on account of some imports from subject countries. The Authority should note the larger fact that duties have been in force for quite some time on the subject goods from subject countries and the imports from subject countries were only about 6% of the Indian demand during the POI which is not any alarming level of imports. Nor such import can be perceived as having any threat of injury to the petitioners in the event of expiry of present duties.
- vii. The performance of the domestic industry has increased manyfold in terms of volume parameters. There is no volume injury. The domestic industry has claimed some decline in the profitability in the POI. It may be noted in this regard that the imports from subject countries were not impacting the performance of the domestic industry in any manner and there were higher volumes of import taking place from other countries. The dip in profitability has been the result of down-time in the user industries, which had nothing to do with imports. The injury examination may be conducted in view of such broader economic realities and not on a narrow prism so as to conclude that there is injury. If the claims of price

- undercutting/underselling/suppression were true, then the domestic industry would not have increased the sales. Pricing was apparently impacted due to indigenous factors and not because of any alleged unfair competition from imports from subject countries.
- viii. The observation of likelihood of more exports in the event of expiry of duties as made in the disclosure is denied. Since the Authority has not disclosed any information under consideration even in indexed form other than the table at para 104, the party is not in any position to offer any meaningful comments and reiterates its submissions earlier made on likelihood.
 - ix. The observation that capacities with the producers in the subject countries are far higher than the domestic demand in India does not indicate any likelihood of dumping and injury in the event of expiry of duties. Merely showing capacity in subject countries higher than that of demand in India is not any parameter of likelihood examination. It should be demonstrated that all such capacities are excess and idle capacities and are waiting for the expiry of duty in India to be activated for India. Had the likelihood been so vigorous, then the imports in POI also would have been much higher and injurious and at a higher dumped rate.
 - x. The data on injury and limited information provided on likelihood shows that expiry of the existing anti-dumping duty is not likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
 - xi. The duties have met all its intended purposes in the present case and the present case is a fit case for recommending discontinuation of existing duties and we pray for the same.
 - xii. Thai exporters have not caused any injury to the domestic industry.
 - xiii. The rate of duty should be considered specifically for Advance Fibre Co. Ltd. as they have cooperated in this investigation.

L.3 Examination of the Authority

118. The Authority notes that most of the submissions by the domestic industry and other interested parties are repetitive in nature. These submissions have already been examined at appropriate places in this finding. Further, the Authority has examined additional/new relevant submissions of the interested parties as under:
- a. As regards absence of injury to the domestic industry, the same has been adequately examined. The Authority notes that the present investigation is a sunset review investigation and the Authority is required to consider both current and likely injury.
 - b. As regards PCN wise analysis, it is reiterated that that same issue was earlier dealt by the Authority in case of ADD investigation for the same product wherein it was decided not to adopt PCN methodology on this basis. No justification has been given by interested parties which justify the need for deviation from the previous findings.
 - c. As regards possibility of absence of dumping in case of PCN wise analysis, the Authority notes that the present investigation is a sunset review investigation and therefore even if there was no current dumping, the exporters are required to establish absence of likelihood of dumping and injury in the event of cessation of ADD.
 - d. As regards communication of deficiency to the interested parties from the Authority, it is noted that opportunity for rectification of deficiency cannot be utilised by interested parties to complete the questionnaire response and provide some new/ fresh information which was not provided at the stage of filing questionnaire response.
 - e. As regards likelihood examination, it is noted that likelihood determination is not limited to capacities with the responding exporters. All the factors listed in the relevant paragraphs hereinabove cumulatively show that in the event of cessation of ADD, the exporters in the subject countries are likely to intensify export of the product to India at dumped prices, leading to injury to the Domestic Industry
 - f. As regards argument on the disclosure of likelihood information, it is noted that the information is based on responses filed by the exporters themselves. Since the information is only for one year, the same cannot be provided in indexed form.
 - g. As regards argument of weighted average negative injury margin of Panel Plus, it is noted the company is dumping the product into India despite anti-dumping duty in existence. Further the information provided by the company with regard to unutilized capacities, exports to third

countries, dumped and injurious exports to third countries clearly shows likelihood of dumping and injury in the event of cessation of ADD. The volume of current exports by Panel Plus to India is quite insignificant having regard to consumption in India, its exports to various countries globally, its production and installed capacities. These parameters collectively establish that the current injury margin is not representative of the likely behaviour of the exporter in the event of cessation of Anti-dumping duty.

- h. The Authority also considered the volume of exports to India by different cooperating exporters/producers. It is noted the quantum of ADD on Robin Resources was US\$ 5.72 per CBM. Its volume of exports to India increased significantly in relation to its exports to various countries and also in relation to total imports of PUC into India from Malaysia. Further, the quantum of ADD on Panel Plus was much higher (US\$ 45.27 per CBM) and accordingly its volume of exports to India is quite insignificant in relation to its exports to various countries and also in relation to imports of PUC into India from Thailand. Further, the volume of exports of both Robin Resources and Panel Plus to third countries at prices below normal value and NIP is quite significant, having regard to consumption in India. This indicates that in the event of cessation of ADD, the exporters in the subject countries are likely to intensify export of the product in India at dumped prices, leading to injury to the Domestic Industry.

M. INDIAN INDUSTRY'S INTEREST

119. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the product to the consumers.
120. It is noted that fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

N. CONCLUSION

121. Having regard to the contentions raised, information provided and submissions made and facts available before the Authority as recorded in the above findings and on the basis of the above analysis of the likelihood of continuation or recurrence of dumping and injury to the domestic industry, the Authority concludes that:
 - a. There is continued dumping of the subject goods from subject countries except for China. Except China, imports are likely to enter the Indian market at dumped prices in the event of expiry of duty.
 - b. The domestic industry has suffered continued injury.
 - c. The information on record shows likelihood of continuation of dumping and injury in case the anti-dumping duty in force is allowed to cease.
 - d. Factors such as positive price undercutting, excess capacities over demand and significant volume of exports to third country at price below normal value and Non-Injurious Price collectively establish likelihood of dumping and injury to the domestic industry in case the ADD in force on imports from Thailand, Malaysia and Sri Lanka is allowed to cease.

O. RECOMMENDATIONS

122. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link.
123. Having concluded that there is likelihood of continuation of dumping and injury if the existing anti-dumping duties are allowed to cease, the Authority is of the view that continuation of duty is required on the import of PUC from the subject countries except China PR. The Authority examined the quantum of duty that should be recommended. The Authority considered the volume of dumped and injurious exports from cooperating exporters to India and to the rest of the world. The Authority considers it appropriate to recommend continuation of existing quantum of ADD in respect of all exporters/

producers, except Robin Resources. In case of Robin Resources, however, it would be appropriate to modify the quantum of ADD, considering the dumping margin and injury margin found in the present investigation. Further, the non-cooperating producers and exporters in this sunset review investigation are required to be accorded residual duty, as applicable at present, as per the consistent practice of not rewarding non-cooperation. Accordingly, the anti-dumping duties for responding producers and non-cooperative producers from subject countries are recommended as per the duty table below. The Authority, thus, considers it necessary to recommend continuation of definitive anti-dumping duty as modified, on all imports of the subject goods mentioned in column 3 from Malaysia, Thailand and Sri Lanka as per column 7 in the duty table below, for a further period of five years.

Duty Table

SN	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	4411	Plain Medium Density Fibre Board from 6MM and above	Thailand	Any country including Thailand	Panel Plus MDF Company Limited	45.27	Cubic Meters	USD
2.	- do -	- do -	Thailand	Any country including Thailand	Any producer other than S.No. 1 above	45.27	Cubic Meters	USD
3.	- do -	- do -	Any country other than Thailand	Thailand	Any	45.27	Cubic Meters	USD
4.	- do -	- do -	Malaysia	Any country including Malaysia	Robin Resources (Malaysia) Sdn. Bhd.	13.29	Cubic Meters	USD
5.	- do -	- do -	Malaysia	Any country including Malaysia	Any producer other than S.No. 5 above	36.10	Cubic Meters	USD
6.	- do -	- do -	Any country other than Malaysia	Malaysia	Any	36.10	Cubic Meters	USD
7.	- do -	- do -	Sri Lanka	Any country including Sri Lanka	Any	26.49	Cubic Meters	USD
8.	- do -	- do -	Any country other than Sri Lanka	Sri Lanka	Any	26.49	Cubic Meters	USD

P. FURTHER PROCEDURE

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

B. B. SWAIN, Spl. Secy. & Designated Authority

113. उपरोक्त के अध्यक्षीन, दिनांक 20 अगस्त, 2020 को अधिसूचित प्रारंभिक जाँच परिणामों की एतद्वारा पुष्टि की जाती है।

ढ. आगे की प्रक्रिया

114. केंद्रीय सरकार द्वारा स्वीकार किए जाने के बाद इन जाँच परिणामों के खिलाफ कोई अपील वर्ष 1995 में यथासंशोधित सीमा शुल्क टैरिफ अधिनियम, 1975 तथा सीमा शुल्क टैरिफ नियमावली, 1995 के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपील न्यायाधिकरण के समक्ष की जाएगी।

बी.बी. स्वेन, विशेष सचिव एवं निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(DIRECTORATE GENERAL OF TRADE REMEDIES)

NOTIFICATION

FINAL FINDINGS

New Delhi, the 28th January, 2021

Case No: ADD-(OI) 02/2020

Subject: Final Findings of Anti-dumping Investigation concerning imports of “Phenol” into India originating in or exported from Thailand and United States of America.

F.No. 6/3/2020-DGTR.—Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the ‘Act’) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred to as the ‘Rules’), thereof.

A. BACKGROUND OF THE CASE

1. M/s. Deepak Phenolics Ltd., M/s. Hindustan Organics Chemicals Ltd. and M/s. SI Group India Pvt. Ltd. (hereinafter also referred to as the “Applicants”) filed an application before the Designated Authority (hereinafter also referred to as “the Authority”) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter also referred as the “Rules”) for imposition of anti-dumping duty (ADD) on imports of “Phenol” (hereinafter also referred to as the “Product under Consideration” or “PUC” or “subject goods”) from Thailand and United States of America (USA) (hereinafter also referred to as the “subject countries”).
2. The Authority, on the basis of sufficient prima facie evidence submitted by the Applicant, issued a public notice vide notification No. 6/3/2020-DGTR dated 25th February, 2020, published in the Gazette of India, initiating the investigation in accordance with Section 9A of the Act read with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods originating in or exported from the subject countries and to recommend the amount of ADD, which if levied, would be adequate to remove the alleged injury to the Domestic Industry.
3. The Authority having regard to the Act and the Rules, considered it appropriate to recommend interim duties and issued preliminary findings vide Notification No. 6/3/2020- DGTR dated 20th August, 2020, recommending the imposition of provisional anti-dumping duties on the imports of the subject goods, originating in or exported from China PR. However, vide Office Memorandum No. 354/121/2020-TRU dated 21st October, 2020, the Central Government decided not to impose the provisional ADD.

B. PROCEDURE

4. The procedure described below has been followed with regard to the investigation:
 - a. The Authority notified the Embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
 - b. The Authority issued a public notice dated 25th February, 2020 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of subject goods from subject countries.

- c. The Authority sent a copy of the initiation notification dated 25th February, 2020, to the Embassies of the subject countries in India, the known producers and exporters from the subject countries, known importers, importer/user Associations, the Domestic Industry, and other interested parties, as per the addresses made available by the Applicants. The interested parties were advised to provide relevant information in the form and manner prescribed and make their submissions known in writing within the prescribed time-limit, in accordance with Rules 6(2) and 6(4) of the Rules.
- d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Government of the subject country, through its Embassy in India in accordance with Rule 6(3) of the Rules supra.
- e. The Embassies of the subject countries in India were also requested to advise the exporters/producers from their respective countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
- f. The Authority, upon request made by the interested parties, granted extension of time to the interested parties to file their response as well as submissions. Vide communication dated 4th April, 2020, the time was extended up to 24th April, 2020. Vide communication dated 23rd April, 2020, the time was extended up to 10th May, 2020 and vide communication dated 11th May, 2020, the time was further extended up to 20th May, 2020. Any submission made by interested parties even after the due date had been taken into account to the extent considered relevant and appropriate for the purpose of preliminary determination. Further, the Authority has considered all submissions made by interested parties during the course of present investigation for the purpose of final determination.
- g. The Authority sent questionnaires to the following known producers/ exporters in the subject countries in accordance with Rule 6(4) of the Rules:
 - i. M/s. AdvanSix, USA;
 - ii. M/s. Deckota Gasification Company, USA;
 - iii. M/s. Dow Chemical Co., USA;
 - iv. M/s. Georgia Gulf, USA;
 - v. M/s. INEOS Phenol, USA;
 - vi. M/s. PTT Phenol Company Limited, Thailand;
 - vii. M/s. Shell Chemicals, USA.
- h. In response to the above notification, the following producers/exporters have responded and submitted exporter's questionnaire responses and/or legal submissions:
 - i. M/s. Kempar Energy Pte. Ltd. (Kempar), Singapore;
 - ii. M/s. Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP), Singapore;
 - iii. M/s. Mitsui & Co. Ltd. (MBK), Japan;
 - iv. M/s. PTT Phenol Company Limited (PPCL), Thailand.
- i. The Authority sent questionnaires to the following known importers and users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
 - i. M/s. Acron Enterprises;
 - ii. M/s. Bleach Marketing Pvt. Ltd.;
 - iii. M/s. Centrum Metalics Pvt. Ltd.;
 - iv. M/s. C.J.Shah and Company;
 - v. M/s. Farmson Pharmaceutical Gujarat Ltd.;
 - vi. M/s. Haresh Kumar & Co.;
 - vii. M/s. High Polymer Labs Ltd.;
 - viii. M/s. India Glycols Ltd.;
 - ix. M/s. Kailash Polymers;
 - x. M/s. KantilalManilal& Co. Pvt. Ltd.;

- xi. M/s. Karmen International (P) Ltd.;
 - xii. M/s. Khetan Brothers;
 - xiii. M/s. Krishna Antioxidants Pvt. Ltd.;
 - xiv. M/s. Kundan Rice Mills Ltd.;
 - xv. M/s. Meghdev Enterprises;
 - xvi. M/s. Naiknavare Chemicals Limited;
 - xvii. M/s. National Plywood Industries Ltd.;
 - xviii. M/s. NGP Industries Ltd.;
 - xix. M/s. Paras Dyes & Chemicals;
 - xx. M/s. PCL Oil & Industries;
 - xxi. M/s. Rainbow Colours & Chemicals;
 - xxii. M/s. Resins & Plastic Ltd.;
 - xxiii. M/s. Satguru International;
 - xxiv. M/s. Shubham Dyes & Chemicals Limited;
 - xxv. M/s. Singh Plasticisers and Resins (I) Pvt.;
 - xxvi. M/s. Sonkamal Enterprises;
 - xxvii. M/s. Torrent Pharmaceuticals Limited;
 - xxviii. M/s. United Phosphorus Ltd.;
 - xxix. M/s. Wonder Laminates Pvt. Ltd.
- j. In response to the above notification, following importers or users have responded and submitted importer/user questionnaire responses:
- i. M/s. Aica Laminates India Private Limited;
 - ii. M/s. Akin Chemicals Pvt. Ltd.;
 - iii. M/s. Atul Ltd.;
 - iv. M/s. Clean Science & Tech Pvt. Ltd.;
 - v. M/s. Greenlam Industries Limited;
 - vi. M/s. Meghmani Organics Ltd.;
 - vii. M/s. Virgo Laminates Ltd.
- k. The following importers/users have filed legal submissions/registered as interested parties in response to the initiation notification:
- i. M/s. Agrow Allied Ventures Pvt. Ltd.;
 - ii. M/s. Akin Chemicals Pvt. Ltd.;
 - iii. M/s. Atul Ltd.;
 - iv. M/s. Cedar Décor Pvt Ltd;
 - v. M/s. Cent Ply;
 - vi. M/s. Clean Science & Tech Pvt. Ltd.;
 - vii. M/s. DCM Shriram Industries Ltd;
 - viii. M/s. Gitanjali Chemicals Pvt. Ltd.;
 - ix. M/s. Hareesh Petrochem Pvt. Ltd.;
 - x. M/s. Hwatsi Chemical Pvt. Ltd.;
 - xi. M/s. Meghmani Organics Ltd;
 - xii. M/s. Supriya Lifescience Ltd;

- xiii. M/s. Tradex Corporation.
- l. The Authority sent a copy of the initiation notification to the following known Associations of the subject goods in India:
 - i. Indian Laminate Manufacturers Association (ILMA);
 - ii. The Institute of Indian Foundrymen (IIF).
- m. In response, the following user Associations have filed submissions:
 - i. Indian Laminate Manufacturers Association;
 - ii. The Institute of Indian Foundrymen;
 - iii. Federation of Indian Plywood and Panel Industry.
- n. The Authority made available the non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- o. The period of investigation (POI) for the purpose of present investigation is 1st July, 2019 to 31st December, 2019 (6 months). The injury examination period has been considered as the period from 1st April, 2016-31st March, 2017; 1st April, 2017- 31st March, 2018, 1st April, 2018-30th June, 2019 and the period of investigation.
- p. The Authority obtained transaction-wise import data from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Directorate General of Systems & Data Management (DGS) for subject goods for the injury period, including the POI, and analysed the data after due examination of the transactions.
- q. The non-injurious price (hereinafter referred to as “NIP”) based on the cost of production and reasonable profits to sell the subject goods in India, having regard to the information furnished by the Domestic Industry in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules, has been worked out so as to ascertain whether ADD lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- r. Additional/supplementary information was sought from the applicants and other interested parties to the extent deemed necessary. The information provided by the Applicant was examined by the Authority by way of a table study, to the extent deemed necessary. Only such information with necessary rectification, wherever applicable, has been relied upon.
- s. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- t. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the present final findings on the basis of facts available.
- u. Provisional ADD on the import of the subject goods from the subject countries were recommended vide the Preliminary Findings issued on 20th August, 2020. However, the provisional ADD was not imposed.
- v. As recorded in the Preliminary Findings, the Authority invited comments on the same and the views of the interested parties on the preliminary determination has been considered and addressed to the extent possible for the purpose of Final Findings.
- w. In accordance with Rule 6(6) of the Rules, the Authority also provided an opportunity to all interested parties to present their views orally in a hearing held on 9th October, 2020. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
- x. The submissions made by the interested parties during the course of this investigation, including in response to the Preliminary Findings, wherever found relevant, have been addressed by the Authority, in these Final Findings.
- y. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported by evidence and considered relevant to the present investigation.

- z. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 7th January, 2021 and comments received thereon, considered relevant by the Authority, have been addressed in these Final Findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.
- aa. “***” in these Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- bb. The exchange rate adopted by the Authority for the subject investigation is US\$1 = ₹71.67.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 5. At the stage of initiation, the product under consideration was defined as:

“The product under consideration in the present investigation is “Phenol”. The product is marketed in two forms i.e. bulk and packed. Bulk sales are normally in loose form, whereas packed sales can be of much smaller container loads and are generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide, etc.

This product is classified under Customs Tariff heading no. 2907.11. The Customs classification is, however, indicative only and in no way binding on the scope of the present investigation.”

- 6. The Authority provisionally had held in the Preliminary Findings that the subject goods produced by the Domestic Industry are like article to the product imported from subject countries in terms of Rule 2(d) of the Rules.

C.1 Submissions of the Domestic Industry

- 7. The submissions made by the Domestic Industry with regard to the PUC and like article and considered relevant by the Authority are as follows:
 - a. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms- bulk and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide, etc.
 - b. This product is classified under Customs Tariff heading no. 2907.11.
 - c. The goods produced by the Applicants are like article to the PUC imported from subject countries as they are comparable in terms of chemical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods, and are technically and commercially substitutable. There is no known significant difference in the technology employed by the Domestic Industry and the producers in subject country. The Applicants have produced like article to the imported products.

C.2. Submissions of other interested parties

- 8. No submissions have been made by the exporter/ producer/ other interested parties regarding PUC.

C.3. Examination by the Authority

- 9. The PUC in the present investigation is “Phenol”.
- 10. Phenol is a basic organic chemical normally classified under Chapter 29 of the Customs Tariff Act. The product is marketed in two forms - bulk (in loose) and packed. Bulk sales are normally in loose form, whereas packed consignments can be of much smaller container loads and generally packed in drums. Phenol is used in Phenol Formaldehyde Resins, Laminates, Plywood, Particle Boards, Bisphenol-A, Alkyl Phenols, Pharmaceuticals, Diphenyl Oxide, etc.
- 11. The product is classified under Customs Tariff heading no. 2907.11. The Customs classification is, however, indicative only and in no way binding on the scope of the present investigation.
- 12. It has been noted from the information available on record that the product produced by the Domestic Industry is like article to the PUC imported from subject countries. The product produced by the Domestic Industry, and subject goods imported from subject countries is comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially

substitutable. The consumers have used and are using the two interchangeably. The contention of the Applicant has not been disputed by the other interested parties. Therefore, the Authority holds that the subject goods produced by the Domestic Industry are like article to the product imported from subject countries in terms of Rule 2(d) of the AD Rules.

D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

D.1. Submissions of the Domestic Industry

13. The Domestic Industry has made the following submissions with regard to the scope of Domestic Industry and standing:
- The Applicants, namely, Deepak Phenolics Ltd., Hindustan Organics Chemicals Ltd. and SI Group India Pvt. Ltd., constitute 100% of the domestic production for the subject goods in India.
 - The Applicants have not imported the subject goods in the POI from the subject countries.
 - The Applicants are not related to any exporters in the subject countries or importers of the subject goods in India.
 - In response to the argument of the Respondents that SI Group imported from South Africa and hence cannot be considered as eligible domestic industry, the Applicants submitted that the imports made by the Domestic Industry from South Africa is not relevant in the present case. Even so, the imports by SI Group from South Africa was made under advance license, in low volumes, for its export products and is not significant so as to disentitle it from being treated as eligible domestic industry. In previous findings of acetone and phenol, the Authority has considered SI Group as eligible domestic industry when they had imported the PUC under advance license.

D.2 Submissions of other interested parties

14. Other interested parties have made the following submissions with regard to the scope of Domestic Industry and standing:
- SI Group must not be considered as a constituent of the Domestic Industry as they are an importer of the PUC from South Africa which is a subject country in an ongoing sunset review investigation. SI group omitted to provide the proportion of imports made in relation to total imports from South Africa to India. If imports of the PUC made by SI Group from South Africa are significant in relation to the total imports from it into India, then it must be excluded from the scope of the Domestic Industry. Unless allegation of dumping exists against a country and domestic producer has imported from the country is admitted or proved, they cannot be part of the Domestic Industry and must be excluded from scope.

D.3. Examination by the Authority

15. Rule 2(b) of the Anti-Dumping Rules defines Domestic Industry as under:

“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”.

16. The application has been jointly filed by Deepak Phenolics Ltd., Hindustan Organics Chemicals Ltd. and SI Group India Pvt. Ltd. The Applicants account for 100% of Indian production, as there is no other producer of the subject goods in India, apart from the Applicants. The Applicants have claimed that neither they have imported the PUC from the subject countries in the POI nor they are related to any exporter or producer of PUC in the subject countries or any importer of the PUC in India.
17. The Authority considered the arguments of the interested parties regarding imports of product by SI Group from South Africa, one of the applicant companies. The Authority notes that the same is not relevant in the present investigation as the imports have not been made from the present subject countries. The volume of imports by SI Group is negligible. Imports have been made under advance license for which there is an obligation to export those products manufactured using the imports made under advance license. The products so produced were not intended for consumption within the country. Being under advance licence, these imports were exempted from payment of ADD. The Authority considers that such imports made under advance licence should not disentitle a domestic producer from being treated eligible Domestic Industry under Rule 2(b). Therefore, the Authority holds that it would not be appropriate to exclude SI Group from the scope of the Domestic Industry solely for this reason.

18. Accordingly, the Authority holds that the Applicants constitute Domestic Industry within the meaning of Rule 2(b) of the Rules, and considers that the application satisfied the criteria of standing in terms of Rule 5(3) of the Rules.

E. CONFIDENTIALITY

E.1. Submissions of the Domestic Industry

19. The Domestic Industry has made the following submissions with regard to confidentiality:

- a. The Applicants have submitted that information otherwise available in the public domain has been claimed as confidential by PPCL and MBK in the exporters' questionnaire responses. Further, the exporters have claimed excessive confidentiality in excess of the provisions of the Authority's Trade Notice No. 10/2018 dated 7th September, 2018. MBK has not submitted Part IV of the exporters' questionnaire response.
- b. The users/importers have also disregarded the Authority's Trade Notice No. 10/2018 dated 7th September, 2018 in their claims of confidentiality.
- c. Only an information can be claimed confidential by the interested parties, while claims/submissions/arguments of the interested parties cannot be claimed as confidential. However, it would be seen from the responses filed by the responding exporter, even the claims have been claimed as confidential.
- d. None of the claims of the normal value have been provided by the exporters in the non-confidential version of the exporter questionnaire response, and therefore such claims are required to be rejected.
- e. PPCL, MAP and MBK in their exporter questionnaire responses have claimed information regarding details of shareholders, company structure, list of products sold, production facilities and process, related party information, Annual Reports, contractual links and joint ventures, etc. as excessively confidential.
- f. The Authority has rightfully not considered submissions of ILMA and IIF in the Preliminary Findings as they have failed to comply with the directions of the Authority in the initiation notification and specific directions given to them through the mail dated 13th May, 2020 and the same was admitted through an e-mail dated 6th September, 2020 which was suppressed in the writ petition filed in the Hon'ble High Court. ILMA and IIF had failed to serve all their submissions to the Domestic Industry thereby violating the rights of the Domestic Industry to defend its interests.
- g. The Applicants have submitted that the users/importers in their user/importer questionnaires have claimed excessive confidentiality without due consideration of the requirements of the Trade Notice 10/2018
- h. The non-confidential version of responses filed by exporters, and users do not provide a meaningful understanding of information claimed confidential.
- i. The responses should be disregarded and the exporters must be declared as non-cooperative by denial of individual treatment since the Domestic Industry is handicapped from offering comments and defending its interests in the absence of even indexed information, thereby violating principles of natural justice.
- j. In response to the contention that arguments of excessive confidentiality by the Domestic Industry have not been addressed, the Applicants have submitted that the same has been analysed by the Authority in Paragraphs 20 and 21 of the Preliminary Findings.

E.2. Submissions of other interested parties

20. Other interested parties have made the following submissions with regard to confidentiality:

- a. The exporters, importers, users and other interested parties have submitted that the Applicants have claimed excessive confidentiality and have not fulfilled the guidelines prescribed in the Trade Notice No. 10/2018 dated 7th September, 2018.
- b. If the Applicants have made arguments on retrospective imposition in the confidential version of the application, it is a clear violation of confidentiality provisions, since the same has not been provided in the non-confidential version. The inability of the Applicants to provide the arguments in non-confidential version hinders the ability of the interested parties to provide meaningful comments on the same and defend their interests on this crucial issue.
- c. The non-confidential version of the application does not allow for a reasonable understanding of the allegations contained therein. The non-confidential version of the application clearly violates the requirements specified in Rule 7 of the Rules.

- d. In the Preliminary Findings, the Authority has summarily dismissed the arguments of the exporters in terms of excessive confidentiality claimed by the Applicants, without providing any reasons for the same. The Authority must assess claims of confidentiality on a case-by-case basis and provide reasons as to why a particular party's objection regarding confidentiality has been denied. A decision of a quasi-judicial body like the Authority, must be in accordance with the principles of natural justice, and therefore, reasons for arriving at its decision must be disclosed by the Authority.
- e. The Authority failed to provide reasoned order and dismissed the exporter's claims of excessive confidentiality by Domestic Industry which is in contravention of Trade Notice 10/2018.
- f. Exporters have provided sufficient reasons for claiming information as confidential in questionnaire responses and addressed claims of petitioners in Exhibit 3 of comments to Preliminary Findings.
- g. The Authority has to disclose the facts and basis on which normal value and export price has been determined and the actual normal value and export price as normal value can also be considered as a benchmark under reference form of duty and since the normal value and export price for all other non-cooperating producers/ exporters cannot be considered confidential. Further, the Applicants themselves have disclosed the normal value and export price for subject countries in their petition based on facts available. The same should also be disclosed to customs authorities so that ADD can be determined on a real time consignment to consignment basis.
- h. Information on installed capacity, production, capacity utilization, sales quantity, sales value, employees, productivity per day, inventory, PBIT, NIP, etc. has not been provided as required by Trade Notice, neither has good cause been shown for claims of confidentiality.
- i. The non-confidential version violates requirements under Rule 7 of the Rules and the Trade Notice 1/2013 dated 9th December, 2013. The rights of defence of interested parties could not be fully exercised. Significant data in non-confidential version of the Application has not been properly indexed. Part-VI has not been provided and therefore, the Application is incomplete. Formats A-L have been kept confidential for which no reasonable justification has been provided. The Authority should direct the Domestic Industry to provide the summary of the documents and indexed data in non-confidential version for comments.
- j. Computation of NIP, normal value, dumping margin and other data should be disclosed.
- k. Information disclosed and filed with other authorities or accessible to an ordinary shareholder in public cannot be held confidential.
- l. The Authority has not clarified what the form of duty will be and the reasons for selecting the same.

E.3. Examination by Authority

21. With regard to confidentiality of information, Rule 7 of the Rules provide as follows:

“Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule(2) of rule 12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”

22. The Authority examined the confidentiality claims of the interested parties and on being satisfied allowed the claim on confidentiality. The Authority considers that any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by

parties to an investigation shall, upon good cause shown, should be treated as such by the authority. Such information cannot be disclosed without specific permission of the party submitting it.

23. The Authority has considered the claims of confidentiality made by the Applicants and the opposing interested parties and on being satisfied about the same, the Authority has allowed the claim on confidentiality. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).
24. As regards the arguments of retrospective imposition of duties not in the non-confidential version of the application, it is noted that Applicants requested for imposition of retrospective form of duties through letters filed after the filing of application. The non-confidential versions of the letters have been circulated by the Applicants to all interested parties.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submissions by the Domestic Industry

25. The following submissions have been made by the Domestic Industry with regard to various issues:
 - a. The parameters laid down under the law for retrospective imposition of duty are fully met in the present case. There is a long history of dumping in the country evident from investigations being conducted since 2002. Further, the dumping margin is significant throughout the POI and such a level of dumping has caused adverse effects on the Domestic Industry as inventories have piled up, and there is significant decline in profits, PBIT, cash profits and return on investment. Therefore, it is vital to consider (a) imposition of ADD on a retrospective basis; and (b) import assessments are made provisional pending outcome of the investigation.
 - b. Since there is significant intensified injury within POI, which intensified further post-POI, the Domestic Industry has requested the Authority to consider the imposition of benchmark form of duty in order to address the intensified injury. During the POI, it can be seen that there is a presence of dumped and undumped imports. In such a situation, benchmark form of duty is most appropriate. There are imports into the country that are injurious and non-injurious during the POI. The import prices have significantly declined over the injury period and the POI. There is a high volatility in the prices of imports from subject countries over the injury period, within the POI, and within same time. The Authority's Office Memorandum dated 18th June, 2019 states that the reference price system may be recommended in situations of high price volatility.
 - c. There is no bar as per WTO Agreement or Rules against recommending different forms of duties for the same product against different countries. The quantum and form of ADD will depend on facts of a particular case and this does not tantamount to differential treatment.
 - d. In response to the argument that the Authority failed to provide reasons for the form of duty, the Applicants have submitted that there is no such legal requirement. There is no violation of principles of natural justice since the opposing parties are given opportunity to comment on the Preliminary Findings.
 - e. In blatant abuse of trade notices issued by the Authority and global practices applied, a lot of parties participated in the Oral Hearing without filing any factual submissions within the prescribed time limit, and even without being registered as an interested party; and, in any case, without filing questionnaire response. Principles of natural justice also demand that a party exercises its rights well within time limits. The Domestic Industry requests the Authority to record a reasoned determination on this.
 - f. While Rule 2(c) does not provide for participation of users, Rule 6(5) says that users can participate when the PUC is sold at retail level. Therefore, User Associations such as ILMA and FIPPI cannot participate and further, they have submitted no information. Submissions cannot be considered as information.
 - g. The law does not allow for associations of users to be considered as interested parties. The user associations in this case should be considered as non-cooperative as they have not provided their Registration Certification, by-laws & Memorandum of Association, lists of members, details of the executive body/Managing Structure, copies of the minutes of the meeting in which it was resolved by the Association to oppose an anti-dumping application on behalf of some/all of its members and lists of members who supported, opposed or remained neutral with regard to the application.
 - h. Prior to the issuance of Preliminary Findings on 20th August, 2020, ILMA deliberately did not comply with DGTR's direction dated 13th May, 2020, for serving their submissions onto all the interested parties and the investigation team. Instead, as late as on 6th September, 2020, the legal representative of ILMA replied to DGTR's e-mail dated 13th May, 2020, stating that the submissions of ILMA and IIF

were inadvertently not enclosed in his earlier e-mail dated 13th May, 2020, whereby he had circulated the submissions of three other interested parties.

- i. It would be seen that not only PPCL has related raw material supplier but also related utility suppliers. Therefore, the prices of raw material and utility, as claimed by the exporters are required to be rejected as they are not at arm's length.
- j. The exporters have intentionally refrained from providing adequate information sought by the Authority as to whether the raw materials for production have been purchased from a related supplier or captively produced. The information as to whether the procured raw material prices are reflective and representative of a fair market price have also been kept confidential.
- k. While the trend of import price decline continues, the raw material prices did not show a corresponding decline and that due to the continued price pressures faced due to imports, the Domestic Industry was forced to reduce their prices.
- l. The parties other than those listed in the Preliminary Findings should not be considered as interested party since only they filed information within time limits. These parties are PTT Phenol Company, Thailand, MAP, MBK, Kempar Energy Pte. Ltd., Aica Laminates India Private Limited, Greenlam Industries Limited, Clean Science & Tech Pvt. Ltd., Meghmani Organics Ltd, Akin Chemicals Ltd., Atul Ltd., and Virgo Laminates Ltd.
- m. The users have failed to provide relevant information in the form of questionnaires and therefore, the authenticity of mere statements cannot be established. Any arguments made without filing responses are liable to be rejected.
- n. Parties who are not specified as interested parties under Rule 2(c) have to seek liberty from Authority to be treated as one and the same cannot be assumed.
- o. Century Ply, Hareesh Petrochem and Gitanjali Chemicals Pvt. Ltd. cannot be considered interested parties as they have not filed responses or submissions.
- p. Exim Corp cannot be considered as interested party as it did not register itself nor has it filed any information, submissions or questionnaire responses.
- q. Trade Notice No. 11/2018 and the Manual of Operating Practices state that if the parties have neither registered themselves nor filed any questionnaire responses, they cannot be allowed to participate further in the investigation.
- r. Increase or decline in raw material prices is not a consideration of form of duty. Further, the weighted average import price over the injury period i.e. April 2016 to June 20 is 1068 (CIF), which is in fact higher than the reference price in the Preliminary Findings. Further, there is a fluctuation in export price and no significant fluctuations in the domestic price.
- s. In response to the argument that the Office Memorandum does not constitute Trade Notice, the disclaimer in the Manual clearly stated that it is not intended to replace any Trade Notice/Circulars/Instructions and the Office Memorandum is an instruction. In case the argument of the respondents is accepted, the Office Memorandum also forms part of the Manual and hence forms established practice.
- t. Rule 12 of the Rules and Article 7 of the Anti-Dumping Agreement provide that Preliminary Findings can be issued in appropriate cases and that countries like US and EU issue the same as a matter of rule.
- u. In response to the argument of the Respondents that the case of Digital Offset Printing Plates was unusual with regard to a short POI, it has not been established as to how the same is not applicable in the present case.
- v. With regard to the argument that importers had no knowledge of dumping by exporters, the legal requirement under Section 9A(3) is to prove either history of dumping or knowledge of importer that exporter practices dumping and not both. Imposition of duty against the subject country in itself establishes history of dumping. Further, whenever ADD is imposed on one set of countries, the dumping shifts to other sources. This shows that importer is well aware.
- w. In response to the argument that rare and extraordinary situations must exist, the argument is legally incorrect and the parties are trying to impose additional conditions not required by law.
- x. It is the established practice of the Authority to calculate NIP in INR. However, when comparing the same with the landed price of the PUC, it is required to be converted into US\$.

- y. The purpose of ADD is to eliminate injury and re-establish a situation of open and fair competition. It would not restrict imports from subject countries in any way or the availability of products to consumers.
- z. In response to the argument that the Authority has not recommended retrospective levy previously even on the request of the Domestic Industry, the Applicants have submitted that non-imposition in other cases is not a ground to reject claims of DI.
- aa. ADD is not a form of protection and instead addresses unfair pricing. Extensions have been sought only due to continued dumping and the Authority in all previous investigations has conducted elaborate investigations before imposition as has also been done in the instant case before initiation. Further, the exporters are habitually dumping and even though the Domestic Industry can cater to the existing demand, it is prevented from doing so. The opposing interested parties have not provided any instances as to how the domestic industry is not fulfilling the legal requirement.
- bb. In response to the argument that the Authority has actively disallowed 6 month POI in previous investigations, the Applicants have submitted that in a number of cases such as Acrylic Fibre, Dry Batteries, viscose staple Fibre, penicillin G Potassium 6 APA, lead batteries from Japan, Korea, China and Bangladesh, etc., the Authority has allowed a 6 month POI.
- cc. In response to the argument of the Respondents that Post-POI data is to be considered, it is submitted that in a fresh investigation, the same cannot be considered. In this regard, the Domestic Industry has referred to the Findings issued in SBR wherein the Authority refused to terminate the investigation despite finding that the sole domestic producer had suspended production after the POI, stating that the same fell outside the investigation period. The price trends of imports during the POI are relevant for quantum of duty determination and not beyond the POI. Further, the impact of COVID- 19 has no relevance.
- dd. In response to the argument that IIF and ILMA have adhered to the prescribed formats it is submitted that the public file does not contain such information of the association or its members.
- ee. In response to the argument that the landed price of imports declined due to raw material decline, the Applicants have submitted that the argument cannot be accepted as the landed price of imports is below the cost of the Domestic Industry.
- ff. With regard to the argument of the Respondent regarding inconsistencies, the Applicant has submitted that information of both the consolidated period (April 18-June 19) as well as bifurcated period (2018-19 and Apr-June, 2019).
- gg. With respect to the argument of the Respondents referring to the trigger price of Acetone, the Applicants have submitted that the same is an SSR case wherein post-POI data was examined for likelihood. The same is not relevant in the present case.

F.2. Submissions of other interested parties

26. The following submissions have been made by the exporter/ producer/ other interested parties with regard to various issues:
- a. The Applicants have not made any arguments requesting for the imposition of retrospective ADD in the application. No documents in the public file show such arguments either.
 - b. There is no requirement to levy ADD retrospectively. The basic principle of taxation law is certainty and predictability for the tax-payer and, therefore, taxes and duties are prospective in nature. Retrospective imposition is against the norm in ADD as well. It causes prejudice to the bona-fide importer and the user. Section 9A(3) of the Act merely carves out an exception for rare and extraordinary situations with conditions, (a) history of dumping and (b) massive dumping in short period of time. No evidence has been provided by Applicants to substantiate the claim. The 'history of dumping' should be specific to the countries against whom the investigation is ongoing. Retrospective duty has been requested by the DI in multiple investigations, however, no such duty was imposed by the Authority, showcasing clear that it is a provision which mandates extraordinary conditions to exist and must be used. The Domestic Industry has not established the extraordinary circumstances. The Authority has to ascertain the fulfilment of the requisite conditions prior to the recommendation of a retrospective levy of duty. The onus to prove that the conditions are met lies upon the Applicants and the non-confidential petition does not provide any averments.
 - c. The Domestic Industry has failed to substantiate whether importers had any knowledge regarding alleged practices of dumping by exporters. Reference has been made to submissions by importers/users dated 30th May, 2020 where they contested awareness of exporters of alleged dumping.

- d. The Authority has not provided any reasons for adopting such a short POI, and the initiation notice is, therefore, in clear violation of the Rules. The Authority has consistently rejected shorter POI in multiple investigations previously and initiated investigations on POI longer than the POI proposed by the Applicants. A POI of 6 months for a commodity product like Phenol is highly erratic and that has prejudiced the Preliminary Findings by causing distortion of facts
- e. M/s. Deepak Phenolics Ltd. must be facing start up difficulties and technical problems. The plant was also shut due to internal reasons.
- f. The Domestic Industry has been consistently availing unfair advantage in way of extreme protection through various trade remedies available in India. There is no further requirement to conduct one more anti-dumping investigation to assess dumped imports of Phenol and material injury or threat of material injury to the Domestic Industry. The Authority has conducted 14 anti-dumping investigations/ sunset reviews on Phenol and Acetone in the last 17 years. In 2019, M/s. Deepak Phenolics Ltd. had approached the Authority for imposing a Safeguard duty on Phenol which was later withdrawn by them. M/s. Deepak Phenolics Ltd. had filed an application for inclusion of product phenol in the Restrictive list of Imports. However, the same was dismissed by the Ministry of Chemicals.
- g. The user industry is dependent on imports as there is a demand-supply gap.
- h. The Applicants have failed to provide any compelling reasons for the Authority to conduct a monthly analysis. The DGTR Manual prescribes scenarios where such an analysis may be undertaken where there are wide variations in cost of production due to raw material price fluctuations. As acknowledged, there is insignificant decline in raw material prices. For a monthly dumping assessment, monthly cost data has to be called, which is an expansive exercise. The Authority may kindly issue an official notification and thereafter provide time for such information.
- i. If ADD is levied on imports of Phenol, then the import price will increase from US\$ 550-600 per ton up to US\$ 950 per kg, creating a huge price difference and an increase of prices of Phenol in the domestic market and also in the price of exports which use Phenol as a raw material.
- j. The Preliminary Findings have recommended unwarranted and unreasonable quantum of ADD. The reference form of ADD recommended by the Authority in the Preliminary Findings shall lead to irreparable damages to the users of Phenol in India. The imposition of ADD will kill the users, viz. domestic MSMEs, which are currently providing revenue and employment, despite the pandemic situation.
- k. A duty in the form of reference price is excessively punitive towards importers and users in India. The recommendation of provisional ADD in the Preliminary Findings, based on reference price, is totally against the legitimate interest of the users for the primary reason that the landed price of imports have substantially comedown during the current period on account of reduction in key raw material price which is a crude based product. Raw material prices of the PUC, i.e. Benzene and Propylene, have fallen sharply in the last 3 months which has a bearing on the fixation of duty which is not addressed in the Preliminary Findings.
- l. Certain parameters have been acknowledged by the Authority to be relevant while determining whether or not ADD ought to be recommended in reference price form. Some of these factors are summarized below:
 - i. Reference price is considered more appropriate when the Authority is convinced that there is a need to protect the interests of the downstream industry;
 - ii. Reference price may also be appropriate when the user industry imports specific grades of PUC, which is not available in the country or the Domestic Industry is manufacturing only certain price range of goods but the same cannot be distinguished as a separate product;
 - iii. Reference price is not desirable where major raw materials are liable to significant price fluctuations - if the price of the principal raw material have declined, then the Domestic Industry gets extra protection and exporters/ importers get unnecessarily penalized even though they may not be indulging in dumping or causing injury; and
 - iv. Reference price becomes ineffective in a rising market and overly protective and punitive in a falling market.

Based on the above parameters, reference price would not be the appropriate form of duty in light of the commercial factors pertaining to the PUC and associated market. This is particularly so because in the present case the prices of the PUC have declined in the post-POI period. Further, the decline in price is also accompanied by decline in raw material costs.

- m. Anti-dumping measures against other countries are in form of fixed duties. Inconsistent forms of duty between different sets of subject countries will lead to a difference in the final cost to the importers, practically preventing the present subject countries from selling the PUC to India due to unjustified differential treatment compared to other WTO members. Treating two countries differently to all other sources of imports would be in violation of the axioms underlying the Most Favoured Nation principle.
- n. The Authority in the present investigation has failed to provide any reasons or point to any facts or circumstances that justify the application of reference price form of duty, in deviation from its past practice of applying fixed duty in investigations concerning the subject goods. In the absence of any reasoning provided by the Authority for recommending reference price of duty, the Preliminary Findings also violates the principles of natural justice.
- o. Where a product faces price volatility and/or is known to experience market fluctuations, recommending reference price form of duty by the Authority. Thus, the Authority is requested to rescind the OM dated 18th June, 2019, as even a suggestion that reference price form of duty must be recommended in situations of high price volatility would be in essence in contravention of the statutory Rules. The idea that reference price as a form of duty is incompatible with products that face price volatility is also recognized by other anti-dumping authorities.
- p. Phenol and Acetone are joint products and the cost of these two products is not of any significant difference though the price is a factor of demand and supply.
- q. Benchmark price of Acetone shows the Phenol duties are unrealistically high.
- r. There is material inconsistency between the injury period considered in the application, especially the updated injury information following initiation, and the Preliminary Findings. The initiation had a fixed injury period and POI as 2016-17, 2017-18, April 2018-June 2019 (Annualized), POI-July to December 2019 (Annualized) and this has been adopted in Preliminary Findings also. However, the updated information of dumping and injury supplied by the Applicants after the initiation contains the period 2016-17, 2017-18, 2018-19, April 2019-June 2019 (Annualized), POI July to December 2019 (Annualized), which is inconsistent with the initiation.
- s. The injury analysis period prior to the POI needs to be uniform in order to facilitate an objective analysis. In the present case, a highly unusual timeframe of 15 months has been assumed within the injury analysis period. The Domestic Industry's contention in the Oral Hearing that there was no dumping during the period is to be rejected.
- t. A six-month POI will not give a clear picture of the imports and the injury caused to the domestic market. The annualized data will be distorted, and indices can also be misleading. In previous investigations, the Authority has actively disallowed a 6 month POI.
- u. The contention that import prices were higher in April – June 2019 and therefore, dumping must have been absent, is fallacious and deserves to be rejected outright as the same is a mere assertion not backed by any evidence.
- v. The Preliminary Findings do not show any material injury suffered by the Domestic Industry which warrants interim protection.
- w. COVID-19 has created huge damages to the user industry. ADD at this juncture shall force many user units to close down. Duties are against public interest.
- x. The Authority did not take cognisance of submissions made by IIF and ILMA and recorded in the Preliminary Findings that no submissions had been received.
- y. In the Preliminary Findings, the Authority has not included the name of PPCL as one of the parties which made legal submissions, although some of the issues raised by PPCL in the legal submissions have been included in the Preliminary Findings.
- z. The Preliminary Findings have not addressed the following issues raised by PPCL in their legal submissions:
 - i. Excessive confidentiality;
 - ii. Erroneous methodology used to calculate dumping;
 - iii. The Applicants have not suffered any material injury;
 - iv. Incomprehensible Adjustments made to Injury figures for HOCL;
 - v. Determination on injury margin excluding non-injurious price imports;

- vi. The Applicants have improved with respect to other economic parameters;
- vii. The Applicants face no threat of Material Injury.
- aa. The Authority has incorrectly indexed the values for POI and the annualized POI for several data points, creating a misleading picture of the injury assessment.
- bb. The Authority in its Preliminary Findings must explain the facts or circumstances that it deemed appropriate to issue Preliminary Findings imposing provisional duties. The Rules require circumstances to be exigent. Reference has been made to Article 7.1 of AD Agreement wherein it is provided that provisional duty is to be recommended only if necessary, to prevent injury caused during investigation.
- cc. In the Preliminary Findings, the Authority has failed to provide reasons as to why it considers that possible demand-supply gap may not be a reason for depriving a Domestic Industry from seeking redressal against dumped imports causing injury. By failing to provide reasons for its findings the Authority, a quasi-judicial body, failed to comply with the principles of natural justice.
- dd. Both price of the PUC and the price of the raw materials suffer from a great degree of price volatility. Unlike what is submitted by the Domestic Industry, the decline in prices of the PUC is also accompanied by decline in raw material costs and in fact, there is a corresponding decline in the price of raw materials.
- ee. The objections raised by the Applicants to the participation by certain parties have no legal oral factual substance and the parties here are clearly interested parties. ILMA is an association of laminate manufacturers who are users of Phenol in India and the other companies being represented here are importers/users of the product who are also members of ILMA. Phenol holds about 20-25% share in the cost of the users here who are laminate manufacturers and it is essential for the Authority to consider the views of such users in the course of this investigation.
- ff. The Domestic Industry has failed to substantiate whether importers had any knowledge regarding alleged practices of dumping by exporters. Reference has been made to submissions by importers/users dated 30th May, 2020 where they contested awareness of exporters of alleged dumping.
- gg. Inconsistent forms of duty between different sets of subject countries will lead to a difference in the final cost to the importers practically preventing the present subject countries from selling the PUC to India due to unjustified differential treatment compared to other WTO members.
- hh. The Authority in the present investigation has failed to provide any reasons or point to any facts or circumstances that justify the application of reference price form of duty, in deviation from its past practice of applying fixed duty, and therefore against principles of natural justice.
- ii. An Office Memorandum does not constitute Trade Notice. Hence, Office Memorandum dated 18th June, 2019 does not supersede DGTR Manual. Respondents have referred to the disclaimer in the Manual which stated that trade notices and circulars will prevail over Manual. The language of Office Memorandum is not mandatory and is merely recommendatory. It does not bind the Authority to recommend reference form of duty in a situation where there is a heterogeneous product with large number of PCN and high volatility.
- jj. Phenol faces high price volatility and may lead to a situation where the duty is above the dumping margin.
- kk. The Domestic Industry's claim for retrospective levy is based on erstwhile POI and not actual POI and updated data dated 17th April, 2020 further diminishes the need for the same. Dumping margins are as low as 0-10%. The Authority has rejected retrospective levy in cases where dumping margin was over 40% to 100%.
- ll. Section 9A(3) state that rare and extraordinary situations must exist and present factual circumstances do not justify retrospective levy and will not address alleged injury by Domestic Industry.
- mm. The NIP for the Domestic Industry is to be calculated in INR as production, sale of like article and bill of entry filed by importers are in Indian Rupee and therefore unaffected by exchange rate fluctuations.
- nn. The user industry is mostly MSMEs which constitute only 31% of both India's GDP and employment against 50% and two-thirds respectively at a global level. Increased costs of such inputs will negatively impact the economic recovery and growth of capacities vis-à-vis employment. The falling prices of phenol is due to recession set in since October last year. The impact of COVID-19 will continue on MSMEs for 3 to 5 more years. ADD has achieved its intended purpose and hence imposition is against public interest.

- oo. Reference price as per the Preliminary Findings is US \$989 to \$1,007 per MT. The current import price of Phenol from USA and Thailand ranges between US\$ 650 - 750 per MT. Such a price change is market-driven and is based on the fluctuation of prices in the raw materials. Thus, importers would be required to pay approximately USD 250 per MT - USD 350 per MT ADD on imports of Phenol, which is higher than dumping margin and therefore inconsistent with the Section 9A(1) of the Act, Rule 13 of the Rules and Article 9.3 of the AD Agreement.
- pp. Post-POI data should be considered in the present case.
- qq. If ADD is imposed, the import price will increase, leading to an increase in phenol prices in the domestic market. There would be an increase in the export price of their 2, 4-D series herbicides. Acetone (by product of 2, 4-D series) is not scrape or waste material as pointed out by the Domestic Industry in the Oral Hearing. Acetone has realization value in market. The contention of the Domestic Industry that certain interested parties have no credentials or submissions are not applicable to IIF. Foundry industry contributes to engineering exports. Phenol is a key raw material for Phenolic Resins used to make casting for engineering sector and holds 60-65% share in the cost. ADD will have direct effect on cost of such users. Phenol holds 20-25% share in cost of laminate manufacturers and therefore, views are to be considered.
- rr. IIF and ILMA have filed responses to the extent feasible in prescribed formats. The Authority has been accommodative in including views of “interested parties”.
- ss. The Respondents have requested that the Preliminary Findings be recalled and a new Preliminary Finding be issued as the user is burdened with unreasonable quantum of duties and the duties are against legitimate interests of users since landed price of imports has reduced to \$600 MT due to reduction in raw material price triggered by drop in crude price.
- tt. The form of duty will kill fair competition and users will be forced to shut down operation as they cannot compete in end product with such high cost.
- uu. The difference in 16% in imports at the time of initiation and in the Preliminary Finding should lead to termination of present case.
- vv. The Preliminary Findings failed to address that raw material prices have fallen in last 3 months as a result of crude glut due to COVID-19.
- ww. The Preliminary Findings/interim duties recommended in the present matter when imports fell from 110,557 MT in the base year to 87,410 MT as annualized in the POI which is a fall of almost 21% but ironically the Authority found the present case as a fit case to recommend Preliminary Findings.
- xx. COVID-19 has impacted entire global matrix and an AD measure applied “in the ordinary course of trade” cannot be applied to commodities not traded in ordinary course of trade.
- yy. The investigation should be terminated as the applicants have reported sufficient profits to SEBI and public filings in the stock exchange.
- zz. The Authority exceeds its rights and permissions at the cost of consumers for the gains of applicants. Trade remedial measures are being grossly abused by the Authority to promote private vested interests in the guise of fair trade, thereby violating constitutional guarantee of fair share in development.
- aaa. The fundamental principle underlying any quasi-judicial proceeding is that all evidences and facts are available to affected parties by way of notice to show cause and opportunity of ‘personal hearing’. Reference has been made to Shri Govind Misra alias Misir v. Shri Jyotish Chandra Roy where it was held that the copy of the application must be supplied along with notice. Reference was also made to Baransing Bolwary v. Tura Municipal Board wherein it was held that rights of persons adversely and prejudicially affected is entitled to pre-decisional notice irrespective of the nature of proceeding.
- bbb. Import of commodities from several countries on international pricing and freely available to consumers without any discrimination cannot be termed as dumping or unfair trade.
- ccc. Indian capacity is not upto the mark and ADD is an effort to kill MSMEs.

F.3 Examination by the Authority

27. The Authority has considered the views of the interested parties, as follows-

- a. Regarding the selection of 6 months as POI, the Authority notes that the adoption of 6 months as POI is not inconsistent with the Rules, provided the Applicants substantiate the need for such a time period,

and the same is accepted by the Authority. In this case, the Applicants substantiated the need for considering 6 months as the POI by providing reasons that dumping commenced in this period and the injury to the Domestic Industry intensified during the POI. The Applicants claimed that the six months POI is appropriate in view of the fact that China PR had imposed ADD on subject countries in May, 2019, which has led to a significant drop in import prices from the subject countries to India. The product was exported at a much higher price in the month of April and May, 2019. The inclusion of April and May, 2019 would have implied inclusion of a “period of no dumping”. It would not be appropriate to fix a period for which there is no allegation of dumping.

- b. The arguments submitted by the Applicants were examined by the Authority. It is noted that the purpose of an AD investigation is to examine whether the product has been dumped and whether such dumping has caused material injury to the Domestic Industry. It is further noted that the Rules have been amended vide Notification No. 9/2020-Customs(N.T.) dated 2nd February, 2020, wherein Rule 2(da) and Explanation to Rule 22 have been inserted incorporating the following provisions:

“the period of investigation shall,-

(i) not be more than six months old as on the date of initiation of investigation.

(ii) be for a period of twelve months and for the reasons to be recorded in writing the designated authority may consider a minimum of six months or maximum of eighteen months.”

- c. After examining the arguments of the Applicants, the Authority has considered appropriate for selection of 6 months as POI given the justification provided by the Applicants as mentioned above as it would not be appropriate to fix a period for which there is no allegation of dumping.
- d. As regards consideration of fifteen months as the preceding period, the Authority notes that there is no bar in considering 15 months as the preceding period.
- e. As regards arguments of M/s. Deepak Phenolics Ltd. facing start-up costs and technical problems, it is noted that M/s. Deepak Phenolics Ltd. has fully capitalized its startup cost and the same have not been included in the injury data. Further, the company achieved good capacity utilization even within 2018-19 and hence the cost of production of the company could not have been higher due to possible underutilization of new production facilities.
- f. As regards the argument that the Domestic Industry is approaching various forums and seeking relief, it is noted that it is the prerogative of the industrial enterprise to seek recourse under various statutory or regulatory provisions.
- g. With reference to the argument of demand-supply gap, the Authority considers that a possible gap may not be a reason for depriving the Domestic Industry from seeking redressal against dumped imports causing injury.
- h. As regards the contention of the parties about the form of duty, the Authority notes that as per the Rules, the mandate of the Authority is to determine the existence, degree and effect of the alleged dumping and to recommend the amount of ADD, which, if levied, would be adequate to remove the injury to the Domestic Industry. The Authority notes that the form of duty is determined after evaluating all facts relevant for the present investigation and the form of duty shall depend on such facts. The form of duty is relevant to achieve the intended purpose of any duty and the apprehensions of the users have been examined in this backdrop. The form of duty is fixed in view of facts of each and every case and the form of duty adopted in some other investigation may not be of any relevance to the present investigation. Accordingly, the suitability of the form of the anti-dumping measure is decided by taking into consideration the facts of a case.
- i. The injury analysis has been done for the injury period by comparing annualised figures, and not on a monthly basis. The injury margin, dumping margin and price undercutting have been determined for the POI and for the PUC as a whole.
- j. Regarding interested parties and the participation of those parties in the Oral Hearing which had not registered within the prescribed time limit and/or had not made submissions, the Authority notes that as per Trade Notice No. 11/2018 dated 10th September, 2018 even if a party has not registered and/or not submitted questionnaire responses or legal submissions within the prescribed time-frame, the Authority reserves the right to include any other entity as an interested party if it is in the larger interest of the investigation impacting the findings in any way.

- k. As regards the claim of the Applicants that certain parties participated for the first time in the Oral Hearing, without registering themselves as interested parties, and made significant factual submissions during the course of the Oral Hearing, the Authority notes that submissions of these parties made pursuant to the Oral Hearing have been taken into consideration for the purpose of the present investigation and the Applicants have been given the opportunity to file rejoinders, if any, to these submissions and the same has also been considered by the Authority.
- l. The Authority notes that the Preliminary Findings took cognisance of all submissions made in response to the Authority's direction dated 13th May, 2020.
- m. As regards non-consideration of submissions made by some interested parties in the Preliminary Findings, the Authority notes that a clear direction was issued to all interested parties for serving their submissions to opposing interested parties. It is noted that despite the directions, the submissions were not circulated by some interested parties before the Preliminary Findings. In any case, the Authority has now considered submissions made by all interested parties in the present determination.
- n. As regards the contention of ILMA and IIF about the need to treat them as interested parties, the Authority notes from the submissions of ILMA that ILMA represents the interest of a section of users of Phenol in India and to that extent, the contentions of the Association and its members are considered and addressed.
- o. As regards the contention that ADD in the present case is unwarranted and will affect the users at large when there is a demand-supply gap, the Authority notes that ADD is imposed for a limited purpose of removing injury caused by dumping and no way intends to stop imports as such. The facts also show the demand-supply gap has considerably reduced and imports at fair price shall not be restricted.
- p. As regards the submission of the interested parties that the present case does not warrant issue of Preliminary Findings, the Authority has issued Preliminary Findings after considering the facts and circumstances of the case.
- q. As regards to the argument that post-POI data is to be considered, the Authority notes that there is no legal requirement to consider post-POI data in a fresh investigation. As a matter of practice, the Authority does not consider post-POI data in fresh investigations.
- r. The Authority notes that claims made by the user associations have not been substantiated with sufficient concrete evidence so as to quantify the impact of the duties on their members. The Authority notes that the purpose of imposition of ADD is not to prevent imports into the country, but to address trade distortion caused by unfair practices and remedy the injury caused to the Domestic Industry due to these imports. Therefore, imposition of ADD will in no way prejudice the imports in any manner nor will it affect the availability of the product to consumers. Rather, ADD only re-establishes fair and open competition in the country.
- s. As regards the calculation of NIP, the Authority notes that the determination has been made as per the Rules laid down and the prevailing practice of the Authority.
- t. The Applicants have requested for retrospective imposition of duties in the present investigation on the ground that the PUC is being dumped by subject countries in the present case have also been dumped by subject countries and there is a long history of dumping of the PUC. Further, it has also been contended that imports from subject countries have gone up significantly and subsequent to the imposition of ADD, the dumping shifts from one source to another. Further, the Applicants have also contended huge dumping within a short period of six months. The Domestic Industry has also alleged that dumping has caused adverse effect on the domestic industry. Taking into consideration the contentions by the Applicants and the Respondents, the Authority notes that there is insufficient evidence and justification to warrant retrospective levy of ADD.
- u. As regards the contention that the recommendation of reference price of duty is a deviation from past practice of applying fixed duty on the subject goods, the Authority notes that the very first recommendation for imposition of ADD on the product was in the form of reference price wherein the Authority had issued final findings No. 14/04/2002-DGAD dated 13th February, 2003 and the Customs Authorities issued notification No.47/2003 dated 24th March, 2003.
- v. The Authority has considered phenol and acetone as joint products and has apportioned the joint cost incurred upto the point of separation between the two products on the basis of respective turnover consistent with the practice adopted by the Authority in this regard.

- w. As regards the argument that Indian capacities being not upto the mark, and Covid-19 impacting the global matrix, it is noted that the same cannot justify dumping of the product in India.
- x. As regards the argument regarding making available evidences and facts to all interested parties, it is noted that during the investigation the Authority had sent an e-mail to all interested parties requesting them to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic. E-mail addresses of all interested parties were made available to all. Further, a list of all interested parties, along with their e-mail addresses is available on DGTR's website. As regards personal hearing, the same is granted on request, which was not received from any of the interested parties in the present case. However, in accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 9th October, 2020. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
- y. The fact of dumping has already been established in the relevant paragraphs of these findings after due verification of the information.

G. NORMAL VALUE, EXPORT PRICE AND DETERMINATION OF DUMPING MARGIN

G.1. Submissions of the Domestic Industry

28. The following submissions have been made by the Domestic Industry with regard to the normal value, export price and dumping margin:
- a. For determining Normal Value, the Applicants have considered ICIS bulletin for monthly prices in South East Asia for Thailand and US Gulf for USA. Relevant adjustments have been made to CFR prices to determine ex-factory prices.
 - b. The Applicants have adjusted the CIF price for ocean freight, marine insurance, commission, port expenses and inland freight to determine the export price.
 - c. The dumping margin is positive and significant for both the subject countries.
 - d. The responding exporter has not raised any argument in its written submissions regarding "particular market situation" or "any other aspects of normal value."
 - e. The questionnaire responses filed by PTT Phenol Company is deficient. Mitsui India Pvt. Ltd, a related importer as stated in Preliminary Findings has not filed the non-confidential version of Part IV of the questionnaire response nor has it filed any separate response. Unrelated companies namely, Tradechem International FZE (Tradechem) and Riveredge International Pte. Ltd. (Riveredge) have not filed questionnaire responses. Considering paragraphs 12.17, 12.18, 12.20, 12.20(ii) and (iv) of the Manual of Operating Practices, the response of the exporter must be rejected since the unrelated trading companies have not filed responses. The share of exports of these unrelated exporters is to be examined and if their share is above 30%, the responding exporter is to be considered non-cooperative.
 - f. There is a significant difference in prices of different export transactions with time period and it would not be appropriate to determine weighted average normal value and compare it with the weighted average export price. There is no consistent pattern in export price, unlike in the case of normal value. Therefore, a comparison of weighted average normal value to weighted average export price will significantly distort the dumping margin. Hence, it would be most appropriate to determine weighted average normal value and compare with individual (transaction/transaction basis) export price.
 - g. The raw material price of the responding exporter cannot be accepted as it does not reflect the actual price in the market. The exporter has intentionally refrained from providing adequate information as to whether raw materials for production has been purchased from a related supplier or captively produced. The information as to whether the procured raw material prices are reflective and representative of a fair market price have also been kept confidential. The Domestic Industry has relied upon the ruling by Ministry of Commerce of People's Republic of China on anti-dumping investigation of imported phenol from United States, European Union, South Korea, Japan and Thailand involving the same exporter wherein it was found that the company's related purchase price was lower than the market average price, therefore, not credible and South East Asian open market price was considered as related purchase price.
 - h. Adjustments regarding price comparability have been kept confidential by the exporter in the questionnaire response.
 - i. The international price of raw material is to be considered for computation of normal value. The Authority may direct the responding exporter to provide adequate information regarding valuation of raw material in the non-confidential version; in the absence of which, the best available information is to be relied upon.

- j. None of the exporters from USA responded and therefore, the normal value calculated in the Preliminary Findings is to be confirmed. Normal value for USA to be considered while keeping in mind the findings of the Chinese Authority since exporters in USA had responded to that investigation.
- k. Normal value of responding Thai exporter is to be considered based on price prevailing in Thailand.
- l. ICIS reports are acceptable material and reliable for normal value. CESTAT case referred to by the interested parties is not relevant in the present case as in the said case, the prices were rejected since it was based on one figure of a related product mentioned in an article. ICIS LOR is a monthly report and the same has been relied upon to prima facie establish the existence of dumping. Further, the Authority has repeatedly relied on prices published in international journals in the past for calculation of normal value.
- m. Price adjustments in export price have been made as per experience, conservative estimates and established practice of the Authority. The Domestic Industry has provided best available information.
- n. The dumping margin is required to be calculated month-wise and separately for bulk and packed.
- o. China has imposed ADD on imports of subject goods from subject countries into China. The producers are not only dumping in India but also in other countries. The dumping margin determined by the Chinese authorities based on exporter responses is significant. In the present case, even though none of the US producers have filed responses, the dumping margin (10-20%) is still lower than that of China.

G.2. Submissions of other interested parties

29. The following submissions have been made by the exporter/ producer/ other interested parties with regard to normal value, export price and dumping margin:
- a. Exports from Thailand to India are only bulk, but domestic sales are in both bulk and packed. The Authority is requested to make necessary adjustments to enable fair comparison.
 - b. The Applicants have failed to provide any legitimate calculation or rationale with respect to adjustments made when arriving at normal value for Thailand.
 - c. The Applicants have not specified the adjustments undertaken to determine the ex-factory price for Normal Value from the ICIS Reports. The validity of the ICIS Reports relied upon is unclear. It is not evident whether the ICIS Reports calculates prices in the domestic markets of the subject countries. If ICIS Reports specify local prices domestic prices, then Applicants have wrongly adjusted Ocean Freight for calculation. If the ICIS Reports do not specify local prices, then the Authority cannot rely on such a basis.
 - d. The adjustments with respect to ocean freight, marine insurance, inland freight have been sought in order to calculate export prices at ex-factory level. However, the Applicants have failed to provide adequate information and rationale regarding adjustments made in the export price and hence dumping shown in frivolous.
 - e. In the original application, the export price of packed Phenol was wrongly shown as less than export price of bulk Phenol, whereas in the updated application, separate prices have not been mentioned. The accuracy and reliability of the calculations and evidences, therefore, need to be checked by the Authority.
 - f. Separate dumping margins have been calculated for bulk and packed Phenol. However, no separated normal value has been calculated. Moreover, separate export prices have only been calculated in the original application. It is unclear how such separate dumping margins have been created. The Authority may determine the individual margins of dumping based on the responses filed by the exporters.
 - g. The prices of South East Asia have been adopted for Thailand which is unsustainable as the normal value is country-specific and general prices purportedly prevailing in the entire region which include a number of other countries cannot be adopted as the normal value of a specific country. Similarly, prices prevailing in the US Gulf cannot be assumed as the normal value specific to USA. The decision in Dye Stuff Manufacturers Association of India vs. Government of India is relied upon wherein it was held that acceptable facts for normal value determination have to be authentic and relevant to the subject country and the POI.
 - h. Prices in publications cannot form the basis for constructing normal value as they are always based on certain assumptions and presumptions and cannot be considered to correctly reflect the actual prices of producers and exporters in the subject countries.
 - i. Exporters did not at any point request the Authority to disregard their domestic price for the normal value calculation.

- j. On the issue of the related importer in India, PPCL has submitted that the sales made to Mitsui India account for only ***% of the sales made to India during the POI. Further, it is also crucial to bear in mind that the price at which the goods were sold to the related importer is within a ***% range of the price at which goods were sold to various unrelated importers, whereby it cannot be said that this price is unreliable. In any event, the Authority has considered the channel through the related importer to be non-cooperative and the lowest representative export price has been considered for calculating the dumping margin of the non-cooperative channel. In light of the above, the Domestic Industry's allegations ought to be rejected since the non-participation of Mitsui India has had no beneficial impact for the exporters, and the appropriate adverse effects of non-cooperation from Mitsui India have already been incorporated into the dumping margin calculation.
- k. As regards the unrelated exporters, it is submitted that a majority of PPCL's unrelated exporters have participated.
- l. The responding producer PPCL has provided all the relevant details with respect to raw material prices to the Authority in the confidential version of the questionnaire response and has also cooperated with the Authority with respect to any follow up queries on the questionnaire response.
- m. The Domestic Industry has failed to meet the dual criteria set out under Annexure I of the Rules and Article 2.4.2 of the Antidumping Agreement that allows normal value established on a weighted average basis may be compared to the prices of the individual export transactions. The Domestic Industry's suggestion of determining weighted average normal value and comparing with individual export price can be adopted only when:
 1. The Authority finds that the pattern of export prices differs significantly among different purchasers, regions or time periods; and
 2. An explanation is provided as to why such differences cannot be taken into account appropriately by the use of weighted-average -to-weighted average or transaction-to-transaction comparison.
- n. Dumping margin to be calculated month-wise and separately for bulk and packed if it has been done so for price undercutting.
- o. There is no import restriction or unfair trade restriction in Thailand. The license restriction is only for occupational health and safety.
- p. Arguments of interested parties regarding methodology used to calculate dumping has not been taken into consideration.
- q. Normal value should be published in currency of the exporter as it is specific to the exporter and specific to country of home market of the exporter.
- r. Notification of recommendation without incorporation of 'dumping margin established' during POI is violation of obligations to restrict collection of duty to limit of established dumping margin.

G.3. Examination by the Authority

30. Under section 9A (1) (c) of the Act, "normal value" in relation to an article, means:

- i. *the comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or*
- ii. *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:*
 - (a) *comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);*
 - (b) *Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article*

is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

31. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have co-operated in this investigation by filing the prescribed questionnaire responses:
 - i. PTT Phenol Company Limited (PPCL), Thailand;
 - ii. M/s. Mitsui & Co (Asia Pacific) Pte. Ltd. (MAP), Singapore;
 - iii. M/s. Mitsui & Co. Ltd. (MBK), Japan;
 - iv. M/s. Kempar Energy Pte. Ltd. (Kempar), Singapore.
32. It is noted that PPCL is a producer and exporter, based in Thailand. During the POI, PPCL sold its products directly to customers in India and also to all the other three parties, who are trading companies which have sold the products to customers in India. MAP, MBK and Kempar were not involved in the domestic sales of the PUC in the Thailand market. The Authority notes that PPCL and the Domestic Industry have requested for due adjustments to be made due to the differences in the bulk and packed forms of Phenol. For the purpose of Preliminary Findings, the Authority had considered all domestic sales of PPCL as bulk/loose, pending further examination during the course of the investigation. Subsequently, in view of the averments made, and desk verification, the margin comparison for the final determination has been conducted on a bulk-to-bulk basis for both injury and dumping margins, as all exports to India had been made on bulk basis.
33. There is no questionnaire response from any producer in USA. Accordingly, the normal value and export price for all the producers/exporters from the subject countries have been determined as below.
34. With regard to the argument about normal value being exporter specific, the Authority notes that the details of the normal value, as calculated in the Preliminary Findings, were shared with the exporters concerned, and the comments received thereafter have been incorporated in the disclosure statement.

G.4 Determination of normal value

Thailand

Normal value for PPCL, Thailand

35. From the data filed by the cooperating producer and exporter from Thailand i.e., PPCL, it is noted that during the POI, domestic sales have been made to unaffiliated customers. The questionnaire response has been examined and it is noted that the respondent has provided domestic sales price details of the subject goods in respective Appendices with proper costing data for mandatory tests. As regards normal value, the Authority notes that ***MT was sold in the domestic market at a price of US\$ ***/MT. The Authority notes that the domestic sales are in sufficient volumes when compared with volume of exports to India. Therefore, domestic sales have been considered for the purpose of determining the normal value. The Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to cost of production of subject goods. In case profit-making transactions are more than 80% then the Authority considers all the transactions in the domestic market for the determination of the normal value. Where the profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value. Based on the ordinary course of trade test, profitable domestic sales have been taken into account for determination of normal value, since the profitable sales were less than 80% by volume. Further, PPCL has claimed Inland Freight, Storage Cost, Credit Cost, Surveyor Cost and other related adjustments as post factory expenses. Claims made by PPCL have been examined, and after desk verification, the response filed has been accepted. It is noted that PPCL had also claimed an adjustment in its normal value on account of the differences between bulk and packed, which was provisionally accepted in the preliminary finding. However, since the dumping margin and injury margin comparison has now been made only for bulk products, the Authority has removed this adjustment from the Normal Value calculation. With regard to the claims made against PPCL regarding raw material procurement price from related parties, the Authority notes that PPCL has disclosed all the relevant information, including related party purchases of raw material and utilities specified in Appendices 6 and 11 of the questionnaire response.
 36. Normal Value of PPCL so determined is mentioned in the dumping margin table below.
- ##### **Normal Value for Non-Cooperative exporters in Thailand**
37. The Authority notes that no other exporter/producer from Thailand has responded to the Authority in the present investigation. It is also noted from a perusal of import information received from DGCI&S that all

imports of subject goods are in bulk/loose form only, and hence no separate Normal Value determination has been made for packed/drum Phenol. For all the non-cooperative exporters/producers in Thailand, the Authority determines the normal value on the basis of facts available and the same is mentioned in the dumping margin table below.

Normal value for all producers and exporters in USA

38. The Authority notes that no exporter/producer from USA has filed questionnaire response in the present investigation. It may be noted that the Applicant had determined the normal value in USA on the basis of ICIS reports. None of the interested parties have provided any other information with regard to normal value in USA, nor have provided any evidence to show that this evidence is not appropriate. It is also noted from a perusal of import information received from DGCI&S that all imports of subject goods are in bulk/loose form only, and hence no separate Normal Value determination has been made for packed/drum Phenol. The normal value in US has, therefore, been determined on the basis of facts available i.e. prices reported in ICIS reports. The Normal Value so determined is mentioned in the dumping margin table below.

G.5. Determination of export price

Export Price for PPCL, Thailand

39. In their questionnaire response, PPCL has declared that the company has exported the product to India directly as well as through unrelated foreign traders namely Mitsui & Co., Ltd (“MBK”), Mitsui & Co (Asia Pacific) Pte Ltd. (“MAP”), Kempar Energy Pte. Ltd. (“Kempar”), Tradechem International FZE (“Tradechem”) and Riveredge International PTE Ltd (Riveredge). The Authority notes that some of the exports were made by MAP through a related importer namely Mitsui & Co. India Private Limited, who has not filed a separate questionnaire response. The export price at which subject goods have been sold by PPCL to MAP, MBK and Kempar; and the price at which MAP, MBK and Kempar have exported to India have been examined, after taking into account the associated expenses incurred by MAP, MBK and Kempar. The Authority notes that PPCL has exported ***MT of the PUC to India during the POI, and out of ***MT, ***MT has been exported to India through the cooperating channel of trade.
40. It is noted that MAP, MBK and Kempar have exported the product at a price above costs, after taking into account the expenses incurred by them. There is no evidence of any compensatory arrangement, nor any other reason to justify rejection of producer’s price and adoption of trader’s price. All the trade channels of exports to India are found to be profitable, therefore, the Authority has considered the prices of PPCL, the producer, to determine the ex-factory export price. Further, the producer has claimed Shipping Cost, Surveyor Cost, Handling Charges, Storage Cost, Commission, Credit Cost and Bank Charges as post factory expenses for making exports to India. The claims made by PPCL have been accepted after examining the information submitted, and after desk verification.
41. The Authority notes that two traders, namely, Tradechem International FZE, and Riveredge have not submitted the exporters questionnaire response containing the requisite information for the said *** MT quantity exported to India during the POI. In accordance with provisions of Explanation (b) to sub-section (1) and sub-section (6A) of Section 9A of the Customs Tariff Act, 1975, and Rule 6(8) of the Rules, the export price for ***MT for which the complete chain of responses containing the requisite necessary information has not been submitted to the Authority, has been determined based on facts available. The Net Export Price for PPCL has been determined on a weighted average basis after taking into account all exporting channels as mentioned above (cooperating as well as non-cooperating) and weighted average Net Export Price, as shown in the dumping margin table below.

Non-cooperative Exporters from Thailand

42. The export price for the non-responding producers/exporters from Thailand has been determined on the basis of facts available taking into account the export transactions of the responding exporter.

Export Price for USA

43. None of the exporters/producers from USA have filed questionnaire response. Due to this non-cooperation, the Authority has determined the export price for all the exporters from USA based on the imports reported in the DGCI&S, and adjustments as per facts available under 6(8) of the Rules.

G.6 Determination of dumping margin

44. Considering the normal value and export price for subject goods, the dumping margins for the subject goods from subject countries have been determined as follows:

Producer	Normal Value/ CNV	Export Price	Dumping Margin		
	(US\$/MT)	(US\$/MT)	((US\$/MT)	(%)	(Range)

PPCL, Thailand	***	***	***	***	10-20
Other exporters from Thailand	***	***	***	***	20-30
All producers/ exporters from USA	***	***	***	***	10-20

H. INJURY ASSESSMENT AND CAUSAL LINK

H.1. Submissions of the Domestic Industry

45. The following submissions have been made by the Domestic Industry with regard to the injury and causal link:

- a. Due to the imposition of ADD by China, countries have shifted their exports to India.
- b. In view of the fact that prices of Phenol declined very substantially over the proposed POI despite no or insignificant decline in cost on account of raw material, month-wise analysis during the POI is requested.
- c. Demand for the PUC has increased over the injury period.
- d. The imports from the subject countries, in absolute terms as well as in relation to production and consumption, first declined and thereafter, increased in the POI.
- e. Imports are undercutting the prices of the Domestic Industry and are depressing the prices of the Domestic Industry.
- f. Production, capacity, and capacity utilization of the Domestic Industry have increased with commencement of production by M/s. Deepak Phenolics Ltd.
- g. The inventories of the Domestic Industry are piling up.
- h. The profitability declined severely over the injury period and the Domestic Industry was in losses during the POI.
- i. The PBIT and ROCE were negligible during the POI.
- j. Imports are impacting the ability of Domestic Industry to raise capital investment.
- k. Imports from subject countries pose a threat of material injury to the Domestic Industry.
- l. Exporters in the subject countries have excess and freely disposable capacities and also maintain high export orientation and the producers are dependent on exports to maintain revenues and turnover of their companies. There is a global surplus of capacities with capacity expansions in South Africa, China PR and Thailand.
- m. Thailand has imposed restrictions on import of the PUC, thereby closing the market for global exporters, making India a lucrative market.
- n. Factors other than dumping are not causing injury to the Domestic Industry.
- o. Price undercutting being caused by the dumped imports has led to the decline in selling prices of the Domestic Industry.
- p. Despite existence of sufficient demand, the Applicants have to undertake exports at losses.
- q. The Applicant submitted that it should be considered that there is no demand supply gap at present as Deepak Phenolics has started production, thereby making available significant material in the domestic market. Imports of about 80,000-100,000 MT is being made under advance license, which will be continued by consumers. Imports under advance licence is exempted from ADD and basic customs duties. The net demand is 2.5-2.6 lacs which the Domestic Industry is well equipped to meet.
- r. The Applicants submitted that the decline in raw material prices is not corresponding to the trend of import price decline. The injury was so significant that one of the Applicants were forced to export even below the variable cost. The decline in prices has gone even below raw material costs. The Domestic Industry was forced to reduce its prices due to continued price pressures by imports.
- s. Since HOCL suffered injury in 2016-17 and 2017-18 due to other factors than dumped imports, in view of the rules which provide for segregation of such injury, the Applicants considered the unit cost of production, profit/loss, cash flow and return on investment of HOCL in 2016-17 and 2017-18 by considering capacity utilization at 80%. However, for the sake of completeness, the Domestic Industry has provided information with regard to actual profit/loss suffered by the domestic industry during the relevant period. The method of treatment of expenses of HOCL during the two year partial plant shutdown period also is to be considered.

- t. The Applicants submitted that price undercutting and injury margin should be determined only considering those import transactions whose landed price of imports is below selling price and NIP of the Domestic Industry. The concern is against injurious imports and not against non-injurious imports. The WTO Report in European Communities – Anti-Dumping Duties on Malleable Cast iron Tube or Pipe Fittings from Brazil has been relied upon by the Applicants for the same. Reference has also been made to Kothari Sugars & Chemicals Limited v. Designated Authority wherein transactions above NIP was allowed for calculation of injury margin.
- u. In response to the argument of the Respondents that the Authority must rely on unadjusted data of the Domestic Industry to determine injury, the Applicants submitted that they have objection in relying on unadjusted data to determine injury and segregating injury caused due to HOCL to refute the claims of other interested parties.
- v. In response to the argument that separate injury margin is to be determined for bulk and packed phenol and therefore, the Domestic Industry is to provide necessary cost information to determine NIP separately, the Applicants have submitted that separate information including costing information for bulk and packed phenol have been provided.
- w. In response to the argument that the data in the Preliminary Findings have been incorrectly indexed, the Applicants have submitted that the indexation has been done as per the established practice of the Authority. Further, the Applicants also submitted that they have not claimed injury with respect to employment, wages and productivity.
- x. In response to the argument that there is no volume injury to the Domestic Industry and that its capacity, production and sales increased, the Applicants submitted that since Deepak Phenolics commenced production during the POI, these parameters have improved compared to previous years. The Domestic Industry is selling the product at sub-optimal prices in order to maintain its volumes and sustain in the market.
- y. In response to the argument that imports in relation to production and demand declined, the Applicants submitted that since the establishment of a new large scale facility by Deepak Phenolics, significant material have been made available on the market thereby resulting in some fall in imports which is its natural consequence, while previously imports were necessitated due to demand-supply gap in the country. However, imports from subject countries has increased in relation to total imports.
- z. In response to the argument that the import prices from subject countries increased and domestic prices decreased more than the cost of sales, the Applicants submitted that the landed price of the imports was below the cost of production in 2016-17 and 2017-18 while the same was much above cost of production in April, 2018 - June 2019. However, the landed price of imports declined below cost of production in the POI. The landed price of imports was below the cost of Domestic Industry which forced it to reduce its prices more than cost decline leading to price depression.
- aa. In response to the argument that factors other than dumping is causing injury and that the Authority overlooked non-attributive factors, the Applicants have submitted that the legal requirement is for “a” causal relationship and not “the” causal link between dumped imports and injury.
- bb. In response to the argument that Deepak Phenolics suffered injury due to a 14-day plant shutdown, the Applicants have submitted that the planned shutdown was part of the business activity and since the customers preferred dumped imports, DPL was forced to shutdown earlier due to the presence of dumped imports. Further, a 14-day plant shut down cannot refute the claim of material injury to the Domestic Industry for the entire POI.
- cc. In response to the arguments regarding injury to HOCL caused due to other factors than dumped imports, the Applicants have submitted that the injury claimed is for the POI while the reports referred to by the interested parties is that of 2018-19. The findings are based on 2016-17 data.
- dd. As regards the argument of feed stock prices higher in India, the Applicants have relied upon M/s. Nippon Zeon Co. Ltd., Japan & Others v. Designated Authority, wherein Hon’ble CESTAT has taken the view that while imposing anti-dumping duty the position that has to be considered is not in the context of ideal conditions but in the specific circumstances of the domestic industry.
- ee. As regards plant shut downs and consequent decline in production, it was submitted that no injury was claimed injury due to decline in production. Further, the company is not facing any such issues in the period of investigation as is evident from annual report for the POI. In response to the argument of the Respondents that downturn of automotive sector in POI led to decline in demand for foundry resin and that the injury caused by demand-supply fluctuations is not attributable to imports, the Applicants have submitted that decline in demand during POI, has made the Domestic Industry vulnerable. Imports from subject country at dumped prices have aggravated the injury to the already vulnerable domestic industry.

- ff. In response to the argument that the petitioner companies' performance has improved in 2018-19 and POI, the Applicants have submitted that the statements in the annual report do not provide any guidance with regard to deterioration in performance over the injury period of an anti-dumping case since the same is being used by interested parties to show injury due to other factors and that there is no injury at the same time. Public statements in the Annual Report do not alter the conclusion that dumping of the product has contributed to injury to the Domestic Industry.
- gg. In response to the arguments of the Respondents that non-injurious transactions cannot be excluded, the Applicants have submitted that opposing parties have not objected the interpretation of the Domestic Industry and rather conceded that it was one of the methods to assess effect of price undercutting.
- hh. In response to the argument that 22% ROCE cannot be accepted, the Applicants have submitted that the Authority has a practice to allow 22% return in all situations and, therefore, principles of equity demand that the same is applied to all situations.
- ii. In response to the argument that import prices from subject countries is higher than other countries, the Applicants have submitted that imports from other countries are either attracting ADD or at de-minimus levels or are at higher prices. As regards imports from Saudi Arabia, while the imports are more than de-minimus levels, the pattern of imports over the injury period and proposed POI shows that (a) there is significant decline in imports, (b) during POI, imports occurred only in one month. It cannot, therefore, be said that the imports from other countries have also caused injury to the Domestic Industry.
- jj. The imports from subject countries are entering the Indian market below cost, which has resulted in price depression and as regards the profitability, the Domestic Industry is suffering losses in the POI due to price depression caused by the dumped imports. While interest and depreciation has increased due to the newly set up DPL plant, the Domestic Industry is unable to earn reasonable return on investment when DPL is excluded.
- kk. Volume of imports in relation to total imports have been examined by the Authority consistently in all its findings.
- ll. In response to the argument that the safeguard application previously filed by the Domestic Industry is contradictory on parameters of profitability, the Applicants have submitted that the POI is different and in the instant case 2018-19 is not included due to absence of dumped imports. In the safeguard investigation, the Applicant claimed increase in imports from all sources which was causing injury to the Domestic Industry. Dumped imports from US and Thailand and increase in imports from all sources may impact the domestic industry differently.
- mm. In response to the argument that there is no causal link between increase in imports and profitability of the Domestic Industry, the Applicants have submitted that injury is due to low priced imports causing price depression and resulting in losses and low return on investments.
- nn. In response to the argument on profitability, the Applicants submitted that profits declined in 2017-18 because the landed price of imports were below cost. The profits increased because in the entire injury period, the landed price of imports were above cost only in the period Apr 18-June 19. The landed price of imports again declined below the cost in the POI and resultantly, the Domestic Industry suffered losses.

H.2. Submissions of other interested parties

- 46. The following submissions have been made by the producer/ exporter/ other interested parties with regard to Injury and causal link are as follows:
 - a. No reliable evidence has been provided for claim of 12,009 MT of the goods imported in April-May 2019, which were lying in stock in the POI.
 - b. Domestic Industry had made obscure and inaccurate submissions regarding the import volume in the Safeguard investigation against imports of Phenol into India.
 - c. The facts available on record reveal that the Applicants have exaggerated the increased import of the subject goods and deliberately invented injury to the Domestic Industry. Any injury allegedly suffered by the Domestic Industry has been caused by factors other than imports from subject countries. During the Oral Hearing, the Domestic Industry had admitted to the fact that HOCL was facing operational constraints during the injury analysis period which was not attributable to dumping and it was requested that such injury was to be adjusted while examining injury to the Domestic Industry in India.
 - d. The consistent practice of the Authority is to take all import transactions from a country into account for determination of price undercutting, not merely the positive transactions only. As per the submission of Domestic Industry, even if there is one single positive undercutting transaction, the determination should be positive based on the transaction. The Domestic Industry has relied on the WTO Panel Report dated

14th November, 2001 in the case of European Communities – ADD on Malleable Cast Iron Tube or Pipe Fittings from Brazil. The claim of the Domestic Industry is incorrect. The European Union did not rely only on undercutting import transactions for determining price undercutting. They calculated the consequence of disregarding non-undercutting sales as well. The difference between the two calculations was marginal and did not affect the determination materially. The same might not be the case in the current investigation and will lead to highly distorted results.

- e. The Domestic Industry has also stated that the injury margin should also be determined by taking into account only the injurious transactions, i.e. where the landed value is lower than the NIP. The Domestic Industry has submitted that EU, which also follows the principle of lesser duty rule, determines injury margin after excluding non-injurious export transactions. Since the practice has not been challenged in the WTO, the Authority should also consider only those transactions that are below NIP. The Domestic Industry has made reference to the Hon'ble Tribunal's order in the matter of Kothari Sugars & Chemicals Ltd. Vs. Designated Authority. Just because the practice has not been challenged in the WTO yet, does not automatically make the practice valid. ADD can be levied based on the injury margin if injury margin is lower than the dumping margin. If the Domestic Industry's argument is accepted, there would not be any cases where injury margin would be negative resulting in nil duty for the exporter. Any unwarranted exclusions of transactions from injury margin will directly have an impact on the quantum of ADD. The EU had clarified that the undercutting margin determined by excluding non-injurious imports was also 'one of the methodologies' to assess the effect of price undercutting. The Domestic Industry has incorrectly relied on the decision of Hon'ble Tribunal in Kothari Sugars & Chemicals Ltd. vs. Designated Authority to substantiate its claim. The Hon'ble Tribunal in this case did not lay down any blanket legal proposition or rule that import transactions that are above NIP should be excluded for the purpose of injury margin calculation.
- f. There is no increase in imports from subject countries in absolute terms or relative to consumption or production in India. In the face of the huge increase in production by the Domestic Industry, the subject imports are insignificant in nature. The Domestic Industry has claimed that the USA, EU, Korea RP, Japan and Thailand diverted their exports from China PR to India after the imposition of a provisional ADD by China PR in May 2019. However, data indicates that imports have reduced after May 2019. The imposition of a provisional ADD by China PR has clearly not affected the imports coming into India. Further, the determination made by the Chinese investigating authority pertains to a different POI and therefore, the same cannot be relied upon for making any determination in the present investigation.
- g. Price undercutting from the subject imports was negative for April, 2018-June 19(A) and POI(A) in the case of imports from the USA, which negates any claim made on price effect. Further, the import price has moved in consonance with the cost of sales of the Domestic Industry.
- h. The domestic selling price has moved commensurately with the shift in cost of sales. No claim of price suppression or depression can be made by the Domestic Industry on this count.
- i. An analysis of relevant economic parameters shows that the Domestic Industry has shown improvement in the performance in almost all relevant economic parameters including capacity, production, sales and market share as seen from the updated application, Annual Reports and Preliminary Findings.
- j. The Domestic Industry has rapidly been increasing its market share over the injury period, despite the rise in demand.
- k. Deepak Phenolics Ltd. alone holds around 55% of the share in a market. It is obvious that the share of subject imports in the market would be insignificant in nature.
- l. The Domestic Industry has faced no injury in terms of employees, wages and productivity per day.
- m. The profitability of the Domestic Industry in the POI is not affected by the domestic sales, but by the high interest and depreciation costs incurred by it.
- n. Injury, if any, caused to Deepak Phenolics Ltd. is due to start-up difficulties resulting from delay in commencement of commercial production and unfair pricing policy.
- o. There is no mention of 'dumped imports' in the report presented by Deepak Phenolics Ltd. in its investor communication.
- p. The absence of co-relation between import volume and profit parameter of the Domestic Industry shows that there is no causal link between imports and injury to the Domestic Industry.
- q. There are strong prima facie reasons to believe that the data furnished by the Applicants is not validated with the actuals on the published final accounts in the terms of the Balance Sheet in order to validate the claim on NIP, injury and alleged dumping.

- r. One of the producers in India is known to have been exporting its Phenol at price below US\$ 750 in recent times and yet claims injury from imports into India on a comparable or similar price added with the protection of Basic Customs Duty.
- s. There must be a transparent determination of NIP based on at least one key raw-material pricing, i.e. Benzene. The present methodology employed by the Applicants skews the NIP in favour of the domestic producers and destructs the consumer industries. International prices of Benzene and Polypropylene are volatile and are falling at all time low levels.
- t. The methodology employed by the Authority by way of a reference price converted in US\$ or fixed ADD are both inappropriate distortions of Rule 17(1)(b).
- u. The Applicant has not provided supporting evidence with regard to the free disposable capacities in exporting countries.
- v. The Annual Report of M/s. Hindustan Organics Chemicals Ltd. indicates high interest, depreciation and employee wages cost as cause of injury. The Report has acknowledged that the company achieved record production for Phenol and that feed stock prices are higher in India compared to other exporting countries and the Indian producers are at competitive disadvantages due to higher overhead costs.
- w. The consistent practice of the Authority is to analyse the Post-POI data for threat of material injury claims. However, latest information of M/s. Deepak Phenolics Ltd. shows no threat of material injury. The results for the last quarter of 2019-20 as per the Audited Financial Report for M/s. Deepak Nitrite Ltd. show 33% rise in PBIT from 40.5 Crores to 63.60 Crores. Year on year comparison shows PBIT and Revenue have become almost double in 2019-20 as compared to 2018-19. For M/s. Deepak Phenolics Ltd., the overall sales revenue of the company increased by 23% from Q2 to Q3 and overall profit has increased significantly from Q2 to Q4 showing no threat of Material injury. Recent import data also shows a declining trend in the import volumes for 2018-19 compared to annualized figures for April, 2019 to January, 2020. It is mandatory for the Authority to consider existence of all the factors enumerated for the purposes of concluding threat of material injury/likelihood.
- x. The method of adjustment with regard to injury considering Hindustan Organics Chemicals Ltd.'s capacity utilization at 80%, provided by the Applicants is non-transparent and appears to be deliberately obfuscated to prevent the interested parties from commenting meaningfully.
- y. The Authority has also noted the problem faced by Hindustan Organics Chemicals Ltd. on account of availability of raw material in an anti-dumping investigation on imports of Acetone from Japan and Thailand.
- z. If the only remaining Domestic Industry member is Deepak Phenolics Ltd., then it should have made an allegation on material retardation rather than material injury.
- aa. No reason has been provided for adjusting the data for only 2016-17 and 2017-18 as opposed to the entire injury period. To show inflated injury, the Applicants have tried to present combined figures and taken a base year of 2016-17 even though they have readily acknowledged that the injury suffered by other Domestic Industry members is on account of extraneous factors.
- bb. While the volume of imports from Thailand has decreased, the profitability of the Domestic Industry has also decreased. The volume of imports from Thailand has not adversely affected the profitability of the Applicants.
- cc. Owing to the strong sales and profitability performance, the claims with regards to inventories are unsubstantiated.
- dd. A mandatory BIS certification requirement, as notified by the Government, will act as a deterrence with respect to increased imports in the foreseeable future.
- ee. The Applicants experienced their largest decline in profitability in April-June, 2019, a period in which the price undercutting for Thailand was negative. Thus, no evidence that price undercutting from Thailand can be linked to the Applicants' significant drop in profits.
- ff. The Authority should scrutinize the poor performance of M/s. Hindustan Organics Chemicals Ltd. and find that any alleged injury suffered by M/s. Hindustan Organics Chemicals Ltd. is a consequence of their own continued inefficiencies and not attributable to the subject imports.
- gg. There is a break in causal link between alleged undercutting and performance of the Domestic Industry. Also, the Applicants have failed to provide any reasoning beyond mere conjecture that the import restrictions from Thailand will lead to more imports being directed to India.

- hh. Continued injury of the Indian industry despite the presence of duties, indicates that any injury suffered by the Domestic Industry must be due to extraneous factors.
- ii. The reason for the increase of imports from subject countries from 2016 to 2019 is not dumping, but the growth of the Indian market demands following development of downstream industry.
- jj. The facts of the case as emerged in the Preliminary Findings show that the case warranted no duty as the gap between NIP and Landed price is very negligible and any material injury has been totally absent. But the Authority opted benchmark duty so that the price of Phenol at the time of import is fixed at a very high level which is highly arbitrary and has gone against the fair market principles of demand and supply. The Authority is requested to review the form of duty adopted in the Preliminary Findings. The users are still compelled to import the PUC as the capacity in India falls significantly short of demand and benchmark duty is highly inappropriate in such a scenario.
- kk. DPL is the key producer of Phenol in India now and though the company started production of Phenol in the last year, it has already reached high levels of profits. HOCL had historically been suffering losses for its inherent issues and been added to the present case to show some inferior financial situation, which is not the real situation of Phenol industry in India. Thus, none of the injury parameters shows any material having been suffered by the DI on account of imports of subject goods from subject countries.
- ll. NIP of the Domestic Industry must be considered in INR and NIP, Normal Value and Export Price must be disclosed if ADD is recommended on reference price basis. If the NIP of the Domestic Industry is assumed in USD, then it would result in a situation where the ADD payable by the Indian importer today would be higher than the NIP calculated on the basis of exchange rate which was assumed at INR 71.67 per USD for the POI. NIP in Indian currency should be published in order to enable customs officer to make proper assessment of appropriate ADD.
- mm. NIP has been determined without proper verification or validation of costs actually incurred by the Applicants as required by law.
- nn. Causal link is bogus as domestic producers are able to sell its entire product easily at remunerative prices.
- oo. While assessing the volume effect of dumped imports, the Authority is supposed to consider whether there has been a 'significant' increase in the volume of dumped imports, either in absolute terms or in relation to production and consumption in India. A mere increase in the volume of dumped imports in absolute terms and in relation to production and consumption in India is not sufficient to arrive at a finding that volume effect of dumped imports exist. Similarly, with respect to the price parameters also, the price undercutting needs to be significant or in the alternative, it must be shown that the prices of imports have had a suppressing or depressing effects on the selling prices of the Domestic Industry.
- pp. The Domestic Industry has claimed that after China imposed ADD on inter-alia USA and Thailand, these countries have diverted their exports to India. However, there is a decline in imports from the subject countries rather than an increase.
- qq. Neither the Authority in its Preliminary Findings, nor the Domestic Industry in their application has explained why or how prices were suppressed and depressed due to imports from the subject countries and not to imports from other countries when the latter was entering the country at prices which were considerably lower than from the subject countries.
- rr. In the Preliminary Findings, the Authority concluded about the Domestic Industry's material injury that the volume of imports from subject countries has increased in relation to total imports. However, an increase in volume of imports in relation to total imports is not a relevant economic factor pertaining to the condition of the Domestic Industry and there is no correlation between the two whatsoever.
- ss. The Authority has not explained how imports from other countries which were at lower prices than the subject imports were not the cause of the alleged price suppression and depression and neither has injury caused by such other imports been segregated from the impact of the subject imports.
- tt. The method of 'adjustment' adopted by the Domestic Industry for calculation of imports is unclear, non-transparent and has led to double counting. As per the methodology, imports should have decreased for POI, but instead increased substantially. The consistent practice of the Authority is to rely on DGCI&S and DGS data in trade remedy investigations. If the argument of adjustment is accepted, the problem would arise in every investigation.
- uu. The Authority is required to examine factors other than the dumped imports, which at the same time are injuring the Domestic Industry, and the injury caused by these other factors must not be attributed to the dumped imports. However, in the present case, the Authority instead of excluding such injury to HOCL

- from being attributed to the subject imports has sought to modify the performance parameters of HOCL by considering the capacity utilization achieved in the POI, in respect of profits, cash profits and return on investments. This is not what is prescribed under the law. The Authority cannot arbitrarily choose to evaluate the performance of HOCL considering the capacity utilization level achieved in the POI. There are no reasons justifying such an adjustment other than the fact that it helps the Domestic Industry demonstrate a steeper decline in injury parameters.
- vv. The Authority has failed to also explain its reasons for making any adjustment to the data of the Domestic Industry and has failed to explain the methodology adopted with respect to adjustment for HOCL. The Authority is requested to firstly rely upon the unadjusted data of the Domestic Industry for the determination of injury. Either unadjusted data is to be relied upon or exact methodology has to be clarified. The Respondents have referred to Reliance Industries Ltd. v. Designated Authority and Ors. wherein it was held that absence of reasoning by the Designated Authority affects the right to appeal.
 - ww. The Authority has considered all domestic sales of PPCL as bulk/loose form of phenol as specified in the Preliminary Findings. It is submitted that the domestic sales of the PUC made by PPCL are in both bulk and packed form. In this regard, the PPCL would like to clarify that transaction reflected as “truck” under column Form of Sales in Appendix 4A are in fact “packed” phenol sales, whereas transactions referred to as “pipeline” are in fact, “bulk/loose” phenol sales. In view of the difference in prices between bulk and packed phenol, the Authority is requested to make necessary adjustments to enable a fair comparison of domestic prices of subject countries with export prices to India. The exporters have already provided an appropriate adjustment, which appears to have been taken into consideration by the Authority.
 - xx. The exporters submit that a separate injury and dumping margin is determined for bulk and packed sales in line with the previous practice of the Authority. Based on the data placed on record, it appears that the Applicants have not furnished their cost information separately for bulk and packed despite acknowledging differences in the prices. The Authority is requested to direct the Domestic Industry to provide the relevant information to determine NIP separately for bulk and packed sales of the PUC and calculate separate NIPs for bulk and packed sales.
 - yy. There is no volume injury to the Domestic Industry on account of imports from subject countries. The increase in the domestic sales of the Domestic Industry has clearly outpaced the demand of the subject goods in the country demonstrating a lack of volume injury to the Domestic Industry. There is no injury suffered by the Domestic Industry on account of the volume of imports from the subject countries. The Net Sales Realization of the Domestic Industry is largely in line with the import prices indicating the lack of price undercutting by the imports from the subject countries. Prices are neither suppressed nor depressed on account of imports from the subject countries.
 - zz. The Preliminary Findings issued by the Authority concluded that Domestic Industry is facing injury without comprehensively considering factors other than dumped imports that may have contributed to the alleged injury, if any, caused to the Domestic Industry. It appears that non-attributive factors put forth by Exporters in its Preliminary Submissions have been overlooked by the Authority.
 - aaa. HOCL has acknowledged in its annual report for FY 2018-19 that feed stock prices are higher in India compared to other exporting countries and the Indian producers are at competitive disadvantages due to such higher overhead costs. With higher raw material prices, there is bound to be an adverse impact on price suppression / depression as well as the non-injurious price calculation. The above extract is therefore an inadvertent admission by HOCL that price injury is not on account of imports but on account of inherent problems such as availability of raw materials at competitive price and their inability to control the overheads costs.
 - bbb. The Authority is requested to scrutinize the poor performance of HOCL and find that any alleged injury suffered by HOCL is a consequence of their own continued inefficiencies and not attributable to the subject imports.
 - ccc. An assessment of SI Group’s financial statements revealed that during the injury period revenue of Phenol increased.
 - ddd. There is no adverse price effect caused by the subject imports.
 - eee. Exclusion of non-injurious transactions is contradictory to the past practices of the Authority. The Respondents have referred to Anti-Dumping Investigation concerning imports of Caustic Soda originating in and exported from Japan and Qatar wherein the argument was rejected on the ground that undercutting is to be calculated considering DGCI&S data and not selected transactions. Further, zeroing is unreasonable and violation of AD Agreement as has been held by the WTO Body in EC – Bed Linen.

- fff. The data provided in the Preliminary Findings in terms of injury analysis do not correspond to the adjusted or the unadjusted data provided in the updated petition filed by the Applicants on 17th April, 2020. This is evident because the Authority has admittedly considered the capacity utilization achieved in the POI as stated in paragraph 51 of the Preliminary Findings.
- ggg. The Authority has not taken into consideration arguments relating to exclusion of non-injurious price imports to determine injury margin, improvement in economic parameters of the DI and threat of material injury.
- hhh. Data for POI and POI (A) in the Preliminary Findings have been incorrectly indexed. The indexed values for POI and POI (A) are the same for employment, wages and productivity. Profitability, cash profits and ROCE have also been incorrectly indexed.
- iii. There is no volume injury to the Domestic Industry. The sales of the Domestic Industry has increased by 472% in POI (A) while demand for PUC has increased only by 14%. The imports from subject countries declined by 21 indexed points and 27 indexed points when compared to previous year of Apr'18-Jun-19(A). Capacity, production and domestic sales of DI has increased significantly.
- jjj. Imports in relation to production and demand declined by 220% and 12% respectively.
- kkk. Net Sales Realization of Domestic Industry is in line with import prices. Negative price undercutting for USA with landed price of 72,085 MT and positive for Thailand with landed price 69,574 MT and price difference is a mere 3.5%, the price undercutting to the Domestic Industry can be deduced to be insignificant for imports from Thailand.
- lll. Import prices from subject countries has increased by 8 indexed points and Domestic Industry prices have decreased by 13 points while cost of sales decreased only by 4 points. There is no price suppression or depression to the domestic industry due to imports but due to some other reasons perhaps its own policies and pricing mechanism.
- mmm. Deepak Phenolics suffered injury due to temporary 14-day plant shutdown as mentioned in the Investor Communication for second quarter of FY 2020 due to which there was a decline in revenue and EBITDA.
- nnn. Price injury to HOCL is due to inherent problems such as availability of raw materials at competitive price, inability to control overhead costs and lack of modernization of facilities. Annual Reports of HOCL state that the company has shortage of working capital due to continuous loss and non-availability of working capital finance. Further, the Annual Report for FY 2019-20 state that there was a decrease in production due to 48 day shutdown and 8 days due to shortage of benzene and a 7 day lockdown. The Domestic Industry should demonstrate how the issues in the Reports have been accounted for in the POI.
- ooo. HOCL declared a sick unit and Rashyani Unit shut down since 2013. The production at Cochi unit suspended since Mid-2015 due to working capital problems.
- ppp. There was improvement in performance during 2018-19 and the POI in reference to HOCL and DPL Annual report 2018-19. SI group's financial statements show increase in revenue of Phenol during the injury period by 6 points in 2018-19.
- qqq. There is no threat of material injury as the imports from subject countries have decreased and there is no likelihood of increase, the Domestic Industry did not provide any verifiable evidence of capacities and inventories in subject countries, there is a break in causal link between undercutting and performance of domestic industry and no reasoning by the Domestic Industry as to import restrictions from Thailand will increase imports into India.
- rrr. The assumption of 22% as reasonable ROCE is not justified.
- sss. The 22% ROCE was adopted at a time when the bank rate of interest (PLR) was 18% but it is substantially lower now (7-10%). The 22% predetermined and fixed rate is no more "reasonable" as per the Anti-Dumping Agreement. In present case, funds are borrowed overseas at 2.5% LIBOR, bank borrowing in India are at 7% to 10%. Currency fluctuation is capitalized and depreciation is claimed. It should be decided on a case to case basis taking into consideration the real costs of finance and investment in any business.
- ttt. The Authority must assess whether the 15 economic factors show an actual or potential decline. Furthermore, mere decline of the economic parameters in Para (iv) without the conditions of Para (ii) being present cannot result in a finding of injury.
- uuu. Unlike as stated in the Preliminary Findings, the capacity of the Domestic Industry is not a requirement under law for the volume effect analysis. Volume of subject imports in total imports cannot show volume effect as it has no impact on Domestic Industry.

- vvv. The Applicants have not provided any evidence for their claim on warehousing of imports. If at all true, then even imports in POI would be warehoused and not consumed. The methodology should hence be rejected.
- www. The import price of the subject countries is higher than imports from other countries, whether attracting ADD or not. Imports from other countries which constitute 31.48% of total imports into India are coming in at prices which are considerably lower than the subject countries. No explanation provided as to why price depression or suppression is due to subject imports and not other imports.
- xxx. Even if transaction-by-transaction import prices are to be considered in making a price undercutting analysis, the Domestic Industry's selling prices must also be considered on a transaction-to-transaction basis which are similar in point of time to the imports being compared. Fair comparison has to be ensured.
- yyy. In the instant case, the DI has not provided any facts on how individual transactions of price undercutting in proximate time had the potential of affecting the prices of the subject goods in the market as a whole. CESTAT decision in Kothari Sugars & Chemicals Limited versus Designated Authority is unreliable since Korea- Pneumatic Valves was not taken into consideration.
- zzz. The profitability in the POI was affected by the depreciation costs incurred rather than price suppressing or depressing effects of imports from the subject countries. Any adverse effect on profitability may be attributed to other lower priced imports.
- aaaa. Increase in volume of imports in relation to total imports is not a relevant economic factor pertaining to the condition of the Domestic Industry and there is no correlation between the two whatsoever.
- bbbb. The Authority is requested to examine the effect of crack spread on the pricing of the subject goods in India.
- cccc. The safeguard application filed by the same Applicants on 27th August, 2019 contradicts with the AD application on parameters related to profitability.
- dddd. There is no causal link between imports and performance of domestic industry in terms of profits as volume of imports in 2018-19 was highest at 123,727 MT and DI made highest profits in 2018-19. Import volume was also lower in POI (A) than in 2018-19 and DI's PBIT had fallen. There is no coincidence between increase in imports and profitability of DI. Reference has been made to safeguard Investigation concerning Uncoated Copy Paper.
- eeee. Recovery in profits is not on account of anti-dumping duties and a fall during 6 months is not a reasonable ground to invoke anti-dumping duties.
- ffff. The gap between NIP and landed price is negligible and material injury is absent.
- gggg. The Preliminary Findings show that profitability of DI moved from 100 to 567 in the previous year and declined to -61 in the POI, while the petitions shows profitability has moved from 100 to 245 in previous year and declined to -61 in the POI, showing significant fluctuation.
- hhhh. Injury margin for Thailand is insignificant (0-10%).
- iiii. The Authority should call for import data made under Advanced License and the duty for such imports not to be payable by the users.

H.3. Examination by the Authority

- 47. The Authority has taken note of the arguments and counter-arguments of all the interested parties with regard to injury to the Domestic Industry. The injury analysis so made by the Authority hereunder addresses the various submissions made by the interested parties.

H.3.1 Cumulative assessment

- 48. Annexure-II para (iii) of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:
 - a. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article, and
 - b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

49. The Authority notes that:

- a. The subject goods are being dumped into India from the subject countries. The margins of dumping from each of the subject countries are more than the de minimis limits prescribed under the Rules.
 - b. The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.
 - c. Cumulative assessment of the effects of import is appropriate as the exports from the subject countries not only directly compete with the like articles offered by each of them but also the like articles offered by the Domestic Industry in the Indian market. It is noted that the consumers who are buying from the domestic industry are also importing from amongst the subject countries.
50. As regards the issue of cumulative assessment in terms of para (iii) of the Annexure-II of the Rules, it is noted that the imports from subject countries fully satisfy the criteria of para (iii) of the Annexure-II. Therefore, the contention of the other interested parties about cumulative assessment are not correct.
51. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from the subject countries on the Domestic Industry.
52. Rule 11 of the Rules, read with Annexure II, provides that an injury determination shall involve examination of factors that may indicate injury to the Domestic Industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred. For the examination of the impact of the dumped imports on the Domestic Industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.
53. With regard to import volumes and prices, the Authority has relied upon the import information of DGCI&S and information provided by the cooperating producers and exporters from Thailand.
54. As per the consistent practice of the Authority, all import transactions have been taken into account for determination of price undercutting and for determining injury margin.
55. The Authority notes that M/s. Hindustan Organics Chemicals Ltd. had very low production in 2016-17 and 2017-18. The company admitted that this was due to working capital problems faced by the company. The Authority considers that the reasons for low production by the company during this period were not attributable to dumping in the country and were due to "other factors". The Authority has, therefore, evaluated the performance of Hindustan Organics Chemicals Ltd. in respect of profits, cash profits and return on investments, considering the capacity utilization achieved in the POI.
56. With respect to the issue raised that the data furnished by the Applicants is not validated with the actuals on the published final accounts in the terms of the Balance Sheet, and the same should not validate the claim on NIP, injury and alleged dumping, it is noted that the Authority has examined the information furnished by the domestic industry which has been verified and accepted, and the information submitted by the producers and exporters for normal values and export price have also been verified and accepted. It may be added that desk verifications of information submitted by interested parties have been made due to the present COVID-19 situation.
57. As regards the argument that NIP is required to be calculated in INR, it is noted that it is a consistent practice of the Authority to calculate the NIP in INR. However, while comparing the same with the landed price, NIP is converted in USD. This is consistent with the Hon'ble CESTAT order in the matter of Pig Iron Mfrs. Assn. Versus Designated Authority, Min. of Commerce, wherein CESTAT held that anti-dumping duty should be fixed in dollar terms so that erosion of the quantum of protection does not take place on account of changes in the exchange rate.
58. With respect to the argument that the method of 'adjustment' adopted by the Domestic Industry for calculation of imports is unclear, non-transparent and has led to double counting, it is noted that volume of import of subject goods and its prices have been determined from DGCI&S data, and information furnished by the producer and exporters from subject countries.
59. As regards the submission that alleged injury to the Domestic Industry is due to other reasons and there is no injury as per statements in annual reports of the constituents of the Domestic Industry, the Authority notes

that the injury analysis carried out hereunder is self-explanatory to establish that the dumping from subject countries has caused injury to the Domestic Industry.

60. As regards the submission of the interested parties that 22% returns on capital employed is not acceptable, the Authority notes that such is the consistent practice of the Authority in all previous investigations conducted.

61. All other submissions of all interested parties with regard to injury analysis have been addressed in the following paragraphs.

H.3.2 Volume effect of dumped imports on Domestic Industry

a) Assessment of demand

62. The Authority has taken into consideration, for the purpose of the present investigation, demand for the product in India as the sum of domestic sales of Indian Producers and imports from all sources.

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Sales of Domestic Industry	MT	42,604	53,129	193,675	154,940	121,821	243,642
Trend	Indexed	100	125	364	364	572	572
Subject imports	MT	110,557	108,800	146,446	117,157	43,705	87,410
Trend	Indexed	100	98	106	106	79	79
Imports attracting ADD	MT	98,657	105,275	68,332	54,665	17,283	34,566
Trend	Indexed	100	107	55	55	35	35
Other Countries imports	MT	72,660	74,011	57,028	45,623	2,825	5,650
Trend	Indexed	100	102	63	63	8	8
Total Demand	MT	324,477	341,215	465,481	372,385	185,634	371,268
Trend	Indexed	100	105	115	115	114	114

63. It is seen that the demand for the subject good has consistently increased during the injury period, with a marginal decline in the POI. The overall demand of subject goods has increased during the POI.

b) Import Volumes from the subject countries

64. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been an increase in dumped imports, either in absolute terms or relative to production or consumption in India.

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Subject Countries	MT	1,10,557	1,08,800	1,46,446	1,17,157	43,705	87,410
Trend	Indexed	100	98	106	106	79	79
Thailand	MT	57,688	87,568	96,022	76,818	30,749	61,498
Trend	Indexed	100	152	133	133	107	107
U S A	MT	52,869	21,232	50,424	40,339	12,956	25,912
Trend	Indexed	100	40	76	76	49	49
Countries attracting ADD	MT	98,657	1,05,275	68,332	54,665	17,283	34,566
Trend	Indexed	100	107	55	55	35	35

Others	MT	72,660	74,011	57,028	45,623	2,825	5,650
Trend	Indexed	100	102	63	63	8	8
Total Imports	MT	2,81,874	2,88,087	2,71,806	2,17,445	63,813	1,27,626
Trend	Indexed	100	102	77	77	45	45
Subject Imports in relation to							
Total imports	%	39	38	54	54	68	68
Trend	Indexed	100	96	137	137	175	175
Indian Production	%	254	203	72	72	34	34
Trend	Indexed	100	80	28	28	13	13
Indian Demand	MT	34	32	31	31	24	24
Trend	Indexed	100	94	92	92	69	69

65. The following is observed:

- Compared to the base year, overall volume of subject imports has declined in absolute terms and in relation to production and consumption in the country in the POI. The Domestic Industry submitted that this decline in imports was a natural consequence of addition of capacity to the extent of 54% of Indian demand. The Authority considers that the decline in overall imports was a natural consequence of such an increase in capacities in the country in a situation where there was a demand-supply gap in the country. As against the established demand of 3.71 lacs MT during the present POI, the installed capacity for the product in the country before commencement of production by Deepak Phenolics Ltd. was only 76,750 MT.
- The volume of subject imports has increased in relation to total imports in India. Whereas the subject imports constituted below 40% of total imports in India in 2016-17 and 2017-18, its share increased to 54% in April, 2018-June, 2019 period and further to 68% in the present POI. Imports from subject countries, thus, constitute the majority of the imports in India.
- However, the volume of imports of subject goods from subject countries declined in relation to production and consumption in the country.

H.3.2 Price effect of the dumped imports

66. With regard to the effect of the dumped imports on prices, it is required to be analyzed whether there has been a price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the Domestic Industry on account of the dumped imports from subject countries has been examined with reference to price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the NIP of the Domestic Industry have been compared with landed price of imports of the subject goods from the subject countries.

a) Price undercutting

67. For the purpose of price undercutting analysis, the net selling price of the Domestic Industry has been compared with the landed value of imports from the subject countries.

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
Subject Countries				Actual	Annualised	Actual	Annualised
Net Sales Realisation	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Landed Price	Rs./MT	65,223	72,599	99,262	99,262	70,318	70,318
Trend	Indexed	100	111	152	152	108	108
Price undercutting	Rs./MT	***	***	***	***	***	***
Trend	Indexed	***	***	***	***	***	***

Price undercutting	%	***	***	***	***	***	***
Price undercutting	Range	20-30	20-30	(10)-0	(10)-0	0-10	0-10
Thailand							
Net Sales Realisation	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Landed Price	Rs./MT	69,264	73,139	1,01,345	1,01,345	69,574	69,574
Trend	Indexed	100	106	146	146	100	100
Price undercutting	Rs./MT	***	***	***	***	***	***
Trend	Indexed	***	***	***	***	***	***
Price undercutting	%	***	***	***	***	***	***
Price undercutting	Range	10-20	20-30	(10)-0	(10)-10	0-10	0-10
USA							
Net Sales Realisation	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Landed Price	Rs./MT	60,813	70,371	95,295	95,295	72,085	72,085
Trend	Indexed	100	116	157	157	119	119
Price undercutting	Rs./MT	***	***	***	***	***	***
Trend	Indexed	***	***	***	***	***	***
Price undercutting	%	***	***	***	***	***	***
Price undercutting	Range	30-40	20-30	(10)-0	(10)-0	(10)-0	(10)-0

68. It is seen that the imports from subject countries are entering at a price below the domestic selling price of the Domestic Industry, resulting in positive price undercutting.

b) **Price suppression and depression**

69. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period. The table below shows factual position:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Cost of sales	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	115	113	113	96	96
Selling price	Rs./MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Landed price	Rs./MT	65,223	72,599	99,262	99,262	70,318	70,318
Trend	Indexed	100	111	152	152	108	108

70. It is seen that whereas the cost of sales & selling price of the Domestic Industry and landed price of imports increased till April, 2018-June, 2019, the same declined thereafter. However, the decline in selling price and landed price of imports was far more than the decline in cost of sales resulting in price suppression. It is also noted while the landed price of the imports were below the cost of production in 2016-17 and 2017-18, the same were much above cost of production in April, 2018-June, 2019. However, the landed price of imports declined below cost of production in the POI. It is thus noted that subject imports are depressing the prices of the Domestic Industry in the market.

c) **Price Underselling**

71. The Authority has also examined price underselling suffered by the Domestic Industry on account of dumped imports from the subject country. For this purpose, the NIP determined based on average NIP for the Domestic Industry has been compared with the landed price of imports as obtained from the DGCIS import data.
72. It is noted that the landed price of imports was below the non-injurious price of the Domestic Industry. The Authority notes that the Domestic Industry has suffered price underselling during POI due to dumped imports of the subject goods from the subject country.

Particulars	Thailand		USA	
	Rs./MT	USD/MT	Rs./MT	USD/MT
Landed Value	69,577.95	970.81	72,089.27	1,005.85
NIP	***	***	***	***
Price Underselling Margin	***	***	***	***
Price Underselling (%)	***		***	
Price Underselling (Range in %)	0-10		(10)-0	

H.3.3 Economic parameters of the Domestic Industry

73. Annexure II to the Rules provides that the examination of the impact of the dumped imports on the Domestic Industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The various injury parameters relating to the Domestic Industry are discussed below
74. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

i. **Production, capacity, capacity utilization and sales**

75. The capacity, production, sales and capacity utilization of the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Capacity	MT	76,750	76,750	3,45,938	2,76,750	2,76,750	2,76,750
Trend	Indexed	100	100	361	361	361	361
Production	MT	43,524	53,490	2,02,461	1,61,969	1,29,280	2,58,560
Trend	Indexed	100	123	372	372	594	594
Capacity Utilization	%	57	70	88	88	93	93
Trend	Indexed	100	123	156	156	165	165
Domestic Sales	MT	42,604	53,129	193,675	154,940	121,821	243,642
Trend	Indexed	100	125	364	364	572	572

76. The installed capacity with the Domestic Industry increased over the injury period. This is due to the setting up of a new plant with an installed capacity of 2,00,000 MT for phenol and 1,20,000 MT for Acetone by Deepak Phenolics at a gross investment of Rs. 1,200 crores. The plant commenced commercial production in November, 2018. The installed capacity in the Country were 76,750 MT against demand of more than 3 lacs. The Domestic Industry submitted that this investment was justified considering the demand-supply gap for the product in the Country.
77. As a result of setting up of fresh capacity, production and sales of the Domestic Industry has increased over the injury period.

ii. **Market share in Demand**

78. Market share of the Domestic Industry is shown in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Domestic Industry	%	13.13	15.57	41.61	41.61	65.62	65.62
Trend	Indexed	100	119	317	317	500	500
Subject Countries	%	34.07	31.89	31.46	31.46	23.54	23.54
Trend	Indexed	100	94	92	92	69	69
Countries attracting ADD	%	30.40	30.85	14.68	14.68	9.31	9.31
Trend	Indexed	100	101	48	48	31	31
Other countries	%	22.39	21.69	12.25	12.25	1.52	1.52
Trend	Indexed	100	97	55	55	7	7
Total	%	100.00	100.00	100.00	100.00	100.00	100.00

79. The following is noted:

- The Domestic Industry had a meagre market share earlier. The same was due to the absence of production capacities in the country and curtailment of production by Hindustan Organics Chemicals Ltd. due to working capital shortage.
- With Hindustan Organics Chemicals Ltd.'s production resuming to reasonable levels and Deepak Phenolics Ltd. commencing production in its new plant, the sales of the Domestic Industry increased. Consequently, the market share of the Domestic Industry increased over the injury period.
- Whereas market share of imports from various sources declined over the injury period, as far as subject countries are concerned, the market share declined in April-June, 2019 and increased thereafter in the POI.
- The Domestic Industry has contended that the increase in the market share should also be seen along with the fact of addition of new capacities, and the price at which the Domestic Industry is selling the product.

iii. **Inventories**

80. Inventory position with the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Opening	MT	***	***	***	***	***	***
Closing	MT	***	***	***	***	***	***
Average	MT	***	***	***	***	***	***
Trend	Indexed	100	110	340	340	556	556
Inventory as no of days production	Days	***	***	***	***	***	***
Trend	Indexed	100	89	91	91	94	94
Inventory as no of days sales	Days	***	***	***	***	***	***
Trend	Indexed	100	88	93	93	91	91

81. It is seen that the average inventories with the Domestic Industry have increased over the period.

iv. **Profitability, cash profits and return on capital employed**

82. Profitability, cash profits and return on investment of the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
Cost of sales	₹/MT	***	***	***	***	***	***
Trend	Indexed	100	115	113	113	96	96
Selling price	₹/MT	***	***	***	***	***	***
Trend	Indexed	100	111	114	114	87	87
Profit per unit	₹/MT	***	***	***	***	***	***
Trend	Indexed	100	71	120	120	(8)	(8)
Total Profit/(Loss)	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	90	567	567	(61)	(61)
Cash Profit	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	88	776	621	127	127
Profit before Interest	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	97	450	360	159	159
Return on Capital Employed	%	***	***	***	***	***	***
Trend	Indexed	100	81	25	25	13	13

83. It is seen that:

- The Domestic Industry was earning profits up to April, 2018-June, 2019. While profit per unit increased in April, 2018-June, 2019, the same declined thereafter to such an extent that the Domestic Industry suffered financial losses in POI.
- Cash profit, Profit before interest and return on capital employed followed the same trend as that of profits. Cash profits, PBIT and return on investment increased in April, 2018-June, 2019 and declined thereafter till the POI.
- The Domestic Industry contended that the deterioration in performance of the Domestic Industry was continuous throughout the investigation period. It is noted that profits, cash profits and return on investments have declined during the injury period.

v. **Employment, wages and productivity**

84. Employment, wages and productivity of the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April, 2018-June, 2019		POI	
				Actual	Annualised	Actual	Annualised
No. of Employees	Nos.	***	***	***	***	***	***
Trend	Indexed	100	97	173	173	183	183
Salaries & Wages	Rs. Lacs	***	***	***	***	***	***
Trend	Indexed	100	115	188	188	223	223
Productivity per day	MT/Day	***	***	***	***	***	***
Trend	Indexed	100	123	372	372	594	594

85. It is seen that performance of the Domestic Industry has improved in respect of employment, wages and productivity. The Domestic Industry submitted that these parameters are not relevant to show the impact of dumping on the Domestic Industry.

vi. **Growth**

86. The growth of the Domestic Industry in terms of production, capacity utilization domestic sales volume, inventories, profits, cash profits and return on investment is as given in the table below:

Particulars	Unit	2017-18	April, 2018-June, 2019 (A)	POI
Production	Y/Y	23	203	60
Domestic Sales	Y/Y	25	192	57
Capacity Utilisation	Y/Y	23	27	6
Average Inventory	Y/Y	10	210	64
Market share of Domestic Industry	Y/Y	19	167	58
Profit/Loss	Y/Y	(10)	526	(111)
Cash Profit	Y/Y	(12)	606	(79)
PBIT	Y/Y	(3)	273	(56)
Return on Capital Employed	Y/Y	(20)	(68)	(51)

87. It is seen that the growth of the Domestic Industry was positive in respect of volume parameters (production and sales) and negative in respect of price parameters (cost of sales, selling price, profits, and return on investment).

vii. **Magnitude of Dumping Margin**

88. Magnitude of dumping is an indicator of the extent to which the imports are being dumped in India. The investigation has shown that dumping margin is positive in the investigation period.

viii. **Ability to raise capital investment**

89. Significant investment was recently made in the PUC. The Domestic Industry is suffering financial losses in the POI. With the competition being faced by the Domestic Industry because of dumped imports, the operations of the industry have been impacted which has affected its ability to raise capital investment. The Domestic Industry is a multi-product company and, therefore, the ability to raise capital investment is not governed based on the performance of the product alone.

ix. **Factors affecting domestic prices**

90. Import prices are directly affecting the prices of the Domestic Industry in the market. It is noted that the landed value of the subject goods from subject countries is not only below its net selling price but also below the NIP of the Domestic Industry. Further, the landed prices of subject imports have depressed the prices of the Domestic Industry leading to financial losses. The imports of subject goods from third countries are either attracting ADD or are de-minimis or are at higher prices. Dumped imports are impacting the prices of the product in the market. Thus, it is concluded that the principal factor affecting the domestic prices is the dumped imports of subject goods from the subject countries.

H.3.4. Injury Margin

91. The Authority has determined the NIP for the Domestic Industry on the basis of principles laid down in Anti-Dumping Rules read with Annexure III, as amended. The NIP of the PUC has been determined by adopting the information/data relating to the cost of production provided by the Domestic Industry and duly certified by the practicing cost accountant for the period of investigation. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials by the Domestic Industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) for the PUC was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and being followed.

92. For all the non-cooperative producers/exporters from the subject countries, the Authority has determined the landed price based on facts available.

93. Based on the landed price and NIP determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below:

Country	Name of Producers/ Exporters	Non- Injurious Price (US\$/MT)	Landed Value (US\$/MT)	Injury Margin US\$/MT	Injury Margin (%)	Injury Margin % (Range)
Thailand	PTT Phenol Company Limited	***	***	***	***	0-10
Thailand	Other Producers and Exporters	***	***	***	***	0-10
USA	All Producers and Exporters	***	1,005.85	***	***	(10)-0

H.3.5 Conclusion on Injury

94. The examination of the imports of the subject product and performance of Domestic Industry shows that:

- a. The volume of imports from subject countries has increased in relation to total imports.
- b. The imports from subject countries are undercutting the prices of the Domestic Industry and the price underselling is also positive.
- c. Though both the selling price and cost of sales have declined during the injury period, the decline in selling price and landed price of imports was far more than the decline in cost of sales resulting in price suppression.
- d. The imports from subject countries have depressed the prices of the Domestic Industry.
- e. Though the production, sales and capacity utilization has increased over the injury period, the performance of the Domestic Industry has deteriorated in respect of profits, cash profits and return on capital employed. The Domestic Industry has suffered financial losses in the period of investigation. On the basis of above, it is concluded that the domestic industry has suffered material injury on account of dumped imports from subject countries.

I. Causal Link & Non Attribution Analysis

95. Under Section 9A (5), the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the PUC during the review investigation period or not. It has been examined below whether factors other than dumped imports could have contributed to the injury to the Domestic Industry:

a. Volume and value of Imports not sold at dumped prices

96. The imports from other countries are either attracting ADD or are de-minimus or are at higher prices. While volume of imports from Saudi Arabia are more than negligible, the pattern of imports over the injury period, and POI show that there is a decline in imports, and during POI, imports occurred only in one month. Thus, imports from other countries do not appear to have caused injury to the Domestic Industry.

b. Contraction in demand

97. The Authority notes that there is no contraction in demand as the demand of the subject goods in the country has consistently grown throughout the injury period. Thus, the Domestic Industry has not suffered any injury on this account.

c. Changes in Pattern of consumption

98. There have been no material changes in the pattern of consumption of the PUC. Hence, changes in the pattern of consumption have not caused injury to the Domestic Industry.

d. Conditions of Competition and Trade Restrictive Practices

99. The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the Domestic Industry.

e. Developments in Technology

100. No evidence has been brought by any interested parties about existence of significant changes in the technology that could have caused injury to the Domestic Industry.

f. Productivity

101. The Authority notes that the productivity of the Domestic Industry has increased over the injury period. Therefore, the Domestic Industry has not suffered injury on this account.

g. Export Performance of the Domestic Industry

102. The Authority has considered data for the domestic operations only for the injury analysis. Therefore, export performance is not the cause for the injury to the Domestic Industry.

h. Performance of Other Products of the Company

103. The Domestic Industry has provided the injury data of PUC performance and the same has been adopted by the Authority for the purpose of injury analysis. Therefore, performance of other products produced and sold by the applicant is not a possible cause of the injury to the Domestic Industry.

J. POST-DISCLOSURE COMMENTS

J.1. Views of the Domestic Industry

104. The following submissions have been made by the Domestic Industry on the Disclosure Statement:

- a. There are continuous arrivals of low cost, unwarranted, high volumes of imports from the subject countries to the tune of 75,000 MT – 80,000 MT annually from Thailand and 45,000 MT – 50,000 MT from USA annually as well as during the POI.
- b. The imports from subject countries are entering at a price far below the domestic selling price of HOCL which resulted in price suppression and had to suffer heavily on margins which caused material injury to HOCL.
- c. The Domestic Industry submits it has not received the legal submissions submitted by M/s. Cedar Décor Pvt. Ltd., M/s Cent Ply, M/s. DCM Shriram Industries Ltd., M/s. Hwatsi Chemical Pvt. Ltd., M/s. Supriya Lifescience Ltd., M/s Tradex Corporation and as a result, the Domestic Industry has not been able to offer comments on these submissions.
- d. There is no bar in considering 15 months as preceding period.
- e. There is no demand-supply gap at present. The net demand available to the Domestic Industry is in the region of 2.5 -2.6 lacs since imports of about 80,000-1,00,000 MT are being made under advance licence. The Domestic Industry is well equipped to meet this demand, with the commencement of a new large scale facility by Deepak Phenolics.
- f. The Domestic Industry submits that the increase in market share is due to the addition of new capacities.
- g. The NIP revised is significantly low and is in stark difference to the NIP determined at the stage of initiation and Provisional Findings. There was no reason for the domestic industry to believe that the methodology adopted by the Directorate earlier is incorrect or inapt. In the present investigation, the Authority had issued provisional findings. The domestic industry has not been asked to justify why the NIP should be computed after including entire sales of SIG. This sudden change has led to a negative injury margin for USA.
- h. The volume of captive consumption of Phenol would have either been used by the producer itself or by the consumer and thus had to be included in determining the domestic consumption. Had SIG not been integrated, the production of subject goods now being featured as captive would have been featured in domestic sales. If SIG had not created capacity for Phenol, the requirement of Phenol in the domestic market would have been met by other producers. Similarly, had SIG not created facilities for other products, SIG would have sold phenol in the market. In fact, company keeps switching its purchase of phenol both from its own production and imports for the other products. Thus, in either situation, the volume of captive production would have been included in the “domestic production”.
- i. There cannot be two different treatment of captive consumption. When captive consumption is relevant for injury examination, it cannot be excluded from the determination of non-injurious price.
- j. We request the Authority to kindly reconsider considering the captive consumption in NIP determination.
- k. It is submitted that for normation, utilities for the year 2018-19 is considered which is already included in the year Apr18-Jun19. The utility for the year 2017-18, which is Rs 20,865 needs to be taken for normation purposes and not 2018-19.
- l. It is submitted that the negative injury margin is because of exclusion of a significant portion of sale made by SIG on the grounds of its being captive. Whereas the rules provide for consideration of respective share of “domestic production” for computation of weighted average for the domestic industry as a whole, the “production for domestic sales” has been considered for determination of non-injurious price. In other words, “production for domestic sales” has been treated as “domestic production”

- m. While calculating NIP for DPL, for normation, raw material utilization for the year 2018-19 is considered which is already included in the year Apr18-Jun19. The raw material utilization for the year Apr18-Jun19, which is Rs 52458 per Mt, needs to be taken for normation purposes and not 2018-19.
- n. Non-injurious import transactions to be excluded while determining price undercutting and injury margin.
- o. The disclosure statement does not address the issue raised by the Authority regarding raw material prices not in arm's length. The Chinese Authority provided a specific finding in this regard and rejected the claims of the responding exporter.
- p. It is submitted that not only the exporter has related raw material supplier but also related utility supplier. Therefore, the prices of raw material and utility, as claimed by the exporters are required to be rejected as they are not at arm's length.
- q. The Domestic Industry submits that it should be considered that there is no demand supply gap at present. Even though the capacity in the country is below the gross consumption, it must be considered that imports to the tune of about 80000-100000 MT are being made under advance license.
- r. Anti-dumping duty is not a protection to the industry, but rather a means of price correction.

J.2. Views of Other Interested Parties

105. The submissions of other interested parties on the Disclosure Statement are as follows:

- a. Alleged dumped imports have been of no adverse consequences on the DI and imports have been largely withdrawing from the market as a result of increase in capacity in India. No ADD is essential in such a scenario.
- b. Some imports shall be necessary to ensure fair competition in the Indian market and any ADD in the present scenario will impact the trade balance and the DI will use the situation for profiteering.
- c. Subject imports have declined in absolute terms and also in relation to production and consumption in India. This alone shows the present case warrants no duties to further obliterate such declining imports.
- d. No ADD is warranted when the imports have been declining in relation to production and consumption and such import evidently did not create any injury.
- e. Injury margin, price undercutting, suppression and underselling from USA have been negative and it cannot be said that the import volumes from Thailand was of injurious effects to the DI either as the price from USA and Thailand were comparable at delivered level in India.
- f. The argument that a minor positive injury margin from Thailand caused material injury to the DI to the extent claimed is totally ungrounded.
- g. The Authority has adopted cumulative assessment of injury in this matter and the Disclosure contains no examination of facts considering facts of imports separately for Thailand to say that the alleged injury was on account of imports from Thailand alone. Termination of the investigation against USA alone is not sufficient and the case should be terminated against both the subject countries.
- h. When the price from USA is found to be at negative injury margin level, a comparable price from Thailand also should be found as of not having any injurious effect on the DI in reality and case should be terminated against both the countries in view of such facts.
- i. The difference in landed price from the subject countries has not been significant.
- j. Even though the injury margin in case of Thailand is slightly positive in the POI as per Disclosure, the prices have further increased in the post POI period and the performance of the DI also has sky rocketed. Phenol produced by the Applicants currently is not facing any unfair competition from imports and any duty for another 5 years or so is totally unjustified in such an event.
- k. Overall facts of the present case show decline in imports and improvements in the performance of the DI and the cause of very imports itself in the past was demand supply gap which is negated much now.
- l. The price of imports has gone up substantially in the post POI period and this factor should be considered while deciding the matter.
- m. Any alleged injury being suffered by the domestic industry is not due to the subject imports or the domestic sales at all, but due to high costs incurred by the domestic industry.
- n. The Authority has failed to provide any reasons as to why it was satisfied with respect to the claims of confidentiality raised by the parties, particularly in those instances where the claims are in contravention of the applicable law and trade notice.

- o. Disclosure Statement fails to identify the Exporters as having filed legal submissions/registered as interested parties in response to the initiation notification.
- p. The Authority is requested to rescind OM dated 18 June 2019, as an even suggestion that reference price form of duty must be recommended in situations of high price volatility.
- q. We request the Authority to recommend duties in ad valorem. In case, the Authority is unable to recommend ad valorem duties, we request the Authority to recommend a fixed form of duty. In case the Authority choose not to recommend any of these, then we request the Authority to consider a reference price form of duty with a trigger price mechanism, where a fixed or ad valorem duty will be liable to be paid if the import price of the subject goods from the subject countries is below the trigger price.
- r. The Disclosure Statement issued has breached the confidentiality of PTT Phenol Company, Mitsui & Co. Ltd. and Mitsui & Co. (Asia Pacific Pte. Ltd.).
- s. There exists no injury to the Domestic Industry and even if it is accepted (though not conceded) that there is injury to the Domestic Industry, such injury cannot be attributed to the imports from the subject countries.
- t. SI Group is liable to be excluded from the present investigation.
- u. The Authority has failed to take into consideration the submissions of PTT Phenol Company, Mitsui & Co. Ltd. and Mitsui & Co. (Asia Pacific Pte. Ltd.), regarding the incomprehensible adjustments made to HOCL and injury to the DI.
- v. In the event that the Authority does not terminate the investigation before issuance of the Final Findings, no anti-dumping duty must be recommended insofar as USA is concerned as the price underselling from it is negative.
- w. The Applicants had not included the April 2019 to June 2019 within the POI since addition of the same would have resulted in a higher weighted average export price and consequently, lower dumping margin of the subject goods. The injury analysis period cannot be cherry picked and the same must be uniform unless exceptional circumstances warrant departure from the same.
- x. The Authority must disclose the facts considered for this purpose of determining normal value and in the case of Thailand so as to enable the interested parties to comment on the same.
- y. We request the Authority to discard ICIS reports from consideration while determining the normal value for USA.
- z. The Authority must disclose the quantum of adjustments made with respect to ocean freight, marine insurance, commission, inland freight, and port expenses as well as the actual export price.
- aa. The Authority must disclose dumping margin determined for USA and Thailand.
- bb. Since the Authority has found pursuant to the said sunset review that dumping continued from South Africa, SI Group is liable to be excluded from the present investigation.
- cc. In the Disclosure Statement, the price underselling by imports from USA have been disclosed as negative. Therefore, It is inappropriate to include the imports from USA within injury analysis.
- dd. The claim of price suppression or depression is unfounded, and no price effect can be attributed to the imports from the subject countries.
- ee. It is submitted that while addition of capacity may usually result in increased production and sales, it may be noted that capacity utilization of the Domestic Industry has also increased despite addition of massive capacity which clearly evinces the fact that it could replace imports effectively in the domestic market and indicates the preference of users for domestically produced goods over imports. Therefore, there is clearly no injury on this front.
- ff. Improvement in employment, wages and productivity should be taken into consideration while determining whether the Domestic Industry of the like article in India is suffering as a result of dumped imports.
- gg. The impact of high depreciation and interest costs incurred by the Domestic Industry along with price suppression and depression, if any, caused by lower priced imports from other countries must be segregated and not attributed to imports from the subject countries.
- hh. It is submitted that the relevant parameter to gauge an adverse impact on inventories when capacity, production, and capacity utilisation has increased is to consider inventories as number of days of production and sales rather than in absolute terms. When viewed in that perspective, it is evident that inventories have actually decreased in terms of both number of days of production and sales and the DA is requested to consider the same.

- ii. It is submitted that while the growth in volume parameters has been rightly observed, the purported deterioration in the profitability must be examined more closely by reconciling the same with the financial reports published by the company for the relevant quarters of 2019-20 comprising the POI.
- jj. Ability to raise capital for further investments has not been affected as they are multiproduct companies as admitted by the Applicants.
- kk. We request the Authority to segregate the injury caused by lower prices from other countries in order to make an objective determination regarding the extent of injury caused by imports from the subject countries.
- ll. It is submitted that the NIP of the Domestic Industry must be calculated in INR and not in USD.
- mm. It is submitted that the normal value in the country of export is specific to the producer/exporter and the country being the price in the home market of the exporter. We request the Authority to convert the price in the home market of the exporter for the purpose of comparison of data during the period of investigation.
- nn. Since normal value can also be considered as a benchmark under reference price form of duty, the same is required to be disclosed for the subject countries as the same would be relevant for determining the ADD payable by importers.
- oo. The Authority may note that the price of imports has gone up substantially in the post POI period and this factor should be considered while deciding the matter. ILMA has raised serious concern about the reference form of duty recommended in the PF. However, by this time the prices have gone up further and any fixed form of duty shall even more disastrous for the users. The Authority may consider these aspects as well while taking a final view in the matter.

J.3. Examination by the Authority

106. The Authority has examined the post-disclosure submissions made by the interested parties including reiterations which have already been examined suitably and addressed adequately in the relevant paras of these final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below.
- a. With regard to the modification of NIP from initiation, and Preliminary Findings, it is noted that NIP at the stage of initiation is computed on prima facie basis, and the same has been determined after Preliminary Findings based on documents submitted by the Domestic Industry, and duly verified by the Authority after desk verification. It is also noted that the Authority has determined the NIP in accordance with Annexure III of the AD rules.
 - b. The Applicants have stated that captive consumption is to be taken for determining the domestic sales for the purpose of determination/computation of weighted average NIP. The issue has been examined, and it is noted that the captive consumption is the transfer of PUC from one unit to another unit of the same applicant. Since the price of captive consumption is not determined by the demand and supply in the open market, and it is determined by the Applicants as suitable to them, therefore, the injury due to captive consumption is self-inflicted, and cannot be attributed to dumping.
 - c. With regard to issues raised about non-injurious import transactions to be excluded while determining price undercutting and injury margin, the Authority notes that the Authority has taken into account all transactions as per the Authority's established practice.
 - d. As regards argument on methodology for normation is considered, the Authority has considered the submissions of the domestic industry and made the appropriate changes as per principles laid down under Annexure III.
 - e. With regard to submissions by some of the exporters that their legal submissions have not been acknowledged, it is noted that the same has been correctly acknowledged, and examined in the final findings.
 - f. With regard to the Domestic Industry's submission that they had not received the legal submissions of some of the other interested parties, the Authority notes that vide e-mail dated 9th October, 2020, the Authority had shared the e-mail addresses of all interested parties and requested all the interested parties to share the non-confidential versions of their submissions with all other parties. Further, the e-mail addresses of all interested parties are available on the website of DGTR.
 - g. As regards legal submissions of M/s. Cedar Décor Pvt. Ltd., M/s Cent Ply, M/s. DCM Shriram Industries Ltd., M/s. Hwatsi Chemical Pvt. Ltd., M/s. Supriya Lifescience Ltd., M/s Tradex Corporation, not circulated to the other interested parties including domestic industry despite clear instructions by the Authority, it is noted these have been circulated subsequently to all interested parties.

- h. As regards argument that injury to the domestic industry is due to start up difficulty of Deepak Phenolics Ltd, it is noted that M/s. Deepak Phenolics Ltd. had commenced its commercial production in November, 2018 and has already achieved 96% capacity utilisation and, therefore, established itself as a leading producer of subject goods in India.
- i. As regards the names of the exporters missing in 4(k), the same has been added in the relevant paras.
- j. As regards injury margin of USA, the same is negative in view of the modifications made in the NIP of the domestic industry.
- k. As regards the issue of cumulative assessment in terms of para (iii) of the Annexure-II of the Rules, it is noted that the imports from subject countries fully satisfy the criteria of para (iii) of the Annexure-II. Further injury margin of a subject country is not a requirement for cumulative assessment under para (iii) of the Annexure-II and therefore the argument of the interested parties linking cumulative assessment with injury margin is not accepted.
- l. As regards arguments on injury it is noted that the Authority has examined the injury parameters objectively taking into account the facts and arguments in the submissions. All parameters of injury need not show deterioration. While some parameter may show deterioration, some may show improvement. The Designated Authority has considered all injury parameters and thereafter concluded whether the domestic industry has suffered injury or not. The overall position of the domestic industry has been evaluated, in light of all the relevant factors having a bearing on the situation of that industry.
- m. As regards appropriateness of ICIS reports for normal value is concerned, it is noted that the Authority has an established practice for considering prices reported in journals which are periodically released and is considered appropriate. Reference to Dye Stuff Manufacturers Association case is misplaced since the facts and circumstances of that case was different since prices adopted in that case was of non PUC.
- n. As regards impact of China case, it is clarified that the Authority has made determination in accordance with the rules and without considering the impact of ADD imposed by China.
- o. As regards increase in import price in post-POI period, the Authority considers that post-POI data cannot be considered for determination in the present case and post-POI parameters cannot be selectively considered by the Authority. Consideration of post-POI data implies de-facto updation of all relevant information and thereafter full examination thereof, including verification. Therefore, the Authority considers that it would not be appropriate to consider post POI data in the facts and circumstances of the present case.
- p. The authority notes that while some interested parties have contended that reference price duty is not appropriate in the present case, some have contended that fixed form of duty would be disastrous to users. Notwithstanding contrary arguments of the interested parties, the authority has considered it appropriate to recommend reference price form of duty in the fact and circumstances in the present case.
- q. As regards price adjustments in export price determination, the same has been appropriately disclosed to the extent necessary to the cooperating producer and exporter who has supplied the information to the Authority on the confidential basis.
- r. As regards eligibility of domestic producers to constitute eligible domestic industry, the same has been appropriately examined and considered in the present finding.
- s. As regards depreciation cost of the domestic industry, the Authority has adopted the same consistent with the provisions of Annexure III of the rules.
- t. It is clarified that the cost incurred by the Deepak Phenolics while setting up new capacities have been determined as per the standard practice of the Authority, and consistent with the provisions laid in Annexure III of the Rules.
- u. The Authority notes that the demand-supply gap in the country does not bar the Domestic Industry from seeking redressal from dumped imports.
- v. The issues raised regarding POI, confidentiality, normal value, calculation of NIP in INR, injury, price effect, adjustments made, the form of duty and exclusion of SI Group from the ambit of Domestic Industry have already been addressed in the relevant paragraphs above.
- w. Since the POI is not of 12 months, in order to ensure that the actual/indexed figures are directly comparable with preceding years, the actual/indexed data has been “annualised” and mentioned in these Final Findings. Since the POI in the present case is six months, the figures have been multiplied by 2 to

make them comparable to the previous years. For this reason, the indexed figures for the POI actual and annualised show the same figures in these Final Findings.

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

107. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The Interested parties have not established that imposition of duties is going to adversely impact the public interest.
108. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

L. CONCLUSION & RECOMMENDATIONS

109. After examining the submissions made by the interested parties and issues raised therein, and considering the facts available on record, the Authority concludes that:
- The product under consideration has been exported to India from subject countries below its normal value.
 - The Domestic Industry has suffered material injury.
 - The material injury has been caused by the dumped imports of subject goods from the subject countries.
 - As injury margin in respect of USA is negative, no ADD is recommended against USA.

M. RECOMMENDATIONS

110. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the Authority is of the view that imposition of Anti-Dumping duty is required to offset dumping and injury.
111. In terms of provision contained in Rule 4(d) of the Rules, the Authority recommends imposition of ADD equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the Domestic Industry. As injury margin in respect of USA is negative, no ADD is recommended against USA. Taking into account the factual matrix of the case, and having regard to information provided, and submissions made by interested parties, it is considered appropriate to recommend benchmark/reference form of anti-dumping duties. The Authority recommends imposition of definitive anti-dumping duties on import of subject goods originating in or exported from Thailand from the date of notification to be issued in this regard by the Central government, as the difference between the landed value of subject goods and the reference price indicated in column 7 of the table below, provided the landed value is less than the value indicated in column 7.
112. The landed value of imports for this purpose shall be assessable value as determined by the Customs under Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 8B, 9, 9A of the Customs Tariff Act, 1975.

DUTY TABLE

SN	Heading	Description	Country of Origin	Country of Export	Producer	Reference Price	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	290711	Phenol	Thailand	Any country including Thailand	PTT Phenol Company Limited	990.83	MT	US\$

2	290711	Phenol	Thailand	Any country including Thailand	Any producer other than Serial Number 1	990.83	MT	US\$
3	290711	Phenol	Any country other than country attracting anti-dumping duty	Thailand	Any	990.83	MT	US\$

113. Subject to the above, the Preliminary Findings notified on 20th August, 2020 is hereby confirmed.

N. FURTHER PROCEDURE

114. An appeal against these findings after its acceptance by the Central Government shall lie before the Customs, Exercise and Service tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

B.B. SWAIN, Spl. Secy. and Designated Authority

त. आगे की प्रक्रिया

134. केन्द्र सरकार द्वारा इसे स्वीकार किए जाने के बाद इन जांच परिणामों के विरुद्ध अपील सीमा प्रशुल्क नियमावली, 1995 और 1995 में यथा संशोधित सीमा प्रशुल्क अधिनियम, 1975 के अनुसार सीमा शुल्क, उत्पाद और सेवा कर अपीलीय न्यायाधिकरण के समक्ष होगी।

बी. बी. स्वेन, विशेष सचिव एवं निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(DIRECTORATE GENERAL OF TRADE REMEDIES)
NOTIFICATION
(Final Findings)

New Delhi, the 30th December, 2020

CASE No. ADD-OI-32/2019

Subject : Anti-dumping investigation concerning imports of “Viscose Spun Yarn” originating in or exported from China PR, Indonesia and Vietnam

F. No. 6/41/2019-DGTR.—Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of injury) Rules, 1995 as amended from time to time (hereinafter also referred to as the AD Rules or the Rules).

A. BACKGROUND OF THE CASE

1. The Designated Authority (herein after referred to as the Authority), received a written application from the Indian Manmade Yarn Manufacturers Association (hereinafter referred to as the “Applicant”) on the behalf of domestic producers, in accordance with the Act and the Rules for imposition of Anti-dumping duty on imports of “Viscose Spun Yarn” (hereinafter also referred to as the “Product Under Consideration” or “PUC” or “subject goods”) from People’s Republic of China, Indonesia and Vietnam (hereinafter also referred to as the “subject countries”) alleging dumping and consequent injury and requested for levy of anti-dumping duty on the imports of the subject goods from the above subject countries.
2. The Authority, on the basis of prima facie evidence submitted by the Applicant, issued a public notice vide notification No. 6/41/2019 - DGTR dated 14th January, 2020, published in the Gazette of India, Extraordinary, initiating the anti-dumping investigation in accordance with Section 9A of the Act read with Rule 5 of the Rules to determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from China PR, Indonesia, and Vietnam, and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the Domestic Industry.

B. PROCEDURE

3. The procedure described below has been followed with regard to the investigation:
 - a. The Authority notified the Embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
 - b. The Authority issued a public notice vide its initiation notification dated 14th January, 2020 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods from subject countries.
 - c. The Authority sent a copy of the initiation notification dated 14th January, 2020 to the Embassies of subject countries in India, the known producers and exporters from the subject countries, known importers, importer/user Associations, the Domestic Industry as well as other domestic producers, and other interested parties as mentioned in the application, and requested them to make their views known in writing within the prescribed time limit, in accordance with Rules 6(2) and 6(4) of the Rules.

- d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of the subject countries in India in accordance with Rule 6(3) of the Rules supra.
- e. The Embassies of the subject countries in India were also requested to advise the exporters/producers from their respective countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the known producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
- f. The Authority, upon several requests made by the interested parties, granted extensions of time to the interested parties to file their response as well as submissions. Vide communication dated 4th March, 2020, the time was extended upto 18th March, 2020. Vide communication dated 18th March, 2020, the time was again extended up to 1st April, 2020. Vide communications dated 1st April, 2020; 21st April, 2020 and 9th May, 2020 the time was further extended up to 22nd April, 2020; 10th May, 2020; and 20th May, 2020 respectively.
- g. The following governments of the subject countries provided written submissions:
 - i. Trade Defense, Directorate General of Foreign Trade, Republic of Indonesia
- h. The Authority sent questionnaires to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the AD Rules:

China PR	Indonesia	Vietnam
1. M/s Chtc Dayao Textile Co Ltd.	1. M/s Adetex	1. M/s Company Limited Hung Nghiep Formosa
2. M/s F-Tex (Asia) International Limited	2. M/s Adikencana Mahkotabuana	2. M/s Haosheng Vina Co. Ltd
3. M/s Fujian Changle Jinyuan Teaxtile Co	3. M/s Apac Inti Corpora	3. M/s Hung Nghia Formosa Company Ltd
4. M/s Fuzhou Hongyi Trade Co. Ltd.	4. M/s Bintang Makmur Sentosa Textile Industries	4. M/s Mei Sheng Textiles Vietnam Co., Ltd
5. M/s Hmei Thread Co. Ltd. of Yibin Sichua	5. M/s Bitratex Industries	
6. M/s Jiangsu Pengxiang New Material	6. M/s Delta Merlin Sandang Tekstil	
7. M/s Ningbo Haikai International Trade	7. M/s Delta Dunia Sandang Tekstil	
8. M/s Ningbo Sss Thread Co.Ltd	8. M/s Delta Dunia Tekstil	
9. M/s Shandong Zhink New Material Co. Ltd.	9. M/s Embee Plumbon Tekstil	
10. M/s Shaoxing Lianghe Textile Co Ltd.	10. M/s Elegant Textile Industry	
11. M/s Shaoxing Shuhao Textile Technology	11. M/s Excellence Qualities Yarn	
12. M/s Suzhou Pure-Fibre Textile Texhnology Co. Ltd	12. M/s Indo Liberty Textiles	
13. M/s Top Fiber Source Co. Limited	13. M/s Kewalram Indonesia	
14. M/s Wujiang Jingyi Special Fiber Co Ltd	14. M/s Lotus Indah Textile Industries	
15. M/s Xiamen Phoenix New Material	15. M/s Manunggal Adipura	
16. M/s Xiamen Mc Group Corp. Ltd	16. M/s Mulia Jaya Sejahtera Abadi Textile	
17. M/s Xiamen Ming Textile Co Ltd	17. M/s Natatex Prima	

18. M/s Xiamen Wei Textile Technology Co Ltd	18. M/s Pamor Spinning Mills	
19. M/s Xuzhou Guangpeng Textile Co Ltd	19. M/s Pisma Putra Textile	
20. M/s Yibin Grace Textile Co. Ltd	20. M/s Primayudha Mandirijaya	
21. M/s Yibin Spark Fine Spinnig Tech Co. Ltd	21. M/s Sekar Bengawan	
22. M/s Zhejiang Zhongda Group	22. M/s Sinar Pantja Djaja	
	23. M/s Sri Rejeki Isman	
	24. M/s Sunrise Bumi Textiles	

i. In response, the following exporters/producers have filed the exporter's questionnaire response:

1. M/s Yibin Spark Fine Spinning Tech Co. Ltd. China;
2. M/s Yibin Grace Textile Co Ltd, China
3. M/s PT Delta Merlin Sandang, Indonesia;
4. M/s PT Delta Dunia Tekstil, Indonesia;
5. M/s PT Delta Dunia Sandang Tekstil, Indonesia;
6. M/s PT Manunggal Adipura, Indonesia;
7. M/s PT Lotus Indah Textile Industries, Indonesia;
8. M/s PT Embee Plumbon Tekstil, Indonesia;
9. M/s PT Adikencana Mahkotabuana, Indonesia;
10. M/s PT Sri Rejeki Isman Tbk, Indonesia;
11. M/s PT Bitratex Industries, Indonesia;
12. M/s PT Sinar Pantja Djaja, Indonesia;
13. M/s Primayudha Mandirijaya, Indonesia;
14. M/s PT Natatex Prima, Indonesia;
15. M/s PT Sunrise Bhumi Textiles, Indonesia;
16. M/s PT Elegant Textile Industry, Indonesia;
17. M/s PT Indoliberty Textiles, Indonesia;
18. M/s United Raw Material PTE Ltd., Singapore.

j. The following interested parties made legal submissions:

1. M/s Indonesian Textile Association;
2. China Chamber of Commerce for Import & Export of Textile and Apparel;

k. The following interested party submitted a letter:

1. M/s Indo-Thai Synthetics Company Limited.

m. The following interested party has submitted a letter for registration:

1. M/s PT Adetex, Indonesia

n. No response was received from exporters/producers from Vietnam.

o. The Authority sent Importer's Questionnaire to the following known importers/ users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.

1. M/s A.C.Textile Mills	108. M/s Pavan Kumar Raj Kumar
2. M/s A.P.A.Textiles India Pvt Ltd	109. M/s Pee Vee Textiles Limited
3. M/s Aapt Distribution Private Limited	110. M/s Perfect Products
4. M/s Aaurvin Mills	111. M/s Polychem Exports
5. M/s Accord Exports	112. M/s Poly Chem Imp. & Exp. Co.
6. M/s Acsen Tex (P) Ltd	113. M/s Poongodhai Textile Mills
7. M/s Agarwal Fabtex Pvt Ltd	114. M/s Prakash Cotex India Llp
8. M/s Amarjot Textile	115. M/s Prakash Textiles
9. M/s Ambika Cotton Mills Limited	116. M/s R Vijayanand & Co
10. M/s Anithaa Weaving Mill Private Limited	117. M/s Rajeswari Weaving Mill
11. M/s Annapoorani Textiles Private Limited	118. M/s Raj Rajeshwar Enterprises Pvt. Ltd.
12. M/s Anusha Agencies Private Limited	119. M/s Ranga Weaves India P Ltd
13. M/s Apex Textiles	120. M/s Ratanmoti Texfab (India) Pvt. Ltd.
14. M/s Apple Apparelss	121. M/s Rhythm Overseas
15. M/s Arun Surya Textiles	122. M/s Richloom Exim
16. M/s Arunaagold Tex Corporate Private Limited	123. M/s Roshini Impex
17. M/s Arul Jothi Exports Private Limited,	124. M/s Royalene
18. M/s Arthanari Loom Centre (Textile) Private Limited	125. M/s S.K.T.Textile Mills
19. M/s Arvind Universal Textiles Pvt. Ltd.	126. M/s S. K. Weaving Pvt. Ltd.
20. M/s Avantika Fiber & Allied Private Ltd	127. M/s Sakshi Yarns Pvt Ltd
21. M/s Avp Industries Private Limited	128. M/s Sandhya Fabrics
22. M/s B.M. Industries Pvt. Ltd.	129. M/s Santha Spinning Mills Private Ltd
23. M/s B.R.T. Spinners Private Limited	130. M/s Santosh Industries
24. M/s B. S. Pulses Pvt. Ltd.	131. M/s Sgr Textile House LLP
25. M/s B T Cotton Co.	132. M/s Shakthi Murugan Textiles
26. M/s Beekaylon Synthetics Pvt. Ltd.	133. M/s Shekhawati Syntex Pvt. Ltd.
27. M/s Bhagavathi Tex	134. M/s Shree Balaji Fabrics
28. M/s Bhartia Yarns Pvt Ltd	135. M/s Shree Hari Yarns Private Limited
29. M/s Bhatia Colour Co	136. M/s Shree Ramkrishna Agency
30. M/s Bhawana Spinning Mills	137. M/s Shree Shakatambika Mills
31. M/s Bhumi Yarn Pvt. Ltd.	138. M/s Shri Selvakumar Textile & Sizing Mills
32. M/s Bid Textiles	139. M/s Shri Vasudeva Weaving Mills Pvt Ltd
33. M/s Bittu Synthetics Pvt.Ltd	140. M/s Shyena Tech Yarns Pvt Ltd
34. M/s C S Export	141. M/s Shri Aaditya Traders
35. M/s C S Weaverss	142. M/s Shri Arunachaleswarar Tex
36. M/s C S Yaarns	143. M/s Shri Kalyan Trading Co.
37. M/s Chandra Internationals	144. M/s Shri Vallimurugan Spinners Private Limited
38. M/s Damodar Industries Limited.	145. M/s Sindhu Suta Textiles
39. M/s Delhi Textile Traders	146. M/s Sju Textile Mills
40. M/s Dharan Textile	147. M/s Slachi Impex
41. M/s DHC Marketing Pvt. Ltd.	148. M/s Snowtex Synthetics Private Limited
42. M/s Erode Amarnath Mills Private Limited	149. M/s Somanur Kalpana Cotton (India) Private Limited
43. M/s Erode Viscose Rayon Fabrics	150. M/s Spaceage Syntex Pvt Ltd
44. M/s Espee Kumaran Textiles	151. M/s Sree Arulmani Exports
45. M/s Euro Vistaa (India) Limited	

46. M/s Everflow Petrofils Ltd.	152. M/s Sree Arulmurugan Textile Mills
47. M/s Everflow Techno Tex Pvt. Ltd.	153. M/s Sree Sundara Mills
48. M/s Fine Yarns	154. M/s Srinivasa Textiles
49. M/s Fortune Filaments	155. M/s Sri Aiswaryaa Internationals
50. M/s Gimatex Industries Pvt. Ltd	156. M/s Sri Amman Sizing And Weaving Mills
51. M/s Gnana Murugan Textiles	157. M/s Sri Amman Textiles
52. M/s Hardik Fashion - Hitendrakumar Ishwarlal Patel-Huf	158. M/s Sri Baalaji Sizing/Spinnings Mills
53. M/s Hardik Tex (Navinchandra Ishwarlal Patel-Huf)	159. M/s Sri Balaji Yarns
54. M/s Hasasi India Private Limited	160. M/s Sri Jayalakshmi Textiles
55. M/s Healthium Medtech Private Limited	161. M/s Sri Jayaramm Textiles
56. M/s Hundred Rayon	162. M/s Sri Lakshmi- Durga Export
57. M/s J M Commodities Limited	163. M/s Sri Mouli Textiles Pvt Ltd
58. M/s Janki Overseas	164. M/s Sri Murugan Textiles
59. M/s Jeen Bhavani International	165. M/s Sri Palani Andavar Textiles
60. M/s K Chandrasekar	166. M/s Sri Ramakrishna Textiles
61. M/s K. K. Spinners (P) Ltd.	167. M/s Sri Sakthivel Impex,
62. M/s K R G Textile Mills	168. M/s Sri Sakthivel Tex Mills
63. M/s Kadeshwara Fabrics	169. M/s Sri Shanmuga Textiles
64. M/s Kalaimagal Textiles	170. M/s Sri Shanmugavel Mills Pvt Limited
65. M/s Karan Enterprise	171. M/s Sri Shuba Tex Private Limited
66. M/s Karwa Yarn Private Limited	172. M/s Sri Spm Weaving Mills
67. M/s Kasim Textile Mills Private Limited	173. M/s Sri Venkatachalapathi Textiles
68. M/s Kayavlon Impex Pvt Ltd	174. M/s Strike Right Integrated Services Limited
69. M/s Kay Aar Exports	175. M/s Sudhan Yarns, (Prop: C. Suganthi)
70. M/s Kedia Textiles	176. M/s Sun Laand Auto Weave
71. M/s Kej Enterprises	177. M/s Suryaamba Spinning Mills Ltd.
72. M/s Khanna Textiles	178. M/s Suyog Synthetics
73. M/s Kohinoor Weaving Mills	179. M/s Svc Textile Company Pvt. Ltd.
74. M/s Kpg Cottspinn India Private Ltd	180. M/s T. T. Limited
75. M/s Kpm Enterprises	181. M/s Tesla Corp
76. M/s Kreepa Overseas Pvt. Ltd.	182. M/s Texperts India Pvt. Ltd.
77. M/s Krs Textiles	183. M/s Thakurji Enterprise
78. M/s Kunal Textiles	184. M/s Thangavel Fabrics Private Limited
79. M/s Kumaran Textiles	185. M/s Tharun Texspin Mills Private Limited
80. M/s Laxmi Textile Industries	186. M/s Titaanium Ten Enterprise Limited
81. M/s Le Merite Exports Limited	187. M/s Top Light Lables, (Prop. N. Velusamy)
82. M/s M.P. Textiles	188. M/s Tribest Fineyarns Limited
83. M/s M. Sundardas & Sons	189. M/s Tribeni Worldwide Pvt. Ltd.
84. M/s Madurai Weaving Mills	190. M/s Tripod Textile Export Pvt Ltd
85. M/s Malar Textiles	191. M/s Tulsi Udhyog
86. M/s Mangalam International	192. M/s United Dry Goods (P) Ltd
87. M/s Mayank Traders	193. M/s Unitec Inc
88. M/s Malli Mal Sant Lal & Co	194. M/s Vardhman Filaments
89. M/s Maru Enterprises Pvt. Ltd.	195. M/s Varunn Exports
	196. M/s Ved-Darshan Yarn Traders LLP

90. M/s Mehala Mills	197. M/s Velatal Spinning Mills (P) Limited.
91. M/s Mehta Yarns	198. M/s Vms Fabrics Private Limited
92. M/s Modern India Limited	199. M/s Viramdev Textiles
93. M/s Monit Trading Private Limited	200. M/s Vishakha Enterprises
94. M/s Motherland Textile India Private Limited	201. M/s Withus Fab Tex (Opc) Private Limited
95. M/s Murugavilas Textiles	202. M/s Yarncoms India Pvt Ltd
96. M/s Nakoda Infraprojects Private Limited	203. M/s Yashraj Overseas
97. M/s Nataraja Textiles	204. M/s Yuvaraj Textiles
98. M/s Nimish Syntex	
99. M/s Nithyabharath Textile Private Ltd	
100. M/s Nithya Textiles	
101. M/s Om Fab	
102. M/s Orion Fabrics Pvt. Ltd.	
103. M/s P.K.P.N. Spinning Mills P. Ltd	
104. M/s P J Commercials	
105. M/s P Surya	
106. M/s Pan Impex	
107. M/s Pankaj Enka Private Limited	

p. In response, the following importers/users have responded by filing importer's questionnaire response:

1. M/s Kayavlon Impex Pvt Ltd.;
2. M/s Roshni Impex;
3. M/s Gnanamurgan Textiles;
4. M/s Erode Viscose Rayon Fabric.

q. The following importers/users have filed letters for registering themselves as interested parties and/or have filed legal submissions:

1. M/s DHC Marketing Pvt Ltd;
2. M/s Sri Balaji Spinning Mills;
3. M/s Health Medtech Private Limited;
4. M/s Shree Balaji Fabrics;
5. M/s Kumaran Textiles;
6. M/s Kalaimagal Textiles;
7. M/s Nithyabharath Textile (P) Ltd;
8. M/s Annapoorani Textiles private Ltd;
9. M/s Thirumala Exports;
10. M/s Ved Darshan Yarn traders LLP;
11. M/s P. Surya Rao;
12. M/s KRG Textile Mills;
13. M/s Neelam Thread Pvt. Ltd.;
14. M/s Sri Shuba Tex Private Limited;
15. M/s ACE Industries;
16. M/s Maher Filaments;
17. M/s Reagan Fashions Pvt. Ltd.
18. M/s Health Medtech Pvt. Ltd

- r. The Authority also sent initiation notification to the following Associations asking them to inform all their members regarding the initiation of investigation with the request to submit their response/comments, if any:
1. Erode Veerapan Chatram Powerloom Owners Association
 2. Rajasthan Textile Mills Association
 3. Erode Visaithari Urimayalargal Sangam
- s. The Authority made available the non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. Submissions made by all the interested parties to the extent considered relevant have been taken into account in these final findings.
- t. The Period of Investigation (POI) for the purpose of the present anti-dumping investigation is from 1st April, 2019 – 31st December, 2019 (9 months). The injury examination period has been considered as the period from 1st April, 2016 – 31st March, 2017; 1st April, 2017 – 31st March, 2018; 1st April, 2018- 31st March, 2019 and the POI.
- u. The Authority obtained transaction-wise import data for subject goods for the past three years, and the POI from the Directorate General of Commercial Intelligence and Statistics (DGCIS) and Directorate General of Systems (DGS) and analysed the data after due examination of the transactions.
- v. The Non-Injurious Price (hereinafter referred to as “NIP”) has been determined based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the Domestic Industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- w. Verification of the information provided by the Applicant Domestic Industry by way of table study, to the extent deemed necessary, was carried out. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of these final findings.
- x. Desk Verification of the information provided by the producers/ exporters, to the extent deemed necessary, was carried out by the Authority and has been relied upon for the purpose of these final findings.
- y. Submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority, in these final findings.
- z. The comments on the proposed PCN methodology from the interested parties including Domestic Industry was also invited vide Notification dated 19th February, 2020. Thereafter, PCN wise information was called from the interested parties by the Authority vide letter dated 4th March 2020 and time limit for submission of information was accordingly extended till 20th May, 2020.
- aa. Due to the worldwide outbreak of COVID-19 and consequent restrictions imposed by different countries, including India, the Authority in accordance with Rule 6(6) of the AD Rules and Trade Notice No. 01/2020 dated 10th April 2020, conducted an Oral Hearing through video conferencing on 7th December 2020 to provide an opportunity to the interested parties to present their views orally before the Designated Authority. All the parties who attended the oral hearing were advised to file written submissions of the views expressed orally, followed by rejoinders, if any. The arguments made in such written submissions and/or rejoinders received from the interested parties have been considered, to the extent deemed necessary, for the purpose of these final findings.
- bb. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing

information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

- cc. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded these final findings on the basis of the facts available.
- dd. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 18th December 2020 and comments received thereon, considered relevant by the Authority, have been addressed in the Final Findings. The Authority notes that most of the post-disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post-disclosure submissions to the extent considered relevant are being examined in these Final Findings.
- ee. ‘***’ in these final findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- ff. The exchange rate adopted by the Authority for the subject investigation is US\$1 = ₹ 71.24.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. At the stage of initiation, the product under consideration was defined as follows:

“4. The product under consideration for the purpose of the present investigation is “Viscose rayon spun yarn containing 85% or more by weight of artificial viscose staple fibre, other than sewing thread, not put up for retail sale, falling under 55101110 and 55101210. The product under consideration can be either single or multiple folded or cabled yarn”.

5. VSY is mainly used for weaving or knitting for production of fabric for eventual use in garments.

6. The PUC is classified under Chapter 55 of Customs Tariff Act, 1975. While the prescribed classification of the product is 55101110 and 55101210, the PUC has also been imported under 55101190, 55101290, 55109010 and 55109090. The Customs classification is indicative only and not binding on the scope of the investigation.”

C.1. Submissions of the Domestic Industry

5. The submissions made by the Domestic Industry with regard to product under consideration and like article and considered relevant by the Authority are as follows:

- a) The product under consideration in the present investigation is “viscose rayon spun yarn” also known as “viscose spun yarn” containing 85% or more by weight of artificial viscose staple fibre, other than sewing thread, not put up for retail sale. The subject goods are classified under heading Chapter 55 under customs subheading no. 5510 of the Customs Tariff Act, 1975.
- b) While the prescribed classification of the product is 55101110 and 55101210, the product has also been imported under 55101190, 55101290, 55109010 and 55109090. Single yarn is the product that is being imported in multiple codes. The customs classification is, however, indicative only and is in no way binding on the scope of the present investigation
- c) The product under consideration is viscose spun yarn, a man-made fibre having all kinds of variants of viscose spun yarns such as bright/ semi-dull (or variants thereof), coloured/dyed, undyed or dope dyed (or variants thereof), single/ double/ multiple/ folded/ cabled (or variants thereof), single ply or double ply (or variants thereof), waxed or non-waxed having counts of the yarn ranges from 10 counts to 60 counts. The product can be sold in the form of normal yarn or slub yarn.
- d) Viscose spun yarn is used for weaving (warp/weft) or knitting (Hosiery) for production of fabric for eventual use in garments.
- e) The product is manufactured through three different technologies-
 - i. Ring Spun Technology - Ring spinning technology;

- ii. Open End Spun Technology – Rotor spinning technology;
 - iii. Air-jet Spinning technology - “airjet” technology is supplied by Murata, Japan. It is known as Vortex Technology (Murata Vortex System), and supplied by Rieter technology, Switzerland, known as Comforjet.
- f) The goods produced by the Applicant are like article to the PUC imported from subject countries as they are comparable in terms of chemical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods, and are technically and commercially substitutable. There is no known significant difference in the technology employed by the domestic industry and the producers in subject country. The Applicants have produced like article to the imported products.
 - g) The domestic industry produces and supplies the double yarn as well as multi yarn and there is no justification for its exclusion. Further, the production process and the spindles used for producing single yarn and the double or multi yarn are same. The petitioning companies have already submitted the PCN wise data to the Authority whereby details of all different types of product under consideration are provided and the Authority may verify the same.
 - h) The domestic producers use airjet technology. Airjet Technology incorporates both Vortex and Comfertjet technologies.
 - i) With regard to the exclusion of the Dyed VSY, it is submitted that though Dyed VSY is being imported into India from subject countries, the domestic industry produces and supplies the Dyed VSY. There is thus no justification for its exclusion.

C.2. Submissions of Other Interested Parties

6. The following submissions have been made by the exporters/ producers/ other interested parties regarding the PUC:
 - a) The scope of the PUC should be reviewed. Double yarn or multi-yarn are significantly different from single yarn in terms of the production process and prices. Since the domestic industry does not produce double yarn or multi-yarn the same should be excluded from the scope of product as their imports would not cause injury.
 - b) VSY produced through air-jet technology should be excluded as the domestic industry has insufficient production capacities and this type of product is only used for fashion fabric.
 - c) Dyed VSY should be excluded from the PUC as it has not been imported in India.

C.3. Examination by the Authority

7. The PUC in the present investigation is viscose rayon spun yarn containing 85% or more by weight of artificial viscose staple fibre, other than sewing thread, not put up for retail sale.
8. The product is classified under Customs Tariff headings 55101110 and 55101210. The PUC has also been imported under 55101190, 55101290, 55109010 and 55109090. The Customs classification is indicative only and not binding on the scope of the investigation.
9. Some interested parties have contended that the domestic industry does not produce and sell double or multi yarns. The domestic industry has, however, provided evidence in the form of sales invoices relating to sales of double yarn and multi yarn. The authority therefore holds not to exclude double yarn and multi yarn from the scope of PUC.
10. Some interested parties have contended that VSY produced through air-jet technology should be excluded as the domestic industry has insufficient production capacities and this type of product is only used for fashion fabric. The Authority notes that Airjet technology is being used in India. The domestic industry has provided production details of VSY produced through Airjet technology. The Authority, therefore, holds not to exclude VSY produced through air-jet technology from the scope of PUC.
11. Some interested parties have contended that Dyed VSY should be excluded from the scope of the product under consideration as it has not been imported in India. The Authority notes that the Dyed VSY is being imported in India and the Domestic Industry is also producing the same. The Authority, therefore, holds not to exclude Dyed VSY from the scope of PUC.

12. It has been noted from the information available on record that the product produced by the Domestic Industry is like article to PUC imported from subject countries. The product produced by the Domestic Industry, and subject goods imported from subject countries is comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. The Authority holds that the subject goods produced by the domestic industry are a like article to the product imported from subject countries in terms of Rule 2(d) of the AD Rules.

PCN system adopted for product cost-price comparison

13. The Authority proposed a PCN methodology vide letter dated 19th February, 2020 and invited comments on the same from the interested parties. Based on comments received, the Authority notified the following PCN methodology for the purpose of the present investigation to the interested parties on 4th March, 2020.

SN	Particulars	Type	Code
1.	Technology	Ring, Vortex & Open End	Ring = "R" Airjet = "A" Open End = "O"
2.	Count	Count Ranging from NE 12/1 to 60/1 Count Ranging from NE 12/2 to 60/2	11-15 = 1 16-20 = 2 21-30 = 3 31-40 = 4 41-50 = 5 51-60 = 6
3.	Ply of Yarn	Single & Double Ply (1 & 2)	Single ply = S Double Ply = D Multi-Ply yarn = M
4.	Wax/ Non- Wax	Waxed and Unwaxed (N & W)	Waxed = W Unwaxed = U
5.	Fiber Type	Type of Viscose	Viscose Bright = VB Viscose Semi -Dull = YS Fire Retardant = FR Modal= MO Tencel = TL Micro Modal = MM Bamboo Fiber = BA Micro Tencel= MT
6.	Dyeing Type	Undyed, Dyed or Dope Dyed	Undyed = U Dyed = D Dope Dyed = DD
7.	Special feature	Normal Yarn	Normal Yarn = NY
		Slub	Slub = SL

14. The interested parties have submitted the PCN wise data to the Authority.

D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

D.1 Submissions of the Domestic Industry

15. The following submissions have been made by domestic industry with regard to the standing of the domestic industry:
- a. The application has been filed by The Indian Manmade Yarn Manufacturers Association on behalf of the Domestic Industry. The following companies have provided their financial and injury data:
 - a. M/s Arunachala Gounder Textile Mills Pvt Ltd
 - b. M/s Cheran Spinner Private Limited
 - c. M/s Chola Spinning Mills Private Limited
 - d. M/s Mothi Spinners Private Limited
 - e. M/s Pallava Textiles Private Limited
 - f. M/s Sri Cheran Synthetics India Private Limited
 - g. M/s Victory Spinning Mills Private Limited
 - b. These companies are not related to any importer or exporter of subject goods in the subject countries, nor have they imported subject goods from subject countries.
 - c. The application has been supported by the following companies-
 - i. M/s Aadhavan Spinners Pvt Ltd
 - ii. M/s Bhaarathi Spintex India Pvt Ltd
 - iii. M/s Chendhoor Murugan Yarn Tex India Pvt Ltd
 - iv. M/s Dhanalakshmi Synthetics Pvt Ltd
 - v. M/s Dharanii Cotton Mills Private Limited
 - vi. M/s Saravanagiri Spinning Mills Pvt Ltd
 - vii. M/s GMB Textiles Mills India Ltd
 - viii. M/s Hari Krishnaa Spinning Mills Pvt Ltd
 - ix. M/s Hariharan Spinners (I) Pvt Ltd
 - x. M/s K.P.N Textile Mills Pvt Ltd
 - xi. M/s KKP Spinning Mills Pvt Ltd
 - xii. M/s KKP Textiles Pvt Ltd
 - xiii. M/s Kumaragiri Spinnerss (P) Ltd
 - xiv. M/s Meenakshi Textile Mills
 - xv. M/s NKCM Spinners Pvt Ltd
 - xvi. M/s Pavathal Spinning Mills Pvt Ltd
 - xvii. M/s Prince Yarnn India Ltd
 - xviii. M/s Sri Jaya Maaruthi Yarn India Pvt Ltd
 - xix. M/s Sri SanthanaLakshmi Spinners Pvt Ltd
 - xx. M/s V. Thangavel & Sons (P) Ltd
 - xxi. M/s Vedagiri Hi-Tech Spinning Mills Pvt Ltd
 - xxii. M/s VST Spintex India Pvt Ltd

- d. Post initiation of the investigation, the Application has been supported by the following companies-
 - a. M/s Sri Hariprasath Textiles Private Limited
 - b. M/s Shiv Ganes Spinning Mills (P) Ltd.
 - c. M/s Saranya Spinning Mills (P) Ltd.
 - d. M/s Mehala Hills
 - e. M/s Aakavi Spinning Mills Private Limited
 - f. M/s SSPE Cotton Mills Private Limited
 - g. M/s Shrie Harivallabi Spinners Private Limited
- e. In the absence of any publicly available information, the Applicants have estimated gross domestic production on the basis of information provided by the major supplier of raw material i.e. Viscose Staple Fibre and imports of the raw material into India.
- f. The petitioning association has submitted all the requisite information as per the instructions issued by the Authority with the application.
- g. The Association represents the majority of the VSY producers who are located in the geographical area of Erode and nearby. This region is the hub of the producers of product under consideration. The cluster of VSY producers in the area of Erode and nearby represent 80% of the Indian Industry.
- h. The petitioning companies alone constitute more than 25% and are eligible to maintain the application in terms of Rule 5.
- i. The WTO AD Agreement or the Indian Rules do not provide for any specific mechanism for determining the total Indian production and standing of the Domestic Industry. The Domestic Industry in the present case is fragmented and scattered, consisting of small and medium scale enterprises. Neither the government authorities nor any private institution publishes or provides any record of Indian production of the product under consideration. Therefore, this industry is quite different in structure and composition as compared to the typical domestic industry in various other cases.
- j. The ruling of Hon'ble CESTAT in the case of Lubrizol (India) Pvt. Ltd. versus the Designated Authority clearly shows the meaning of the term "major proportion" and the application passes that test.
- k. There are 7 petitioning companies and 29 domestic producers of product who have expressly supported the investigation and imposition of duty. The Applicant along with supporters accounted for 47% of the total Indian production at the stage of initiation. Further, there was no opposition to the application either at the stage of initiation or any time thereafter.
- l. The Applicant association has provided information regarding the total number of its members that manufacture the subject goods, and the members who are importers of the subject goods.
- m. The Application is specifically supported by a number of domestic producers of the product.
- n. The Applicant association has written a communication to all known manufacturers/ producers of the product in the country who wish the anti-dumping duty to be imposed on the dumped subject goods. None of the producers of the product under consideration have opposed the application/investigation/imposition of duty on the subject goods.
- o. The Association does consist of producers of mixed yarn of cotton fiber, polyester staple fiber, polyester staple yarn, etc. But this fact is totally immaterial. In fact, the petitioner companies also are capable of producing blends of cotton fiber, polyester staple fiber, polyester staple yarn, etc as per the demand in the market. The spindles used for production of VSY can be switched to other types of yarn and no separate production facility is required to produce mixed yarn of cotton fiber, polyester staple fiber, polyester staple yarn,

- etc. However, the information submitted to the Authority has been prepared considering information pertaining product under consideration only.
- p. If it is considered that the total Indian production is overestimated by the Applicants (by not considering the VSF being consumed in the NPUC), the standing of domestic industry is rather higher.
 - q. The Applicant has also submitted the list of companies who have faced injury and stopped manufacturing the product under consideration and switched or diverted their spindles to other products.
 - r. The submission on Grasim being held guilty of following discriminatory pricing by Competition Commission of India (CCI) is irrelevant and misplaced and the said decision has no relevance to the present antidumping investigation. There is no enquiry by the CCI either against the petitioning companies or with regard to the product under consideration. The Petitioner has relied on the data to the extent of sales made by the Grasim for VSF production to determine the total Indian production of PUC.
 - s. The present investigation was initiated on 14th January 2020, whereas the report of CCI has been published on 16th March 2020. Further, the findings of CCI has no bearing on the data provided by Grasim to the Authority as even the report of CCI is based on the data provided by Grasim only.

D.2. Submissions of Other Interested Parties

16. The following submissions have been made by other interested parties with regard to the standing of the domestic industry:
 - a. The Association has not filed complete information as per the instructions circulated vide F.No.14/44/2016-DGAD. All the members of the Association are neither part of the petitioning companies nor have expressly supported the application. There is no evidence to support that the Association consists of 80% of producers and, in fact, it belongs to a handful of industries located in Erode and Tiruchengode district.
 - b. No resolution has been passed and minutes of the meeting provided wherein its members had decided to file the application.
 - c. The Association consists of producers of mixed yarn of cotton fibre, polyester staple fibre, polyester staple yarn, etc. and it is not clear how the Applicant has segregated the two.
 - d. Change in standing casts serious doubts as to how the Authority has satisfied itself about the accuracy and adequacy of the information before initiation.
 - e. The Application is not representative of the Domestic Industry and hence cannot be said to be made on behalf of Domestic Industry. Mere crossing the threshold of 25% does not ipso facto means satisfaction on other conditions and the test of 'a major proportion' under Rule 2(b).
 - f. Merely 7 small producers (with a doubtful 29% share) located in the Southern region of India leaving out other major producers and other regions of India.
 - g. The Applicant has relied on the sales data of VSF provided by M/s Grasim Industries Ltd. to compute the total production of VSY by the Indian domestic industry. The Applicant has applied a consumption norm for the PUC in the ratio 1:0.98 to determine the total production of the PUC by the Domestic Industry. The data on total sale of VSF by Grasim pertains only to the sale of VSF to such producers of VSY who produce 100% VSY. Implicitly therefore, the data set leaves out the total consumption of VSF by such producers of VSY who produce blended VSY which comprises VSF above 85% but less than 100%. Further, Grasim has not provided data on all manufacturers of VSY.
 - h. The production of the subject product is not actual and it is based on assumption which is not only inaccurate but also misleading as there is no such justification that all raw material purchased in a certain period will be consumed in the same period. This means that it is possible that some portion of the purchased material in the POI would not be used during the POI. In the absence of the actual production, the legal standing cannot be correctly established and as such this should have led to the rejection of the complaint or the termination of the present investigation.

- i. Grasim follows a non-transparent practice of dual pricing while invoicing and refuses to disclose its discount policies to the customers. The CCI held that Grasim has been supplying VSF to domestic spinner's category and deemed exporter's category at different prices which are generally discriminatory and disadvantageous to the spinners in the domestic category. Also, Grasim was controlling the production of spinners and discriminating against those spinners who were found to be not converting VSF purchased from it into yarn as per its policy by forcing spinners to submit their monthly production data before passing on the required discounts and spinners were forced to submit the details of products produced and not just VSF consumed.
- j. Grasim is related to three exporters in Indonesia which have submitted the Questionnaire response and the chances of them being treated as cooperative is high. Their data is unreliable. They must have planned the prices of export to India as they were well prepared by Grasim for the upcoming investigation.
- k. The total Indian production has been estimated on the basis of unverified information of Grasim without any proof of production and the use of VSF in PUC and Non-PUC, whereas the same information and names of users of VSF had been disclosed in the Final Findings issued by the Authority in the Sunset Review of Anti-dumping Duty on VSF, excluding Bamboo Fibre, on 8th July, 2016.
- l. CCI has imposed a penalty on Grasim for indulging in unfair price discriminatory practice and the data provided for total Indian production cannot be relied upon.
- m. The determination of total Indian production is inaccurate and unreliable as the basis for determination has not been disclosed. Further, Indian production is not based on the information sourced from any authority established by law or Government Promotion Council of the subject goods or the Ministry of Textiles.
- n. Support letters submitted do not adhere to the guidelines mandated in Trade Notice 13 of 2018 dated 27th September 2018. The support letters attached do not expressly support the petition. The share of supporting domestic producers is also below 25%.
- o. The import data of VSF provided is different from the Comtrade Statistics data.
- p. It seems to be a joint application by some small customers in Erode and Tiruchengode of Grasim to mislead the Authority and protect the price advantage taken by Grasim due to AD imposition of VSF.
- q. The exclusion of importers from the Domestic Industry and total production is not automatic. What is the source of information about the importing producers and who are related to the exporters?
- r. If names of other producers of Viscose Spun Yarn are not disclosed, it cannot be verified whether all producers of Viscose Spun Yarn have been included for determining total production in India.
- s. The Domestic Industry is not static in its determination of standing and domestic market share and changing its stand time-to-time. The Authority should have taken into consideration the changes in the percentage of the production and analyze whether 29% would constitute a "major proportion pursuant to Article 4.1 of ADA and Rule 2(b) of the AD Rules. (Relied upon AB report in EC- Fasteners (China))

D.3. Examination by the Authority

17. Rule 2(b) of the Rules defines domestic industry as under:

"(b) 'domestic industry' means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers".

18. The present Application was filed by the Indian Manmade Yarn Manufacturers Association on behalf of the Domestic Industry. The following companies have provided their financial and injury data:
 - a. M/s Arunachala Gounder Textile Mills Pvt Ltd
 - b. M/s Cheran Spinner Private Limited
 - c. M/s Chola Spinning Mills Private Limited
 - d. M/s Mothi Spinners Private Limited
 - e. M/s Pallava Textiles Private Limited
 - f. M/s Sri Cheran Synthetics India Private Limited
 - g. M/s Victory Spinning Mills Private Limited
19. The Applicant association submitted that the production of its members constitutes about 80% of Indian production. The Association has, however, not given any definite quantity of Indian production in the POI, pleading that production information is not collected/compiled by the association, nor called by the association for this purpose in view of sensitivity of the said information.
20. The Association, however, submitted that it had sent a communication dated 12th November, 2019 to 50 members of the Association intimating them that in view of significant injury being suffered by the domestic producers of Viscose Spun Yarn from low priced imports, the Association has decided to seek imposition of anti-dumping duty on imports of Viscose Spun Yarn" and has asked them to specify whether they supported or opposed the petition for imposition of duty and that whether or not they wished to provide relevant information about company's operations.
21. Forty (40) domestic producers have supported the Application and there was no opposition to the filling of application either at initiation stage or anytime thereafter during the course of the investigation.
22. Out of the 40 supporters, 22 domestic producers have separately filed support letters and provided information with regard to their capacity (in spindles & MT), production, domestic sales (in volume & value) and export sales (in volume & value) besides opening and closing stock at the time of initiation. No other information was furnished.
23. Post initiation of investigation 7 additional companies filed support letters and provided capacity (in spindles & MT), production, domestic sales (in volume & value) and export sales (in volume & value) besides opening and closing stock at the time of initiation.
24. Since no concrete information with regard to Indian production is compiled by or available with either the Associations, or any agency, which would be accessible as public information; considering facts and circumstances of the present case, the Authority considered it appropriate to rely on the available information for the purpose of determining the total production in India and the standing of the petitioning domestic producers as eligible Domestic Industry at the stage of initiation. The Authority recognises the difficulties in quantifying gross domestic production in case of fragmented industry like the one in the present case. It is seen that there are at least 150 producers of whom are consuming raw materials either from Grasim or are importing the same for manufacture of PUC in India. The average production per company comes to 1-2%, thus showing small size of each producer vis-à-vis Indian production. The interested parties have contended that that any domestic producer can produce not only VSY but also other kinds of yarns. Further, production of product under consideration requires viscose staple fibre as the key raw material (while by definition, viscose staple fibre should be at least 85% by weight, the product under consideration is de-facto 100% viscose). The Authority, therefore, holds that in the facts and circumstances of the present case, domestic production can be determined on the basis of consumption of raw material in the country. The Authority has assessed Indian production on the basis of consumption of raw material as had been done in the past also by the Authority in similar situations. Further, in view of the difficulties encountered in ascertaining producer-wise raw material consumption in such fragmented industry, consumption in such situations is determined/ derived by considering supplies of raw material(s) by various sources. Since M/s Grasim Industry

Ltd. is the only domestic supplier of raw material in the country, its information along with imports of viscose staple fibre can be considered as the supplies of viscose staple fibre to the producers of viscose spun yarn.

25. Interested parties have referred to the decision of CCI rendered in the context of Grasim Industries Ltd. The Authority, however, notes that the said investigation and decision has no bearing on the information supplied by the company with regard to the quantity of viscose staple fibre sold by the company. The company has provided the details of sales of Viscose Staple Fibre made to various parties in India for manufacture of PUC and non-PUC. Thus, information provided by Grasim Industries has been relied upon to estimate the Indian production of subject goods. Further, information on imports has been relied upon from the published DGCI&S information. On the basis of supplies of raw material by the sole Indian producer M/s Grasim Industries and imports thereof, the total domestic production of subject goods for the POI on the basis of consumption norm declared by petitioners is *** MT (***%) and that on the basis of standard input-output norm is *** MT (***%), and in both the situations petitioning domestic producers account for more than 30% of the total domestic production even without any supporter of the Application. It is noted that if the production of producers who have given support letters (some with some data and others without that) then these taken together account for approximately 65% of the Indian domestic production.
26. The Authority notes that as regards decision of Competition Commission, is irrelevant to the present investigation in so far as assessment of total Indian production and standing of Domestic Industry is concerned. The decision of CCI concerns pricing of the product by a raw material supplier and is beyond the domain of the current investigation in so far as assessment of total Indian production and standing of domestic industry is concerned. The present investigation concerns viscose spun yarn and not viscose staple fibre. Information with regard to Indian production has been adopted by the Authority based on the sales volumes of viscose staple fibre supplied by Grasim Industries. No other information pertaining to Grasim Industries has been adopted in the present investigation.
27. The Authority notes that it is desirable that a supporter of an Application provides the desired information in the format prescribed in Trade notice 13/ 2018. The information prescribed by the Authority in Trade notice 13/ 2018 for supporting domestic producers enables the Authority to ascertain whether supporting domestic producers have also suffered injury, even if such domestic producers are not included as a part of the Domestic Industry. However, in a situation where supporting domestic producer has not provided relevant information in prescribed format, but have nonetheless expressed support to the application, the Authority notes that such supporters cannot be treated as “opposition”.
28. The Authority notes that the production of the applicant Domestic Industry who has provided all relevant information with regard to injury constituted a major proportion of Indian production at the stage of initiation and even thereafter.
29. The Association has provided relevant details as prescribed under the Trade Notice and a copy of the resolution passed for filling of application for imposition of duty.
30. As regards the contention that members of the Association are also engaged in products not covered under present investigation, it is noted that the mere fact that the Association members are engaged in other products as well does not imply that the Association cannot take up the case in respect of the PUC. The Authority has considered information pertaining only to the PUC and has not considered information pertaining to other products. Further, Applicant companies have provided information only for the PUC. The Indian production has been assessed based on raw material consumption.
31. After the initiation, Grasim Industries has provided complete details of sales of viscose staple fibre to different consumers in India which further supports the correctness of information filed at the time of initiation.
32. As regards import volumes of VSF, it is noted that the Authority has adopted information published by the DGCI&S.

33. As regards to the information of total Indian Production to be procured from government source, the Authority notes that there is neither any government agency nor any private body organisation in possession of any such data.
34. From the above, the Authority notes that the participating eligible domestic producers account for a major proportion of the total domestic production and, therefore, constitute Domestic Industry within the meaning of the Rules. The petitioning companies satisfy the eligibility criteria of domestic industry under Rule 2(b) of the Rules and meets the criteria of standing under Rule 5 (3) of the Rules.

E. CONFIDENTIALITY

E.1. Submissions of the Domestic Industry

35. The following submissions have been made by the Domestic Industry:
- a. The Applicant has disclosed all the essential information in the non-confidential version of the application in accordance with Rule 7 of AD Rules and as per Trade Notice No. 10/2018 dated 7th September, 2018 and provided sufficient information justifying initiation of the investigation. The applicant has provided all information as required under the application proforma.
 - b. Indexed information has been provided wherever possible. The injury analysis is essentially an analysis of trend which can be easily seen through trends of various parameters provided in the application.
 - c. Interested parties have filed a grossly deficient response in the non-confidential version even after being given an extension of time to file sufficient and complete information. The same is purely with the intent to impede the investigation and not provide the data necessary for an expedited determination. By virtue of Rule 6(8) of the Rules, the response filed by interested parties must be rejected and they should be declared as non-cooperative.
 - d. Contrary to the arguments of the opposite interested parties, the Domestic Industry has submitted a justification table for its claims of confidentiality both with the non-confidential version of the petition and the updated data. Further, the Domestic Industry has submitted a table showing its compliance with the Trade Notice.
 - e. Formats A to K contain costing and price information, which cannot be disclosed. Further, non-injurious price is a confidential sensitive information and cannot be disclosed.
 - f. All the injury parameters of the Domestic Industry have been provided in the indexed form and in line with the requirements of the trade notice.
 - g. NIP is a highly business-sensitive information and cannot be disclosed on an actual basis or even in a range. In fact, the Designated Authority does not disclose NIP or normal value or export price even in a range.
 - h. The Applicant has already submitted the non-confidential version of DGCI&S Transaction wise import data vide letter dated 28th February 2020.
 - i. The disclosure of actual figures of normal value will cause serious prejudice since the information constitutes third party information. A sufficient non- confidential version of the same has been provided by the petitioner.

E.2. Submissions of Other Interested Parties

36. The following submissions have been made by the other interested parties:
- a. Excessive confidentiality has been claimed in violation of Trade Notice No. 10/2018 dated 7th September, 2018, 13 of 2018, and 14 of 2018 as format H provided for petitioner companies does not contain any aggregate number or indexed numbers and all figures have been blacked out and no meaningful summary has been provided. In this connection reliance is placed on the decision of the Hon'ble Supreme Court of India in *Sterlite Industries (India) Ltd. v. Designated Authority* 2003 (158) E.L.T. 673 (S.C.).
 - b. The Applicant has not provided non-injurious price range and price underselling/injury margin as per Trade Notice No. 18/2018.

- c. The summary import data have been provided without providing the entire transaction-wise DGCI&S data.
- d. The Application does not disclose names of producers who are importers of the subject product and who are related to the exporters of the subject product. This information cannot be considered as confidential.
- e. Normal value determined for subject countries are kept confidential and no evidence has been provided.
- f. No meaningful summary has been provided. The Applicant stated as to why summarisation is not possible for annual reports of the petitioner companies, performance parameter of each companies constituting, information pertaining to costing, consumption of raw material, allocation and apportionment of expenses, segregation of Domestic Industry production and sales of PUC and NPUC, stock, employment, investments, price trends, import material price trend.

E.3. Examination by Authority

37. With regard to confidentiality of information, Rule 7 of the Rules provide as follows:

“Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule(2) of rule 12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”

38. The Authority examined the confidentiality claims of the interested parties and on being satisfied allowed the claim on confidentiality, the Authority considers that any information which is by nature confidential or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, should be treated as such. Such information cannot be disclosed without specific permission of the party submitting it.
39. The Authority has considered the claims of confidentiality made by the Applicants and the opposing interested parties and on being satisfied about the same, the authority has allowed the claim on confidentiality. The Authority made available to all interested parties the public file containing non-confidential version of evidence submitted by various interested parties for inspection, upon request as per Rule 6(7).
40. As regards the contention that the injury information provided by the applicant companies is inconsistent with the trade notice or the decision of the Hon'ble Supreme Court, the Authority notes that the information has been adequately and sufficiently disclosed in the non-confidential version. Further, whenever applicant has not provided actual information, the Applicant has provided reasons for the same. The interested parties have not shown how the reasons/justifications given by the applicant for claiming confidentiality are not appropriate.
41. It is clarified that the Authority treats non-injurious price as a confidential information.
42. As regards the contention that excel file of transaction-by-transaction imports were claimed confidential by the Domestic Industry, the procedure for sharing and procuring import data has been laid down in the Trade Notice 07/2018 dated 15th March, 2018. It provides that (i) the sorted import

data relied upon by the domestic industry can be shared in hard copy & (ii) interested parties can seek authorization from the Authority for seeking raw transaction by transaction import data from DGCI&S. The hard copy of the sorted import data was made accessible to the interested parties based upon declaration/undertaking as per prescribed format. The interested parties who requested for procurement of import data from DGCI&S and provided undertaking as per Trade Notice 07/2018 were also granted authorization to obtain import data in excel file from DGCI&S. The Authority, thus, notes that the procedure now being applied is consistent and uniform across parties and investigations and provides adequate opportunity to the interested parties to defend their interests.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submissions of the Domestic Industry

43. The following submissions have been made by the Domestic Industry:

- a. The Authority has already satisfied itself with regard to accuracy and adequacy of the information submitted by the Domestic Industry in the Application. In fact, the investigation was initiated only after the Authority satisfied itself with regard to dumping, injury and causal link.
- b. The investigation in the present matter was initiated after satisfying the requirement of Rule 5 of Rules and Article 5 of the WTO Agreement. The Application filed by the Applicant was considered by the Authority as properly documented for initiation of the anti-dumping investigation. However, while initiating the investigation, the Authority has extended the POI as 1st April, 2019 – 31st December, 2019 (9 months) for detailed analysis.
- c. The Authority can consider POI between six months to eighteen months and the POI can be extended or revised from the POI proposed by the applicant in the application. It seems that interested party is not aware of the practice of the Authority.
- d. The imposition of the proposed anti-dumping duty will not result in any significant adverse impact on the eventual end product and the imposition will be in the larger public interest.
- e. If the prices of the product under consideration are examined over the present injury period, it would be seen that the average import price during the period was Rs. 192 per Kg. If an ADD of Rs. 25 per Kg is considered, it would be seen that the prices of the product, in the event of Domestic Industry raising the prices to the extent of ADD (which shall not happen, given market forces and competition) will increase to pre-dumping period. Consumers were paying these prices and growing for last three years. Such being the case, it is without basis that the prices of the product would become unreasonably high in the event of the imposition of ADD.
- f. The subject goods are primarily used in the manufacture of women's wear predominantly the ethnic wear. The Applicants have determined the impact of the proposed ADD on the eventual end product. In a situation where the Domestic Industry increases its price by \$ 333 per MT, it will be seen that imposition of anti-dumping duty will increase the cost of the eventual end-product by 0.2%-0.5%. Thus, the impact of proposed ADD in the event the Domestic Industry raises the prices by the amount of ADD (which is less likely to happen) would be insignificant.
- g. Imposition of ADD would help prevent the decay of the Domestic Industry and would re-establish fair competition in the market.
- h. Most of the producers of viscose spun yarn are in MSMEs. The industry is unable to compete with low-priced imports and is finding it difficult to survive in the market. The situation in the present investigation is grave and the information submitted on record clearly shows that the domestic industry is suffering material injury. Imports of the product have increased almost 25 times over the injury period from below 2,000 MT to above 50,000 MT in POI and 6,300 MT in the month of March 2020 alone.

F.2. Submissions of Other Interested Parties

44. The following submissions have been made by other interested parties:

- a. The Authority did not have prima facie evidence of dumping, injury and causal link for the full POI of 9 months from April 2019 to December 2019 at the time of initiation of investigation.

Therefore, the initiation of investigation by the Authority is not in accordance with Rule 5 of the Rules.

- b. The initiation does not comply with the requirements of Article 5.2 and 5.3 of the Anti-Dumping Agreement (ADA) as the data for the POI was inadequate and inaccurate due to which the adjustment of POI was needed, showing that it lacked prima facie evidence of dumping, injury and causal link information and requirement for imposition of anti-dumping duty on imports from subject countries.
- c. There are numerous inaccuracies and inconsistencies in the data in the application which prevent objective examination. The injury information of the Domestic Industry is different at different places in the Application (in pages 38-39 and pages 462-463). Further, imports relative to consumption in paragraph 73 and table 5 page 26 are different from the Annexure A, Proforma IV-A part 1 page 37.
- d. Documents such as Registration Certificate, By-Laws & Memorandum of Association, list of the members, details of the executive body/managing structure of the Association, minutes of the meeting in which it was resolved by the Association to file an anti-dumping petition on behalf of some/all its members, and a list of the members who either supported, opposed or remained neutral with regard to the petition have not been provided by the Applicant. These documents are even more important in the present investigation since the Association consists of many members and all these members are not a part of the petitioner companies.
- e. More than 1,000 power loom weavers are using VSY for manufacture of value-added fabric and other fabric applications who are small scale industries fragmented across the country and are not capable of sustaining increase in raw material prices. Increase in raw materials prices will render these companies uncompetitive.
- f. The value chain of the raw materials in the viscose fabrics is inverted as there is only one producer and supplier of VSF in India. Weavers and spinners are dependent on internationally competitive fibre and yarn to compete with other South Asian Countries. The imposition of ADD on VSF is one of the major reasons for the downstream spinners and weavers being uncompetitive in the international market. If the textile value chain has to be given a boost, the ADDs on raw materials like fibres must be removed.
- g. The Government of India is requested to evaluate the public interest in the textile industry and consider the livelihood of millions of people engaged in production of downstream products before imposition of duty on VSY. To survive in this fiercely competitive textile industry, consumers must have continuous availability of cheaper raw materials for growth and to service bank loans. Imposition of ADD will result in huge unemployment of labour and their families. It is essential that imported raw material should be available throughout the year.
- h. VSY industry in India comprises small and medium size enterprises. In turn, there is a lack of detailed data at the macro level. As per NITI Aayog, the Indian textiles industry is the biggest employer after agriculture which provides direct employment to 4.5 crore people and another 6 crores in allied sectors. India is the second largest manufacturer of textiles and clothing and the second-largest exporter of textiles and apparel as per Annual Report 2019-20 of the Ministry of Textiles. The importance of competitive supply of raw material, including yarn such as VSY cannot be ignored because it is the major input and plays vital role in Indian economy. Imposition of ADD on such a crucial raw material will hurt the textile industry especially during COVID-19 crisis.
- i. The eventual imposition of duty will have adverse and cascading impact on the end users and create a monopoly of the petitioner in the domestic market as import will decline and these users will be on the mercy on their will.
- j. Importers want removal of duty on VSF and in that situation yarn imports would reduce by itself without the need for any additional protection measures on yarn imports.
- k. The import of Viscose yarns needs to be seen in overall context of ensuring health of entire textile value chain, most notably spinning and weaving industries which are key MSMEs contributing to employment generation.

1. Demand for Viscose based products has grown at over 12% over last five years whereas the capacity and production of VSF has grown at only 2.6% resulting in shortage of fibre / yarn. Overall growth in India has lagged behind rest of the world whereas Viscose demand growth in India has outpaced rest of the world. Due to the duty on VSF, and to meet demand for local industry, yarn import increased during FY'19 and FY'20 as a direct consequence of growing demand and lack of availability. This situation would be further exacerbated as there is no new capacity addition of VSF.

F.3. Examination by the Authority

45. The Authority holds that the investigation was initiated after satisfying the requirement of Rule 5 of the Rules and Article 5 of the WTO Agreement.
 - a. The interested parties have made a statement about the adverse impact of ADD on downstream industry but have not provided any verifiable data/information to substantiate.
 - b. On this issue, the domestic industry has submitted as follows:
 1. The product under consideration is used only in women's wear, predominantly ethnic wear. The product under consideration is not used in any other sector of textiles industry. Thus, the submissions with regard to textiles industry as a whole are irrelevant.
 2. The average price of VSY over the injury period, excluding POI was Rs. *** per kg. The price of the VSY after adding proposed ADD will still remain below these prices.
 3. The costs on account of VSY constitute 0.25-0.75% of cost of fabric made out of VSY.
 4. When the price of price of VSY declined from average of Rs. *** per kg. to Rs. *** per kg. in POI, there is no evidence that the price of eventual fabric in the market and for public at large declined. There is no evidence that the consumption of VSY substantially increased.
 5. When the price of price of VSY increased from average of *** in 2017-18 to *** in 2017-18, there is no evidence that the price of eventual fabric in the market and for public at large increased. Nor, is there any evidence that the consumption of VSY substantially declined. On the contrary, the consumption of VSY increased, which implies consumption of fabric made out of fabric increased.
46. The Authority notes that anti-dumping measures are aimed essentially to ensure fair trade and provide level-playing field to all stakeholders. These measures do not restrict import nor cause an unjustified increase in cost of eventual end products. The purpose of ADD is not to give any kind of undue advantage to the domestic producers, or cause any undue hardship to the consumers of the product. A consumer cannot seek, as a matter of right, access to a product at dumped prices, particularly when such dumping is found to have caused injury to an established industry in India. The purpose of ADD is to remove unfair dumping causing injury to the domestic industry. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. The imposition of anti-dumping duties would not affect the availability of the product to the consumers at fair prices.

G. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN

47. Under Section 9A(l)(c) of the Act, "*normal value, in relation to an article, means:*
 - (i) *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
 - (ii) *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.”

G.1. Submissions of the Domestic Industry

48. The following submissions have been made by the Domestic Industry:

- a. Article 15(b) of China's Accession Protocol implies that provisions of Clause 15(a)(ii) shall expire 15 years from date of China's Accession. In other words, provisions of this paragraph shall be available for 15 years, i.e., up to December, 2016. Should it be contended that provisions of Article 15(a)(ii) have already ceased and, therefore, the same cannot be applied to the present case, the provisions of Article 15(a)(i) are still applicable and must be considered for determination of normal value in China. The Authority may, therefore, kindly direct the Chinese producers to show that, consistent with the provisions of Article 15(a)(i), market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product under consideration, so that the Designated Authority can use Chinese prices or costs for the industry under investigation. The responding exporters must establish that the elements of costs referred to in the context of determination of normal value are appropriately and completely reflected in the records kept by the exporter or producer under investigation.
- b. Thailand can be taken as an appropriate surrogate country for Chinese producers. The applicant has been able to procure verifiable information in respect of the pricing of the product in Thailand.
- c. The normal value for Indonesia has been taken on the basis of the price at which the producers in Indonesia, have sold the product for consumption in their domestic market.
- d. The Authority has not granted Vietnam Market Economy Status. Therefore, Vietnam should be treated as a non-market economy for the present purposes.
- e. The Applicant has relied upon transaction wise import data procured from DGCI&S. The export prices being CIF value while the normal values being at ex-factory level, the export prices have been adjusted for, ocean freight, marine insurance, commission, inland freight expenses, port expenses, bank charges and VAT (only for China).
- f. The Authority can only consider their data for normal value, export price dumping margin determination, that too if the same is complete in all respects. The Applicant requests the Authority to re-examine and determine the export price determined for each of the responding exporters from the subject countries.
- g. The Applicant has made adjustments from export price on the basis of established practice of Authority. The Applicant has not considered any arbitrary selection of the adjustments made to export price. Moreover, actual price adjustments are proprietary information of the concerned exporter and the same is available in public domain.
- h. There is no discrepancy in the dumping margins provided in the various submissions made by the petitioner. The dumping margins have changed in accordance with the change in export price as per DGCI&S data while updating the POI and considering first Indonesia and then Thailand as appropriate market economy third country for construction of normal value for China PR and Vietnam.

G.2. Submissions of Other Interested Parties

49. The following submissions have been made by other interested parties:

- a. The Normal Value determined for subject countries has been kept confidential and no evidence has been provided.
- b. With regard to the Normal Value for exporters from Indonesia, the Applicant has claimed that the Normal Value for Indonesia has been calculated on the basis of the price at which the producers in Indonesia have sold the PUC in their domestic market. This data is entirely inappropriate because the Applicant has not brought on record any reliable evidence to substantiate their claim and to justify the determination of the Normal Value.
- c. The Domestic Industry has not disclosed the source of selling price information in Thailand based on which the Normal Value for China PR has been determined. Thailand cannot be surrogate country as the reasons provided by the domestic industry are irrelevant and no legal or factual support provided that the products are similar. There are only one or two less developed producers in Thailand and exports are also insignificant.
- d. China PR should be treated as market economy as Article 15(a)(ii) of the Protocol on the Accession of the People's Republic of China has expired.
- e. The Authority is requested to consider Indonesia as a surrogate market economy country for China PR as the Authority will obtain verified information and further, VSY is a developed industry in Indonesia with approximately 20 producers exporting substantial volumes.
- f. Dumping margin is required to be determined based on information provided by the producers/exporters from the subject countries. Three different dumping margins in three different submissions show that the data is not reliable.
- g. No evidence has been given as to how the applicant has analysed the Normal Value, export price, and dumping margin for Indonesia.
- h. The responding exporters have cooperated in the investigation. The Authority may calculate the Normal Value, Export Price, and dumping margins of the Respondents based on the data on the record pursuant to Article 6.10 and Article 2.2.1 of ADA. (Relied upon Appellate Body observation in EC – Fasteners (China) & Panel Body determination in Argentina – Ceramic Tiles)
- i. The Applicant has self-assumed the deductions in the export price without even providing any meaningful evidence to support the same. Arbitrary selection of uniform percentages of adjustments for all the subject countries is unreliable. Reliance is placed on Appellate Body Report in the United States - Final Dumping Determination on Softwood Lumber from Canada - and Panel decision in the United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/R.
- j. The Applicant has provided a summary of the data on the quantum of imports and import prices without providing the entire data set purportedly secured from DGCI&S.
- k. The Applicant has not provided any basis of the adjustments made to the Export Price on account of ocean freight; marine insurance; port expenses; bank charges; and handling charges.
- l. Calculate dumping on a quarterly basis as international raw material prices have fluctuated by more than 50% during the POI and dropped from USD 1.75 per kg to USD 1.25 per KG during the three quarters of the POI.

G.3. Examination by the Authority

50. The Authority notes that the applicant has provided sufficient non-confidential version of its submissions consistent with the practice adopted by the Authority.
51. As regards source of information for Thailand or Indonesian data, the Applicant has adequately disclosed the same to the Authority on a confidential basis. The Authority notes that disclosure of such information on actual basis can cause serious prejudice since the information constitutes third party information.

52. As regards the appropriateness of Thailand as a surrogate country, it is noted that the only reason given by interested parties contending inappropriateness of Thailand is the existence of low number of producers and low volume of exports.
53. As regards the contention that three different submissions show three different dumping margins, the Authority notes that the dumping margins have changed in accordance with the change in export price as per DGCI&S data while updating the POI.
54. As regards price adjustments claimed in the application, the Authority notes that the dumping margin is beyond de-minimis even if price adjustments are ignored. Further, the questionnaire response filed by the producers/exporters show that the price adjustments claimed by the applicant are not excessive. The Applicant submitted that the relevant information is a proprietary information of the foreign producers and is not in the public domain. This claim of the Applicant has not been disputed by the interested parties.
55. As regards request for calculation of dumping margin on a quarterly basis, the Authority notes that barring Indonesian Textile Association (API), M/s PT. Embee Plumbon Tekstil, M/s PT Bitratex Industries, M/s PT Primayudha Mandirijaya, M/s PT Lotus Indah Textile Industries, M/s PT Sinar Pantja Dajaja, M/s PT. Sri Rejeki Isman, Tbk, M/s PT Adi Kencana Mahkotabuana, M/s Roshni Impex, M/s Gnanamurugan Textiles and M/s Erode Viscose Rayon Fabrics, no other interested parties have demanded quarterly comparison, nor filed questionnaire response in a manner which permits quarterly determination of cost of production. Even the company demanding quarterly determination has not provided all relevant information on quarterly basis.

H. DETERMINATION OF NORMAL VALUE

Determination of Normal Value

H.1 Normal value for China PR

Market Economy Status for Chinese Producers

56. Article 15 of China's Accession Protocol in WTO provides as follows: Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

"(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

- (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
- (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event; the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector. "

57. It is noted that while, the provision contained in Article 15 (a) (ii) have expired on 11th December, 2016, the provision under Article 2.2.1.1 of WTO read with obligation under 15 (a) (i) of the Accession Protocol require criterion stipulated in para 8 of the Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire for claiming the market economy status. It is noted that since none of the responding producers and the exporters from China PR have submitted supplementary questionnaire response, the normal value computation is required to be done as per provisions of para 7 of Annexure I of the AD Rules.
58. At the stage of initiation, it was noted that the Applicant had claimed consideration of Thailand as an appropriate market economy third country for construction of normal value for China PR and had provided information regarding price in Thailand. The Authority advised all interested parties to offer their comments on this issue within 30 days from the date of issuance of initiation notification. Further, pending detailed examination of the claim of Thailand as a surrogate country for China PR, the Authority, for the purpose of initiation of the investigation, had taken the option of the price payable in India for constructing normal value for the China PR. Accordingly, Normal Value for China PR was constructed on the basis of cost of production in India, duly adjusted.
59. The interested parties have disputed consideration of Thailand as an appropriate market economy third country. Some interested parties have suggested consideration of Indonesia as an appropriate country. The Authority considers that none of the interested parties have however justified how Thailand and Indonesia are an appropriate market economy country having regard to the rules.
60. Having regard to the facts of the case, submissions made by the interested parties, the Authority considers it appropriate to determine Normal Value on the basis of price paid or payable in India, duly adjusted to include profit, which has been determined considering the cost of production in India, after addition for selling, general & administrative expenses and reasonable profits.

H.2 Normal Value for Indonesia

61. There are 15 producers and exporters from Indonesia and a related producer/exporter from Singapore, who have filed their responses. Amongst these 15 producers and exporters, the Authority notes that the responses of 10 producers/exporters, viz. M/s PT Natatex Prima; M/s PT Sunrise Bhumi Textiles; M/s PT Elegant Textile Industry; M/s PT Lotus Indah Textile Industries; M/s PT Adikencana Mahkotabuana; M/s PT Sri Rejeki Isman Tbk; M/s PT Bitratex Industries, M/s PT Sinar Pantja Djaja; M/s PT Primayudha Mandirijaya and M/s PT Embee Plumbon Tekstil have not provided the data/details as per Trade Notice No. 05/2018 dated 28th February, 2018. An opportunity had been provided to them, but no information was received within the stipulated time-frame. The data remains incomplete and there are data gaps. Therefore, they have not been considered as 'cooperating' producers/exporters and the normal value accordingly been determined on the basis of facts available.
62. Further, the Authority notes that M/s PT Indoliberty Textiles, Indonesia had not exported to India during the POI. Hence, the response of M/s PT Indoliberty Textiles, Indonesia has not been considered in the present final findings.
63. The Normal Value of the cooperative producers/exporters has been determined based on their eligible domestic sales transactions.
64. To determine the normal value for cooperative producers/exporters, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of subject goods for each PCN. If profit-making transactions for particular PCN is more than 80%, then the Authority has considered all the transactions in the domestic market for the determination of the normal value and in cases, where profitable transactions for particular

PCN is less than 80%, only profitable domestic sales have been taken into consideration for the determination of the normal value. Wherever there were no domestic sales or no profitable domestic sales of particular PCN, normal value was constructed based on the cost of production along with reasonable addition for administrative, selling & general costs and for profits.

H.3 Normal Value for Vietnam

65. The Applicant has claimed Vietnam as a non-market economy. Vietnam has, however, been given market economy status by India. Further, none of the producers from Vietnam have filed questionnaire response. Since none of the producers/ exporters have cooperated with the Authority, normal value has been determined on the basis of facts available in terms of Rule 6(8).

DETERMINATION OF EXPORT PRICE

Export price for China PR

Yibin Spark Fine Spinning Tech Co. Ltd.

66. The Authority notes that Yibin Spark Fine Spinning Tech Co. Ltd. (Yibin Spark) produced and exported *** MT of the PUC to India during the POI directly and through an unrelated trader United Raw Material Pte. Ltd. The Authority has determined the ex-factory export price for Yibin Spark based on its export price after taking into consideration its claims of port and other related expenses, inland transportation, insurance, ocean freight and bank charges.

Yibin Grace Textile Co Ltd.

67. The Authority notes that Yibin Grace Textile Co Ltd. (Yibin Grace) exported *** MT of the PUC to India during POI directly and through an unrelated trader United Raw Material Pte. Ltd. The Authority has determined the ex-factory export price for Yibin Grace based on its export price after taking into consideration its claims of inland transportation, handling charges, insurance and ocean freight.

Non-cooperating Exporters from China PR

68. For the non-cooperating exporters from China PR, the Authority has computed the ex-factory export price based on facts available.

Export price for Indonesia

69. As stated above in paragraph above, there are four cooperating producers/ exporters from Indonesia. Therefore, the Authority holds to determine individual rate of duty for such producers/exporters from Indonesia, viz. PT Manunggal Adipura, PT Delta Dunia Tekstil, PT Delta Merlin Sandang Tekstil and PT Delta Dunia Sandang Tekstil.
70. The Authority has determined individual rates of duty and the export price of the 4 Indonesian producers/ exporters who have furnished requisite information/data and have exported to India during the POI.

PT Manunggal Adipura

71. It is noted that during the POI, PT Manunggal Adipura made sales of the PUC to India either directly or through United Raw Material PTE Ltd., Singapore and Texvista. The Authority notes that PT Manunggal Adipura exported *** MT of the PUC to India directly and through United Raw Material PTE Ltd., Singapore and through Texvista during the POI. The Authority has determined the ex-factory export price for PT Manunggal Adipura based on its export price after taking into consideration its claims of ocean freight, insurance and inland transportation.

PT Delta Dunia Tekstil

72. The Authority notes that PT Delta Dunia Tekstil exported *** MT of the PUC to India during POI directly or through an unrelated trader, Fenatex Co. Ltd. The Authority has determined the ex-factory export price for PT Delta Dunia Tekstil based on its export price after taking into consideration its claims of handling charges, inland freight, packing cost, credit cost and bank charges.

PT Delta Merlin Sandang Tekstil

73. The Authority notes that PT Delta Merlin Sandang Tekstil exported *** MT of the PUC to India during POI directly or through an unrelated trader, Fenatex Co. Ltd. The Authority has determined

the ex-factory export price for PT Delta Merlin Sandang Tekstil based on its export price after taking into consideration its claims of shipping cost, ocean insurance, handling charges, inland freight, packing cost, commission, credit cost, bank charges and other expenses.

PT Delta Dunia Sandang Tekstil

74. The Authority notes that PT Delta Dunia Sandang Tekstil exported *** MT of the PUC to India during POI. The Authority has determined the ex-factory export price for PT Delta Dunia Sandang Tekstil based on its export price after taking into consideration its claims of handling charges, inland freight, packing cost, credit cost and bank charges.

Non-cooperating producers/exporters from Indonesia

75. For those producers/exporters from Indonesia whose questionnaire responses are incomplete for determination of individual dumping margin and for the non-cooperating producers/exporters from Indonesia, the Authority has determined ex-factory export price based on facts available.

Export price for Vietnam

76. Since none of the producers/exporters from Vietnam have cooperated with the Authority, the Authority has determined ex-factory export price for producers/exporters from Vietnam based on facts available.

Dumping Margin

77. The dumping margin for the subject goods has been determined by considering normal value and net export price at ex-factory level. It is seen that the dumping margin for all the producers-exporters from China PR, Indonesia and Vietnam are above de minimis and significantly positive.

Subject Countries/ Producer	NV/CN V (USD/Kg)	NEP (USD/ Kg)	Dumping Margin (USD/Kg)	Dumping Margin (%)	Dumping Margin Range (%)
China PR					
Yibin Spark	***	***	***	***	20-30
Yibin Grace	***	***	***	***	20-30
Any other producer	***	***	***	***	40-50
Indonesia					
PT. Manunggal Adipura	***	***	***	***	10-20
PT Delta Merlin Sandang	***	***	***	***	10-20
PT Delta Dunia Tekstil	***	***			
PT Delta Dunia Sandang Tekstil	***	***			
Any other producer	***	***	***	***	20-30
Vietnam					
All producers	***	***	***	***	10-20

The same is mentioned in the table below.

I. EXAMINATION OF INJURY AND CAUSAL LINK

I.1 Views of the domestic industry

78. The following submissions have been made by the Domestic Industry with regard to the injury and causal link:
- The demand has increased till 2018-19 and thereafter declined slightly in POI.

- b. The volume of imports has shown a huge increase in absolute terms.
- c. The dumped imports have increased significantly in relation to production & consumption in India.
- d. The imports are undercutting the prices of the applicants in the Indian market.
- e. The comparison of cost of sales and selling price shows that whereas the cost of sales declined throughout the injury period, selling price showed a fluctuating trend. The selling price declined from the base year to the year 2017-18 and further increased in the 2018-19 and declined in the POI.
- f. The decline in the selling price was far more than the decline in the cost of production. The imports are causing significant price depression.
- g. There has been a significant price undercutting by the dumped imports as compared with the price of like product in India and the effect of such dumped imports is to depress prices to a significant degree.
- h. While the overall production increased, the increase in production of domestic producers as a whole is lower than the increase in demand.
- i. The performance of the Domestic Industry improved in 2018-19 and thereafter has steeply deteriorated in terms of profits, return on investments and cash flow.
- j. While overall production increased, the increase in production is lower than the increase in demand.
- k. The petitioner companies could have enhanced production by about 24,000 MT, considering the capacity utilization achieved by some of the producers forming part of the Domestic Industry;
- l. Despite an increase in the demand, the sales of the Domestic Industry have not increased to the extent of increase in demand.
- m. In view of increasing demand, the industry has added capacity to meet the domestic needs. Resultantly, the capacities added by the domestic producers increased over the period. However, the Domestic Industry has not been able to benefit from these capacity additions to the extent these could have been in the absence of dumping.
- n. The market share of domestic producers has declined.
- o. The dumping margin is not only more than de-minimus but also substantial. The impact of dumping on the Domestic Industry is adverse.
- p. Inventories with the Domestic Industry have shown a significant increase in the proposed POI.
- q. The productivity of the Domestic Industry has increased in the POI, but the productivity is not linked to the injury to the Domestic Industry.
- r. The sole factor adversely affecting the domestic price is import price.
- s. Employment and wages have shown improvement in the proposed injury period.
- t. The growth of the Domestic Industry has now become adverse in terms of all price parameters. The growth of the Domestic Industry in terms of the majority of parameters such as, production, sales, market share, profits, return on investment, cash profits, etc. is negative in POI.
- u. Injury to the Domestic Industry is not due to other known listed factors, viz. the performance of other products being produced and sold by the Domestic Industry, changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and export performance.
- v. Under WTO ADA and the Rules 3% of dumped imports to total imports is considered as significant and the affected domestic industry can seek relief under antidumping law. The volume of import from Indonesia is more than de-minimis. As per the cumulative assessment of injury, the Domestic Industry's performance has deteriorated on account of dumped imports

from the subject countries including Indonesia. Imports of the product have increased almost 25 times over the injury period from below 2,000 MT to above 50,000 MT in POI

- w. Manmade fibre-based industries are subject to invert duty structure. Fibre is at 18% and yarn is at 12%. Vide Notification No. 20/2018-Central Tax (Rate), dated 26th July, 2018, Government has allowed the refund claim from 1st August, 2018 on accumulated ITC due to inverted duty structure and the same is applicable for the textile industry.
- x. The interested parties have not considered value addition done by the Industry from Fiber to Yarn, where this excess GST is utilized.
- y. Grasim's VSF prices have remained competitive vis-à-vis international prices. While the International VSF prices declined by 14% during the period Apr – Dec 2019, Grasim VSF prices declined by 22% during the same period. Thus, there is no merit in the point that Grasim has manipulated market prices. Further, the average price of VSF of Grasim has been consistently lower as compared to the average price of VSF in international market since June 2019.
- z. The capital employed, interest and depreciation per MT of subject goods have declined in POI as compared to the base year and the injury suffered by domestic industry is on account of dumped imports leading to realization of sub optimal price for the PUC sold in the domestic market during POI.
- aa. The applicant has already provided the methodology adopted to convert the spindles in MT. It is calculated on the basis of average production per spindle for the whole industry from 220 grams to 260 grams per Spindle/Shift.

I.2 Views of Other Interested Parties

79. The following submissions have been made by other interested parties with regard to injury and causal link:
- a. Erroneous data has been provided by the Applicant. There are completely different sets of figures on imports in relation to demand at different places in the application.
 - b. The Applicant has not disclosed the selling price of like domestic products.
 - c. There is no evidence of material injury.
 - d. There is no decline in production, capacity utilisation and sales of the Domestic Industry. There has been a steady increase in the market share of the Domestic Industry. There is no actual or potential decline in productivity, employment and wages.
 - e. There is no causal link between the volume of imports from subject countries and losses if any, suffered by the Domestic Industry. The Domestic Industry's share during the POI-A* compared to the year 2018-19 has increased by 7%. The share of Other Indian Industry during the POI-A* compared to the year 2018-19 has decreased by 17%. The share of imports during the POI-A* compared to the year 2018-19 has increased by 10%.
 - f. The Applicant has no prima facie evidence of injury as required by Article 5.2 of the Agreement, read together with Article 3.4 of the Agreement. As such, the Authority should have rejected the application in the first place.
 - g. All the economic indicators in the period of injury 2016-2017 to 2018-2019 were in perfect condition. Any injury allegedly suffered by the domestic industry has been caused by factors other than imports from China PR.
 - h. The price undercutting analysis was not made based on a fair comparison between type per type product as what is presented in the petition consists of only a general comparison. This does not qualify as positive evidence as required in Article 3.1 of the Agreement and that objective examination cannot be made based upon the same Article.
 - i. Does the import price reflect additional clearance cost, import duty, applicable taxes and any distributor margin to arrive at the correct landed cost price? If those factors are considered, there would be no price undercutting which could affect the Applicants' price.

- j. In 2018-2019, import subject product from alleged countries only constituted 5%. With this small quantum of import of the import product, it would not be possible that import could have caused any injury or posed any threat of injury to the Applicants.
- k. The capacity and quality of the domestic yarn industry cannot meet the needs of Indian market. In the last few years, the demand and consumption of viscose filament fabrics has risen multi-folds with multiple end-users.
- l. The share of imports from Indonesia has remained constant and has not captured the incremental market at all.
- m. The raw material is subject to higher SGST & CGST (9%) rates than the finished product (6%). Producers of finished product will have unutilized credit of GST paid on input/raw material and the Authority needs to examine the relation between unutilized credit and the injury caused to the domestic industry.
- n. The domestic selling price of VSF, which apparently is manipulated by Grasim Industries, is at variance with Global VSF selling price. The global price of VSF fell during the injury period but not in India by same proportion.
- o. The injury showed is caused due to loss in export market share, predatory pricing practice by the supplier of raw material and comparatively low quality of the product produced.
- p. The textile industry reports all capacity in the number of spindles and not MT. The Applicant has provided the data in MT without explaining the calculation methodology adopted. Thus, the evaluation of figure presented in the Application is misleading and must not be relied upon. The Authority must use spindles installed to compute the capacity and capacity utilization. If this analysis is used, the capacity utilization of the Domestic Industry will show a high utilization of above 85% in all years of the injury period.
- q. The calculation of NIP must not be unnecessarily inflated due to predatory pricing of the raw material and should be determined by considering the best utilization of raw materials over the past three years period and the POI. Therefore, NIP must exclude the impact of such predatory pricing practice i.e. 5% as per the determination by the CCI.
- r. The Directorate in the past have terminated the investigations wherein the injury to the domestic industry was not due to dumping but other factors, such as in the matter of Non-Woven Fabric, Coated Paper and Playing Cards. The Authority should take a similar approach and terminate this case ab-initio.

I.3 Examination by the Authority

80. The Authority has taken note of various submissions made by the Domestic Industry and other interested parties and analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.
81. It is noted that Rule 11 dealing with injury specifies that the Authority shall record a finding whether dumped imports of such article into India cause or threaten material injury to any established industry in India or materially retards the establishment of any industry in India. Further, it specifies that the Authority shall determine the injury to Domestic Industry, threat of injury to domestic industry, material retardation to establishment of Domestic Industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out under the rules.

I.3.1 Cumulative Assessment

82. Article 3.3 of WTO agreement and Para (iii) of Annexure II of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the Authority will cumulatively assess the effect of such imports, in case it determines that:

- a. Margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of imports from each country is three percent (or more) of the import of like article or where the import of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article; and
 - b. Cumulative assessment of the effect of imports is appropriate in the light of the conditions of competition between the imported article and the like domestic articles.
83. The Authority notes that:
- a. The subject goods supplied from various subject countries and by the Domestic Industry are like articles.
 - b. The subject goods are being dumped into India from subject countries. The margin of dumping from each of the subject countries is more than the de minimis limits prescribed under the Rules.
 - c. The volume of imports from each of the subject countries is individually more than 3% of total volume of imports.
 - d. Prices at which the goods are being exported from the subject countries indicate a clear inter se competition between the imports from these sources in the Indian market.
 - e. The competition between the dumped imported articles and the like articles offered by the domestic industry in the Indian market exists.
 - f. Cumulative assessment of the effect of imports is appropriate as the exports from the subject countries not only directly compete inter se but also with the like articles offered by the Domestic Industry in the Indian market.
84. Rule 11 of the Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the Domestic Industry, “.... taking into account all relevant facts, including the volume of dumped imports. Their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles ...” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the Domestic Industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.
85. In view of the above, the Authority considers that it is appropriate to assess injury to the domestic industry cumulatively from imports of the subject goods from the subject countries.

I.3.2 Volume Effect of Dumped Imports on the Domestic Industry

a) Assessment of Demand/Apparent Consumption

86. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed has increased over the injury investigation period. Even though the demand shows slight decline in the POI, overall demand has shown an increase over the injury period.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Total imports from subject countries	MT	1,855	11,406	18,679	40,185	53,580
Trend	Indexed	100	615	1,007		2,889
Imports from other countries	MT	121	429	2,370	4,006	5,342
Trend	Indexed	100	356	1,964		4,427

Domestic Industry Sales	MT	***	***	***	***	***
Trend	Indexed	100	159	188		201
Sales of Other Producers	MT	***	***	***	***	***
Trend	Indexed	100	101	132		84
Total Demand	MT	***	***	***	***	***
Trend	Indexed	100	118	152		134

b) Import Volumes from subject countries

87. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports from subject countries, either in absolute terms or relative to production or consumption in India.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Subject Country	MT	1,855	11,406	18,679	40,185	53,580
China PR	MT	984	4,725	8,279	16,602	22,136
Indonesia	MT	870	5,154	9,167	19,561	26,081
Vietnam	MT	-	1,527	1,233	4,022	5,363
Other Countries	MT	121	429	2,370	4,006	5,342
Total Import	MT	1,975	11,836	21,049	44,191	58,922

88. It is seen that dumped imports of the subject goods from the subject countries have increased in absolute terms. Imports of the subject goods which were 1,855 MT in 2016-17, increased to about 53,580 MT in POI(A), showing a significant increase by 22 times over the injury period.

c) Subject Countries Imports in relative terms

89. It is seen that the subject dumped imports in relation to production and demand increased throughout the injury period. Imports of the product from subject countries increased in relation to the Indian production from 2.31% in 2016-17 to 44.42% in POI(A) and have increased in relation to consumption in India from 0.77% in 2016-17 to 16.60% in POI(A).

Particulars	Unit	2016-17	2017-18	2018-19	POI Annualised
Share of subject imports in relation to					
Total Imports	%	93.89%	96.37%	88.74%	90.93%
Demand	%	0.77%	4.01%	5.10%	16.60%
Indian Production	%	2.31%	11.76%	16.72%	44.42%

1.3.3 Price Effect of Dumped Imports on the Domestic Industry

90. With regard to the effect of the dumped imports on prices, it is required to be analyzed whether there has been a significant price undercutting by the dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the Domestic Industry on account of the dumped imports from subject countries has been examined with reference to price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the NIP of the domestic industry have been compared with landed price of imports of the subject goods from the subject countries.

a) Price Undercutting

91. For the purpose of price undercutting analysis, the NSR of the domestic industry has been compared with the landed value of imports from the subject countries. While computing the net selling price of the domestic industry all taxes, rebates, discounts and commissions have been deducted and sales realization at ex-works level has been determined for comparison with the landed value of the dumped imports. The Authority has determined PCN wise price undercutting

and thereafter weighted average for the subject countries. Accordingly, the undercutting effects of the dumped imports from the subject countries work out as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI (A)
Subject countries					
Net Sales Realization	Rs/Kg	***	***	***	***
Trend	Indexed	100	95	100	91
Landed Price	Rs/Kg	194.68	187.64	205.79	173.36
Trend	Indexed	100	96	106	89
Price undercutting	Rs/Kg	***	***	***	***
Trend	Indexed	100	84	64	108
Price undercutting	%	***	***	***	***
Price undercutting	Range	10-20	10-20	0-10	10-20
China PR					
Net selling realization	Rs/Kg	***	***	***	***
Landed price of imports	Rs/Kg	213.44	188.89	206.70	172.92
Price undercutting	Rs/Kg	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	0-10	10-20	0-10	10-20
Indonesia					
Net selling realization	Rs/Kg	***	***	***	***
Landed price of imports	Rs/Kg	173.46	185.78	204.49	173.82
Price undercutting	Rs/Kg	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	20-30	10-20	0-10	10-20
Vietnam					
Net selling realization	Rs/Kg	-	***	***	***
Landed price of imports	Rs/Kg	-	190.04	209.33	172.95
Price undercutting	Rs/Kg	-	***	***	***
Price undercutting	%	-	***	***	***
Price undercutting	Range	-	10-20	0-10	10-20

92. From the aforesaid table, it can be seen that the imports from subject countries are at prices substantially below the selling price of the Domestic Industry. Price undercutting during the POI is positive and significant for each of the subject countries.

b) Price Suppression and Depression

93. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, changes in costs and prices over the injury period, were compared as below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Selling price	Rs/Kg	***	***	***	***	***
Trend	Indexed	100	95	100		91
Cost of Sales	Rs/Kg	***	***	***	***	***
Trend	Indexed	100	97	98		94
Landed Price	Rs/Kg	194.68	187.64	205.79	173.36	173.36
Trend	Indexed	100	96	106		89

94. The following is observed:

- Imports from subject countries were at prices lower than the cost of sales of the domestic industry throughout the injury investigation period including POI.
- A comparison of the cost of production and selling price shows that the selling price declined steeply in the POI, far more than the decline in cost of production.

95. It is thus seen that the imports are depressing and suppressing the prices of the Domestic Industry in the market.

c) Price Underselling

96. The Authority has also examined the price underselling suffered by the Domestic Industry on account of dumped imports from the subject countries. For this purpose, the NIP determined for the domestic industry has been compared with the landed price of imports.

Particulars	Unit	China	Indonesia	Vietnam
NIP	Rs./Kg	***	***	***
Landed Price	Rs./Kg	172.92	173.82	172.95
Price underselling	Rs./Kg	***	***	***
Price underselling	%	***	***	***
Price underselling	Range	20-30	20-30	20-30

97. The NIP of the PUC has been determined by adopting the verified information/data relating to the cost of production of the domestic industry for the POI on the basis of principles mentioned in Annexure III of the Rules. It is seen that the imports are being made at a price much lower than the NIP. The price underselling from the subject countries during the POI is positive and quite significant.

I.3.4 Economic Parameters of the Domestic Industry

98. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on domestic producers of such products. With regard to consequent impact of dumped imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the Domestic Industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. An examination of the performance of the domestic industry reveals that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below.

99. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

a) Production, Capacity, Sales and Capacity Utilization

100. Capacity, production, sales and capacity utilization of the domestic industry over the injury period is given in the following table: -

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Total Capacity	MT	***	***	***	***	***
Trend	Indexed	100	114	122		122
Total Production	MT	***	***	***	***	***
Trend	Indexed	100	121	138		153
Production - PUC	MT	***	***	***	***	***
Trend	Indexed	100	121	139		150
Capacity Utilization	%	***	***	***	***	***
Trend	Indexed	100	106	113		126
Domestic Sales	MT	***	***	***	***	***
Trend	Indexed	100	159	188		201
Export Sales	MT	***	***	***	***	***
Trend	Indexed	100	50	98		122
Total Sales	MT	***	***	***	***	***
Trend	Indexed	100	146	178		192

101. The following is observed from the above table:

- The domestic industry increased its capacity for the PUC throughout the injury period in view of increasing demand in India.
- While production, sales and capacity utilization of the domestic industry increased throughout the injury period, the increase in sales were lower than the increase in production.

b) Market Share

102. While the share of the Domestic Industry increased over the injury period, including the POI, the share of other domestic producers, being much smaller in operations than the applicant companies, declined steeply from 76.90% in 2016-17 to 48.31% in the POI. The market share of imports from subject countries increased from 0.77% in 2016-17 to 16.60% in POI.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Subject countries	%	0.77	4.01	5.10	16.60	16.60
Imports from other countries	%	0.05	0.15	0.65	1.65	1.65
Domestic Industry Sales	%	22.28	30.01	27.62	33.44	33.44
Sales of Other Producers	%	76.90	65.83	66.64	48.31	48.31
Total Demand	%	100.00	100.00	100.00	100.00	100.00

c) Profitability, return on investment and cash profits

103. Details of profitability, return on investment and cash profits of the Domestic Industry's Domestic Sales over the injury period are given in the table below: -

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Selling price	Rs/Kg	***	***	***	***	***
Trend	Indexed	100	95	100		91
Cost	Rs/Kg	***	***	***	***	***
Trend	Indexed	100	97	98		94
Profit/ loss	Rs/Kg	***	***	***	***	***
Trend	Indexed	100	18	184		6
Profit/ loss	Rs Lacs	***	***	***	***	***
Trend	Indexed	100	29	347		11
Profit/ loss before Interest and Tax	Rs Lacs	***	***	***	***	***
Trend	Indexed	100	96	265		77
Cash Profit	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	125	211		105
ROCE	%	***	***	***	***	***
Trend	Indexed	100	65	162		46

104. The following is observed from the above table:

- Profits of the domestic industry declined in 2017-18, but increased thereafter in 2018-19. Profits, however, declined significantly in the POI.
- Profits in the POI were at a level far below the profit levels in the previous years.
- Cash profit, PBIT and ROCE also followed the same trend as that of profits. Cash profit, PBIT and ROCE declined in 2017-18, increased thereafter in 2018-19 and then declined significantly in the POI. Cash profit, PBIT and ROCE in the POI were at a level much below the levels registered in base year or other preceding years.

d) Employment, productivity and wages

105. Details of employment, productivity and wages of the domestic industry over the injury period are given in the table below.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Employee	Nos.	***	***	***	***	***
Trend	Indexed	100	108	145		154
Productivity per Day	MT/Day	***	***	***	***	***
Trend	Indexed	100	121	139		150
Productivity per employee	MT/Nos	***	***	***	***	***
Trend	Indexed	100	112	96		98
Wages	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	156	190		194

106. It is seen that the number of employees, wages and productivity per day have increased throughout the injury period in line with increase in capacity, production and cost of living.

e) Inventories

107. The inventory position with the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Inventories	MT	***	***	***	***	***
Trend	Indexed	100	157	231		287

108. It is seen that inventories with the Domestic Industry have increased throughout the injury period.

f) Growth

109. It is seen that growth of the Domestic Industry with regard to production, domestic sales, capacity utilization was positive over the injury period, whereas growth in respect of profits and return on investment is negative in the POI as can be seen from the table below:

Particulars	Unit	2017-18	2018-19	POI Annualised
Production (MT)	%	20.73%	15.20%	7.98%
Domestic Sales Volume (MT)	%	58.98%	18.49%	6.64%
Capacity Utilization	%	6.40%	6.45%	11.17%
Cost of Sales (Rs/Kg)	%	-3.05%	1.21%	-4.40%
Selling Price (Rs/Kg)	%	-5.19%	5.94%	-9.00%
Profit/ Loss (Rs/Kg)	%	-81.83%	912.94%	-96.94%
ROI	%	-5.32%	149.09%	-71.22%

g) Ability to Raise Capital Investments

110. The profits of Domestic Industry have declined steeply in the POI, thus impacting the ability of the domestic industry to raise capital investment.

h) Factors affecting domestic prices

111. The examination of the import prices from the subject countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the Domestic Industry in the domestic market, etc. shows that the landed value of imported subject goods from the subject countries is significantly below the selling price of the domestic industry, causing price undercutting in the Indian market. The benchmark for the Indian producers' prices is the import prices of the subject goods from subject countries. There is no viable substitute to this product. Demand for the product has shown significant increase during the injury period with slight decline in POI. However, this slight decline could not have been a factor responsible for price depression/suppression faced by the Domestic Industry. It is thus evident that the only factor responsible for the depressed and suppressed domestic industry prices are the import prices of the product. Though the cost of production of Domestic Industry declined in the POI as compared to the previous year, the decline in import prices and Domestic Industry prices were more than the decline in the cost of production. The principal factor affecting the domestic prices thus is the dumped imports of subject goods from subject countries.

I.3.5 Factors establishing Injury to domestic industry

112. The examination of the imports of the subject product and performance of Domestic Industry shows that the volume of imports increased manifold during the injury period in absolute terms and also in relation to production and consumption in India. With regard to price effect, it is noted that the imports are undercutting the prices of the Domestic Industry and the price underselling is also positive, and significant. It is also noted that the imports of subject goods from subject countries have also depressed/suppressed the prices of the Domestic Industry. The dumping margin from subject countries is positive and significant.

113. The capacity of the Domestic Industry increased throughout the injury period. Production, sales, capacity utilization and inventories of the Domestic Industry increased throughout the injury period. Profits declined significantly in the POI. Profits, Cash profit, PBIT and ROCE in the POI were at a level far below the profit levels during the previous years.

I.3.6 NON-ATTRIBUTION ANALYSIS

114. As per the Rules, the Authority, inter alia, is required to examine any known factors other than the dumped imports which at the same time are injuring the Domestic Industry, so that the injury caused by these other factors may not be attributed to the dumped imports.

Other known factors and causal link

115. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the Domestic Industry. It has been examined below whether factors other than dumped imports could have contributed to the injury to the Domestic Industry.

c) Volume and price of imports from third countries

116. The imports from countries other than the subject countries are negligible in volume terms. Thus, it cannot be said that imports from other countries are causing injury.

b) Export Performance

117. The Authority has considered the data for domestic operations only for its injury analysis.

c) Development of Technology

118. None of the interested parties have furnished any evidence to demonstrate significant changes in the technology that could have caused injury to the Domestic Industry.

d) Performance of other products of the company

119. The Authority notes that the performance of other products being produced and sold by the Domestic Industry does not appear to be a possible cause of injury to the Domestic Industry as the Authority has considered the data of PUC only for injury analysis.

e) Trade Restrictive Practices and Competition between the Foreign and Domestic producers

120. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. No evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

f) Contraction in Demand and Changes in pattern of consumption

121. It is noted that the demand of the subject goods has increased from the base year with a slight decline in the POI. However, in the POI, whereas the demand slightly declined, imports increased very significantly. The Authority notes that the slight decline in demand during POI cannot be a cause of significant reduction in profitability of the Domestic Industry.

J. MAGNITUDE OF INJURY AND INJURY MARGIN

122. The Authority has determined Non-Injurious Price (NIP) for the Domestic Industry on the basis of principles laid down in Anti-Dumping Rules read with Annexure III, as amended. The non-injurious price of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The non-injurious price has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the non-injurious price, a reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit.
123. For all the non-cooperative producers/exporters from the subject countries, the Authority has determined the landed price based on facts available.
124. Based on the landed price and non-injurious price determined as above, the injury margins for producers/exporters have been determined and the same is provided in the table below:

Subject Countries/ Producer	NIP USD/Kg	LV USD/Kg	Injury Margin		
			USD/Kg	%	Range %
China PR					
Yibin Spark Fine Spinning Tech Co. Ltd.	***	***	***	***	20-30
Yibin Grace Textile Co Ltd.	***	***	***	***	10-20
All Other Producers/Exporters	***	***	***	***	30-40
Indonesia					
PT Manunggal Adipura	***	***	***	***	10-20
PT Delta Merlin Sandang Tekstil	***	***	***	***	10-20
PT Delta Dunia Tekstil	***	***			
PT Delta Dunia Sandang Tekstil	***	***			
All Other Producers/Exporters	***	***	***	***	20-30
Vietnam					
All Producers/Exporters	***	***	***	***	10-20

K. CONCLUSION ON INJURY& CAUSAL LINK

125. On the basis of examination of information and analysis of the same, the performance of the Domestic Industry is summarized below:

- a. Imports of the product under consideration have increased significantly from the subject counties in absolute terms, in relation to production and consumption in India.
- b. While demand for the product declined, imports of the product have increased.
- c. Dumped imports are undercutting the prices of the Domestic Industry.
- d. Imports are depressing and suppressing the prices of the Domestic Industry in the market.
- e. Performance of the Domestic Industry improved in respect of parameters such as production, sales, market share, employees, wages and productivity, performance of the domestic industry deteriorated in respect of parameters such as inventories, profits, cash profits and return on investment.
- f. Market share of domestic producers as a whole has significantly declined.
- g. Significant deterioration in parameters such as profits, cash profits and return on investment when performance in respect of parameters such as production and sales implies that the Domestic Industry has suffered material injury.

L. POST DISCLOSURE COMMENTS

L.1 Views of the Domestic Industry

126. The following post-disclosure submissions have been made by the Domestic Industry:

- a. Average VSY prices prevailed at a higher level at around Rs 191 per kg during Apr'19 - Aug'19 and then also the market continued to grow as demand reached a level of 39,000 tons during Aug'19. Prices went down to Rs 146 per kg level during Jun'20 but demand remained subdued even after prices falling and demand was around 15,000 tons in Jun'20. So even if ADD of around Rs 15-20 per kg is imposed then also prices will be lower than that of the higher prevailing level.
- b. Likely ADD applicable on VSY imports will be Rs 15-20/kg. This translates to only 5-7 US cents per garment (one garment is of 250 grams - so from 1 kg of yarn, 4 garments can be made). As most of the garments are in blends, considering VSF content at 35%, the impact of likely ADD per garment would be around 2 US cents per garment, which is insignificant compared to the cost of garment (which is around 5 US Dollar per piece).
- c. The notion that ADD will lead to stagnation or competitiveness in garment exports is misplaced. Prices were in the range of Rs 184 – 197 per kg during Mar'19 and Apr'19, VSF based garment

exports were around 9,100 – 10,500 tons per month. But then prices went down to Rs 150 per kg level during Aug'20/Sep'20; but VSF based garment exports also went down to 3500 – 4000 tons per month level.

- d. VSY prices will not go up as a result of imposition of proposed ADD. VSY prices had declined with dumping in the market, and will roll back, at the max. to the past levels. In fact, prices will not even roll back to the past levels, and fabric manufacturers will get VSY at a price lower than the past.
- e. The VSY and downstream industry grew in the past, when VSY prices were higher. Further, industry did not show any additional significant increase when prices declined in the current period. Therefore, industry and consumption would not decline with imposition of ADD.
- f. The impact on eventual fabric is insignificant and inconsequential on either domestic or export competitiveness.
- g. Post-oral hearing additional domestic producers have communicated to the authority and requested for imposition of duty.
- h. There is no available data for the total Indian production of VSY in India, either through government sources or through private agencies.
- i. The CCI order has no relevance in the present matter. Grasim has filed an appeal against the Order of the CCI before the National Company Appellate Tribunal (NCLAT). Vide its order dated 04.11. 2020, NCLAT has stayed the recovery of penalty amount, till the pendency of the appeal.
- j. Raw material prices are in tandem with international prices.
- k. The Indian industry not only has the capacity much more than the existing demand in the country, but also will be able to cater to any foreseeable increase in demand, as well as earn valuable foreign exchange for the country by undertaking exports from the surplus production, thereby truly fulfilling the vision of Aatmanirbhar Bharat in so far as the product is concerned.
- l. There are around 50,000 looms producing VSY and the average employment directly dependent on VSY is of half person per power loom. The direct employment engaged in this sector using VSY is about 30,000 persons, which forms around 0.05% of employment in the entire textile sector.
- m. MSMEs are adversely impacted by dumping. There are many minor producers accounting for below 10% of the total Indian capacity. If the duties are imposed, the domestic producers will not unduly increase their prices due to market forces and high competition. Duties will lead to continued availability of product through multiple domestic sources at reasonable prices and free, fair and reasonable competition will prevail protecting the interests of the users.
- n. There is no demand-supply gap.
- o. There has been a huge lag in capacity utilization in post-Covid period, but at the same the VSY imports have touched record high.
- p. Post-GST there is a sharp increase in the past few months in the imports of overseas fabric and garments due to lower import duties.
- q. Turkey has recently concluded an anti-dumping investigation on the subject goods against Indonesia and China. The yarn industry of Indonesia and China may shift to India as India will be the potential market. This shift is mainly due to the shrinking of other markets that have lost competitiveness in the presences of dumped imports.
- r. Imports of cheaper yarn from countries such as China and Indonesia are hurting India's second largest employer, the textile industry, and a large number of small and medium yarn producing units are on the brink of closure.
- s. Anti-dumping duty is not a protection to the industry, but rather a means of price correction.
- t. The imposition of anti-dumping duty will not have any significant adverse impact on public at large. The duty will protect the domestic industry against dumping of subject goods.

- u. Chinese producers are not entitled to market economy treatment and the normal value for China PR could be determined on the basis of price in a market economy third country such as Thailand. Also, none of the Chinese producers have filed MET questionnaire to rebut the claim that the companies operate in the non-market economy situation.
- v. The duty may kindly be imposed on ad-valorem percentage. The subject goods have various PCNs. The different product types have significant differences in the associated prices.
- w. The Domestic Industry has submitted that the PUC is largely consumed in ladies top, skirts, and dresses and the impact of Rs. 20 per kg. proposed ADD on the eventual end product shall be in the region of 0.87% to 1%:

S. No.	End-Use	Ladies Top	Skirt	Dress
1	Average VSY Consumption per article (in kg)	0.350	0.750	1.000
2	Cost of product (Rs)/piece	800	1,500	2,000
3	Spun Yarn price -Rs/kg	170	170	170
4	Landed value (Spun Yarn import Price with basic Customs duty)	179	179	179
5	Increase in price due to ADD (assuming Rs. 20/kg)	20	20	20
6	Cost of Spun Yarn used per unit of end product	70	150	199
7	Spun Yarn Cost as a % of cost of end product	9%	10%	10%
8	Increase in spun yarn price (S.No. 5 * S.No.1)	7	15	20
9	Impact of ADD on the end product (S.No. 8/S.No. 2)	0.87%	1.00%	1.00%

L.2 Views of Other Interested Parties

127. The following post-disclosure submissions have been made by other interested parties:

- a. The Government of Indonesia is fully aware that Indonesian producers participating in this investigation have fully cooperated with the Authority, and in that, they have acted to the best of their ability. As such, the application of the best information available is completely unjustified. Non-cooperating treatment has been given to a large number of Indonesian producers, for which no proper explanation is given in the Disclosure Statement.
- b. The Authority provided insufficient time to analyze the Disclosure Statement and submit a response.
- c. The Authority has failed to address the facts and legal arguments submitted by the Government of Indonesia and Indonesian producers prior to issuance of the Disclosure Statement.
- d. The Government of Indonesia is concerned with the application of a single dumping margin to all Indonesian producers that the Authority grouped as cooperating producers and another single dumping margin to the rest of Indonesian producers who have also fully cooperated in this investigation.
- e. The dumping margin stated in the Disclosure ranging from 10% to 30% is very much confusing, not transparent, and unacceptable by ADA.
- f. The source of data by exercising methodology using Grasim's production as the basis of India's total production was just a mere assumption which is misleading and totally unacceptable.
- g. The Government of Indonesia strongly disagrees with the Authority's assumption on the representativeness of the Applicants as Indian domestic industry due to the fact there are a series of Authority's statements which are inconsistent from one and another.
- h. The deliberate omission of injury data of the other 71% of the Indian industry of the product under investigation has caused gross distortion of facts namely the performance of the Applicant.
- i. The Duniatex Group submits that the Dumping margin computed by the Authority as reflected in the Disclosure Statement for the three companies belonging to the Duniatex Group appears to be misplaced and therefore ought to be reconsidered.

- j. In the Disclosure Statement, the Authority has proposed not to exclude double yarn and multi-yarn from the product scope on the pretext that the Domestic Industry has provided evidence of sales in the form of invoices. It is submitted that if the invoices do not pertain to the POI but show sales post the POI, even then double yarn and multi-yarn should be excluded from the product scope. This is for the reason that when the Domestic Industry did not even produce double yarn and multi-yarn during the POI, then it cannot suffer injury due to imports of both these grades. Further, double yarn and multi-yarn are different from single yarn VSY because of difference in the production process.
- k. It is surprising that Grasim is aware of the consumption by the producers of the subject goods. Further, Grasim is also aware to what extent such producers of the subject goods in India are consuming VSF to manufacture 100% pure viscose spun yarn and blended yarn such as poly-viscose. While Grasim may be aware of VSF sold by it during a year, but how is it aware that to what extent a producer has consumed VSF to manufacture 100% pure viscose spun yarn and blended yarn such as poly viscose?
- l. The Domestic Industry is not affected by the alleged dumped imports because several injury parameters show significant improvement. In view of the above, it is submitted that the case of material injury is not made out and there is no causal link.
- m. Anti-competitive practices of the raw material supplier Grasim which had sold the raw material to the Applicants at a very high price has also caused injury to the Applicants.
- n. The cost of production of the Applicants has been skewed due to unfairly high prices of the raw material VSF which was supplied by Grasim Industries Limited.
- o. The Authority is requested to disclose how the prices of the primary raw material VSF were considered to arrive at the non-injurious price.
- p. The Respondents request the Authority to apply lesser duty rule in the present case in line with Rule 4(d) of the Rules.
- q. The Authority has incorrectly and illegally rejected the entire submissions of the Respondents without giving any valid justifications as per the procedures set in WTO laws and the manual of Operating procedure of DGTR. The Authority is a Quasi-Judicial Authority that is under obligation to act as per set laws and regulations.
- r. It is expected from the Authority, being a quasi-judicial body, which ordinarily flows from a precedent or established practice, that the Authority will give a fair opportunity to the interested party to represent himself. The term 'established practice' refers to a regular, consistent predictable, and certain conduct, process, or activity of the decision-making authority.
- s. The rejection of entire submissions of the Respondents is against Natural Justice and Article 6.13 of the Agreement on Anti-dumping. The Respondent submits that during the entire course of the investigation, the Respondents provided all the documents requested by the Authority from time to time. The Respondents submitted all the questionnaire responses in the prescribed formats of DGTR i.e., as per Trade Notice No. 05/2018 dated 28th February, 2018. The Respondent in-fact provided all the data PCN wise as per the PCN identified by the Director-General as per the letter dated 4th March, 2020. The Authority during the course of the investigation made certain inquiries and sought certain information documents via mails and telephone calls. No deficiency letter was issued to any individual company despite mandatory obligation. All those were duly submitted and clarified. No further inquiries were made implying that the Authority did not have any further questions or had no further clarifications to seek on completeness and that no further deficiencies remained. Responses submitted were not even considered w.r.t export sales, domestic sales, cost data type-wise information, productions, landed value and other calculations.
- t. The Authority has unjustifiably rejected all the submissions of all the Respondents including the original questionnaire response.
- u. The Disclosure Statement, without following the due process of law and verification process of information submitted is not only bad in law but also indicates disrespect of the sanity of the procedures and practice established globally.
- v. The Authority only carried out the process of giving opportunity in general for all groups of exporters to submit certain documents, information and clarification via mail dated 4th September,

2020 which was duly responded despite COVID difficulties faced by the consultant as expressed to the authority via several e-mails. Post submissions of the desired information documents and clarifications for explanations further queries were made implying the satisfaction of the authority of a co-operative and information, etc.

- w. The Authority should calculate the Injury Margin of the respondent based on the data submitted by the Respondents and available with the Authority.
- x. The Domestic Industry has been incorrectly determined by the Authority.
- y. With respect to the Authority's noting that Domestic Industry has production facility to produce fashion fabric through Airjet technology is not denied by the Respondents, however, the Indian Domestic Industry does not have enough capacities to meet the Domestic Demand in India for subject produced by such technology. Therefore, it is requested to Authority to exclude the subject goods produced through Airjet technology.
- z. The Authority has not considered the interest of Small Scale Industry, weavers, garments, etc. which will be forced to shut down due to imposition of AD measures on subject goods.
- aa. The Authority is required to specifically convey to each exporter as to which data in the response is missing which will not allow DGTR to compute the individual dumping or injury margin for the Responding exporters.
- bb. The Applicant has not been able to depict any material injury to the domestic industry under the mandates of Article 3.1 of the Agreement on Anti-dumping.
- cc. The export sales of the Domestic Industry have gone down considerably and it is continuously going down during the entire injury period. The Respondents submit that this is the real cause of losses and injury to the Petitioner industries.
- dd. The Domestic Industry has been consistently raising capital for investment in plant and machinery and not facing any injury on this count.
- ee. There is no increase in the inventory of PUC of the Domestic Industry.
- ff. The cost of sales has declined in correlation to the decline in sales prices.
- gg. The number of employees hired has been increasing steadily over the Injury Period, including the POI.
- hh. The productivity per day has shown a steady increase during the injury period, including the POI for the Domestic Industry.
- ii. The Applicant is suffering an injury mainly due to the dual and predatory pricing policy of the alleged sole domestic supplier of the raw material i.e. Grasim.

L.3 Examination by the Authority

128. The Authority notes that most of the issues raised in the post-disclosure comments have already been raised earlier and also addressed appropriately. Additional submissions have been analysed as under—
- a. As regards the non-acceptance of questionnaire response of a number of Indonesian producers, the Authority notes that the questionnaire response filed by these producers could not be accepted in view of significant gaps in the questionnaire responses filed by these exporters. The gaps in the questionnaire response remained despite multiple opportunities provided to them. The Authority notes that it is obligatory on the part of the foreign producers/ exporters to ensure that the questionnaire response filed by them are complete in all respects and in the form and manner prescribed.
 - b. In a situation where the exporters have not provided all relevant information prescribed in the formats, and the responses remained deficient, contradictory and unreliable, it was not feasible for the Authority to determine individual dumping margin and injury margin. Further, the possibility of seeking clarification by the Authority cannot be utilized by foreign producers/ exporters to provide basic information prescribed in the questionnaire. Gross deficiencies and inconsistencies in the questionnaire responses filed by these producers/exporters are briefly explained below.

- c. M/s. SBA Strategy Consulting LLP have filed the Exporter Questionnaire Response in March, 2020 on behalf of the following seven Indonesian producers/exporters:
- i. PT Lotus Indah Textile Industries
 - ii. PT Sinar Pantja Djaja
 - iii. PT Primayudha Mandiri Jaya
 - iv. PT Adikencana Mahkotabuana
 - v. PT Sri Rejeki Isman, Tbk
 - vi. PT Bitratex Industries
 - vii. Embee Plumbin Telsti
- d. On examinations of the questionnaire response, it was observed that Appendix 7, 8, 10 and 11 were not in the form and manner prescribed. While this alone was sufficient to reject the questionnaire response, yet, vide email dated 29th June, 2020, these companies were advised to submit the requisite data by 3rd July, 2020.
- e. M/s. SBA Strategy Consulting, vide email dated 2nd July, 2020 filed the revised appendices. Further, working files in respect of PT Primayudha were filed vide email on 9th July, 2020. M/s. SBA Strategy Consulting filed the revised certifications after further corrections of errors in case of PT Primayudha vide email dated 22nd July, 2020, and in case of PT Bitratex Industries vide email dated 23rd July, 2020.
- f. The information filed by these companies were examined. After examination of these revised appendices it was observed that Appendix 8 of the questionnaire response of all the seven companies represented by M/s. SBA Strategy Consulting contained new information and there was no information for the previous year element-wise cost of production for the product under consideration. Further, it was seen that in case of three companies, namely PT Embee, PT Sri Rejeki Isman and PT Sinar Pantha Dajaj, element-wise cost claimed in Appendices i.e. 6, 7, 8 and 10 were not duly reconciled and differed with each other. M/s. Adikencana claimed under/over absorption of raw-material in different Appendices. Accordingly, another communication was sent vide email dated 24th July, 2020 to M/s. SBA Strategy Consulting to clarify the discrepancy and provide requisite details with complete back-up papers for all the seven companies, latest by 27th July, 2020. It was made clear that the Authority may resort to facts available in case the companies failed to respond within the time limits.
- g. M/s. SBA Strategy Consulting vide email dated 27th July, 2020 filed further information. The information filed was once again examined and compared with the original questionnaire response filed in March, 2020 and revised data and supporting documents submitted in July, 2020. It was observed that there was a wide variation in data and still there were still significant gaps in data. The responses thus continued to remain deficient. The Authority once again provided an opportunity to the exporters vide email dated 4th September, 2020 to submit complete details/back-up papers/reasons for discrepancies. Some of the variation in data and data gaps as listed in the emails are as under: -
- i. In case of M/s. Adikencana and M/s. Sinar Pantja, the element-wise cost and profit figures varied at PUC as well as at Company level. Also, the profit and element-wise cost figures for the PUC has been changed in case of M/s. Bitratex, M/s. Lotus Indah, M/s. Primayudha and M/s. Sri Rejeki Isman.
 - ii. In all the seven companies Appendix 8 was not as per the prescribed format, the quantitative data for capacity, production, sales and per unit cost data, etc. has not been provided for the POI and previous accounting year.
 - iii. Related party transactions were involved in most of the companies particularly related to raw-materials. However, the details of the same was not reflected in Appendix 6 and Appendix 11 of all the companies. Different basis of pricing of raw-materials were used in Appendix 11 of the companies e.g. transactional net margin method, cost plus method etc. Company was asked to submit complete details and working for each of these methods.

- iv. In Appendix 6, M/s. Embee has adjusted waste sale and WIP in Raw-Material consumption instead of showing it separately in relevant Appendices.
 - v. They were also requested to provide the Audited Accounts for the year 2019 and for the POI along with the complete back-up papers for basic records maintained along with screen shots from system.
- h. M/s. SBA Strategy Consulting vide email dated 9th September, 2020 requested the Authority to provide them 2 weeks' time due to wide outbreak of Covid-19 in their office in Jaipur, India. However, they responded with the revised data and clarifications at a very belated stage of investigation vide email on 5th November, 2020. However, still the data/information was not as per the Trade Notice No. 05/2018 dated 28th February, 2018, and continued to remain deficient. Some of the deficiencies notices are as under:
- i. The revised format for Appendix 8 with the calculation of unit cost of production submitted were not certified by a Practising Accountant as per Trade Notice No. 05/2018.
 - ii. Revised Appendix 11 submitted were not certified by a Practising Accountant as per Trade Notice No. 05/2018.
 - iii. Complete details and working for each of the methods used as the basis of pricing of raw-materials in Appendix 11 of the companies e.g. transactional net margin method, cost plus method etc. were not provided.
 - iv. The Audited Accounts provided is in a local language without English version of the same, thus making it impossible to examine the audited accounts.
- i. M/s. Sunrise Bumi Textiles, M/s. Elegant Textile Industry and M/s. PT Indo Liberty Textiles also filed deficient questionnaire response. After examination of the initial questionnaire response, separate emails dated 30th June, 2020 were sent to these producer/exporters to provide the requisite details e.g. Appendix 7, 8, 10 and 11 in the form and manner prescribed. The same were not certified by a Practising Accountant as per Trade Notice No. 05/2018 dated 28th February, 2018. All these companies responded but still there were major data gaps/deficiencies in the questionnaire response submitted by them. Therefore, one more opportunity was given to these companies to clarify and justify the data gaps. But no response was received from them in response to email dated 7th September, 2020.
- j. It is evident that the Authority provided adequate opportunity to all those producers/ exporters whose questionnaire response have not been used to determine individual margin. While M/s. Sunrise Bumi Textiles, M/s. Elegant Textile Industry and M/s. PT Indo Liberty Textiles did not reply to Authority email dated 7th September, 2020, other seven companies namely PT Lotus Indah Textile Industries, PT Sinar Pantja Djaja, PT Primayudha Mandiri Jaya, PT Adikencana Mahkotabuana, PT Sri Rejeki Isman, PT Bitratex Industries and Embee Plumbin Telsti have not provided complete data within the prescribed time limits. Further, there have been changes in the essential basic data, which questions the very reliability of the data provided by these seven producer/exporters. Therefore, the Authority considers the information/ data provided by these producer/exporters is insufficient for determination of individual margin.
- k. As regards time given for offering comments to the disclosure statement, it is noted that six days' time was given to the interested parties to offer their comments. Time of six days cannot be considered insufficient. Besides, no request for additional time was made by any interested party. The Authority further notes that the approaching deadline for completion of investigation and difficulties faced due to COVID-19 pandemic also needs to be appreciated.
- l. It is clarified that all concerns raised by the Government of Indonesia and other interested parties, including Indonesian producers, have been adequately addressed and dealt with while arriving at the conclusion in the present findings.
- m. It is clarified that Authority has determined individual dumping margin in respect of only those producers/exporters who have filed questionnaire response complete in all respect. Further, the Authority has determined one weighted average dumping margin and injury margin for companies forming part of one group.

- n. As regards the range of dumping margin and injury margin given, the Authority notes that the dumping margin and injury margin have been given in a range in order to protect confidentiality of information provided by the responding exporters. The treatment is consistent with practice adopted by authority. Further, actual dumping margin has been disclosed to the exporters concerned.
- o. As regards confidentiality claims of interested parties, as stated above, the Authority has considered the confidentiality claims of various interested parties including the foreign producers, and on being satisfied, allowed the same.
- p. As regards quantification of Indian production, the Authority notes that in a situation such as the present one where the industry is highly fragmented and the product is produced by a large number of producers and where there is no published information with regard to gross Indian production, production is required to be assessed in a reasonable and scientific manner, which may involve taking into account the data of upstream industry. The assessment of production in such cases by considering gross consumption of raw material is a reasonably appropriate and fair methodology. The source of supplies of raw materials in the present case is imports into India and supplies by the only producer in the country. A statement, duly certified by an independent practicing Chartered Accountant, indicating sales of raw material, Viscose Staple Fibre (VSF) to various consumers of VSF for manufacture of the product under consideration has been provided by M/s. Grasim Industries Ltd. In situations where information with regard to raw material procurement by various domestic producers is given by the raw material supplier itself, there is no reason to believe that the same would have led to understatement of production. In fact, the Domestic Industry contended that the gross eligible Indian production adopted for determining standing could be overstated because of the fact that some of the domestic producer have imported the product (either directly or through an affiliate) and therefore, should be treated ineligible as Domestic Industry under Rule 2(b). While the applicant provided its own assessment of imports into India, the Authority has adopted the information published by the DGCI&S for the purpose.
- q. As regards the contention of the Government of Indonesia regarding rejection of questionnaire response, the Authority reiterates that the questionnaire responses filed by these Indonesian producers are indeed grossly deficient and the responses neither contain all information required nor are in the form and manner prescribed in the questionnaire. While deficiencies in the questionnaire responses were pointed out earlier, the subsequent data provided in the responses by these exporters were at material variance as compared to the information earlier provided. Further, the foreign producers were given sufficient time to address those discrepancies in the questionnaire responses but despite further extension having been given, these producers have not addressed the requirements. The Authority notes in this regard that onus to provide all relevant information, document and back up information in a timely manner lies on the foreign producers participating in the investigation. Even though the deficiencies found in the initial questionnaire response itself were sufficient to reject these responses, yet the Authority nevertheless provided repeated opportunities to these foreign producers to address the deficiencies. It is noted that the opportunity to provide clarification cannot be used to provide such information which is required to be provided by the foreign producers in their questionnaire response at the first instance itself. If foreign producers are allowed to provide subsequently what was required to be provided at the first instance, then it would render the time limits for questionnaire response meaningless.
- r. A number of interested parties have disputed existence of injury to domestic industry. The interested parties have pointed out at improvement in performance of the Domestic Industry in respect of few injury parameters. It is noted that the performance of the Domestic Industry has improved in respect of some parameters. However, it is well established that it is not necessary that performance of domestic industry should show deterioration in respect of each injury parameter and thus improvement in some parameters does not imply absence of injury. So long as the performance of Domestic Industry shows deterioration in respect of some parameters and such deterioration outweighs positive developments in other parameters, it can be concluded that the Domestic Industry has suffered injury. The Authority notes in this regard that if the performance of the Domestic Industry deteriorates in respect of profits, cash profits and return on investment in

a situation where its production, sales and capacity utilization improves, it can be safely concluded that material injury has been caused.

- s. As regards competition between companies constituting Domestic Industry and other domestic producers, the Authority notes that no interested party has provided any evidence to show that the performance of the Domestic Industry has deteriorated because of competition caused by other domestic producers not forming part of the Domestic Industry. Further, parameters such as domestic sales and market share of non-petitioning domestic producers clearly show a significant decline in their sales and market share. The market share of other domestic producers has in fact declined from 77% in base year to 48% in the POI. Thus, performance of the Domestic Industry could not have deteriorated due to competition by other domestic producers.
- t. It is clarified that the Authority has given confidential calculations of dumping margin to those foreign producers for whom individual dumping margin have been determined in the disclosure statement. These foreign producers are aware of the actual dumping margin determined by the Authority. Further, while disputing the dumping margin determined in the Disclosure Statement, Government of Indonesia has not established how the dumping margin determined in the Disclosure Statement is inappropriate.
- u. As regards inclusion of double yarn and multi yarn, it is clarified that evidence on record indicates the sale of these products being made by the Domestic Industry during POI.
- v. As regards the information provided by the Grasim, it is clarified that Grasim has provided details of sales made by the company and not consumption of VSY in the country. The company has provided a statement of sales made to various parties duly certified by the independent practicing Chartered Accountant. Since Grasim itself has provided information with regard to its sales made to various customers, all contentions made with regard to reliability of the data or filing of consumption information by Grasim are without any basis.
- w. As regards contention of higher prices paid by the VSY producers, the Authority compared the consumption price reported by the constituents of Domestic Industry with the import price of VSF in India at the same level. It is seen that the consumption price adopted for the purpose of determination of NIP is quite comparable to the import price of VSF. Thus, information on record does not show that the consumption price of VSF adopted for determination of NIP is unduly high.
- x. The Authority has noted the quantification of impact of ADD on the eventual end product as furnished by the Domestic Industry is around 1%.
- y. The Authority notes that none of the interested parties barring the Domestic Industry have quantified impact of proposed ADD on the eventual end product.
- z. The Authority notes that none of the interested parties have brought any evidence in support of their argument that imposition of proposed ADD will have significant adverse impact on downstream products.

M. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

- 129. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The Interested parties have not established that imposition of duties is going to adversely impact the public interest.
- 130. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

N. CONCLUSION

131. After examining the submissions made by the interested parties and issues raised therein, and considering the facts available on record, the Authority concludes that:

- The product under consideration has been exported to India from the subject countries below its normal value.
- The Domestic Industry has suffered material injury.
- Material injury has been caused by the dumped imports of subject goods from the subject countries.

O. RECOMMENDATIONS

132. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the Domestic Industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the authority is of the view that imposition of Anti-Dumping is required to offset dumping and injury. Therefore, Authority recommends imposition of anti-dumping duty on imports of subject goods from the subject country.

133. In terms of provision contained in Rule 4(d) & Rule 17(1) (b) of the Rules, the Authority recommends impositions of anti-dumping duty equal to lesser of margin of dumping and the margin of injury so as to remove the injury to the domestic industry. Accordingly, definitive anti-dumping duty equal to amount mentioned in column 7 of the duty table below is recommend to be imposed for five (5) years from the date of the Notification to be issued by the Central Government, on all imports of goods described at Column 3 of the duty table, originating in or exported from China PR, Indonesia and Vietnam.

DUTY TABLE

SN	Tariff Heading*	Description of goods	Country of origin	Country of export	Producer	Duty amount	Currency	Unit
1	2	3	4	5	6	7	8	9
1	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	China PR	Any Country including China PR	Yibin Spark Fine Spinning Tech Co., Ltd.	0.51	USD	KG
2	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	China PR	Any Country including China PR	Yibin Grace Textile Co., Ltd.	0.41	USD	KG
3	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	China PR	Any Country including China PR	Any producer other than at serial numbers 1 and 2	0.80	USD	KG
4	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Any Country other than China PR, Indonesia, Vietnam	China PR	Any	0.80	USD	KG

SN	Tariff	Description of goods	Country of origin	Country of export	Producer	Duty amount	Currency	Unit
	Heading*							
1	2	3	4	5	6	7	8	9
5	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Indonesia	Any Country including Indonesia	PT. Manunggal Adipura	0.25	USD	KG
6	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Indonesia	Any Country including Indonesia	PT. Delta Merlin Sandang Tekstil	0.35	USD	KG
7	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Indonesia	Any Country including Indonesia	PT. Delta Dunia Tekstil		USD	KG
8	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Indonesia	Any Country including Indonesia	PT. Delta Dunia Tekstil		USD	KG
9	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Indonesia	Any Country including Indonesia	Any producer other than at serial numbers 4 to 8	0.44	USD	KG
10	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Any Country other than China PR, Indonesia, Vietnam	Indonesia	Any	0.44	USD	KG
11	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Vietnam	Any Country including Vietnam	Any	0.41	USD	KG
12	55101110, 55101210, 55101190, 55101290, 55109010, 55109090	Viscose Spun Yarn*	Any Country other than China PR, Indonesia, Vietnam	Vietnam	Any	0.41	USD	KG

*The product under consideration is Viscose rayon spun yarn containing 85% or more by weight of artificial viscose staple fibre, other than sewing thread, not put up for retail sale.

**Note: Customs classification is only indicative, and the determination of anti-dumping duty shall be made as per the description of the PUC.

P. FURTHER PROCEDURE

134. An appeal against these findings after its acceptance by the Central Government shall lie before the Customs, Exercise and Service tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

B.B. SWAIN, Spl. Secy. and Designated Authority

- (ग) नॉन-वोवेन फाइबर,
 (घ) फ्लेम रिटार्डेंट फाइबर,
 (ङ) इको फाइबर (इको वेरो अथवा ईवी)
 (च) स्पन डाइड फाइबर,
 (छ) टेन्सेल फाइबर (अथवा ल्योसेल) तथा आउटलास्ट विस्कोस फाइबर।

अनंत स्वरूप, निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
 (DIRECTORATE GENERAL OF TRADE REMEDIES)
CORRIGENDUM NOTIFICATION
 New Delhi, the 5th March, 2021
(Case No. SSR-AD-03/2021)

Subject : Corrigendum to initiation notification issued in Sunset review anti-dumping investigation concerning imports of Viscose Staple Fibre originating in or exported from China PR and Indonesia.

F. No. 7/03/2021-DGTR.—Having regard to the Customs Tariff Act, 1975, as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, thereof, the Designated Authority has issued the sunset review initiation notification No. 7/03/2021-DGTR dated 22nd February, 2021 and Corrigendum notification of even number dated 23rd February 2021.

2. “Product under consideration” or “subject goods” described in Para 1 & Para 6 of the aforesaid notification is further corrected to be read as follows:

Viscose Staple Fibre (VSF) excluding:

- a) *Bamboo Fibre,*
- b) *Modal Fibre,*
- c) *Non-Woven Fibre,*
- d) *Flame Retardant Fibre,*
- e) *Eco Fibre (Eco Vero or EV),*
- f) *Spun Dyed Fibre,*
- g) *Tencel Fibre (or Lyocell) and Outlast Viscose Fibre*

ANANT SWARUP, Designated Authority

क्रम सं.	शीर्ष	विवरण	मूल देश	निर्यातक देश	उत्पादक	राशि	यूनिट	मुद्रा
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
10.	4411	6 एमएम से कम मोटाई वाला प्लेन मीडियम डेनसिटी फाइबर बोर्ड*	इंडोनेशिया	इंडोनेशिया सहित अन्य कोई देश	पीटी मुक्ति पैनल इंडस्ट्री	227.42	सीबीएम	अमेरिकी डॉलर
11.	4411	6 एमएम से कम मोटाई वाला प्लेन मीडियम डेनसिटी फाइबर बोर्ड	इंडोनेशिया	इंडोनेशिया सहित अन्य कोई देश	पीटी सुमाटेरा प्राइमा फाइबरबोर्ड	244.60	सीबीएम	अमेरिकी डॉलर
12.	4411	6 एमएम से कम मोटाई वाला प्लेन मीडियम डेनसिटी फाइबर बोर्ड*	इंडोनेशिया	इंडोनेशिया सहित अन्य कोई देश	उपर्युक्त क्रम सं. 10 और 11 में उल्लिखित उत्पादकों को छोड़कर अन्य कोई उत्पादक	258.42	सीबीएम	अमेरिकी डॉलर
13.	4411	6 एमएम से कम मोटाई वाला प्लेन मीडियम डेनसिटी फाइबर बोर्ड*	वियतनाम, मलेशिया, थाईलैंड और इंडोनेशिया को छोड़कर अन्य कोई देश	इंडोनेशिया	कोई उत्पादक	258.42	सीबीएम	अमेरिकी डॉलर

* लेमिनेटेड मीडियम डेनसिटी फाइबर बोर्ड (लेमिनेटेड एमडीएफ बोर्ड) विचाराधीन उत्पाद के क्षेत्र से बाहर है। 6 एमएम या उससे अधिक की मोटाई वाले प्लेन मीडियम डेनसिटी फाइबर बोर्ड को उत्पाद क्षेत्र से अलग किया गया है। तदनुसार, विचाराधीन उत्पाद "6 एमएम से कम मोटाई वाला प्लेन मीडियम डेनसिटी फाइबर बोर्ड" है। मॉल्डेड डोर स्किन्स भी विचाराधीन उत्पाद के दायरे से बाहर रखा गया है।

थ. आगे की प्रक्रिया

122. इस सिफारिश के कारण केंद्र सरकार के आदेश के विरुद्ध कोई अपील अधिनियम के संगत प्रावधानों के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय अधिकरण के समक्ष की जाएगी।

अनंत स्वरूप, निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(DIRECTORATE GENERAL OF TRADE REMEDIES)

NOTIFICATION

FINAL FINDINGS

New Delhi, the 20th April, 2021

Case No. ADD-OI-11/2020

Subject : Anti-dumping investigation concerning imports of 'Plain Medium Density Fibre Board having thickness less than 6mm' originating in or exported from Vietnam, Malaysia, Thailand and Indonesia.

F. No. 6/13/2020-DGTR.—Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the 'Act') and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as 'the Rules' or 'AD Rules') thereof;

A. BACKGROUND OF THE CASE

1. M/s Greenply Industries Limited/ M/s Greenpanel Industries Limited, and M/s Century Plyboards (India) Ltd. (hereinafter referred to as the "Applicants" or "Domestic Industry") filed a duly substantiated application before the Designated Authority (hereinafter also referred to as the "Authority"), on behalf of the domestic industry, in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred as the "Act") and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter also referred as the "Rules"), for initiation of original anti-dumping investigation concerning imports of Plain Medium Density Fibre Board having thickness less than 6 mm (hereinafter also referred to as "product under consideration" or "PUC" or "subject goods"), originating in or exported from Vietnam, Malaysia, Thailand and Indonesia.
2. Based on the substantiated application with prima facie evidence of dumping and injury filed by the Applicants, the Authority initiated an anti-dumping investigation vide Notification No. 6/13/2020 – DGTR dated 22nd April, 2020, published in the Gazette of India, in accordance with Rule 5 of the Rules to determine existence, degree and effect of alleged dumping of the subject goods, originating in or exported from the subject countries, and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged material injury to the domestic industry.

B. PROCEDURE

3. The procedure described below has been followed with regard to the investigation:
 - i. The Authority notified the embassy of the subject countries in India about the receipt of the present application before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the AD Rules.
 - ii. The Authority issued a Notification dated 22nd April, 2020, published in the Gazette of India Extraordinary, initiating investigation concerning imports of the subject goods from the subject countries.
 - iii. The Authority sent a copy of the initiation notification to the Embassy of the subject countries in India, known producers/exporters from the subject countries, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the applicant and requested them to make their views known in writing within 60 days from the receipt of notice in accordance with Rule 6(4) of the AD Rules.
 - iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, known importers and to the embassy of the subject countries in India in accordance with Rule 6(3) of the AD Rules.
 - v. The Embassy of the subject countries in India was also requested to advise the exporters/producers from the subject countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
 - vi. The Authority sent exporter's questionnaire to the following known producers/ exporters in the subject countries, whose details were made available by the applicants, to elicit relevant information in accordance with Rule 6(4) of the Rules:
 - a. M/s. Evergreen Fibre Berhad (JB) Sdn. Bhd., Malaysia
 - b. M/s. Dongwha Fibreboard Sdn. Bhd., Malaysia
 - c. M/s. Robin Resources (Malaysia) Sdn. Bhd., Malaysia

- d. M/s. Segamat Panel Boards Sdn. Bhd., Malaysia
 - e. M/s. Advance Fibre Company Limited, Thailand
 - f. M/s. KhonKaen MDF Board Company Limited, Thailand
 - g. M/s. Vanachai Panel Industries Company Limited, Thailand
 - h. M/s. Siam Fibreboard Company Limited, Thailand
 - i. M/s. Metro Fiber Company Limited, Thailand
 - j. M/s. Vanachai Group Public Company Limited, Thailand
 - k. M/s. Metro M.D.F. Company Limited, Thailand
 - l. M/s. PT AndalanKaryaBersama, Indonesia
 - m. M/s. P.T. Sumatera Prima Fibre Board, Indonesia
 - n. M/s PT Hijau Lestari Raya Fibreboard, Indonesia
 - o. M/s. Kim Tin MDF Trading Company Limited, Vietnam
 - p. M/s. MDF VRG Quang Tri Joint Stock Company, Vietnam
 - q. M/s. Hong Duong Bamboo and Rattan Company Limited, Vietnam
 - r. M/s. Vietnam Wooden Board Company Limited, Vietnam
 - s. M/s. Vitranexco Limited Company, Vietnam
 - t. M/s. VRG Dongwha MDF Limited, Vietnam
 - u. M/s. Kim Tin Group Joint Stock Company Limited, Vietnam
- vii. The following producers/exporters from the subject countries filed exporter's questionnaire response:
- a. M/s. Vanachai Panel Industries Company Limited, Thailand
 - b. M/s. Vanachai Group Public Company Limited, Thailand
 - c. Panel Plus MDF Company Limited, Thailand
 - d. Panel Plus Company Limited, Thailand
 - e. M/s. Segamat Panel Boards SDN BHD, Malaysia
 - f. M/s. Magna Foremost SDN BHD, Malaysia
 - g. M/s. Grand Paragon SDN BHD, Malaysia
 - h. M/s. Masonite Components Unlimited Company, Ireland
 - i. M/s. PT Sumatera Prime Fibreboard, Indonesia
 - j. M/s. PT Mukti Panel Industri, Indonesia
 - k. M/s. S. Kijchai Enterprise Public Company Limited, Thailand
 - l. M/s. Wisewoods Company Limited, Thailand
 - m. M/s. SPB Panel Industries Company Limited, Thailand
- viii. The Authority forwarded a copy of the Initiation Notification to the following known importers/users/user associations, whose names and addresses were made available to the authority, of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 6(4):
- a. M/s Krishna Plywood Products Private Limited
 - b. M/s Jacsons Veneers And Panels Private Limited

- c. M/s Label Sales Corporation
 - d. M/s Kalinga Imports & Exports Private Limited
 - e. M/s Srivari Traders
 - f. M/s Victory Plywood Distributors
 - g. M/s Thamarapally Brothers Trading Private Limited
 - h. M/s Mathewsons Exports & Imports Private Limited
 - i. M/s R.J.Metals
 - j. M/s Feroke Boards Limited
- ix. The following importers/users/user associations have filed submissions or questionnaire responses in the present investigation.
- a. M/s. Feroke Boards Limited
 - b. M/s. Ranga Overseas Private Limited
 - c. Thamarappally Brothers Veneers and Panel Pvt. Ltd
 - d. Association of Furniture Manufacturers of India (AFMI)
- x. The following interested parties have filed legal submissions and/or letters of participation in response to the initiation notification:
- a. M/s. Vanachai Group Public Company Limited, Thailand
 - b. M/s. Vanachai Panel Industries Company Limited, Thailand
 - c. Panel Plus MDF Company Limited, Thailand
 - d. Panel Plus Company Limited, Thailand
 - e. M/s. Segamat Panel Boards SDN BHD, Malaysia
 - f. M/s. Magna Foremost SDN BHD, Malaysia
 - g. M/s. Grand Paragon SDN BHD, Malaysia
 - h. M/s. Masonite Components Unlimited Company, Ireland
 - i. M/s. PT Sumatera Prime Fibreboard, Indonesia
 - j. M/s. PT Mukti Panel Industri, Indonesia
 - k. Thai Panel Product Industry Club, Thailand
 - l. Government of Indonesia
- xi. Exporters, foreign producers and other interested parties who have not responded to the Authority, or not supplied information relevant to this investigation, have been treated as non-cooperating interested parties.
- xii. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed.
- xiii. A list of all interested parties was uploaded on DGTR's website along with the request therein to email the NCV of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic.

- xiv. The Period of Investigation for the purpose of the present investigation has been considered from 1st January 2019 to 31st December 2019 (POI). The injury investigation period has been considered as the period from 1st April 2016 – 31st March 2017, 1st April 2017 – 31st March 2018, 1st April 2018 – 31st March 2019 and Period of Investigation.
- xv. Verification of the data provided by the domestic industry and exporters/producers was conducted to the extent considered necessary for the purpose of the investigation.
- xvi. The Non-Injurious Price (NIP) is based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules. It has been worked out so as to ascertain whether duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xvii. Information obtained from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) on transaction-wise import data for the past three years, and the period of investigation has been adopted for determination of volume and value of imports of product concerned in India.
- xviii. In accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 24th February, 2021. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
- xix. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in these final findings.
- xx. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded these final findings on the basis of the facts available.
- xxi. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 7th April, 2021 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.
- xxii. *** in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxiii. The exchange rate adopted by the Authority during the POI for the subject investigation is 1 US\$= 71.34.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 4. The product under consideration for the purpose of present investigation is “Plain Medium Density Fibre Board having thickness less than 6mm”. The product under consideration is also called Plain MDF Board. It is a composite wood product made out of wood waste fibres glued together with urea formaldehyde resin or melamine resin by applying heat and pressure. It is widely used for partitions, Modular furniture, cabinets etc., due to its smooth and uniform finish. MDF Board is produced in plain form and lamination is additional processing which is carried out after production of Plain MDF Board.
- 5. The laminated Medium Density Fibre Board (laminated MDF Board) is beyond the scope of product under consideration. The Plain Medium Density Fibre Board having thickness of 6mm or more is excluded from the product scope. The product under consideration accordingly is, “Plain Medium Density Fibre Board having thickness less than 6mm.”

6. The subject goods are classifiable under tariff heading 44111200 and 44111300. However, the subject goods are being imported under other tariff heading 44119219, 44119229, 44119319, and 44119419 as well. These customs classifications are indicative only and in no way binding on the scope of this investigation.

C.1. Views of the Domestic Industry

7. The domestic industry has submitted as follows with regard to product under consideration and like article:
 - i. There is no difference in the subject goods produced by the domestic industry and exported from subject countries and are comparable in terms of physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The product manufactured by domestic industry is like article to the product imported from subject countries.
 - ii. As regards moulded door skins, the domestic industry has no objection to its exclusion. It has been excluded from import data as well.
 - iii. As regards High Density Fibreboard (HDF), the product under consideration is itself defined as 'Plain Medium Density Fibreboard having thickness less than 6mm', implying HDF is not within scope of product under consideration.
 - iv. As regards additional HS codes, the initiation notification clearly mentions that customs classifications are indicative only and in no way binding on the scope of the present investigation. HS codes include those under which product is classified and imported.

C.2. Views of other interested parties

8. The following submissions have been made by other interested parties with regard to the product under consideration and like article:
 - i. The Applicants have acted in a mischievous manner by not mentioning the name of Door skins in the list of items excluded from the scope of the product under consideration.
 - ii. Door skins or Moulded Door Skins, is a value-added product and have been excluded from the scope of the product under consideration covering MDFs in the past by the Authority.
 - iii. The Authority, in the ongoing anti-subsidy investigation concerning imports of Fiberboards from Indonesia, Malaysia, Sri Lanka, Thailand and Vietnam has clarified vide communication dated 20.12.2019 that Moulded Door Skin is excluded from the scope of the product under consideration.
 - iv. Comparison on PCN level is the appropriate methodology and the type wise information submitted by the exporter should be used for all comparison purposes.
 - v. Exporter manufactures and sells three broad types of products covered in Product under consideration i.e., E0, E1/Carb and E2 based on Formaldehyde Emission and cost and price of these grades vary significantly. Inter se grades with significant cost and price differences warrant separate determination of dumping and injury margin for such different grades.
 - vi. High Density Fibreboard (HDF) should be excluded from scope of product under consideration, as they are completely different products.
 - vii. HS codes will have implication on the accuracy of data with respect to volume and price of import of PUC, and no explanation has been provided as to whether additional HS codes are like product of main HS codes.

C.3. Examination by the Authority

9. The product under consideration in the present investigation, is “Plain Medium Density Fibreboard having thickness less than 6mm”. The product under consideration has been defined as under:

“The product under consideration is Plain Medium Density Fibre Board, also known as Plain MDF Board. It is a composite wood product made out of wood waste fibres glued together with urea formaldehyde resin or melamine resin by applying heat and pressure. It is widely used for partitions, Modular furniture, cabinets etc, due to its smooth and uniform finish. MDF Board is produced in plain form and lamination is additional processing which is carried out after production of Plain MDF Board.

The laminated Medium Density Fibre Board (laminated MDF Board) is beyond the scope of product under consideration. The Plain Medium Density Fibre Board having thickness of 6MM or more is excluded from the product scope. The product under consideration accordingly is, “Plain Medium Density Fibre Board having thickness less than 6mm.”

10. The subject goods produced by the domestic industry and that imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the same, the product under consideration produced by the domestic industry is treated as like article to the product under consideration imported from subject countries.
11. As regards the exclusion of moulded door skin and High Density Fibreboard (HDF) from the scope of product under consideration in the present investigation, it is noted that since domestic industry is not manufacturing moulded door skin, the same is excluded from the scope of product under consideration. As regards exclusion of High Density Fibreboard (HDF), it is noted that High Density Fibreboard (HDF) too is not within the scope of product under consideration.
12. As regards the arguments of the interested parties regarding the adoption of PCN in the present investigation, it is noted that the same issue was earlier dealt by the Authority in case of ADD investigation for Plain Medium Density Fibreboard having thickness less than 6 mm wherein it was decided not to adopt PCN methodology. There does not seem to be any justification to deviate from the stand taken earlier by the Authority.
13. The subject goods are classifiable under tariff heading 4411200 and 4411300. However, the subject goods are being imported under other tariff heading 44119219, 44119229, 44119319, and 44119419 as well. These custom classifications are indicative only and in no way binding on the scope of this investigation.

D. DOMESTIC INDUSTRY AND STANDING

14. Rule 2(b) of the AD rules defines domestic industry as under:

“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term, ‘domestic industry’ may be construed as referring to the rest of the producers.”

D.1. Views of the Domestic Industry

15. Following submissions have been made by the domestic industry with regard to standing and scope of the domestic industry:

- i. The Application for initiation of anti-dumping investigation has been jointly filed by Greenply Industries Limited/ Greenpanel Industries Limited and Century Plyboards (India) Limited. Under Composite Scheme of Arrangement, Greenply Industries Limited was demerged to Greenpanel Industries Limited. The Applicants have provided all relevant information with regard to the present investigation.
- ii. The Applicants have not imported the subject goods. The Applicants are not related, either directly or indirectly, to any exporter in the subject country or any importer of the dumped article within the meaning of Rule 2(b).
- iii. As regards inclusion of other domestic producers who were part of previous investigations, it is stated that those domestic producers do not manufacture the product under consideration.
- iv. As regards supporters and alleged pick and choose methodology, it is not imperative for all petitions to have supporters and the lack of which does not imply that domestic industry has employed pick and choose methodology. WTO Panel in China-Autos(US) has stated that there is no established methodology to define domestic industry and the possibility of weaker performing producers participating is a simple reflection of trade remedial actions.
- v. In response to disclosure statement issued by the Authority, M/s Century Plyboards (India) Ltd sent an e-mail stating that they should not be treated as one of the Applicants any more.

D.2. Views of other interested parties

16. The following submissions have been made by other interested parties with regard to the standing and scope of the domestic industry:
 - i. The domestic industry comes before the Authority with different permutations and combinations of the applicants, as per their convenience, to demonstrate non-existent or contrived injury.
 - ii. Producers who were part of domestic industry in previous investigation and ongoing CVD investigation has been wantonly kept out of scope to distort injury related data.
 - iii. Since the introduction of Trade Notice No. 13/2018 dated 27.09.2018, there has been no supporter to any of the investigations, thereby implying that the domestic producers has employed pick and choose methodology to demonstrate injury. This is against India's obligations in terms of Article 3.4 of the WTO agreement and Appellate Body report in Thailand – H-Beams which states that the Authority should examine “state of the industry” as a whole and not a part of domestic producers.
 - iv. Other domestic producers are performing better in the market and authority must call for and examine their data to ensure fair and holistic appreciation of data.

D.3. Examination by the Authority

17. The Application in the present case was jointly filed by Greenply Industries Limited/ Greenpanel Industries Limited and Century Plyboards (India) Ltd. (hereinafter also referred to as applicant companies), accounting for ***% of the total Indian production. The Authority notes that there are three other manufacturers of the product under consideration namely M/s Balaji Action Buildwell, M/s Pioneer Panel Products, and M/s Ranga Particle Board Industries Limited who also manufacture the like article in India. The Applicants account for a major proportion in Indian production of the subject goods.
18. As regards the argument of inclusion of other domestic producers who were part of previous investigations and ongoing CVD investigation, the Authority notes that Rushil Decor Limited, the other company who is the part of domestic industry in other investigations and ongoing CVD investigation does not manufacture the product under consideration.

19. Vide emails dated 14th April 2021 and 17th April 2021, i.e., after the issuance of disclosure statement, Century Plyboards (India) Limited has filed a letter withdrawing its participation as constituent of domestic industry in this investigation. In this regard, Authority notes that that the investigation has reached its conclusive stage and everything has been finalised. After disclosure statement was issued to all the interested parties, Century Plyboards (India) Limited, which is one of the constituents of applicant domestic industry has made a request to withdraw its participation as constituent of domestic industry. Such withdrawal at the final stage of the investigation though will not affect the continuation of investigation in any manner because the remaining applicant Greenply Industries Limited/Greenpanel Industries Limited accounts for ***% of the total domestic production and thus meets the standing requirement under the Rules all by itself and accounts for a major proportion in Indian production of the subject goods.
20. The applicant company has neither imported the product under consideration nor has claimed to be related to any producer/exporter of the product under consideration in subject countries or importers of subject goods in India.
21. Considering the information on record, the Authority holds that the applicant company i.e. Greenply Industries Limited/ Greenpanel Industries Limited accounts for a major proportion in the domestic production of the like article and the applicant is eligible domestic industry within the meaning of Rule 2(b) and Rule 5(3) of the Rules.
22. The Authority however notes that Century Plyboards (India) Ltd has fully participated in the investigations thus far, provided all relevant information to the Authority, has offered verification of its information and has provided cost statement duly certified by an independent accountant post verification of its information. Since full information relevant to the investigations with regard to the company is on record, it would be appropriate to use the information provided by them for the purpose of assessment of injury because the assessment of injury of domestic industry as a whole by using the information/ data of Century Plyboards (India) Limited will be more representative of the situation.

E. CONFIDENTIALITY

E.1. Submissions by the domestic industry

23. Following submissions have been made by the domestic industry with regard to confidentiality —
 - i. S.Kijchai Enterprise Public Company Limited, Thailand, Wisewoods Company Limited, Thailand and Thamarappally Brothers Veneers and Panel Pvt. Ltd have failed to circulate the non-confidential version of their questionnaire responses.
 - ii. SPB Panel Industries Limited, Thailand has not filed the questionnaire response in the manner prescribed by the Authority.
 - iii. Association of Furniture Manufacturers of India (AFMI) should be considered as non-cooperative in the present investigation.
 - iv. The exporters and producers have resorted to excessive confidentiality and has redacted even basic information. The non-confidential version of the responses filed do not allow a meaningful understanding of the information claimed confidential. The responses are not in accordance with the requirements as per Trade Notice 10/2018, and is liable to be rejected.
 - v. The information kept confidential by the responding interested parties forms an essential part of the exporter questionnaire responses. Due to lack of such vital information in the non-confidential version, the Domestic Industry is unable to offer any meaningful submissions, thereby violating principles of natural justice.

- vi. The exporters have not furnished a sufficient non-confidential version of the appendices. Even indexed information has not been made available to the domestic industry. The exporters have not provided information that is freely available in the public domain.
- vii. As per Panel Plus Company's response, it does not export to India. However, according to its performance parameters, export sales have been made. The website given for Masonite Ireland is not functional. The exporters are trying to mislead the domestic industry and the Authority.
- viii. The non-confidential version of the petition filed by the domestic industry is as per Trade Notice 10/2018.
- ix. As regards confidentiality of the Market Research report, the same is third party information not available in public domain, and the petitioners are not authorized to disclose the same.

E.2. Submissions by other interested parties

24. Following submissions have been made by other interested parties with regard to confidentiality-

- i. Petition is liable to be rejected as it is not in accordance with Trade Notice 10/2018. Reference is made to communication of the Authority in Sunset review Investigation concerning imports of Clear Float Glass from Pakistan, Saudi Arabia and UAE wherein the domestic industry was directed to provide non-confidential version in accordance with Annexure 1 of the Trade Notice, and Aluminium Zinc coated Flat products wherein data of exporter was rejected as certified costing certificates were not provided.
- ii. Claims of confidentiality by the domestic industry is wrong and misplaced. Responses of the exporters were submitted in accordance with Trade Notices 10/2018.
- iii. The petitioner has not provided evidence that information in the public domain was claimed confidential.
- iv. As regards confidentiality of information in Annual Reports, different standards cannot be applied with respect to similar nature of information submitted by other interested parties.
- v. Investigation should not be trivialized by raising issues of reasonable and permissible confidentiality.
- vi. Normal value computed in the petition is high by over 30% and is unsubstantiated. The Petitioners had relied on a Market Research Report by Maia Research. Therefore, there is no reason to claim confidentiality over the information/evidence when the source of the same has already been revealed. The credibility of Maia Research in the MDF sector is questionable as inaccurate selling prices have been quoted. Moreover, of all the reports available on their website, there is no report which cover the POI for the PUC. The selling prices quoted in the Petition are excessively high whereas the actual selling prices are around 220 USD/MT or less on a delivered basis.

E.3. Examination by the Authority

25. With regard to confidentiality of information, Rule 7 of the AD Rules provides as follows:

“Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party

without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”

26. A list of all interested parties was uploaded on DGTR's website along with the request therein to all of them to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic.
27. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed accordingly. The Authority notes that the information provided by the interested parties on confidential basis was duly examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.
28. As regards submission of questionnaire response of (i) SPB Panel Industries Co. Ltd. Thailand(ii) M/s SKijchai's, (iii) Wisewoods Co. Ltd and (iv) Thamarappally Brothers Veneers and Panel Pvt. Ltd, it is seen that these companies have failed to circulate the non-confidential version of their responses to other interested parties. The Authority notes that non circulation of non-confidential version of their responses has impeded the opportunity for the other interested parties to make meaningful comments on the Questionnaire response filed by the aforementioned companies. The Authority holds to reject the responses filed by these companies in view of violation of sub rule 2 of Rule 7 of Anti-dumping Rules, 1995.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submissions by the domestic industry

29. The following miscellaneous submissions have been made by the domestic industry:
 - i. Exporters in subject countries resort to dumping despite subsidies granted by their respective governments and duty concessions granted under Free Trade Agreements, and are already subject to an ongoing anti-subsidy investigation.
 - ii. As regards misuse of trade remedial measures, there is no excessive protection to the domestic industry and anti-dumping duty is only to prevent unfair trade measure. The Authority imposes duty only when all legal requirements are met. The exporters are habitually exporting at unfair prices. The market share of imports is higher than market share of the domestic industry. Despite increase in capacities, domestic industry is prevented from meeting this demand. If exports were made at un-dumped prices, consumers would buy from domestic industry.
 - iii. As regards multiple investigations, the injury is due to low price imports and it is unclear as to the extent to which these low prices are due to dumping and to what extent due to subsidies, and hence should be investigated. A level playing field needs to be provided to

the extent of dumping and subsidies within overall injury margin and no relief is sought beyond injury margin.

- iv. There is no bar in investigating both AD and CVD cases simultaneously and is highly advisable to conduct at the same time. Other jurisdictions like US and EU initiate both AD and CVD investigations simultaneously, as observed by CESTAT and upheld by the Supreme Court in *M/s Suncity Sheets Pvt. Ltd. v. Union of India*.
- v. As regards overlap of POI, there is no difference between POI of dumping and injury in the present investigation, and the injury caused to domestic industry is in the current period of investigation.
- vi. As regards requirements justifying initiation, all requirements of Rule 5 have been met by the domestic industry.
- vii. As regards monopolizing the market, the purpose of anti-dumping duties is to re-establish situation of open and fair competition and imposition will not restrict imports in any way or affect availability of product to consumers.

F.2. Submissions by other interested parties

30. Following miscellaneous submissions have been made by other interested parties:

- i. Issue of subsidies availed by exporters of subject goods is immaterial for anti-dumping investigation, as stated in investigation concerning Textured Tempered Glass from Malaysia.
- ii. Submission of the domestic industry that exporters enjoy duty concessions establish that the cause of injury is duty-free imports under Free Trade Agreements and cannot be attributed to alleged dumped imports.
- iii. Domestic industry has been misusing trade remedial measures for the past 11 years wherein, there have been cases against some or other form of the product.
- iv. CVD investigation on the product under consideration is being conducted parallelly. Multiple duties to address the same situation must be avoided.
- v. The POI of dumping and injury examination should overlap to ensure nexus between import and injury, without which causal link cannot be established, therefore, the petition should be rejected.
- vi. Petitioners failed to provide prima facie evidence to justify initiation.
- vii. Customers in India should be given a wide choice and anti-dumping measures should not be used to monopolize a market.

F.3. Examination by the Authority

31. The Authority has noted all the arguments and counter-arguments of the interested parties and has examined all aspects of the submissions made.

- i. As regards alleged misuse of trade remedial measures and excessive protection, the Authority notes that the recommendation for imposition of duty is made only when the requisite legal requirements are met.
- ii. As regards the submission that the petition does not have prima facie evidence to justify initiation, the Authority notes that the Application contained all information relevant for the purpose of initiation of investigation. The Authority, only after satisfaction that application contained sufficient prima facie evidence to justify initiation of investigation decided to initiate the present investigation.
- iii. As regards conducting parallel anti-dumping and anti-subsidy investigations, the Authority notes that there is no bar in conducting such parallel investigations.

- iv. As regards overlap of period of investigation, the Authority notes that the period of investigation for dumping and injury is the same and there is no difference between the same.

G. DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

G.1. Normal Value

32. Under Section 9A(1)(c) of the Act, normal value in relation to an article means:

- (i) *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
- (ii) *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*
 - (a) *comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - (b) *the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

G.2. Submissions by the domestic industry

33. The submissions made by the domestic industry with regard to normal value, export price and dumping margin are as follows:

- i. The normal values for Indonesia, Malaysia, Thailand and Vietnam have been determined on the basis of the price reported in the Market Research Report by Maia Research. Export price has been calculated on the basis of DGCI&S transaction wise import data.
- ii. Response filed by M/s Wisewoods Limited, Thailand should be rejected as it was not filed in the prescribed manner.
- iii. Exporters have not fully cooperated with the Authority and adverse inference should be drawn from the fact of non-participation, and highest duty should be imposed on the exporters on the basis of facts available.
- iv. The disclosure statement issued in the ongoing anti subsidy investigation against imports of Fibreboard, stated that the major raw material prices in the subject countries are highly distorted due to various government schemes. Therefore, the raw material prices of the exporters in the subject countries are not reflective of market prices and is liable to be rejected for computation of normal value.
- v. As regards consideration of response filed by PT Mukti, it can be considered for determination of normal value and export price subject to accuracy and adequacy of information. The exporters should establish that raw material prices are undistorted. In case the raw material prices are found to be distorted, undistorted prices should be considered.

- vi. As regards separate dumping margin for related parties, it is against the practice of DGTR. In view of Para 12.28 of SOP Manual, only one dumping margin should be determined for all related parties.
- vii. As regards basis of data for normal value, information was provided to the best of abilities to establish prima facie dumping as domestic industry is not privy to actual selling price of subject goods in domestic market of subject countries and cost of production of subject goods in subject countries.
- viii. As regards normal value, petitioners have provided actual prices for determination of normal value.

G.3.Submissions by other interested parties

34. The following submissions have been made by other interested parties regarding the normal value, export price and dumping margin:

- i. Actual information provided by PT Mukti in their questionnaire response should be considered for determination of its normal value and export price.
- ii. Dumping margins for related companies Vanachai Panel Industries Company and Vanachai Group Public Company Limited, and Panel Plus Co. Ltd and Panel Plus MDF Company Limited, as well as PT Sumatera Fibreboard and SegamatPanel Boards SDN BHD should be computed separately.
- iii. Allegations of dumping against Thailand are unsubstantiated.
- iv. Establishment of dumping margin is incorrect as normal value was based on 2018 data, prior to POI. It is also questionable if normal value was established at ex-factory level.
- v. Period where normal value and export value was established is different, and comparing normal value and export price at different level would be inconsistent with Article 2.4 of Anti-Dumping Agreement.
- vi. The normal value computed in petition is high by over 30% and is unsubstantiated.
- vii. In view of WTO Panel and Appellate Body reports in EU-Biodiesel and Australia – A4 copy paper, investigating authority is required to consider costs data recorded and submitted by producers provided they are in accordance with GAAP and reasonably reflect the costs associated with production and sale of product under consideration. In A4 Copy Paper, the Panel ruled that even if the distortion occurs but it permits proper comparison between the domestic price and export price, the investigating authority is not allowed to construct the normal value, let alone replace the cost of the producers.
- viii. The exporters cooperated with the Authority and duly filed complete questionnaire responses. Therefore, actual information should be considered for determination of normal value and export price.

G.3 Examination by the Authority

35. Under section 9A (1) (c), normal value in relation to an article means:

- i. *The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or*
- ii. *When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:*

- a. *comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - b. *the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);*
36. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have participated in the present investigation.
 - i. M/s. Vanachai Panel Industries Company Limited, Thailand
 - ii. M/s. Vanachai Group Public Company Limited, Thailand
 - iii. Panel Plus MDF Company Limited, Thailand
 - iv. Panel Plus Company Limited, Thailand
 - v. M/s. Segamat Panel Boards SDN BHD, Malaysia
 - vi. M/s. Magna Foremost SDN BHD, Malaysia
 - vii. M/s. Grand Paragon SDN BHD, Malaysia
 - viii. M/s. Masonite Components Unlimited Company, Ireland
 - ix. M/s. PT Sumatera Prime Fibreboard, Indonesia
 - x. M/s. PT Mukti Panel Industri, Indonesia
 - xi. M/s. S. Kijchai Enterprise Public Company Limited, Thailand
 - xii. M/s. Wisewoods Company Limited, Thailand
 - xiii. M/s. SPB Panel Industries Company Limited, Thailand
37. The responses of the cooperating producers/exporters who have filed the exporter questionnaire response in the form and manner prescribed by the Authority have been examined for determining Normal Value, Export Price and Dumping Margin.
38. It is noted that M/s. Magna Foremost SDN BHD, Malaysia and its related exporters, namely, M/s. Grand Paragon SDN BHD, Malaysia and M/s. Masonite Components Unlimited Company, Ireland do not export the product under consideration. The companies export Moulded Door Skin which is excluded from the scope of the product under consideration. Since normal value is determined and anti-dumping duty is recommended only on producers/exporters of the product under consideration, the Authority finds that there is no need to calculate the dumping margin for these companies.
39. As regards the arguments of the interested parties regarding recommendation of individual dumping margin for related parties as well, it is noted that the dumping margin is calculated as per laws and practice in India.
40. As regards argument of raw material distortions, it is noted that the domestic industry has not established that the raw material prices are distorted in the subject countries. The argument is rejected, being unsubstantiated.

G.4.0. Determination of Normal Value

G.4.1. Normal Value determination for all producers/exporters from Thailand

Panel Plus MDF Company Limited, Thailand

41. The Authority notes that Panel Plus MDF Co. Ltd. is a producer and exporter of the subject goods based in Thailand. Its related trader, namely, Panel Plus Co. Ltd. has also filed the

questionnaire response. Panel Plus MDF Co. Ltd. has claimed normal value on the basis of sales made in the domestic market. As per information available in the EQ response, during the period of investigation, the ordinary course of trade (80:20) test conducted on the domestic sales of Panel Plus MDF Co. shows ***% of sales as profitable. Therefore, normal value of the subject goods in the POI has been determined by taking profitable domestic sales in the subject country. Panel Plus MDF Co. has claimed adjustments on account of inland freight and credit cost. Authority has allowed the same after due verification and normal value thus arrived is shown in dumping margin table below.

Vanachai Panel Industries Company Limited, Thailand

42. The Authority notes that Vanachai Panel Industries Co.,Ltd. is a producer and exporter of the subject goods based in Thailand. Its related producer namely, Vanachai Group Public Company Ltd, has also filed the questionnaire response. However, since they have sold only Moulded door skin, the margin for them is not being worked out. Vanachai Panel Industries Co.,Ltd.'s domestic sales are found to be below ***% of the sales to India. Therefore, normal value of the subject goods in the POI has been determined by taking into consideration cost of production of the said article along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules. Authority after due verification have determined the normal value as shown in dumping margin table below.

Normal value for all non-cooperative producers/exporters from Thailand

43. Normal value for all non-cooperative producers/exporters from Thailand has been determined on the basis of facts available in terms of Rule 6(8) of the Rules. The normal value so determined is mentioned in the dumping margin table below.

G.4.2. Normal Value determination for producers/exporters from Malaysia

Segamat Panel Boards, SDN. BHD., Malaysia

44. The Authority notes that Segamat Panel Boards, SDN. BHD. is a producer and exporter of the subject goods based in Malaysia. Segamat Panel Boards, SDN. BHD. has claimed normal value on the basis of sales made in the domestic market. As per information available in the Exporter Questionnaire Response (EQR), during the period of investigation, the ordinary course of trade (80:20) test conducted on the domestic sales of Segamat Panel Boards, SDN. BHD. shows *** % of sales as profitable. Therefore, normal value of the subject goods in the POI has been determined by taking only profitable domestic sales in the subject country. Segamat Panel Boards, SDN BHD has claimed adjustments on account of inland freight and credit cost. Authority has allowed the same after due verification and normal value thus arrived is shown in dumping margin table below.

Normal value for all non-cooperative producers/exporters from Malaysia

45. Normal value for all non-cooperative producers/exporters from Malaysia has been determined on the basis of facts available in terms of Rule 6(8) of the Rules. The normal value so determined is mentioned in the dumping margin table below.

G.4.3. Normal Value determination for producers/exporters from Indonesia

PT Mukti Panel Industri, Indonesia

46. The Authority notes that PT Mukti Panel Industri is a producer and exporter of the subject goods based in Indonesia. PT Mukti Panel Industri has claimed normal value on the basis of sales made in the domestic market. As per information available in the EQ response, during the period of investigation, the ordinary course of trade (80:20) test conducted on the domestic sales of PT Mukti Panel Industri shows less than *** % of sales as profitable. Therefore, normal value of the subject goods in the POI has been determined based on cost

of production, considering reasonable profit and general administrative expenses. Dumping margin thus calculated is given in table below.

PT Sumatera Prima Fibreboard, Indonesia

47. The Authority notes that PT Sumatera Prima Fibreboard is a producer and exporter of the subject goods based in Indonesia. PT Sumatera Prima Fibreboard has claimed normal value on the basis of sales made in the domestic market. As per information available in the EQ response, during the period of investigation, the ordinary course of trade (80:20) test conducted on the domestic sales of PT Sumatera Prima Fibreboard shows ***% of sales as profitable. Therefore, normal value of the subject goods in the POI has been determined by taking all domestic sales in the subject country. PT Sumatera Prima Fibreboard has claimed adjustments on account of inland transportation and credit cost. Authority has allowed the same after due verification and normal value thus arrived is shown in dumping margin table below.

Normal Value for all non-cooperative producers/exporters from Indonesia

48. Normal value for all non-cooperative producers/exporters from Indonesia has been determined on the basis of facts available in terms of Rule 6(8) of the Rules. The normal value so determined is mentioned in the dumping margin table below.

G.4.4. Normal Value determination for producers/exporters from Vietnam

49. The Authority notes that none of the producers/exporters from Vietnam have filed Exporter Questionnaire Response. In view of non-cooperation from all the producers/exporters in Vietnam, the Authority has determined normal value on the basis of facts available in terms of Rule 6(8) and the same is indicated in the dumping margin table given below.

G.5. Export Price

G.5.1. Determination of export price in respect of producers/exporters from Thailand

Panel Plus MDF Company Limited (Exporter/Producer)

50. Panel Plus MDF Co. Ltd. has filed questionnaire response along with its related trader, namely Panel Plus Co. Ltd. The Authority, however, notes that Panel Plus MDF Co. has exported *** CBM of the subject goods to India at the invoice value of US\$ *** during the period of investigation. Adjustments have been made on account of Ocean freight, inland transportation, port and other related expenses, bank charges, credit cost, wherever applicable, as claimed by the exporter in its response to the questionnaire in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for Panel Plus MDF Co. Ltd. has been determined, which is indicated in the Dumping Margin Table below.

Vanachai Panel Industries Company Limited (Producer/Exporter)

51. Vanachai Panel Industries Co., Ltd. has filed questionnaire response. It is noted that Vanachai Panel Industries Co., Ltd. has exported *** CBM of the subject goods to India at the net invoice value of US\$ *** during the period of investigation. Adjustments have been made on account of inland transportation, commission, port and other related expenses, bank charges as claimed by the exporter in its response to the questionnaire in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for Vanachai Panel Industries Co., Ltd. has been determined, which is indicated in the Dumping Margin Table below.

Other producers and exporters from Thailand

52. Since no response has been received from any other producer/exporter of the subject goods from the Thailand, the Authority has determined export price as per facts available in terms of Rule 6(8) of the AD Rules in respect of other producers/exporters from Thailand.

G.5.2. Determination of export price in respect of producers/exporters from Malaysia**Segamat Panel Boards, SDN. BHD., Malaysia**

53. Segamat Panel Boards Sdn Bhd. has filed questionnaire response. It is noted that Segamat Panel Boards Sdn Bhd. has exported *** CBM of the subject goods to India at the Value of US\$*** during the period of investigation. Adjustments have been made on account of Ocean freight, inland transportation, port and other related expenses, credit cost and bank charges as claimed by the exporter in its response to the questionnaire in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for Segamat Panel Boards Sdn Bhd. has been determined, which is indicated in the Dumping Margin Table below.

Other producers and exporters from Malaysia

54. Since no response has been received from any other producer/exporter of the subject goods from Malaysia, the Authority has determined export price as per facts available in terms of Rule 6(8) of the AD Rules in respect of other producers/exporters from Malaysia.

G.5.3. Determination of export price in respect of producers/exporters from Indonesia**PT Mukti Panel Industri, Indonesia**

55. PT Mukti Panel Industri has filed questionnaire response. It is noted that PT Mukti Panel Industri has exported*** CBM of subject goods to India invoice value of US\$ ***directly to India during the period of investigation. Adjustments have been made on account of Ocean freight, inland transportation, port and other related expenses, credit cost and bank charges, wherever applicable, as claimed by the exporter in its response to the questionnaire in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for PT Mukti Panel Industri has been determined, which is indicated in the Dumping Margin Table below.

PT Sumatera Prima Fibreboard, Indonesia

56. PT Sumatera Prima Fibreboard has filed questionnaire response. It is noted that PT Sumatera Prima Fibreboard has exported *** CBM of the subject goods to India at the value of US\$*** during the period of investigation. Adjustments have been made on account of Ocean freight, inland transportation, port and other related expenses, credit cost and bank charges as claimed by the exporter in its response to the questionnaire in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for PT Sumatera Prima Fibreboard has been determined, which is indicated in the Dumping Margin Table below.

Other producers and exporters from Indonesia

57. Since no response has been received from any other producer/exporter of the subject goods from Indonesia, the Authority has determined export price as per facts available in terms of Rule 6(8) of the AD Rules in respect of other producers/exporters from Indonesia.

G.5.4. Determination of export price in respect of producers/exporters from Vietnam

58. The Authority notes that none of the producers/exporters from Vietnam have filed Exporter Questionnaire Response. In view of non-cooperation, the Authority has determined export price on the basis of facts available in terms of Rule 6(8), in respect of exporters from Vietnam. The same is indicated in the dumping margin table given below.

G.6. Dumping Margin

59. Considering the normal value and export price as above, the dumping margins for all producers/exporters of the subject goods from the subject country is determined as below.

Country	Producer	Normal Value (US\$/CBM)	Export Price (US\$/CBM)	Dumping Margin (US\$/CBM)	Dumping Margin (%)	Dumping Margin Range (%)
Thailand	Panel Plus MDF Company Limited	***	***	***	***	Negative
	Vanachai Panel Industries Limited	***	***	***	***	40-50
	All Others	***	***	***	***	60-70
Malaysia	Segamat Panel Board SDN. BHD.	***	***	***	***	30-40
	All Others	***	***	***	***	50-60
Indonesia	PT Mukti Panel Industri	***	***	***	***	0-10
	PT Sumatera Prima Fibrebord	***	***	***	***	0-10
	All Others	***	***	***	***	30-40
Vietnam	All	***	***	***	***	40-50

H. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

60. Rule 11 of the Rules read with its Annexure-II thereto provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles.” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the Domestic Industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.
61. The Authority notes that the application for imposition of antidumping duty was filed by M/s Greenply Industries Limited / Greenpanel Industries Limited, and Century Plyboards (India) Ltd.
62. Vide emails dated 14th April 2021 and 17th April 2021, i.e., after the issuance of disclosure statement, Century Plyboards (India) Limited has filed a letter withdrawing its participation as constituent of domestic industry in this investigation. In this regard, Authority notes that such withdrawal at the final stage of the investigation though will not affect the continuation of investigation in any manner because the remaining applicant still accounts for a major proportion in Indian production of the subject goods. However, the Authority, while allowing withdrawal of Century Plyboards (India) Limited as one of the applicants in this investigation, notes that Century Plyboards (India) Ltd has fully participated in the investigations thus far, provided all relevant information to the Authority, has offered

verification of its information and has provided cost statement duly certified by an independent accountant post verification of its information. The Authority has therefore used data / information provided by Century Plyboards (India) Limited for the purpose of assessment of injury because the assessment of injury of domestic industry as a whole by using the information/ data of Century Plyboards (India) Limited will be more representative of the situation.

H.1. Submissions by the domestic industry

63. The following submissions have been made by the domestic industry with regard to injury and causal link:
- i. The market share in demand of the subject countries is 50% while the domestic industry's share is only 32%, despite the increase in capacity for the subject goods. Market share of domestic producers as a whole has declined.
 - ii. The volume of imports from the subject countries in absolute terms and in relation to total imports in the country has increased significantly during the injury period and in the POI.
 - iii. The imports are significantly undercutting and depressing the prices of the domestic industry. The dumping margin and injury margin for all of the subject countries is positive and substantial.
 - iv. The domestic industry has increased capacity, despite which the imports have remained continuously at high levels. Capacity utilization has declined. Inventories have increased substantially during the injury period and the period of investigation.
 - v. Profits declined significantly throughout the injury period and in the period of investigation. Cash Profits, and ROCE follow the same trend as profitability. Despite reducing prices, the domestic industry is faced with same level of imports in the country.
 - vi. The performance parameters of the exporters who have submitted questionnaire responses show that material injury is being caused to the domestic industry due to dumped imports and that there is a threat of material injury in the event of non-imposition of duty. The exporters show high export orientation, increased capacities and exports to India, and hold significant inventories. Selling price of exports to India has declined even though costs have increased.
 - vii. No other known factors are causing injury to the domestic industry. There is causal link between material injury and the imports from subject countries.
 - viii. The increase in depreciation and finance cost, production, domestic sales and productivity per day is due to addition of new capacities by the domestic industry. However, even if level of depreciation before increase in capacity is considered for period of investigation, it would still show decline in cash profits, thus establishing that the decline is due to dumped imports.
 - ix. As regards statements in Annual Report of Rushil Décor, it is stated that Rushil Décor is not a manufacturer of the product under consideration in India. As regards public statements in Annual Reports, Public statements in the Annual Report do not alter the conclusion that dumping of the product has contributed to injury to the domestic industry.
 - x. As regards separate injury margin, it is not the practice of DGTR to calculate separate injury margins for related parties, and the Authority is requested to calculate one injury margin for all related parties.
 - xi. As regards capacity expansions, the expansions were made to bridge the demand-supply gap, despite which there has been a significant import of subject goods.

- xii. The landed price of imports from subject countries is below the cost of sales of the domestic industry throughout the injury period. Therefore, even if the landed price of imports has increased, it was still below the cost and therefore the profitability of the domestic industry has declined.
- xiii. As regards detrimental effect on market share, the market share of the domestic producers has declined despite increasing its capacities whereas market share of the subject countries has increased.
- xiv. The profitability of the domestic industry has declined significantly. Even though the costs have declined, the domestic industry is forced to reduce its prices more than decline in cost. Imports are depressing the prices of the domestic industry. Despite price reductions by the domestic industry, the imports have continued at similar levels.
- xv. As regards employment parameters, injury has not been claimed on that account. Employment increased due to increase in capacities.
- xvi. As regards post-POI period, there is no legal requirement to consider post-POI period in a fresh investigation as has been observed in a recent finding concerning imports of Phenol from Thailand and USA.
- xvii. As regards state of competition, distinction should be made between fair and unfair competition, and there is a separate legislation to ensure that competition between domestic producers remains fair. If internal competition was the only driving force in the market, the domestic industry's market share would not have faced such a situation.
- xviii. Export constitute only 11% of the total sales by domestic industry. It therefore cannot be said that the petitioners are focusing on the export markets. The domestic industry has enough capacities to meet the entire demand of India as well as export the product under consideration at the current levels.
- xix. The petitioners are forced to export the subject goods due to the presence of dumped goods in the country. Dumping of subject goods in the country cannot be justified on the ground that petitioners are exporting the subject goods.
- xx. The claim of the respondents that injury maybe due to imports of thick MDF Board is factually incorrect as the domestic industry has proved that it has suffered material injury due to the imports of the product under consideration.
- xxi. The producers in the subject countries hold significant capacities, maintain a high export orientation and maintain huge inventories, thereby posing a significant threat of material injury.
- xxii. The opposing interested parties have not provided any evidences for capacity, contrary to the claim of the domestic industry. Their arguments are unsubstantiated.

H.2. Submissions by other interested parties

64. The following submissions have been made by other interested parties with regard to injury and causal link:
- i. Petitioners have not demonstrated any dumping or consequent injury to the domestic industry or provided any positive evidence to show that material injury or threat of material injury is due to alleged dumped imports of subject goods.
 - ii. There has been massive improvement with respect to most of the economic parameters of the domestic industry. Decline in profits of the domestic industry is directly attributable to increase in depreciation and finance cost, and massive capacity additions. There is no injury as the domestic industry has increased capacity, production, domestic sales and productivity per day.

- iii. Injury, if any, is on account of other factors including increase in capacity, increase in interest costs, abnormal increase in employment, slowdown of economy, domestic oversupply, etc. Annual Report of Rushil Décor Limited reveals the reason for low performance of the domestic industry. Further, Annual Report of Century Ply states that performance was affected due to subdued real estate sector, muted consumer spending and domestic oversupply.
- iv. Injury margins of related companies should be computed separately. Allegations in the petition against Thailand regarding injury is unsubstantiated.
- v. Injury data presented is misleading as the Petitioner was involved in capacity expansion during the injury period including the period of investigation, which would not have been possible if the domestic industry was facing material injury. Moreover, the expansion activities started to bear results in the later part of period of investigation as well as post-POI period as their sales only improved in the domestic market which establishes that capacity utilization had only increased. The capacity constraints of the domestic industry were the reason behind the imports and therefore, the allegation of dumping is without merit. .
- vi. No link can be established between the movement of landed price of imports of PUC from the subject countries and profitability of the domestic industry. They are found to be inversely proportional.
- vii. The imports of product under consideration from the subject countries did not have any detrimental effect on the market share of the domestic industry.
- viii. While price undercutting reduced over the years from subject countries or remained in a comparable range, as in the case of Thailand, the same did not have an effect on the prices of the domestic industry. The domestic industry was able to maintain a higher price even when there was significant fall in cost. There was minimal decline in NSR during the period when landed price from subject countries reduced.
- ix. The parameters like employment, growth etc. displayed better performance of the domestic industry during the POI.
- x. Post-POI performance of the Petitioner should be considered as a parameter to measure causal link during the period of investigation, wherein the petitioner has witnessed exponential growth without any anti-dumping duty.
- xi. State of competition within Indian producers affected performance of petitioners, and not imports from Indonesia. Any possible injury could be self-inflicted. Petitioners have been focusing on exports as export sales volume has increased formidably. Import of product under consideration was to complement huge export scale of petitioners.
- xii. Core export market is Middle East followed by Asian markets. Thai exports declined from 33468 MT in 2017-18 to 22328 MT. The decline in Thai exports does not support the alleged injury narrative of applicants.
- xiii. Since the industry does not have a dedicated line for production of thin board and since domestic industry has alleged continuation of injury in SSR investigation concerning thick MDF board, it is possible that alleged injury to the DI was caused by imports of thick MDF.
- xiv. Petitioner has increased its prices continuously and at a significant rate. Imports from Indonesia regardless of volume is to cater to the market demand in India, and supplement the existing demand-supply gap. Data of the petitioner shows that market share was positive and has slightly increased from 2017-18 to POI.

- xv. Tables of various exporters mentioned by the domestic industry show more or less similar trend as performance parameters of the domestic industry.
- xvi. There is no provision that allows examination of both injury and threat of material injury. Claim of injury and threat of material injury cannot exist together.
- xvii. Volume of imports has declined as compared to 2017-18 while there has been negligible increase in period of investigation. As far as Indonesia is concerned, there has been decline in imports in the period of investigation.

H.3. Examination by the Authority

- 65. The Authority has taken note of the arguments and counter-arguments of the interested parties with regard to injury to the domestic industry. The injury analysis by the Authority hereunder addresses the various submissions made by the interested parties.
- 66. Article 3.3 of WTO agreement and para (iii) of Annexure II of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the Authority will cumulatively assess the effect of such imports, in case it determines that:
 - a. The margin of dumping established in relation to the imports from each country is more than 2% expressed as a percentage of export price and the volume of the imports from each country is 3% (or more) of the import of like article or where the export of individual countries is less than 3%, the imports collectively account for more than 7% of the import of like article, and
 - b. Cumulative assessment of the effect of imports is appropriate in the light of the conditions of competition between the imported article and the like domestic articles.
- 67. The Authority notes that:
 - a. The subject goods are being dumped into India from the subject countries. The margin of dumping from each of the subject countries is more than the de-minimis limits prescribed under the Rules.
 - b. The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.
 - c. Cumulative assessment of the effects of import is appropriate as the exports from the subject countries not only directly compete with the like articles offered by each of them but also the like articles offered by the domestic industry in the Indian market.
- 68. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from Indonesia, Malaysia, Thailand and Vietnam.
- 69. Rule 11 of the Rules read with its Annexure-II thereto provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles.” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the Domestic Industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.

70. The submissions made by the Domestic Industry and other interested parties during the course of investigations with regard to injury and causal link and considered relevant by the Authority are examined and addressed as under.
71. As regards argument of considering information for post period of investigation, it is noted that the present investigation being a fresh investigation, there is no requirement of considering post period of investigation information.

H.3.1. Assessment of Demand

72. The Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian producers, and imports from all sources. The demand so assessed is given in the table below.

Demand in India	Unit	2016-17	2017-18	2018-19	POI
Sales of Domestic Industry	CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>125</i>	<i>130</i>	<i>146</i>
Sales of Other Indian Producers	CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>97</i>	<i>115</i>	<i>115</i>
Imports from- Subject Country	CBM	72,183	124,699	121,327	121,259
Indonesia	CBM	30,254	34,788	36,177	35,619
Malaysia	CBM	21,462	14,531	30,194	29,798
Thailand	CBM	17,449	56,256	35,269	42,109
Vietnam	CBM	3,019	19,124	19,687	13,733
Imports from other countries	CBM	8,153	12,344	9,457	9,064
Total Demand in India	CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>142</i>	<i>143</i>	<i>148</i>
Market Share in Demand					
Domestic industry	%	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>88</i>	<i>91</i>	<i>98</i>
Other Indian Producers	%	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>68</i>	<i>80</i>	<i>78</i>
Imports from- Subject Countries	%	***	***	***	***
Indonesia	%	***	***	***	***
Malaysia	%	***	***	***	***
Thailand	%	***	***	***	***
Vietnam	%	***	***	***	***
Other Countries	%	***	***	***	***
Total Demand	%	100	100	100	100

73. The Authority notes that the demand in India has increased throughout the injury period and in the POI.

H.3.2. Volume Effect of Dumped Imports

74. The effect of the volume of dumped imports from the subject countries as well as imports from other countries have been examined by the Authority as follows:

Import Volume	Unit	2016-17	2017-18	2018-19	POI
Imports from- Subject Countries	CBM	72,183	124,699	121,327	121,259
Indonesia	CBM	30,254	34,788	36,177	35,619
Malaysia	CBM	21,462	14,531	30,194	29,798
Thailand	CBM	17,449	56,256	35,269	42,109
Vietnam	CBM	3,019	19,124	19,687	13,733
Imports from other countries	CBM	8,153	12,344	9,457	9,064
Total Import Volume	CBM	80,336	137,043	130,785	130,322
Subject Country Imports in relation to					
Imports	%	89.85	90.99	92.77	93.05
Total Indian Production	%	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>156</i>	<i>130</i>	<i>121</i>
Total Indian Demand	%	***	***	***	***

75. The Authority notes that the volume of imports from the subject countries increased in 2017-18 and declined in 2018-19 and in the period of investigation. However, as compared to base year 2016-17, the imports from subject countries have increased in the period of investigation both in absolute terms and in relation to production and consumption in India.

H.3.3. Price Effect of Dumped Imports

76. In terms of Annexure II (ii) of the Rules, the Authority is required to consider the effect of the dumped imports on domestic prices in terms of price undercutting, price underselling, price suppression and price depression, if any.

i. Price Undercutting

77. With regard to the effect of dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, a comparison has been made between the landed value of the product from the subject countries and the average selling price of the domestic industry, net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at ex-factory level.

Particular	Unit	2016-17	2017-18	2018-19	Period of investigation
Net sales realization	Rs/CBM	***	***	***	***
Subject Countries as a whole					
Landed price	Rs/CBM	14,232	13,223	13,786	13,297
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	60-70	70-80	40-50	40-50

Indonesia					
Landed price	Rs/CBM	15,322	14,673	14,807	14,444
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	50-60	50-60	30-40	30-40
Malaysia					
Landed price	Rs/CBM	14,068	14,936	15,058	14,109
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	60-70	50-60	30-40	30-40
Thailand					
Landed price	Rs/CBM	12,914	12,223	12,230	11,780
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	70-80	90-100	60-70	60-70
Vietnam					
Landed price	Rs/CBM	12,094	12,223	12,747	13,214
Price undercutting	Rs/CBM	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	Range	90-100	90-100	50-60	40-50

78. It is noted that import prices of each of the subject countries are undercutting the prices of the domestic industry.

ii. Price Suppression and Depression

79. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority notes the changes in the costs and prices over the injury period. The position is shown as per the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Cost of Sales	Rs/CBM	***	***	***	***
<i>Trend</i>		100	104	111	98
Net Sales Realization	Rs/CBM	***	***	***	***
<i>Trend</i>		100	101	88	84
Landed Price from subject countries	Rs/CBM	14,232	13,223	13,786	13,297
<i>Trend</i>		100	93	97	93

80. It is noted that the landed price of imports from subject countries is below the cost of sales during the period of investigation. Both cost and selling of the domestic industry declined over the injury period. However, decline in selling price of the domestic industry is more than the decline in cost. Imports are both depressing and suppressing the prices of the domestic industry.

H.3.4. Impact on Economic Parameters of the Domestic Industry.

81. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on domestic producers of such products. With regard to consequent impact of dumped imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Various injury parameters relating to the domestic industry are discussed herein below.

i. Production, Capacity, Capacity Utilization and Sales

82. The Authority has considered capacity, production, capacity utilization and sales of the domestic industry over the injury period and notes as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Installed Capacity - Plant	CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>155</i>	<i>360</i>	<i>410</i>
Production Quantity - Plant	CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>123</i>	<i>178</i>	<i>236</i>
Capacity Utilization - Plant	%	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>80</i>	<i>49</i>	<i>58</i>
Production Quantity – product under consideration	CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>118</i>	<i>137</i>	<i>152</i>
Domestic Sales – product under consideration	CBM	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>125</i>	<i>130</i>	<i>146</i>

83. It is noted that:

- The capacity has increased over the injury period and in the period of investigation. It is seen that the increase in capacity is due to the establishment of new capacities.
- The production quantity of the domestic industry increased throughout the injury period and in the period of investigation. The domestic sales have shown the same trend as production. Capacity utilization has declined over the injury period except in the POI where it has shown some improvement. The decline in capacity utilization however is on account of consistent increase in capacity.

ii. Market Share of domestic industry in Demand

84. Market share of the domestic industry have been examined as below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Domestic industry	%	***	***	***	***
<i>Trend</i>		100	88	91	98
Other Indian Producers	%	***	***	***	***
<i>Trend</i>		100	68	80	78
Imports from- Subject Countries	%	***	***	***	***
Other Countries	%	***	***	***	***
Total Demand	%	100	100	100	100

85. The market share of the domestic industry has remained in similar region despite significant capacity addition. The market share of the subject countries has increased as compared to the base year. Further, imports command majority share, despite significant capacities with the domestic producers.

iii. Inventories

86. The data relating to inventory of the subject goods are shown in the following table:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Inventory – Average	CBM	***	***	***	***
<i>Trend</i>		100	243	334	495

87. The Authority notes that the inventories with the domestic industry has increased substantially over the injury period and further in the POI.

iv. Profits, Cash Profits and Return on Capital Employed

88. Profits, return on investment and cash profits of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Cost of Sales	Rs/CBM	***	***	***	***
<i>Trend</i>		100	104	111	98
Selling price	Rs/CBM	***	***	***	***
<i>Trend</i>		100	101	88	84
Profit before tax	Rs/CBM	***	***	***	***
<i>Trend</i>		100	93	26	44
Total Profit before Tax	Rs.Lacs	***	***	***	***
<i>Trend</i>		100	116	33	64
Total Profit before interest	Rs.Lacs	***	***	***	***
<i>Trend</i>		100	119	44	72
Cash Profit	Rs.Lacs	***	***	***	***
<i>Trend</i>		100	130	57	82
Return on capital employed	%	***	***	***	***
<i>Trend</i>		100	59	16	35

89. It is seen that:

- Profitability has shown significant decline over the injury period. Gross profit before tax and cash profits increased in 2017-18, but declined thereafter substantially. Cash profit in the POI was lower than that in the base year. Profit before tax particularly was significantly lower in POI as compared to the base year.
- Return on capital employed (ROCE) declined sharply till 2018-19. Even though ROCE improved in POI, the same was at a sub-optimal level.
- Profitability, gross profit before tax, cash profits and return on capital employed have all seen a decline in the period of investigation as compared to base year.
- The domestic industry has added significant capacity and production. The profits of the domestic industry have however declined as compared to earlier levels.

v. Employment, wages and productivity

90. The situation of the domestic industry with regard to employment, wages and productivity is as below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Employment	Nos	***	***	***	***
<i>Trend</i>		100	137	246	269
Productivity per day	CBM	***	***	***	***
<i>Trend</i>		100	141	137	152
Productivity per Employee	CBM	***	***	***	***
<i>Trend</i>		100	87	56	56
Wages	Rs.Lacs	***	***	***	***
<i>Trend</i>		100	167	246	254

91. It is noted that employment, wages and productivity per day has substantially increased throughout the injury period. The domestic industry has submitted that these parameters are not reflective of the impact of dumped imports on the domestic industry.

vi. Growth

92. Examination of growth parameters of the domestic industry during the injury period is shown below –

Particular	Unit	2016-17	2017-18	2018-19	POI
Production	%	-	17.88	15.90	11.04
Domestic Sales Volume	%	-	24.89	3.82	12.36
Capacity Utilisation	%	-	(20.42)	(37.87)	16.63
Profit/Loss domestic	%	-	(7.27)	(72.44)	72.55
Average stock	%	-	143.01	37.53	48.18

93. It is noted that the growth in terms of production, domestic sales, and capacity utilization in the POI is positive when compared to the preceding year.

vii. Factors affecting domestic prices.

94. The Authority notes that the domestic prices have been affected due to the presence of dumped imports in the country.

viii. Ability to raise fresh investment.

95. The domestic industry has claimed that it has been operating at low-capacity utilization despite significant demand in the country and it has weakened the ability of the Domestic Industry to raise capital investment.

ix. Magnitude of Dumping

96. It is noted that the subject goods are being dumped into India and the dumping margin is positive and significant.

I. OVERALL CONCLUSION ON INJURY

97. Considering various parameters relating to material injury, the Authority notes that subject imports have increased over the injury period in relation to gross imports. Even though the subject imports have shown marginal decline in the POI as compared to preceding year, the level of imports in the POI is still significant high and higher than the levels registered in the base year. Landed price of imports from subject countries being below the cost of sales throughout the injury period, the imports from subject countries are massively undercutting the domestic prices during the injury investigation period. Imports are both depressing and suppressing the prices of the domestic industry as well. Overall performance of the domestic industry has deteriorated in respect of various economic parameters such as profits, cash profits and ROI. Profitability has shown significant decline over the injury period. Return on capital employed (ROCE) declined sharply till 2018-19 and even though it improved in POI, the same was at a sub-optimal level. Profitability, gross profit before tax and return on capital employed have all witnessed significant decline in the period of investigation as compared to base year. Even though the performance of the domestic industry has improved in respect of production and domestic sales, the same is a result of significant fresh investments made by the domestic industry. Further, the decline in price parameters (profits, cash profits and ROI) far outweigh the improvement in production and domestic sales.

J. NON-ATTRIBUTION ANALYSIS

98. As per the Rules, the Authority, *inter alia*, is required to examine any known factors other than the dumped imports which at the same time are injuring the Domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than dumped imports could have contributed to the injury to the domestic industry:

a. Volume and Prices of Imports from Third Countries

99. The Authority notes that the volume of imports of the product under consideration from other countries are at *de minimis* volumes.

b. Contraction in demand and/or change in pattern of consumption

100. The demand for the subject goods has increased throughout the injury period. The pattern of consumption with regard to product under consideration has not undergone any change. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.

c. Export Performance of the domestic industry

101. It is noted that injury analysis is based on domestic performance. Hence, the injury is not on account of export performance of the domestic industry.

d. Development of Technology

102. It is noted that the technology for producing subject goods has not undergone any change and therefore, could not have caused injury to the domestic industry.

e. Performance of other products of the company

103. It is noted that domestic industry has segregated its performance with respect of different products. The performance of other products those are being produced and sold by the domestic industry are not a cause of injury.

f. Trade Restrictive Practices and Competition between Foreign and Domestic producers

104. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The domestic producers compete with the landed prices of the subject goods. The price of the domestic industry is influenced substantially by the landed prices of subject goods. Moreover, no evidence has been submitted by any interested party to suggest that the conditions of competition between foreign and domestic producers have undergone any change.

g. Productivity

105. It is noted that productivity of the domestic industry has been improving throughout the injury period and the improvement is due to the addition of new capacities, and thus, injury to the domestic industry is not on this account.

K. FACTORS ESTABLISHING CAUSAL LINK

106. The Authority concludes that the domestic industry has not suffered injury due to other known factors listed above. Further, the following factors show that the dumped imports from subject countries have caused material injury to the domestic industry.

- a. The landed price of imports from subject countries being below the cost of sales throughout the injury period, the imports from subject countries are massively undercutting the domestic prices throughout the injury investigation period.
- b. Such low-priced imports have had suppressing and depressing effect on the selling price of the domestic industry.
- c. The price suppression and depression suffered by the domestic industry has led to the decline in performance of the domestic industry in respect of profits, cash profits and return on investments despite increase in production and sales.

107. The Authority, thus, concludes that dumped imports from subject countries have caused injury to the domestic industry.

L. MAGNITUDE OF INJURY MARGIN

108. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The NIP of the PUC has been determined by adopting the verified information/data relating to the cost of production for the POI. The NIP has been considered for comparing the landed price from the subject countries for calculating injury margin. For determining the NIP, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) for the PUC was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and being followed.

109. Based on the landed price and non-injurious price determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below: -

Country	Producer	Non-Injurious Price (INR/CBM)	Landed Price (INR/CBM)	Injury Margin (INR/CBM)	Injury Margin (%)	Injury Margin (USD/CBM)	Injury Margin (Range in %)
Thailand	Panel Plus MDF Company Limited	***	***	***	***	***	20-30
	Vanachai Panel Industries Limited	***	***	***	***	***	20-30
	All Others	***	***	***	***	***	30-40
Malaysia	Segamat Panel Board SDN. BHD.	***	***	***	***	***	20-30
	All Others	***	***	***	***	***	40-50
Indonesia	PT Mukti Panel Industri	***	***	***	***	***	15-25
	PT Sumatera Prima Fibrebord	***	***	***	***	***	10-20
	All Others	***	***	***	***	***	25-35
Vietnam	All	***	***	***	***	***	35-45

M. POST DISCLOSURE COMMENTS

110. The Authority issued a disclosure statement on 7th April, 2021 disclosing essential facts of the case and inviting comments from all the interested parties. The post-disclosure submissions have been received from the interested parties. Majority of the issues raised have already been raised earlier and also addressed appropriately. Additional submissions to the extent deemed relevant have been examined as under

M.1. Submissions by Domestic Industry

111. Following submissions have been made by the domestic industry:

- The questionnaire response filed by SPB Panel Industries Company Limited, Thailand should be rejected on the grounds that it is in violation of sub rule 2 of Rule 7 of Anti-dumping Rules, 1995.
- The dumping margin of Panel Plus could not have been negative because 50% of exports from Thailand are made by this company and 75% of imports are priced below Rs 15,000Rs/CBM(CIF). It is requested to the Authority to kindly undertake detailed verification of export price not only by comparing the same with other responding exporters, but also by comparing the same with DG Systems data.

- c. The Authority is requested to disclose the fact considered for normal value in case of Vietnam. Further cost of production of domestic industry for determination of NIP cannot be taken for construction of normal value for Vietnam since Annexure-1 prescribes for actual cost of production for calculating normal value and not any normated cost of production.
- d. When the raw material prices of the subject exporter are distorted due to government interference it does not reflect fair market value. So, in such case the normal value should instead be constructed on the basis of costs of production and sale reflecting undistorted prices or benchmarks. The raw material prices of the exporters in the subject countries are not reflective of the market prices and should be rejected for computation of normal value.
- e. The contentions regarding threat of material injury to the domestic industry in the event of non-imposition of antidumping duty have not been considered in the disclosure statement. The domestic industry requests that the existence of threat of material injury be examined for the purpose of final findings in the present investigation.
- f. No concern has been raised by any of the consumers on imposition of anti-dumping duty. This shows that they do not consider anti-dumping duty to have significant adverse impact on them. The effect of anti-dumping measures on public interest must be studied from the perspective of interests of different set of parties. Imposition of anti-dumping duty will be in the interest of producers, consumers, users and public at large and will also help the country and domestic industry to reduce their dependency on imports.

M.2. Submissions by other interested parties

112. Following submissions have been made by other interested parties:

- a. The Authority should examine whether other domestic producers, who came before the Authority in other investigations should be included as part of 'domestic industry'. Constituents of domestic industry will have direct and material effect on the evaluation of injury and injury margin.
- b. The respondent reiterates that the numerous trade remedial protection provided to the Domestic Industry coupled with the repeated claim of injury by the Domestic Industry through different applications indicates towards one inescapable conclusion that injury, if any, to the Domestic Industry is on account of factors other than the alleged dumped imports.
- c. Other domestic producers are performing much better in the market and the prices in the Indian market are benchmarked by the competitive prices offered by such producers. In such a situation, there is no reason as to why the data relating to the other producers should not be called for before making final determination even at the post-disclosure stage of the investigation.
- d. Based on the information provided by the Authority vide email dated 8th April, 2021, it seems that the Authority has considered different cost for the purpose of carrying out the 80:20 test as well as Normal Value against our claimed cost. The Authority should consider the actual cost claimed by the respondent for the purpose of carrying out the 80:20 test and normal value as it is a single product company and actual cost incurred by the respondent has been captured in the books of account.
- e. The domestic Industry has not suffered any injury on account of the alleged dumped imports.

- f. In commensurate with the increase in capacity, the DI was in a position to produce and sell more. The capacity utilization of DI increased even after significant addition in capacity.
- g. Profitability and ROCE increased during the POI in comparison to the immediate previous year. This shows the DI was in a dominant and non- injurious position during the POI both in terms of volume and price parameters.
- h. Though the Disclosure statement shows price undercutting, what is to be noted here is that the price undercutting substantially reduced over the years as the DI was able to maintain its price at a higher level.
- i. Post POI analysis is not a requirement in a fresh investigation, but there is no bar under the law to call for such data. Published results of Centuryply is for the MDF division, which must cover the PUC. The available data for Greenply is for company as a whole. Such data makes a strong case for calling in post POI data specifically for PUC from the petitioners to gauge the actual growth in the Post POI period and it cannot be a situation that MDF division did well but the PUC did not do well.
- j. An overall analysis of the economic parameters set out in para (iv) of Annexure II clearly reveal that the situation of the Domestic Industry improved substantially.

M.3. Examination by the Authority

113. The Authority notes that most of the submissions by parties are repetitive in nature and were already addressed earlier in the disclosure statement. The findings above *ipso facto* deal with these arguments of the parties. Further, the Authority has examined submissions of interested parties herein below to the extent relevant and not addressed elsewhere:

- a. With regard to the claim that dumping margin for Panel Plus cannot be negative because its export price is lower for majority of export volumes to India, the Authority notes that domestic industry cannot assume positive dumping margin by simply looking at export price. Dumping margin is difference between normal value and export price and therefore lower export price may only increase the likelihood of positive dumping margin, but it does not necessarily rule out the possibility of negative dumping margin in such a situation. The Authority has determined dumping margin for Panel Plus in accordance with the provisions of Act and the Rules.
- b. As regards argument of raw material distortions, it is noted that the domestic industry has not established that the raw material prices are distorted in the subject countries and has not substantiated their argument with verifiable information.
- c. As regards the claim that the Authority has not determined existence of threat of material injury, it is noted that Authority has determined that there is material injury to the domestic industry. Therefore, the claim of the domestic industry that there is also threat of material injury is not necessary to be examined.
- d. As regards the claim that consumers have not objected to the imposition of anti-dumping duty nor established adverse effects, Authority notes that adequate opportunity has been provided to all interested parties to provide relevant information. The present findings are based on information provided by the interested parties and considered relevant by the Authority. .
- e. As regards the claims that other domestic producers should be included as part of the domestic industry, the Authority notes that adequate opportunities were provided to all interested parties, including other domestic producers to provide relevant information to the Authority. The Authority cannot force participation in the investigations by any interested party. The Authority has included all such

companies within the scope of the domestic industry who have provided relevant information. However, the rights of the domestic industry cannot be undermined merely because some of the domestic producers have preferred not to join the application as a domestic industry. Further, none of the interested parties have provided any such information/evidence which shows that injury determination is distorted due to non-inclusion of other domestic producers. Having regard to facts on record, Authority examined whether the domestic producers whose information is on record can be collectively considered as domestic industry under the Anti-dumping Rules.

- f. Opposing interested parties have claimed that numerous trade remedial measures coupled with the repeated claim of injury by the Domestic Industry through different applications indicates that injury, if any, to the Domestic Industry is on account of factors other than the alleged dumped imports. In this regard, it is noted that the assessment of injury and causal link has been made after examining all known factors including the factors other than dumped imports.
- g. As regards the claim that other domestic producers are performing better, the Authority notes that interested parties have not provided relevant information on all injury parameters to substantiate their claim that other domestic producers are not suffering injury. Moreover, Authority is required to assess whether or not domestic producers constituting domestic industry have suffered injury.
- h. As regards the claim that domestic industry is not suffering injury due to improvement in volume and price parameters, the Authority notes that it has conducted comprehensive assessment of all relevant injury parameters in the final findings above before determining that the overall assessment shows that domestic industry is suffering material injury.
- i. As regards the claim that the Authority should analyse post POI data to confirm its assessment of material injury, the Authority notes that assessment of injury to the domestic industry is based on injury investigation period including the POI. There is no requirement to assess post POI data for determination of material injury to the domestic industry in original investigation. Nor it would be appropriate to selectively consider post POI in a particular investigation.
- j. As regards claims regarding determination of normal value of Vietnam, the Authority notes that it has determined normal value in accordance with the Rules and having regard to non-cooperation by the concerned parties.
- k. As regards consideration of the cost of production for assessment of normal value, it is clarified that the Authority has considered the cost of production claimed by the exporters, and has determined the same, after taking into account various information provided by the exporters and making appropriate adjustments.

N. INDIAN INDUSTRY'S INTEREST AND PUBLIC INTEREST

114. Authority considered whether imposition of proposed ADD shall have adverse public interest. This determination is based on consideration of information on record and interests of various parties, including domestic industry, importers and consumers of the product.
115. The authority issued initiation notification inviting views from all interested parties, including importers, consumers and others. Authority also prescribed a questionnaire for the users/ consumers to provide relevant information with regard to present investigation, including possible effect of ADD on their operations. Barring Feroke Boards Limited, none of the users have filed user questionnaire response. Further Feroke Boards Limited is a user of moulded door skin which is not subject to investigation and therefore has no relevance in

the present investigation. Association of Furniture Manufacturers of India (AFMI) have filed submissions but none of its members have filed user questionnaire response. Submissions made by Association of Furniture Manufacturers of India have been taken into account in this determination. The association too has not provided any quantified and verifiable information to demonstrate possible adverse effect of proposed antidumping duty on the consumers and public at large. Even though the Authority has prescribed formats for the users to quantify the impact of ADD and elaborate how imposition of ADD shall adversely impact them, it is noted that none of the users have provided relevant information. Even association has not provided any quantified and verifiable information in this regard. It is, thus, noted that the interested parties have not established impact of ADD on the user industry with verifiable information.

116. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the product to the consumers.
117. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the Domestic Industry and help maintain availability of wider choice to the consumers of the subject goods. The Authority notes that significant fresh capacities have been set up in the country, adequate to take care of entire Indian demand. Further, the product is produced and sold by a number of domestic producers in the country, which shall ensure enough domestic competition.

O. CONCLUSION

118. Having regard to the contentions raised, submissions made, information provided and facts available before the Authority as recorded above and on the basis of the above analysis of dumping and consequent injury to the domestic industry, the Authority concludes that:
- i. M/s Greenply Industries Limited /Greenpanel Industries Limited constitute domestic industry under Rule 2(b) of the Rules. Further, application meets the criteria of standing in terms of Rule 5(3) of the Rules with or without Century Plyboards (India) Ltd.
 - ii. Since domestic industry is not manufacturing moulded door skin, the same is excluded from the scope of the PUC.
 - iii. The product produced by the domestic industry is like article to PUC imported from the subject countries.
 - iv. Considering the normal value and export price for subject goods, the dumping margins for the subject goods from each of the subject exporters and countries is above de minimus except for Panel Plus MDF Company Limited.
 - v. The Domestic Industry has suffered material injury. The Authority notes that subject imports have increased over the injury period in relation to gross imports. Even though the subject imports have shown marginal decline in the POI as compared to preceding year, the level of imports in the POI is still significant high and higher than

the levels registered in the base year. Landed price of imports from subject countries being below the cost of sales throughout the injury period, the imports from subject countries are massively undercutting the domestic prices and causing both depression and suppression effect on the prices of the domestic industry as well. Overall performance of the domestic industry has deteriorated in respect of various economic parameters such as profits, cash profits and ROI. Profitability has shown significant decline over the injury period. Return on capital employed (ROCE) declined sharply till 2018-19, and even though it improved in POI, the same was at a sub-optimal level. Profitability, gross profit before tax and return on capital employed have all witnessed significant decline in the period of investigation as compared to base year.

- vi. The domestic industry has not suffered injury in the POI due to other factors. The domestic industry has suffered injury due to dumping of product under consideration from subject countries.
- vii. Even though the performance of the domestic industry has improved in respect of production and domestic sales, the same is a result of significant fresh investments made by the domestic industry. Further, the decline in price parameters (profits, cash profits and ROI) far outweigh the improvement in production and domestic sales.
- viii. Even though the Authority has prescribed formats for the users to quantify the impact of ADD and elaborate how imposition of ADD shall adversely impact them, it is noted that none of the users have provided relevant information. It is, thus, noted that the interested parties have not established impact of ADD on the user industry with verifiable information.

P. RECOMMENDATIONS

119. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link. Having initiated and conducted an investigation into dumping, injury and the causal link thereof in terms of the Rules and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of anti-dumping duty is necessary to offset dumping and injury.
120. In view of above, the Authority, in terms of provisions contained in Rule 17(1) (b) read with Rule 4(d) of the Rules, recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the Domestic Industry. The Authority accordingly recommends imposition of anti-dumping duty on the import of subject goods originating in or exported from Vietnam, Malaysia, Thailand & Indonesia for a period of five years from the date of notification to be issued in this regard by the Central government, as the difference between the landed value of the subject goods and the amount indicated in Col. 7 of the duty table appended below, provided the landed value is less than the value indicated in Col 7. of the duty table.
121. The landed value of imports for this purpose shall be assessable value as determined by the Customs under Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

DUTY TABLE

S. No.	Heading	Description	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Vietnam	Any country including Vietnam	Any producer	255.35	CBM	USD
2.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Any country other than Vietnam, Malaysia, Thailand & Indonesia	Vietnam	Any Producer	255.35	CBM	USD
3.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Malaysia	Any Country including Malaysia	Segamat Panel Board SDN. BHD.	258.42	CBM	USD
4.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Malaysia	Any Country including Malaysia	Any producer other than at serial number 3	258.42	CBM	USD
5.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Any country other than Vietnam, Malaysia, Thailand & Indonesia	Malaysia	Any Producer	258.42	CBM	USD
6.	4411	Plain Medium Density Fibre Board having thickness	Thailand	Any Country including Thailand	Panel Plus MDF Company Limited	NIL	CBM	USD

S. No.	Heading	Description	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
		less than 6mm*						
7.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Thailand	Any Country including Thailand	Vanachai Panel Industries Limited	258.42	CBM	USD
8.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Thailand	Any Country including Thailand	Any producer other than at serial number 6 & 7	258.42	CBM	USD
9.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Any country other than Vietnam, Malaysia, Thailand & Indonesia	Thailand	Any Producer	258.42	CBM	USD
10.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Indonesia	Any Country including Indonesia	PT Mukti Panel Industri	227.47	CBM	USD
11.	4411	Plain Medium Density Fibre Board having thickness less than 6mm	Indonesia	Any Country including Indonesia	PT Sumatera Prima Fibrebord	244.60	CBM	USD
12.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Indonesia	Any Country including Indonesia	Any producer other than at serial number 10 & 11	258.42	CBM	USD

S. No.	Heading	Description	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
13.	4411	Plain Medium Density Fibre Board having thickness less than 6mm*	Any country other than Vietnam, Malaysia, Thailand & Indonesia	Indonesia	Any Producer	258.42	CBM	USD

** The laminated Medium Density Fibre Board (laminated MDF Board) is beyond the scope of product under consideration. The Plain Medium Density Fibre Board having thickness of 6MM or more is excluded from the product scope. The product under consideration accordingly is, "Plain Medium Density Fibre Board having thickness less than 6mm." Moulded door skin is also excluded from the scope of product under consideration.*

Q. FURTHER PROCEDURE

122. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

ANANT SWARUP, Designated Authority

3.	2933	1-फेनाइल-3-मेथाइल-5-पाइराजोलोन	चीन जनवादी गणराज्य से भिन्न कोई भी देश	चीन जनवादी गणराज्य	कोई भी	4.89	किलोग्राम	अमेरिकी डॉलर

2. इस अधिसूचना के अंतर्गत लगाया गया प्रतिपाटन शुल्क अनंतिम प्रतिपाटन शुल्क के लगाए जाने की तारीख अर्थात् 9 जून, 2020 से पांच वर्ष की अवधि तक (यदि इससे पहले इसे वापस नहीं लिया जाता है, इसका अधिक्रमण नहीं होता है, या इसमें संशोधन नहीं होता है तो) लागू रहेगा और इसका भुगतान भारतीय मुद्रा में करना होगा।

बशर्ते कि उक्त प्रतिपाटन शुल्क को अनंतिम प्रतिपाटन शुल्क के समाप्त होने की तारीख अर्थात् 9 दिसम्बर, 2020 से, इस अधिसूचना के सरकारी राजपत्र में प्रकाशित होने के एक दिन पूर्व तक, नहीं वसूला जाएगा।

स्पष्टीकरण 1 – इस अधिसूचना के उद्देश्य के लिए ऐसे प्रतिपाटन शुल्क की गणना के प्रयोजन हेतु लागू विनिमय दर वही दर होगी जो कि भारत सरकार, वित्त मंत्रालय (राजस्व विभाग) की अधिसूचना, जिसे सीमा शुल्क अधिनियम, 1962 (1962 का 52) (एतश्मिन पश्चात् जिसे सीमा शुल्क अधिनियम से संदर्भित किया गया है) की धारा 14 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए समय-समय पर जारी किया गया हो, में विनिर्दिष्ट की गई होगी और इस विनिमय दर के निर्धारण की संगत तारीख वह तारीख होगी जो कि उक्त सीमा शुल्क अधिनियम की धारा 46 के अंतर्गत आगम पत्र में प्रदर्शित होगी।

स्पष्टीकरण 2 – इस अधिसूचना के उद्देश्य के लिए आयात का अवतरण मूल्य वह आंकलन योग्य मूल्य होगा जिसका निर्धारण सीमा शुल्क अधिनियम के अंतर्गत सीमा शुल्क के द्वारा किया गया हो और सीमा शुल्क टैरिफ अधिनियम की धारा 3, 8ख, 9, 9क के अंतर्गत लगाए जाने वाले शुल्क को छोड़कर सीमा शुल्क के अन्य स्तर पर लागू होता हो।

[फा. सं. 354/52/2020 –टीआरयू]

राजीव रंजन, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 27th April, 2021

No. 26/2021-Customs (ADD)

G.S.R. 294(E).—Whereas, in the matter of ‘1-Phenyl-3-Methyl-5-Pyrazolone’ (hereinafter referred to as the subject goods), falling under tariff heading 2933 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from the People’s Republic of China (hereinafter referred to as the subject country) and imported into India, the designated authority in its preliminary findings *vide* notification No. 6/32/2019-DGTR, dated the 13th April, 2020, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 13th April, 2020, had recommended imposition of provisional anti-dumping duty on the imports of subject goods, originating in, or exported from the subject country.

And, whereas, on the basis of the aforesaid findings of the designated authority, the Central Government had imposed provisional anti-dumping duty on the subject goods with effect from 9th June, 2020 *vide* notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020-Customs (ADD), dated the 9th June, 2020, published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 363(E), dated the 9th June, 2020.

And, whereas, the designated authority in its final findings *vide* notification No. 6/32/2019-DGTR, dated the 28th January, 2021, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 28th January, 2021, while confirming the preliminary findings, dated the 13th April, 2020, has come to the conclusion that-

- there is substantial increase in imports of subject goods from the subject country in absolute terms as well as in relation to its production & consumption in India, during the period of investigation as compared to the previous year;
- the product under consideration has been exported to India from the subject country below the normal value;

- (iii) the domestic industry has suffered material injury;
- (iv) material injury has been caused by the dumped imports of subject goods from the subject country;

and has recommended imposition of definitive anti-dumping duty on imports of the subject goods, originating in or exported from the subject country, and imported into India, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under the tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), and imported into India, an anti-dumping duty equal to the difference between the amount as specified in the corresponding entry in column (7) and the landed value of the goods, in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8), provided that the landed value is less than the amount indicated in column (7) of the said Table, namely:-

TABLE

S. No.	Tariff heading	Description of goods	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2933	1-phenyl-3-methyl-5-pyrazolone	China PR	China PR	Any	4.89	Kg	USD
2.	2933	1-phenyl-3-methyl-5-pyrazolone	China PR	Any, other than China PR	Any	4.89	Kg	USD
3.	2933	1-phenyl-3-methyl-5-pyrazolone	Any, other than China PR	China PR	Any	4.89	Kg	USD

2. The anti-dumping duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of imposition of the provisional anti-dumping duty, that is, the 9th June, 2020, and shall be payable in Indian currency:

Provided that the said anti-dumping duty shall not be levied for the period commencing from the date of the lapse of the provisional anti-dumping duty, that is, the 9th December, 2020, upto the preceding day of the publication of this notification in the Official Gazette.

Explanation 1.- For the purposes of this notification, rate of exchange applicable for the purpose of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Customs Act), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

Explanation 2.- The landed value of imports for the purpose of this notification shall be the assessable value as determined by the customs under the Customs Act and applicable level of custom duties except duties levied under sections 3, 8B, 9, 9A of the Customs Tariff Act.

[F.No. 354/52/2020-TRU]

RAJEEV RANJAN, Under Secy.

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(DIRECTORATE GENERAL OF TRADE REMEDIES)

NOTIFICATION

FINAL FINDINGS

New Delhi, the 3rd May, 2021

Case No. SSR-21/2020

Subject : Sunset Review investigation concerning imports of ‘Methyl Acetoacetate’ originating in or exported from China PR.

F. No. 7/40/2020-DGTR.—Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the ‘Act’) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995 (hereinafter also referred to as ‘the Rules’) as amended from time to time thereof;

A. BACKGROUND OF THE CASE

1. The Designated Authority (hereinafter also referred as the ‘Authority’) initiated anti-dumping investigation on imports of “Methyl Acetoacetate” (hereinafter also referred as the ‘subject goods’ or ‘product under consideration’ or ‘PUC’), originating in or exported from China PR and USA vide Notification No. 14/7/2014-DGAD dated 07th January, 2015. The Authority thereafter notified the Final Findings Notification No. 14/7/2014-DGAD dated 01st April 2016, recommending imposition of anti-dumping duty against imports of the subject goods originating in or exported from China PR and USA. Definitive anti-dumping was imposed by Ministry of Finance vide Notification No. 22/2016-Customs (ADD) dated 31st May, 2016 for 5 years and the same is in force till 30th May, 2021.
2. Section 9A(5) of the Act, inter alia, provides that anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the domestic industry, as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury or not.
3. Rule 23(1B) of the Rules provides as follows:

“...any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.”
4. M/s Laxmi Organics Industries Limited (hereinafter referred to as the ‘Applicant’ or ‘petitioner’ or ‘Domestic Industry’ or ‘DI’) filed a duly substantiated application before the Authority, in accordance with the Act and the Rules alleging likelihood of continuation or recurrence of dumping of the subject goods, originating in or exported from China PR (hereinafter also referred as ‘Subject Country’) and consequent injury to the domestic industry if the existing anti-dumping duty ceases to exist and has requested for review and continuation of the present anti-dumping duties, applicable on the imports of the subject goods, originating in or exported from the subject country, for another five years.
5. The Applicant has not sought extension of anti-dumping duties on imports of subject goods from USA stating that there is no evidence of likelihood of dumping and injury from USA.
6. Based on the duly substantiated application with prima facie evidence of likelihood of continuation or recurrence of dumping of the subject goods originating in or exported from the subject country and consequent injury filed on behalf of the domestic industry in accordance with Section 9A(5) of the Act, read with Rule 23 of the Rules, the Authority initiated sunset review investigation vide Notification No. 7/40/2020-DGTR dated 30th September, 2020, published in the Gazette of India, Extraordinary, to examine whether the expiry of present anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury.

B. PROCEDURE

7. The procedure, as described herein below, has been followed with regard to the investigation:
- a. The Authority notified to the Government of the subject country through its Embassy in India about the receipt of the anti-dumping application before proceeding to initiate the present investigation, in accordance with Rule 5(5) of the Rules.
 - b. The Authority vide Notification No. 7/40/2020-DGTR dated 30th September, 2020 issued a public notice in the Gazette of India, Extraordinary, initiating anti-dumping investigation against imports of the subject goods from the subject country.
 - c. In accordance with Rule 6(2) of the AD Rules, the Authority forwarded a copy of the public notice to the Embassy of the subject country in India, known producers/exporters from the subject country, known importers/users association and the domestic industry as per the addresses made available by the Domestic Industry and requested them to make their views/submissions known in writing within thirty days from the date of issue of the letter. The time limit to file information was extended up to 05th December 2020.
 - d. The Authority provided a copy of the non-confidential version of application filed by the Applicant to the known exporters and the Embassy of the subject country in India, in accordance with Rule 6(3) of the Rules.
 - e. The Embassy of the subject country in India was also requested to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.
 - f. The Authority sent questionnaires to elicit relevant information to the following known exporters of the subject goods in the subject country in accordance with Rule 6(4) of the Rules:
 - (i) M/s. Qingado Double Peach Speciality Chemicals (Group) Co. Ltd
 - (ii) M/s. Nantong Acetic Acid Chemical Co. Ltd
 - (iii) M/s. Wang Long Group Co. Ltd
 - (iv) M/s. Zhangjian Hope Chemicals Co. Ltd
 - (v) M/s. Nantong Tianhong International Trade Co. Ltd
 - (vi) M/s. Jiangsu Tiancheng Biochemical Products Co. Ltd
 - g. The following producer/exporter from the subject country have participated and filed the exporter questionnaire response before the Authority:
 - (i) M/s. Nantong Acetic Acid Chemical Co., Ltd.
 - (ii) M/s. Nantong Tianhong International Trade Co., Ltd.
 - h. Questionnaires were sent to the following known importers/users of subject goods in India calling for necessary information, in accordance with Rule 6(4) of the Rules:
 - (i) M/s. C.J. Shah
 - (ii) M/s. Sojitz
 - (iii) M/s. Hazel Embassy Centre
 - (iv) M/s. Sarna Chemicals Pvt. Ltd
 - (v) M/s. SM Chemicals
 - (vi) M/s. Arch Pharmed Labs Ltd.
 - (vii) M/s. Aurobindo Pharma Ltd.
 - (viii) M/s. Colourtex Industries Ltd
 - (ix) M/s. Kailash Chemicals
 - (x) M/s. Dia Chemie
 - (xi) M/s. Prima Chemicals/Polygon Chemicals

- i. None of the importers/users has filed Questionnaire response in the present investigation.
- j. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. The Authority accepted the confidentiality claims wherever warranted after due examination and such information is considered confidential and not disclosed to other parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the confidential information, which was made available through public file.
- k. The interested parties were asked vide notification dated 9th December, 2020 to share the non-confidential version of the responses, submissions and evidence presented by them with the other interested parties.
- l. Further information was sought from the Applicant and other interested parties to the extent deemed necessary. Verification of the data provided by domestic industry was conducted to the extent considered necessary for the purpose of present investigation.
- m. Investigation was conducted for the period from 1st April, 2019 to 31st March, 2020 (12 months) (hereinafter referred to as the 'Period of Investigation' or 'POI') with injury analysis covering the period April, 2016 – March, 2017, April, 2017 – March 2018, April, 2018 – March, 2019 and the POI.
- n. The Directorate General of Commercial Intelligence and Statistics (DGCI&S) was requested to provide details of imports of subject goods for the past three years, and the period of investigation, and the said information was obtained from the DGCI&S and has been adopted for the purpose of the present investigation.
- o. The Authority has examined the information furnished by the domestic industry to the extent possible on the basis of guidelines laid down in Annexure III of the Rules to work out the cost of production and the non-injurious price of the subject goods in India.
- p. In accordance with Rule 6(6) of the Rules, the Authority provided opportunity to all interested parties to present their submissions orally in the oral hearing held on 21st December, 2020 which was attended by various parties. Further, a 2nd oral hearing was held on 18th February, 2021 in view of change in the Designated Authority, in the light of the judgement of the Hon'ble Supreme Court in the matter of Automotive Tyres Manufacturers Association vs Designated Authority. The oral hearing was held through video conferencing in view of the special circumstances arising out of the COVID-19 pandemic. All the parties who presented their views in the oral hearing were requested to file written submissions of their views, in order to enable opposing interested parties to file rejoinders, if any, thereafter.
- q. A Disclosure Statement containing the essential facts in this investigation which would have been formed the basis of the Final Findings was issued to the interested parties on 07.04.2021 and the interested parties were allowed time up to 13.04.2021 to comment on the same. The comments on Disclosure Statement received from the interested parties have been considered, to the extent found relevant, in this Final Findings Notification.
- r. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the disclosure statement on the basis of the facts available.
- s. '***' in this Final Findings represents the information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- t. The exchange rate for the POI has been taken by the Authority for the subject investigation as 1US\$ = Rs. 71.65.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

C.1 Submissions made by the Domestic industry

8. As regards the product under consideration and like article, the domestic industry has submitted the following:

- a. The product under consideration in the present petition is same as in the original investigation, i.e., 'Methyl Acetoacetate', also referred to as MAA/MAAE/AAME. The PUC is classified under Chapter 29 of the Customs Tariff Act, 1975, under customs sub-heading 29183040.
- b. The subject goods are used in the Pharmaceutical Industry, Agrochemical Industry, Polymer Industry and as a reactant in other industries. MAA is also used as a flavouring agent and in colourants.
- c. This is a sunset review investigation for continued imposition of anti-dumping duty and the issue of like article has been examined by the Authority in the original investigation as well. Therefore, product imported from subject country is like article to product produced by the Domestic Industry.

C.2 Submissions made by the other interested parties

9. No submission has been made by the exporters/other interested parties with regard to scope of product under consideration (PUC) and like article.

C.3 Examination by the Authority

10. The Authority notes that the product under consideration (PUC) in the present sunset review investigation is "Methyl Acetoacetate" from China PR. This being a sunset review investigation, the scope of the PUC remains the same as that in the original investigation. The PUC in the original investigation was:

"4. The product under consideration in the present petition is Methyl Acetoacetate. Methyl Acetoacetate (also known as MAA/MAAE/AAME) is a Diketene based Ester or acetoacetate. The chemical formula of MAA is C₅H₈O₃ and at 99% purity, it is a clear liquid with a colourless appearance.

5. Methyl Acetoacetate is classified in Chapter 29 of the Customs Tariff Act under the subheading 29183040, as 'Methyl Acetoacetate'. Though the product under consideration has dedicated customs classification under the Customs Tariff Act, on analysing the import data, it has been observed that the product under consideration is being imported under various other codes as well such as 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900. Therefore, the customs classification is indicative only and is in no way binding on the scope of the investigation."

11. The subject goods produced by the domestic industry and that imported from the subject country are comparable in terms of physical characteristics, manufacturing process, functions and uses, product specifications, distribution and marketing, and tariff classification of the goods. The two are technically and commercially substitutable. The consumer also uses the two interchangeably. In view of the same, the Authority holds that product manufactured by the Domestic Industry constitutes "like article" to the subject goods being imported into India from the subject country.
12. The present investigation being a sunset review investigation and anti-dumping duties being in force on the imports of the subject goods from the subject country, the Authority considers that scope of the product under consideration in the present review investigation remains the same as in the original investigation.

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

D.1 Submissions made by the Domestic Industry

13. Following submissions have been made by the domestic industry with regard to scope and standing of the domestic industry:
 - a. The Applicant is the sole producer of the subject goods in India and constitutes entirety of Indian production. The Applicant is neither related to an importer in India nor an exporter of the subject country. The Applicant has also not imported the product under consideration from the subject country. The Application, therefore, satisfies the requirement of standing and the applicant constitutes domestic industry within the meaning of the Rules.

D.2 Submissions made by other interested parties

14. No submissions have been made by the exporters, importers, users or any other interested party with regard to the scope of the domestic industry.

D.3 Examination by the Authority

15. Rule 2(b) of the Anti-Dumping Rules defines domestic industry as under:

“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”.

16. The application in the present case has been filed by M/s Laxmi Organics Industries Ltd. The Applicant has claimed that it has neither imported the subject goods from the subject country nor is related to any exporter or producer of subject goods in the subject country or an importer of the product under consideration in India and also that the production by the applicant constitutes entire domestic production of the subject goods in India.
17. In view of the above, the Authority holds that the Applicant constitutes eligible domestic industry within the meaning of Rule 2(b) of the Rules, even though standing within the meaning of Rule 5(3) is not required to be established in a sunset review initiated under Rule 23. The Authority holds that the applicant constitutes domestic industry within the meaning of the Rules.

E. CONFIDENTIALITY

E.1 Submissions made by the domestic industry

18. The following submissions have been made by the domestic industry with regard to confidentiality:
- a. The information in terms of volume parameters, such as production, sales, etc. has not been disclosed as the same is not in public domain. Disclosure of such highly business sensitive information would be of significant competitive advantage to competitors and consumers and would seriously impact the interest of Applicant. The Applicant has, however, provided indexed information wherever possible.
 - b. The Applicant has provided sufficient information justifying initiation of the investigation and provided all information as required under the application proforma. As regards failure of evaluation of certain parameters in the write up, the Applicant submits that it is not necessary for the Applicant to evaluate all the parameters in the application. The Applicant is obliged to provide all relevant information, which it has done.
 - c. The Applicant has provided the data in indexed form in the non-confidential version of the application in accordance with Rule 7 of the Rules and Trade Notice No. 10/2018 dated 7th September, 2018.
 - d. Indexed information has been provided wherever possible. The injury analysis is essentially an analysis of trend which can be easily seen through trends of various parameters provided in the application.
 - e. The responding parties have omitted to provide various requisite crucial information. Third country information has been claimed entirely confidential, thus not permitting domestic industry to provide any input. The responding parties have even kept country's gross capacity, demand, etc. as confidential.
 - f. The questionnaire responses are incomplete, claim excessive confidentiality, and disregards the Trade Notice No. 10/2018 dated 7th September, 2018.
 - g. Therefore, they should not be accepted for determination of individual dumping margin and injury margin.

E.2 Submissions made by other interested parties

19. The following submissions have been made by other interested parties with regard to confidentiality:
- a. Domestic industry has claimed excessive confidentiality in contravention to Rule 7 and Trade Notice No. 1/2013 dated 09/12/2013.

- b. The petitioner has claimed excessive confidentiality and filed an incomplete petition. Section-VI (Costing Information) of the Application is completely missing from the non-confidential version of the petition and no justification has been given by the petitioner as to why confidentiality was claimed.
- c. Non-declaration by the Domestic Industry about the closure of plant due to floods in the application tantamount to misdeclaration and concealment of vital facts.

E.3 Examination by the Authority

20. With regard to confidentiality of information, Rule 7 of the Rules provides as follows:

“Confidential Information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information.”

- 21. The Authority made available non-confidential versions of the information provided by various interested parties to all interested parties for inspection through the public file containing non-confidential version of evidence submitted by various interested parties.
- 22. The Authority examined the confidentiality claims of the interested parties and on being satisfied, allowed the claim on confidentiality. The Authority notes that any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, should be treated as such by the authority. Such information cannot be disclosed without specific permission of the party submitting it.
- 23. The Authority has considered the claims of confidentiality made by the Domestic Industry and the opposing interested parties and on being satisfied about the same, the Authority has allowed the claim on confidentiality. The Authority made available to all interested parties the non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).

F. MISCELLANEOUS SUBMISSIONS

F.1 Submission made by the Domestic Industry

24. The following miscellaneous submissions have been made by the domestic industry:

- a. The Applicant has supported the application with proper evidence justifying initiation of sunset review investigation.
- b. The claims regarding likelihood and dumped imports from subject country likely to significantly increase and cause injury thereafter are based on evidence put on record in Application for initiation as well in the written submission filed and shared with all the interested parties on 14th December, 2020. These are not mere allegations or conjectures.

F.2 Submissions made by other interested parties

25. The following miscellaneous submissions have been made by other interested parties:

- a. The petition is devoid of substantive evidence, sufficient legal and factual basis and injury and thus should not have been considered for initiation.
- b. The Domestic Industry's intentional failure to disclose the closure of plants situated at Mahad due to floods amounts to concealment of material facts. The same is disclosed in para 4 of the quarterly report of the petitioner as on September 30, 2019. Impact of such flood should be considered by the Authority.
- c. The petitioner has deliberately misled the Authority by concealing the main reason behind such injury occurred during the quarter ending September 30, 2019 which was due to the closure of plant during floods and which is clearly specified in Para 4 of their Quarterly Report. It also mentions that the Company's Unit-2 situated at Mahad was affected by flood during the quarter ending September 30, 2019 and it is in the process of evaluating the impact of the damage caused due to floods.
- d. The injury, if at all caused to the domestic industry, is due to the closure of plant during floods and not because of the imports of the subject goods from China PR. Imports from China PR cannot be held liable or responsible for any unnatural happening occurring to the domestic industry.

F.3 Examination by the Authority

26. The Authority has noted all the miscellaneous submissions by the interested parties and has examined all aspects of the submissions made hereunder:
 - a. As regards the submissions of interested parties regarding adequacy and accuracy of the application, the Authority notes that the application contained all information relevant for the purpose of initiation of investigation. The Authority, only after satisfaction that application contained sufficient evidence to justify initiation of the investigation initiated the present investigation. As per Rule 6, the Authority was required to disclose a summary of factors alleged to have caused injury to the domestic industry. The Authority has provided in the initiation notification on what basis it has satisfied itself the need for initiating the review investigation.
 - b. As regards the contention that the plant was affected because of flood, it is noted that the flood had affected the domestic industry. However, the plant remained in operation during the time. Since, the flood was covered by insurance, the same has not been seen to have had an impact on Profit and Loss of the domestic industry. In any case, the claim of the domestic industry in the present investigation is of likelihood of dumping and injury and not current injury and the investigation also indicates improvement in performance over the injury period. Thus, any effect of flood is immaterial as the investigation does not show material injury being faced by the domestic industry on this account.

G. DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

G.1 Normal Value

27. Under Section 9A(1)(c) of the Act, normal value in relation to an article means:

(i) *the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*

(ii) *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either*

(a) *comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

(b) *the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

G.2 Submissions of Domestic Industry

28. The following are the submissions made by the domestic industry with regard to normal value:

- a. China PR should be considered a non-market economy, in line with the position taken by the Authority in previous cases, and by investigating authorities in other countries. Chinese Producer's cost and price cannot be relied upon for determination of normal value.
- b. Paragraph 1 to 6 Annexure I of the Rules do not apply for computation of normal value for imports from China PR, unless a producer/exporter shows with sufficient evidence that he is operating under market economy conditions. As a result, normal value for China PR has to be determined in terms of paragraph 7 of Annexure I of the Rules. Para 7 of Annexure I of the Rules provides that the calculation of the normal value in a non-market economy may be determined on the following basis:
 - i. The price in a market economy third country; or
 - ii. Constructed cost in a market economy third country; or
 - iii. The price from such a third country to other countries, including India; or
 - iv. The price actually paid/payable in India, adjusted to include a reasonable amount of profit.
- c. The Applicant could have determined the normal value on any one of the above-mentioned parameters and has determined the normal value of the subject goods considering price from market economy third country to other country, including India. For this purpose, the Applicant has considered price from Switzerland to India.
- d. Switzerland is an appropriate market economy third country. The consideration of appropriate market economy third country does not imply that such a country should not be a developed country.
- e. The Hon'ble CESTAT in the matter of Kuitun Jinjiang Chemical Industry Co. Ltd. vs Union of India has held that level of development would be relevant only if the domestic sale price or cost of production of a market economy third country is adopted and not when exports from surrogate country to third country or India is considered as the price in international trade is a function of demand and supply in the international market and is not affected by the level of development of the supplier country.

G.3 Submissions of other interested parties

29. The following submissions were made by other interested parties with regard to normal value:

- a. Switzerland has been wrongly claimed as surrogate country for China to construct normal value. Switzerland is a highly developed service sector while China is a developing country. Switzerland has the second highest GDP per capita in the world, which is thirteen times more than China. The cost of living in Switzerland is also nine times more than China.
- b. Article 15(a) and (b) of China's accession protocol has been accepted by the appellate body in its report in the EC-Fasteners (DS-397) between China and EU. The panel suggested that market economy status be automatically given to China upon expiry of Article 15 of China's accession to WTO protocol. Article 15(d) of the protocol states the same. Same has been accepted by USA and EU as well.

G.4 Examination by the Authority

Market Economy status for Chinese producers

30. Article 15 of China's Accession Protocol in WTO provides as follows: "Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

(“Anti-Dumping Agreement”) and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

“a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”

31. It is noted that while the provisions contained in Article 15(a)(ii) have expired on 11.12.2016, the provisions under Article 2.2.1.1 of the WTO read with obligation under 15 (a) (i) of the Accession protocols require criterion stipulated in para 8 of the Annexure I of India's Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming the market economy status.
32. It is noted that since neither the responding producer nor the responding exporter from China PR has submitted supplementary questionnaire response, the normal value computation is required to be done as per provision of para 7 of Annexure I of the Rules.
33. Accordingly, the normal value and export price for the responding producer/exporter from China PR have been determined as below.

G.5 Determination of Normal Value

34. The Authority notes that the M/s. Nantong Acetic Acid Chemical Co., Ltd (producer) and M/s. Nantong Tianhong International Trade Co., Ltd (related exporter) from China PR have filed exporter questionnaire response but have not filed the supplementary questionnaire to claim Market Economy Status.
35. The Authority notes that Normal Value for a country considered as a non-market economy is required to be computed in accordance with para 7 and 8 of Annexure 1 of AD rules. In the instant case the

responding producer has not filed any MET questionnaire and, therefore, the Authority notes that options under para 7 of Annexure 1 to AD rules need to be explored. Para 7 lays down hierarchy for determination of normal value and provides that normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other country, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. Thus, the Authority notes that the normal value is required to be determined having regard to the various sequential alternatives provided under Annexure 7.

36. The Domestic Industry provided Switzerland customs data to show that Switzerland has made significant exports of the subject goods to India throughout the injury period and proposed Switzerland as a market economy third country for China PR.
37. It has been claimed by the domestic industry that the European Commission has also considered developed country as surrogate country for China PR in several investigations such as (i) anti-dumping duty on imports of melamine originating in the People's Republic of China (2017); anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation; anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (2015); and anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia, Thailand and Ukraine (2008).
38. The Authority notes that the Domestic Industry has provided information as per DGCI&S data to consider normal value in terms of para 7 of Annexure I to the Rules on the basis of price from market economy third country to other country, including India and in this regard, has considered prices from Switzerland to India. The Domestic Industry has claimed that Switzerland being a non-subject country with no investigation of anti-dumping underway or anti-dumping measure in force and with import volume from Switzerland being significant, the option of Switzerland is appropriate and is representative of the normal value of the subject goods. The Authority notes that neither the data regarding the domestic sales price in Switzerland is available nor the cost can be constructed since the costing data of Switzerland is unavailable. The Authority also notes that since the PUC is being exported under various HS Codes, the information regarding export price of the subject goods from Switzerland to other countries is also not available. Further, the Authority noted that there are substantial exports of the subject goods from USA to India but the data on exports of the subject goods from USA to other countries cannot be determined as the subject goods fall under more than one HS Code. The Authority, in the absence of sufficient information on record regarding these methods enshrined in Para 7 of Annexure I of the Rules, is left with no option but to determine the normal value by considering the method of "any other reasonable basis". The Authority has, therefore, constructed the normal value for China PR on the basis of cost of production in India, duly adjusted, including selling, general and administrative expenses and addition of reasonable profits. The constructed normal value so determined for Chinese producers/exporters is mentioned in the Dumping Margin Table below.

G.6 Determination of Export Price

G.6.1 Export Price for Nantong Acetic Acid Chemical Co., Ltd., China (Producer) and Nantong Tianhong International Trade Co., Ltd., China (Exporter)

39. Nantong Acetic Acid Chemical Co., Ltd. is a producer/exporter of the subject goods and has exported the PUC to India during the POI directly as well as through a related trader, namely, Nantong Tianhong International Trade Co., Ltd. Following the receipt of response, a deficiency letter was sent to cooperating producer and exporter asking them to submit replies to the deficiencies. The cooperating producer and exporter have submitted replies to deficiencies, and response has been examined. It is noted that during the POI, Nantong Acetic Acid Chemical Co., Ltd, China has exported *** MT of subject goods directly and *** MT through a related party, namely, Nantong Tianhong International Trade Co., Ltd.
40. The Authority has examined the details of the exports given in the questionnaire response filed by the producer/exporter. The sales to Indian customers are on CIF basis. However, the Authority has determined average ex-factory export price after making due adjustments. The producer/exporter and

exporter/trader have claimed adjustments on account of port and handling charges, ocean freight, marine insurance, inland transportation, credit expenses and bank charges which have been allowed. The net export price worked out by the Authority is as shown in the Dumping Margin Table below.

G.7 Calculation Dumping Margin

41. The normal value, ex-factory export price and dumping margin determined in the present investigation for the subject country are as follows: -

DUMPING MARGIN TABLE

Country	Producer	Normal Value (US\$/MT)	Export Price (US\$/MT)	Dumping Margin (US\$/MT)	Dumping Margin (%)	Dumping Margin (Range)
China PR	Nantong Acetic Acid Chemical Co., Ltd.	***	***	***	***	20-30
	Others	***	***	***	***	30-40

H. ASSESSMENT OF INJURY, CAUSAL LINK AND LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY

42. Rule 11 of the Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
43. Rule 23 of the Rules provides that the provisions of Rule 6,7,8,9,10,11,16,18,19 and 20 shall apply mutatis mutandis in case of a sunset review. The Authority in its examination has evaluated the injury parameters which are required under Rule 11 and Annexure II of the Rules and has also examined as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.
44. The Authority notes that the application for continuation of antidumping duty has been filed by M/s Laxmi Organics Ltd. In terms of Rule 2(b) of the Rules, the Applicant has been treated as the domestic industry for the purpose of this investigation. Therefore, for the purpose of injury determination, the cost and injury information of the Domestic Industry has been examined.

H.1 Submissions made by the Domestic Industry

45. The following submissions were made by the domestic industry with regard to injury and causal link:
- The dumped imports from China increased from base year in 2016-17 till 2018-19. However, imports once again increased significantly in the POI.
 - Significant imports are being made under advance license for export purposes. Import prices under advance license are much lower.
 - Imports in relation to production and consumption have increased over the injury period and remained significant throughout the injury period.
 - The landed price of the imports was below the selling price of the domestic industry and thus likely to undercut the prices of the domestic industry in the event duties were to expire.
 - Import prices from subject country vary significantly on transaction-to-transaction basis. However, such import prices from subject country on an average basis are significantly below the selling price of the domestic industry. A significant volume of imports being duty free requires exclusion of custom duties and ADD while examining such imports for the likely impact on the prices of the domestic industry.
 - Owing to significant fluctuations in import prices, the Authority must undertake consideration of transactions with positive undercutting and positive injury margin for examining price effect of

dumped imports. Price undercutting and injurious imports/ injury margins should be determined considering only those transactions that were, in fact, undercutting or injuring the prices of the domestic industry. Petitioner's concern is against injurious imports and not against non-injurious imports. The petitioner has relied on WTO panel observation in the matter of *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings From Brazil* and CESTAT decision in *Kothari Sugars & Chemicals Limited v. Designated Authority*, and its reference in another CESTAT order in *Honest Enterprises Ltd. v. Designated Authority*.

- g. The weighted average export prices to India are grossly insufficient to determine whether injury to the domestic industry is likely to recur. The producers in subject country are holding huge unutilized capacities. Thus, in the event of cessation of anti-dumping duties, these producers are likely to find good market opportunities in India and are likely to export significant volumes at a price below the selling price of the domestic industry.
- h. The landed price of duty paid subject imports is below non-injurious price. The landed price of duty-free subject imports is above non-injurious price because of addition of customs duty not actually paid, and below the CIF import price (which represents the true landed price of imports in these situations). Thus, subject imports continue to undersell the prices of the domestic industry.
- i. The domestic industry has capacities for a large number of products produced using diketene. This ensures optimization of its operations. The domestic industry has increased capacity, production, capacity utilization and sales over the injury period.
- j. The domestic industry still has unfair competition in segments where the consumer is buying under both advance license and purchasing from domestic industry.
- k. The profits, cash profit, PBIT and return on capital employed were significantly high in the base year. However, domestic industry's performance on these parameters declined since base year and then declined significantly in the POI. None the less, the domestic industry was still able to earn profits in the POI.

H.2 Submissions made by other interested party

46. The following submissions were made by other interested parties with regard to injury and causal link:

- a. The imports from subject country increased with increase in demand. In a multi-product plant, production of product under consideration is not an indication of real capacity utilization and impact of increased imports.
- b. Petitioner has increased its capacity utilization and production during POI. All economic parameters remained positive except profitability, cash profits and PBIT. However, these can be attributed to the floods in the plant. Therefore, the purported injury to the domestic industry cannot be attributed to imports from China PR.
- c. The declining profitability is towards quarter ending September, 2019 as a result of the flood. The cash profits and PBIT declined due to not enough increase in the selling price as in line with the increase in cost of sales.
- d. The substantial increase in depreciation and amortization expense during the period of investigation when there is no increase in the installed capacity remains a surprise factor and is a very unusual trend. Further, average capital employed by the company during the period of investigation is disproportionate to the increase in installed capacity.
- e. The Domestic Industry has failed to explain all the reasons behind consistent loss in PBIT and cash profit loss during the period of investigation and last three years.
- f. An analysis of non-attributive factors should be undertaken, and the domestic industry should explain the reasons behind consistent PBIT and cash profit loss during POI. First, an analysis and examination of the effects of other factors must be undertaken.

H.3 Examination by the Authority

47. The Authority has taken note of the submissions made by the interested parties. Annexure- II of the Anti-Dumping Rules provides for objective examination of both (a) the volume of dumped imports and

the effect of the dumped imports on prices in domestic market for the like articles; and (b) the consequent impact on domestic producers of such products.

48. According to Section 9(A)(5) of the Customs Tariff Act, 1975, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time-to-time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of the order of such extension.
49. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject country.
50. The Authority has examined the injury parameters objectively taking into account the facts and arguments submitted by the domestic industry and other interested parties.
51. The Authority has taken note of various submissions made by the Domestic Industry and other interested parties on injury and causal link and analysed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority in the succeeding preceding paras ipso facto addresses submissions made by the domestic industry and other interested parties.

H.3.1 Volume effect of dumped imports on domestic industry

a. Assessment of demand/ apparent consumption

52. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the domestic industry as it is the sole producer of subject goods and imports from all sources:

Demand in India	Unit	2016-17	2017-18	2018-19	POI
Imports from Subject Country	MT	402	247	2,991	1,868
Imports from Other Countries	MT	3,746	4,278	3,964	4,038
Total Imports	MT	4,148	4,525	6,955	5,905
Total Demand	MT	8,302	9,705	10,549	12,485
Trend		100	117	127	150

53. It is seen that the demand for the subject goods has increased throughout the injury period.

b. Import Volumes and Share of Subject Country

54. With regard to the volume of dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. In the present case, however, ADD has been in force. For the purpose of injury analysis, the Authority has relied on the import data procured from DGCI&S. The volume of imports of the subject goods and share of the dumped imports during injury investigation period are as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Imports from subject country	MT	402	247	2,991	1,868
Trend	Indexed	100	61	744	465
Imports from other countries	MT	3,746	4,278	3,964	4,038
Trend	Indexed	100	114	106	108
Total Imports	MT	4,148	4,525	6,955	5,905
Trend	Indexed	100	109	168	142
Subject country imports in relation to total imports	%	9.69	5.45	43.01	31.63
Trend	Indexed	100	56	444	327
Total Indian Production	MT	***	***	***	***
Trend	Indexed	100	115	86	145

Imports from subject country relative to production	%	10	5	76	29
Trend	Indexed	100	49	784	295
Demand	MT	8,302	9,705	10,549	12,485
Trend	Indexed	100	117	127	150
Imports from subject country relative to demand in India	%	5	3	28	15
Trend	Indexed	100	53	586	309

55. It is seen that:

- Imports from China PR declined in 2017-18, increased significantly in 2018-19, and thereafter declined in the POI.
- Similarly, imports from China PR in relation to consumption and production also declined in 2017-18, increased significantly in 2018-19 and thereafter declined in the POI. Imports in relative terms, therefore, continue to be significant. It has been claimed that the imports are not a necessity in the Indian market with domestic industry enhancing capacity over the injury period which is lying unutilized.

H.3.2 Price Effect of The Dumped Imports

56. With regard to the effect of dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to price undercutting, price underselling, price suppression and price depression, if any, in terms of Annexure II (ii) of the Rules. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed price of imports of the subject goods from the subject country.

a. Price Undercutting

57. For the purpose of price undercutting analysis, the selling price of the domestic industry has been compared with the weighted average import price from the subject country. Accordingly, the undercutting effects of the dumped imports from the subject country without adding the existing anti-dumping duty work out as follows:-

Particulars	UOM	POI
Selling Price of DI	Rs/MT	***
Trend	Index	***
Landed price	Rs/MT	***
Price undercutting	Rs/MT	***
Price undercutting	%	***
Price undercutting	Range	0-10

58. It is seen that the landed price of the imports from the subject country is below the selling price of the domestic industry during the period of investigation. Therefore, it is noted that imports from the subject country are likely to undercut the prices of the domestic industry in the event of cessation of ADD.

b. Price suppression and depression

59. In order to determine whether the dumped imports are depressing or suppressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period is examined. Table below shows factual position:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Cost of Sales	Rs/MT	***	***	***	***
Trend		100	127	162	131
Selling Price	Rs/MT	***	***	***	***
Trend		100	111	140	110
Landed Price	Rs/MT	89,920	90,353	1,60,317	1,04,250
Trend		100	111	140	110

60. It is noted that during the injury period, the cost of sales and the selling price of domestic like product have increased till 2018-19. The cost of sales declined in the POI and consequently the selling price also declined. The Authority thus notes that the imports from the subject country have not caused any price suppressing or depressing effect on the domestic industry prices.

H.3.3 Economic Parameters of the Domestic Industry

61. Annexure II to the Rules provides that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The various injury parameters relating to the domestic industry are discussed below.

62. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties.

i. Production, Capacity, Capacity utilization and Sales

63. The capacity, production, sales and capacity utilisation of the domestic industry over the injury period is given in the table below:

Particulars	UOM	2016-17	2017-18	2018-19	POI
Capacity – Plant	MT	***	***	***	***
Trend		100	100	102	103
Production – Plant	MT	***	***	***	***
Trend		100	102	100	106
Total Production (PUC)	MT	***	***	***	***
Trend		100	115	86	145
Capacity utilization - Plant	%	***	***	***	***
Trend		100	102	98	103
Domestic sales	MT	***	***	***	***
Trend		100	125	87	158

64. It is seen that:

- The capacity is not dedicated for the subject goods and thus the total plant capacity has been considered by the domestic industry. The installed plant capacity of the domestic industry remained the same up to 2017-18 and increased thereafter.
- Production of the domestic industry declined in 2018-19 and increased thereafter in the POI.
- The capacity utilization of the domestic industry has increased over the injury period.
- The domestic sales increased in 2017-18 and declined in 2018-19. Domestic sales once again increased in the POI.

ii. Market Share in Demand

65. Market share of the domestic industry is shown in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Share of Domestic industry	%	50	53	34	53
Share of Other Producers	%	-	-	-	-
Share from Subject Country	%	5	3	28	15
Share of Other Countries	%	45	44	38	32
Total	%	100.00%	100.00%	100.00%	100.00%

66. It is seen that the market share of the domestic industry increased in 2017-18 and then declined in 2018-19. Market share then again increased in the POI. Correspondingly, the market share of subject imports declined till 2017-18 and increased significantly in 2018-19 and then declined again in the POI. The market share remains significant in the POI.

iii. Inventories

67. Inventory position with the domestic industry over the injury period is given in the table below:

Stock	Unit	2016-17	2017-18	2018-19	POI
Opening Stock	MT	***	***	***	***
Trend	Indexed	100	102	7	2074
Closing Stock	MT	***	***	***	***
Trend	Indexed	100	7	2030	1115
Average Stock	MT	***	***	***	***
Trend	Indexed	100	54	1030	1589

68. It is seen that the average inventory with the domestic industry declined initially from base year in 2016-17 to 2017-18 but increased significantly in 2018-19 and in the POI.

iv. Profitability, cash profits and return on capital employed

69. Profitability, cash profits and return on investment of the domestic industry over the injury period is given in the table below:

Particulars	UOM	2016-17	2017-18	2018-19	POI
Profit/Loss	Rs/MT	***	***	***	***
Trend		100	47	55	25
Profit/Loss	Rs Lacs	***	***	***	***
Trend		100	58	48	39
Cash Profit	Rs Lacs	***	***	***	***
Trend		100	67	60	68
Return on Capital Employed	%	***	***	***	***
Trend		100	35	34	21

70. It is seen that:

- The profitability, cash profits, PBIT and Return on Capital Employed of the domestic industry declined over the injury period. However, the domestic industry has been able to make profits and earn a reasonable return despite the decline in these above-mentioned parameters.

v. Employment, Wages and Productivity

71. Employment, wages and productivity of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Wages	Rs. Lacs	***	***	***	***
Trend		100	140	138	235
Employee	Nos.	***	***	***	***
Trend		100	122	130	183
Production/Employee	MT/Employee	***	***	***	***
Trend		100	94	66	79
Productivity/Day	Per Day (MT)	***	***	***	***
Trend		100	115	85	100

72. It is seen that:

- The wages paid and the number of employees has increased over the injury period.
- The productivity per day has also increased over the injury period in consonance with the movement of production.

vi. Growth

73. The data relating to growth of the domestic industry is shown in the following table:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Production	%	-	15	-25	68
Domestic Sales	%	-	16	-31	86
Domestic Profit-Per MT	%	-	-53	18	-21
Domestic profit-Per Lacs	%	-	-42	-18	45
Cash Profit	%	-	-33	-10	55
PBIT	%	-	-40	-7	-46
ROI	%	-	-48	2	-3

74. It is seen that the growth of the domestic industry has been positive in terms of production and sales whereas negative in terms of profitability and return on investment in the period of investigation.

vii. Magnitude of Dumping

75. Magnitude of dumping is an indicator of the extent to which the imports are being dumped in India. The investigation has shown that dumping margin is positive and significant in the period of investigation despite duties in force.

viii. Ability to raise capital investment

76. It is seen that the profitability of the domestic industry has declined in the period of investigation. It is noted that the ability to raise capital investments is likely to be affected in the event of cessation of the existing anti-dumping duty.

ix. Factors Affecting Domestic Prices

77. It is noted that even though there is no price suppression or depression in the market, the landed value of the subject goods from subject country is below the net selling price of the domestic industry. There was significant decline in profitability during the injury period. Thus, dumped imports from the subject country are likely to severely impact the prices of the product in the market.

x. Observations on injury

78. Imports in relative terms continue to be significant despite existing anti-dumping duty. Imports from the subject country in relation to total imports, demand and production continued to be significant. Imports from the subject country have not caused any price suppressing or depressing effect on the domestic industry prices but price undercutting effect of the dumped imports from the subject country without adding the existing anti-dumping duty is positive. The growth of the domestic industry has been positive in terms of production and sales. The profitability, cash profits, PBIT and Return on

Capital Employed of the domestic industry declined over the injury period but still the domestic industry has been able to make profits and earn a reasonable return.

xi. Magnitude of price underselling/injury margin

79. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in Anti-Dumping Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the information/data relating to the cost of production provided by the domestic industry and duly certified by the practicing accountant for the period of investigation. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials and utilities has been considered over the injury period. Best utilisation of production capacity over the injury period has been considered. Extraordinary or non-recurring expenses have been excluded from the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and being followed.
80. For all the non-cooperative producers/exporters, the Authority has determined the landed price based on facts available.
81. Based on the landed price and NIP determined as above, the injury margin for producers/exporters as decided by the Authority is provided in the table below:

INJURY MARGIN TABLE

Country	Producer	NIP (US\$/MT)	Landed Value (US\$/MT)	Injury Margin (US\$/MT)	Injury Margin (%)	Injury Margin (Range)
China PR	Nantong Acetic Acid Chemical Co., Ltd.	***	***	***	***	10-20
	Others	***	***	***	***	10-20

I. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS

82. The Authority has examined any known factors other than the dumped imports which at the same time might have been injuring the Domestic Industry, so that the injury caused by these other factors, if any, is not attributed to the dumped imports. Factors which are relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. The Authority examined whether factors other than dumped imports could have contributed to the injury to the Domestic Industry.

a) Volume and price of imports from third country

83. It is seen that the imports from other countries are at higher prices. Therefore, volume and price of imports from third countries are not a reason affecting the domestic industry.

b) Contraction in demand

84. The Authority notes that demand of the product under consideration has increased throughout the injury period.

c) Change in pattern of consumption

85. There has been no material change in the pattern of consumption of the product under consideration. Hence, changes in pattern of consumption have not caused injury to the Domestic industry.

d) Conditions of competition and trade restrictive practices

86. The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the Domestic Industry.

e) Development in technology

87. No evidence has been brought by any interested parties about existence of significant changes in the technology that could have caused injury to the domestic industry.

f) Export Performance of the domestic industry

88. The Authority has considered data for the domestic operations only for the injury analysis. Therefore, export performance is not the cause for the injury to the Domestic Industry.

g) Performance of other products

89. The Domestic Industry has provided the injury information for the product under consideration and the same has been considered by the Authority for the purpose of injury analysis.

J. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY**J.1 Submissions made by domestic industry**

90. The following submissions have been made by the domestic industry with regard to likelihood of continuation or recurrence of dumping or injury:

- a. There is a clear likelihood of the continued dumping being further intensified by exporters from China PR leading to a situation of further intensified injury to the domestic industry, if the existing duty is withdrawn.
- b. Imports are coming at dumped and injurious price. Imports of the product under consideration from subject country have continued and increased within the injury period. Thus, cessation of duties is likely to lead to intensified dumping and consequent injury to the domestic industry. The dumping margin in the previous investigation as well as in the present investigation is positive.
- c. The individual Chinese producers have excessive production capacities. The total individual capacities as per market intelligence of the domestic industry is at the tune of 2,41,000 MT. The publicly available information with regard to capacity of individual producers in China could be found for only three producers. Even those three producers account for 90,000 MT of the production as against 13,000 MT Indian demand. In addition to these facts, it is important to note that the responding exporter has not disputed the capacity figures stated by the domestic industry.
- d. The Authority may check the information on the capacities of other producers from their responses filed at the time of original investigation. At the same time, the capacity for Nantong Acetic Acid Chemical Co. Ltd. could be checked from the response filed in the present investigation as well.
- e. The duty-free imports are made at significant dumped and injurious prices. Chinese producers resorted to significantly high level of dumping at injurious prices throughout the injury period.
- f. The current level of price undercutting suggests that in the event of expiry of present anti-dumping duty, imports from subject country are likely to have significant suppressing/depressing effects on the prices in the market. Such a situation would result in domestic industry facing severe decline in profitability in the event domestic industry matches its price or the domestic industry would lose the volumes.
- g. The landed value of imports below the domestic industry's selling price suggests that in the event of expiry of present anti-dumping duty, the domestic industry will have to either reduce its price to the level of import price or maintain its prices at the cost of losing sale opportunities. In either situation, the domestic industry will again suffer material injury.

- h. Article 11.1 of the anti-dumping agreement states that “an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury”, the panel in US-DRAMS while interpreting Article 11.1 observed that this also implies that duties can be extended when such expiry would be likely to lead to continuation or recurrence of dumping and injury.
- i. The domestic industry has not suffered material injury. However, dumping has continued and absence of material injury does not imply no likelihood of recurrence of injury in the event of cessation of anti-dumping duties.

J.2 Submissions made by other interested parties

91. Following submissions have been made by other interested parties with regard to likelihood of continuation or recurrence of dumping or injury:
- a. There is no necessity to extend current anti-dumping duty. The panel in US-DRAMS (DS-99) observed that the anti-dumping duties shall remain in force only as long and to the extent necessary to counteract injurious dumping under article 11.1 of the anti-dumping agreement.
 - b. Economic performance of the Domestic industry during the post investigation period is not an appropriate parameter to apply likelihood test due to Covid-19 pandemic.

J.3 Examination by the Authority

92. All the factors brought to the notice of the Authority have been examined to determine as to whether there is a likelihood of continuation or recurrence of dumping or injury in event of cessation of the duty. The Authority has considered various information, as made available by the domestic industry and other interested parties, in order to evaluate the likelihood of continuation or recurrence of dumping and or injury.
93. The Authority has examined the likelihood of continuation or recurrence of injury considering the requirement laid down under Section 9A(5), Rule 23 and parameters relating to the threat of material injury in terms of Annexure – II (vii) of the Rules, and other relevant factors brought on record by the interested parties. The present investigation is a sunset review of ADD earlier imposed on the imports of subject goods from China PR. Under the Rules, the Authority is required to determine whether continued imposition of ADD is warranted. This also requires a consideration of whether the duty imposed is serving the intended purpose of eliminating injurious dumping. There are no specific methodologies available to conduct such a likelihood analysis. However, Clause (vii) of Annexure II of the Rules provides, inter-alia, for factors which are required to be taken into consideration viz.,:
- a) A significant rate of increase of dumped imports into India indicting the likelihood of substantially increased importation;
 - b) Sufficiently freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports;
 - c) Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
 - d) Inventories of the article being investigated.

i. Continued dumped imports

94. The Authority notes that the imports of the PUC from the subject country has remained significant despite anti-dumping duty in existence. Further, the dumping margin determined for the POI is positive. Thus, there is a continuation of dumping of subject goods from subject country. It is also seen that without adding the anti-dumping duties, these imports are undercutting the Domestic Industry's prices. Thus, a cessation of ADD is likely see positive undercutting.

ii. Surplus capacities in China

95. The domestic industry has alleged surplus capacity with the producers in China. The domestic industry further substantiated information on capacity, production and demand in China based on a report on the Development Status and Investment Prospect Analysis of Methyl Aceto Acetate (MAA) Industry in the World and China (2021-2025)]. The Authority, on the basis of submissions made by the interested parties and evidence on record, has summarized the information as under:

Particulars	Unit	2018	2019	2020	2021 F	2022 F	2023 F	2024 F	2025 F
Capacity	MT	1,73,000	1,90,000	1,95,000	2,04,000	2,17,000	2,29,000	2,40,000	2,50,000
Output	MT	1,53,400	1,66,000	1,61,000	1,70,200	1,82,900	1,95,900	2,08,100	2,20,600
Domestic demand (China)	MT	132700	142200	135000	143300	153700	163700	173200	182700
Surplus capacity	MT	40,300	47,800	60,000	60,700	63,300	65,300	66,800	67,300

96. It is seen that the exporters in subject country have built mammoth capacities and the capacities are far in excess of the demand in China. The excess capacity projected in 2021 is 60,700MT. It is pertinent to note here that the entire demand in India is to the tune of 12,485MT only. The surplus capacity alone itself is significantly more than the domestic demand in India.

iii. Declining present and potential growth in Chinese domestic demand

97. Evidence provided shows that the growth rate of output (production) projected in China is low, Thus the excess capacity is likely to increase. Further, the already reduced growth rate of production is going to be adversely affected by the outbreak of novel coronavirus. It has been submitted that the Chinese MAA industry has recorded a negative growth and this is likely to decline further as is shown in the table below:

Particulars	Unit	2018	2019	2020	2021 F	2022 F	2023 F	2024 F	2024 F
Output	MT	1,53,400	1,66,000	1,61,000	1,70,200	1,82,900	1,95,900	2,08,100	2,20,600
Growth Rate of Output	%	10.70	8.21	-3.01	5.71	7.46	7.11	6.23	6.01
Consumption	MT	1,32,700	1,42,200	1,35,000	1,43,300	1,53,700	1,63,700	1,73,200	1,82,700
Growth	%	11.2	7.2	5.1	6.1	7.3	6.5	5.8	5.5

iv. Price Undercutting and Attractiveness of India as a Market

98. It is noted that price undercutting is positive during the POI, and thus, cessation of ADD currently in place is likely to lead to intensified dumping causing injury in the form of low volume of sales, reduced selling price and decline in profits to the Domestic Industry. The Authority is required to establish that the price prevailing in the domestic market, i.e., India is attractive for the exporter to divert the quantity exported to the third countries. It is noted that the landed value of imports is below the net selling price of the Domestic Industry in the POI.

K. POST-DISCLOSURE COMMENTS**K.1 Submissions made by the domestic industry**

99. Post Disclosure comments made by the domestic industry are as follows:

- a) Dumping margins determined in the original investigation and present application are not only positive but significant. Positive dumping margin post imposition of duty implies likelihood of dumping in the event of withdrawal of duty and in itself justifies extension of anti-dumping duty.
- b) Chinese producers are having excessive production capacities. With the rapid increase of their production capacity, the consumption has not increased proportionately, nor is likely to increase in future, leading to increase in spare capacity and decline in operating rates. Such increase in capacity will eventually be diverted to Indian market once the duties cease to exist.
- c) Imports of the product under consideration from subject country have continued and increased within the injury period. Imports have remained significant in absolute as well as in relation to production and consumption despite anti-dumping duties in force. This indicates the intention of the producers to maintain presence in the domestic market.
- d) The imports have remained significant and further, the duty free imports are being made at significant dumped and injurious price. Applicant has determined dumping margin and injury margin for the entire injury period to ascertain the actual behaviour of the Chinese producers which shows significantly high level of dumped and injurious imports throughout the injury period.
- e) The level of price undercutting indicates that, should the present anti-dumping cease, the imports are likely to have significant suppressing/ depressing effects on the prices in the market, which shall lead to increase in the demand for the imported product in the market. The situation would either lead to domestic industry facing severe decline in profitability (if the domestic industry matches the prices), or, the domestic industry would lose the volumes.
- f) The landed value of imports was below selling price of the domestic industry. In the event of cessation of duty, the domestic industry will have to either reduce its price to the level of import price or maintain its prices at the cost of losing sale opportunities. In either situation, the domestic industry will again suffer material injury.
- g) India and Europe are the main export destinations of Methyl Acetoacetate (MAA) for Chinese producers because of scale of production in the fields of vitamins, pesticides and dyes. Access to European market is affected due to COVID restrictions and thus India becomes natural export target for Chinese producers/exporters.

K 2. Submissions made by other interested parties

100. Nantong Acetic Acid Chemical Co., Ltd. and Nantong Tianhong International Trade Co., Ltd. from China PR have submitted that:
- a. there is no likelihood of continuation or recurrence of dumping situation of subject goods imported from China PR and the imported products have not caused injury or even threat of injury to the Indian domestic industry.
 - b. Accordingly, we strongly urge the Authority to recommend not to continue the duty imposed by the Ministry of Finance vide Notification No. 22/2016-Customs (ADD) dated 31st May, 2016 and even if the Authority takes a stand of imposition of anti-dumping duty in the present sunset review, the same should be based on the submissions and data filed by the company in the current sunset review investigation and dumping/injury margins determined by the Authority in the present Sunset Review investigation.

K.3 Examination by the Authority

101. The Authority has examined the post Disclosure Statement comments by the domestic industry and other interested parties. The Authority notes that the imports of the PUC from the subject country have remained significant despite anti-dumping duty in existence; the dumping margin determined for the POI is positive; without adding the anti-dumping duties, these imports are undercutting the Domestic Industry's prices and thus a cessation of ADD is likely see positive undercutting; the capacities in China are far in excess of the demand in India; the surplus capacity alone itself is significantly more than the domestic demand in India; the growth rate of output (production) of the subject goods projected in China is low and thus the excess capacity is likely to increase and the landed value of imports is below the net selling price of the Domestic Industry in the POI. The Authority, therefore, concludes that there is likelihood of dumping of the subject goods from the subject country and consequent injury to the Domestic Industry in the event of cessation of the current anti dumping duty that is in force on the import of the subject goods originating in or exported from the subject country.

INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

102. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The interested parties have not established that imposition of duties is going to adversely impact the public interest.
103. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

PUBLIC INTEREST

104. The Authority also examined as to whether the extension of the existing duty on imports of the product under investigation originating in or exported from the subject country would be against the larger public interest.
105. The Authority noted that it had issued Gazette Notification initiating the investigation for extension of the existing duty on imports of the product under investigation originating in or exported from the subject country. This Gazette Notification is in the public domain. Through this Notification, the Authority had invited views from all the interested parties, including importers and users, on all aspects of the application submitted by the Domestic Industry for extension of the existing anti dumping duty. It was specifically mentioned in the Initiation Notification that all the interested parties were advised to intimate their interest (including the nature of interest) in the instant matter and file their questionnaire responses and offer their comments to the domestic industry's application within forty days (40 days) from the date of publication of the Notification. Further, on the DGTR website, questionnaires for importers and users are also available. Questionnaire for users invites comment from them, inter-alia, on the comparability of the product under investigation imported from the country concerned with that produced in India, identifying any differences (e.g., technical or physical characteristics, prices, uses, etc); whether their company would be in favour of the imposition of antidumping measures or against and are there products that could be easily substituted for the product under investigation.

106. The Authority notes that barring one exporter from China, no one else has filed any questionnaire response. Further, neither any consumer nor any importer of the product under consideration attended the oral hearing. Therefore, no evidence has been put forward by the importers and consumers in India showing that the existence of anti dumping duty on the subject goods over the last five years has had any significant adverse effect either on the consumers or at public at large. In fact, none of the consumers has even filed questionnaire response, nor has filed any written submissions in opposition to the request for extension of the duty filed by the domestic industry. This clearly shows that consumers did not consider that imposition of duty on the product has had any significant adverse effect on the consumers at large, and they were unconcerned about the request for extension of the ADD. Further, the product has been imported from a number of countries. The Authority has considered the application for extension of duty only in respect of import from China. Import from USA, Switzerland and all other sources would in any way remain available to the consumers. Majority of the imports from various countries are not subject to investigation or duty.

L. CONCLUSION

107. Having regard to the contentions raised, information provided and submissions made and facts available before the Authority as recorded in the above Findings and on the basis of the above analysis of the likelihood of continuation or recurrence of dumping and injury to the domestic industry, the Authority concludes that:
- (i) Imports from the subject country in relation to total imports, demand and production continued to be significant despite anti-dumping duty in existence and the dumping and injury margins determined for the POI are positive.
 - (ii) Though the growth of the domestic industry has been positive in terms of production and sales and the domestic industry has been able to make profits and earn a reasonable return despite its profitability, cash profits, PBIT and Return on Capital Employed of the domestic industry seeing declining trend over the injury period, the fact is that the imports without adding the existing anti-dumping duty are undercutting the prices of the Domestic Industry.
 - (iv) The capacities in China are far in excess of the demand in China; the surplus capacity alone itself is significantly more than the domestic demand in India; the growth rate of output (production) of the subject goods projected in China is low and thus the excess capacity is likely to increase and the landed value of imports is below the net selling price of the Domestic Industry in the POI.
 - (v) The Authority, therefore, concludes that there is likelihood of dumping of the subject goods from the subject country and consequent injury to the Domestic Industry in the event of cessation of the current anti dumping duty that is in force on the import of the subject goods originating in or exported from the subject country.

M. RECOMMENDATIONS

108. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers/users and other interested parties to provide information on the aspects of dumping, injury and the causal link and likelihood of continuation or recurrence of dumping and injury. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the Authority is of the view that continued imposition of anti-dumping duty is required on the import of the subject goods originating in or exported from the subject country.

109. Under these circumstances, the Authority considers it appropriate to recommend continuation of existing quantum of anti-dumping duty on the imports of the subject goods from the subject countries. The Authority, thus, considers it necessary to recommend continuation of existing definitive anti-dumping duty imposed vide Notification No. 22/2016-Customs (ADD) dated 31st May, 2016. Therefore, anti-dumping duty equal to the amount indicated in Col. 7 of the duty table given below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods, as detailed in column 3 of the duty table, originating in or exported from the subject country for a further period of five years.

Sl. No.	Subheading/ Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer	Duty Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2914 69 90, 2915 39 10, 2915 39 40, 2915 39 90, 2918 30 40 2918 30 90, 2933 19 90, 2941 00 90 and 2918 99 00	Methyl Acetoacetate	China PR	Any country including China PR	Nantong Acetic Acid Chemical Co., Ltd.	0.277	Kg	US\$
2.	-Do-	-Do-	China PR	Any country including China PR	Any other than at Sl. No. 1.	0.404	Kg	US\$
3.	-Do-	-D0-	Any other than China PR	China PR	Any	0.404	Kg	US\$

110. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the customs under the customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 8B, 9 and 9A of the customs Tariff Act, 1975 as amended from time to time.

N. FURTHER PROCEDURE

111. An appeal against these findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

ANANT SWARUP, Jt. Secy. & Designated Authority

- ख) कॉलम 7 के क्र. सं. 1 में निर्यातक का नाम यानी “सोलूटिया यूरोप एसपीआरएल/बीवीबीए, बेल्जियम” को संशोधित करके “सोलूटिया यूरोप बी वी ” किया जाए।
16. तदनुसार, प्राधिकारी सीमा शुल्क अधिसूचना संख्या 54/2017-सीमा शुल्क (ए डी डी) दिनांक 17 नवंबर, 2017 में बदलाव करने की सिफारिश करते हैं।
17. इस आदेश की वजह से केंद्रीय सरकार के आदेशों के विरुद्ध अपील अधिनियम के अनुसार सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण के समक्ष की जाएगी।

अनंत स्वरूप, संयुक्त सचिव एवं निर्दिष्ट प्राधिकारी

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(DIRECTORATE GENERAL OF TRADE REMEDIES)

AMENDMENT NOTIFICATION

New Delhi, the 6th May, 2021

Subject: Amendment to the Final Finding Notification No.15/05/2016-DGAD dated 02nd September, 2017 in Sunset Review investigation of Anti-dumping duty imposed on the imports of Certain Rubber Chemicals, namely, TDQ & PX-13 originating in or exported from the European Union and MOR and MBTS originating in or exported from the Peoples Republic of China.

F.No. 7/48/2020-DGTR.— Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter referred to as “the Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter referred to as “the Rules”) thereof;

A. BACKGROUND

1. The Directorate General of Trade Remedies ("Authority") had conducted an antidumping investigation concerning imports of Certain Rubber Chemicals, namely, TDQ & PX-13 originating in or exported from the European Union, and MOR and MBTS originating in or exported from the Peoples Republic of China and recommended imposition of definitive anti-dumping duties vide the final finding Notification No. 15/05/2016-DGAD dated 02nd September 2017 ("Final Findings"). The recommendations were accepted by the Ministry of Finance, and definitive duties were imposed vide Customs Notification No. 54/ 2017- Customs (ADD) dated 17th November, 2017 ("Customs Notification").

B. PROCEDURE

2. A request was made by Solutia Europe BV (hereinafter referred to as “Applicant”), previously known as Solutia Europe BVBA/SPRL, claiming that due to the change in operation of law, the Applicant has to effect a change in name from Solutia Europe BVBA/SPRL to Solutia Europe BV, as mandated by the Belgium Companies and Association Code. The request has been made in terms of the Trade Notice No. 12/2018 dated 17th September, 2018 (hereinafter referred to as “Trade Notice”), for change of name of the producer/exporter in the duty table as notified by abovementioned Customs Notification.
3. Noting the nature of the request the Authority examined the request for name change, and decided to seek views/comments from the concerned interested parties in terms of Trade Notice. Thereafter, the Authority conducted an oral hearing on 04th March, 2021, wherein, exporters, importers, and users were also invited. During the oral hearing, no interested party other than the applicant participated. The Authority directed the participant namely, applicant exporter to file written submissions. The submissions filed by the applicant exporter have been considered by the Authority.

C. SUBMISSIONS

Views of the Applicants-Solutia Europe BV, Belgium

4. The Applicant is based in Belgium, European Union. It has been submitted that the Belgium Companies and Association Code (hereinafter referred to as “Code”) was amended by the sovereign and notified in the Belgian Official Gazette on 04th April, 2019.

5. As per the reforms introduced in the Code, by operation of law, the company type “besloten vennootschap met beperkte aansprakelijkheid”, abbreviated as “BVBA”, has been replaced by “besloten vennootschap”, abbreviated as “BV”. All Companies in the jurisdiction have been mandated to thereby bring into effect the reform in the Code by 01st January, 2024. Accordingly, with effect from January 1, 2021 Solutia Europe SPRL/ BVBA would trade under the name of Solutia Europe BV due to the change in operation of law.
6. The Trade Notice No. 12/2018 dated 17th September, 2018 issued by the Authority deals with the provisions for change of name by the foreign producer/exporters, and the procedure to bring the name change into effect in the duty table as recommended by the Authority. The Trade Notice prescribes an expedited procedure for conducting an investigation for change in name, where the change of name is a matter of ‘record’ only.
7. The Trade Notice No. 12/2018 dated 17th September, 2018 also mandates that any Exporter/Producer that has been granted an individual margin in an ADD investigation has to report a name change within 90 days of change in name becoming effective. The Applicant, as submitted in the Application, effected the name change on 01st January, 2021 and thereafter filed an application intimating the name change to the Authority within the statutory period of 90 days as mandated by the law.
8. Further, the Applicant submits that the change of name due to change in operation of law falls under the category whereby the change of name is a matter of ‘record’ only. The following showcases that name change of the Applicant is a mere compliance -
 - a. There is no change in management/promoter group of the Applicant.
 - b. There is no change in the shareholding/ownership structure of the Applicant.
 - c. There is no change in the business practice of the Applicant.
 - d. There is no likely advantage to the entity due to the change in name or changed scenario of the Applicant.
9. The Applicant has, in accordance with the law, duly filed a complete application along with all the required evidences to establish the bona-fide claims of the Applicant. The following has been filed by the Applicant in the application under the Trade Notice –
 - i. Belgium Companies and Association Code, amendment;
 - ii. Undertaking by the Director;
 - iii. Audited Annual Reports for the year 2019.

Views of the Domestic Industry & Interested Parties

10. Neither any response nor any written submission received from Domestic Industry or any other concerned interested parties.

D. EXAMINATION BY THE AUTHORITY

11. The submissions made by the applicant have been examined and following observations are being made.
12. As per the Applicant, the need for change in name of the exporter has emerged from introduction of new law in Belgium, where the exporter is located.
13. It is also noted that:
 - a. There is no change in management/promoter group of the Applicant.
 - b. There is no change in the shareholding/ownership structure of the Applicant.
 - c. There is no change in the business practice of the Applicant.
 - d. There is no likely advantage to the entity due to the change in name or changed scenario of the Applicant.
14. The examination further revealed that the request falls within the category of name change only, and there is no change in shareholding pattern of ownership which do not alter the basic nature of the business. The request is covered within the scope of the Trade Notice No 12/ 2018 dated 17th September, 2018.
15. Having considered all aspects, the Authority, recommends following change in the duty table in para no. 189 of the final finding 15/05/2016-DGAD dated 02nd September, 2017:
 - a) at S. No. 1 in column 6, the name of the producer viz. “Solutia Europe SPRL/BVBA, Belgium” be amended to “Solutia Europe BV”.
 - b) at S. No. 1 in column 7, the name of the exporter viz. “Solutia Europe SPRL/BVBA, Belgium” be amended to “Solutia Europe BV”.

16. Accordingly, the Authority recommends the change in the Customs Notification no.54/2017- Customs (ADD) dated 17th November 2017.
17. An appeal against the orders of the Central Government arising out of this order shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Act.

ANANT SWARUP, Jt. Secy. & Designated Authority

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(DIRECTORATE GENERAL OF TRADE REMEDIES)

NOTIFICATION
TERMINATION ORDER

New Delhi, the 7th May, 2021

Case No. ADD-OI-08/2020

Subject: Anti-dumping investigation concerning imports of 'Plain Medium Density Fibre Board having thickness 6mm and above' produced by M/s. Kim Tin MDF Joint Stock Company, Vietnam.

F.No. 6/9/2020-DGTR.—Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the 'Act') and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as 'The Rules' or 'AD Rules') thereof;

A. Background of the case

1. An original anti-dumping investigation concerning imports of the subject goods from Indonesia & Vietnam was initiated by the Authority vide Notification No. 14/23/2014-DGAD dated 7th May 2015. The Authority notified final findings vide Notification No. 14/23/2014/DGAD dated 5th May 2016 recommending definitive antidumping duty on imports of "Plain Medium Density Fibreboard having thickness 6 mm and above" from Indonesia and Vietnam. The definitive antidumping duty was imposed on the subject goods vide Customs Notification No. 34/2016-Customs (ADD) dated 14th July 2016. The duties are effective till 13th July 2021. No anti-dumping duty was levied on M/s Kim Tin MDF Joint Stock Company, Vietnam since its dumping margin was below de-minimis level.
2. M/s Greenply Industries Limited/ M/s Greenpanel Industries Limited, M/s Century Plyboards (India) Ltd., and M/s Rushil Décor Limited (hereinafter referred to as the "Applicants" or "Domestic Industry") thereafter filed a duly substantiated application before the Designated Authority (hereinafter also referred to as the "Authority"), on behalf of the domestic industry, in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the "Act") and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter also referred to as the "Rules"), for initiation of original anti-dumping investigation concerning imports of Plain Medium Density Fibre Board having thickness 6 mm and above (hereinafter also referred to as "product under consideration" or "PUC" or "subject goods"), produced by M/s. Kim Tin MDF Joint Stock Company, Vietnam. (hereinafter referred to as 'subject exporter')
3. Based on the substantiated application with prima facie evidence of dumping and injury filed by the Applicants, the Authority initiated an anti-dumping investigation vide Notification No. 6/9/2020 – DGTR dated 11th May, 2020, published in the Gazette of India, in accordance with Rule 5 of the Rules to determine existence, degree and effect of alleged dumping of the subject goods produced by M/s. Kim Tin MDF Joint Stock Company, Vietnam, and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged material injury to the domestic industry.

B. Procedure

4. The procedure described below has been followed with regard to the investigation:
 - i. The Authority notified the Embassy of Vietnam in India about the receipt of the present application before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the AD Rules.
 - ii. The Authority issued a Notification dated 11th May, 2020, published in the Gazette of India Extraordinary, initiating investigation concerning imports of the subject goods from the subject exporter.
 - iii. The Authority sent a copy of the initiation notification to the Embassy of Vietnam, the subject exporter, known importers/users, as per the addresses made available by the applicant and requested them to make their views known in writing within 60 days from the receipt of notice in accordance with Rule 6(4) of the AD Rules.
 - iv. The Authority provided a copy of the non-confidential version of the application to the subject exporter, known importers and to the Embassy of Vietnam in India in accordance with Rule 6(3) of the AD Rules.

- v. The Authority sent exporter's questionnaire to M/s. Kim Tin MDF Joint Stock Company, Vietnam.
- vi. The Embassy of Vietnam in India was also requested to advise the subject exporter to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the subject exporter.
- vii. The subject exporter and its following related entities filed exporter's questionnaire response and legal submissions and/or letters of participation in response to the initiation notification:
 - i. M/s. Kim Tin MDF Joint Stock Company
 - ii. M/s. FSC Vietnam Corporation
 - iii. M/s. Kim Tin Investment Corporation
 - iv. M/s. Kim Tin Group Joint Stock Company
- viii. The Authority forwarded a copy of the Initiation Notification to the following known importers/users/user associations, whose names and addresses were made available to the authority, of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 6(4):
 - a. M/s Krishna Plywood Products Private Limited
 - b. M/s Jacsons Veneers and Panels Private Limited
 - c. M/s Label Sales Corporation
 - d. M/s Kalinga Imports & Exports Private Limited
 - e. M/s Srivari Traders
 - f. M/s Victory Plywood Distributors
 - g. M/s Thamarapally Brothers Trading Private Limited
 - h. M/s Mathewsons Exports & Imports Private Limited
 - i. M/s R.J.Metals
 - j. M/s Feroke Boards Limited
- ix. None of the importers/users/user associations have filed submissions or questionnaire responses in the present investigation.
- x. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xi. A list of all interested parties was uploaded on DGTR's website along with the request therein to email the NCV of their submissions to all other interested parties since the public file was not accessible physically due to ongoing global pandemic
- xii. The period of investigation for the purpose of the present investigation has been considered from 1st July, 2019 to 30th June, 2020 (POI). The injury investigation period has been considered as the period from 2016-17, 2017-18, April 2018 – June 2019 and the period of investigation.
- xiii. The Non-Injurious Price (NIP) is based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules. It has been worked out so as to ascertain whether duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xiv. Information obtained from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) on transaction-wise import data for the past three years, and the period of investigation has been adopted for determination of volume and value of imports of product concerned in India.
- xv. In accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 26th February 2021. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.

- xvi. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this notification.
- xvii. Wherever an interested party has refused access tooor has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded this notification on the basis of the facts available.
- xviii.*** in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xix. The exchange rate adopted by the Authority during the POI for the subject investigation is 1 US\$= 71.34.

C. Major arguments by interested parties concerning maintainability of the present investigation.

5. M/s Kim Tin MDF Joint Stock Company, Vietnam, the sole exporter under investigation in the present investigations, has made following submissions concerning maintainability of the present investigation.
 - i. The initiation is not maintainable. The investigation was not terminated against the exporter by issue of a public notice, in an express manner, and the levy is still in force. The rule is not that zero or nil duty shall be read as termination. The conclusion in the original findings did not talk about termination either, even though the initiation notification in the present investigation states so.
 - ii. The observation of the Authority that no review can be initiated against Kim Tin is based on the wrong premise that the case was terminated against Kim Tin.
 - iii. The petition was filed without considering the stand of the Authority in such cases. The argument made by the domestic industry in a similar case that nil duty in the case of de-minimis margin is legal and exporter with nil duty can be subjected to review was accepted by the Authority and CESTAT. In view of the same, Kim Tin should be subject to review and the present investigation be terminated.
 - iv. Kim Tin did not appeal for specific termination of previous investigation as competent authorities were of the view that nil duty is also a form of duty and can be subject to review.
6. The domestic industry made following submissions
 - a. The present application is WTO and Indian law compliant. Authority has previously conducted sunset reviews in PVC Suspension, PVC paste and Phthalic Anhydride where responding exporters had de-minimis dumping margins. Even though the Authority did not accept the argument of the opposing parties that review investigations cannot be conducted against such exporters, since the findings of the review investigations once again exempted these companies, the issue was not agitated any further and therefore, the decision of the Authority has not attained finality.
 - b. The CESTAT, in an appeal challenging the findings issued by the Authority in sunset review investigation where, an exporter who was awarded a de-minimis margin in the original investigation was also subjected to the review investigation, ruled that the review investigation pertaining to the particular exporter was conducted like a fresh investigation.
 - c. The domestic industry preferred to file a fresh investigation as the CESTAT decision has not attained finality as the exporter has filed an SLP against the CESTAT order.
 - d. Reference was made to WTO Appellate Body decision in Mexico – Beef and Rice and Ukraine – Anti-Dumping Measures on Ammonium Nitrate wherein it was held that an investigation against an exporter whose dumping margin is de-minimis stands terminated once the Authority has reached such a conclusion, and the exporter cannot be included in the review process.
 - e. The exporter has shown no illegality in the investigation till date.
 - f. The domestic industry decided not to adopt an uncertain approach where legality of investigation was open to challenge before higher authorities.
 - g. Countries like European Union and Turkey has conducted similar investigations wherein an exporter whose dumping margin was found to be de-minimis was later subjected to a fresh investigation on finding that the subject exporter was dumping in the country.
 - h. Turkey suo moto initiated a fresh investigation against the exempted companies and imposed duties on the companies as well. European Commission also determined the legal basis of a fresh investigation against an exporter with a de-minimis dumping margin, which was also upheld by the domestic courts.
 - i. It is the inherent right of the domestic industry to seek relief for the injury being caused due to the dumped imports from the subject exporter.

- j. The Supreme Court in GM Exporter v. Designated Authority stated that the Authority is bound to follow WTO decisions.
- k. The exporter should have appealed against the findings issued by the Authority in the original investigation, in the absence of which, the exporter now cannot claim that the investigation was not expressly terminated.
- l. The impact of a review investigation and a fresh investigation would be the same unless the exporter was planning to strategize its export price according to the timing of the sunset review investigation.

D. Examination by the Authority

- i. The Authority has noted the arguments and counter-arguments of the interested parties and has examined all aspects. It is noted that in the original investigation an Anti-dumping duty at nil rate was levied on the subject exporter since the dumping margin was below the de minimis level. The investigation was not terminated against the exporter. The exporter did neither demand termination of investigation then, nor filed any appeal against the decision of the Designated Authority.
- ii. The said exporter in the current investigation has pleaded that it is subject to review and not fresh investigation. The exporter has not contended that the Designated Authority cannot conduct a review investigation against them.
- iii. It is noted that the Designated Authority has been consistently following the practice of giving zero duty to exporters with individual dumping margin of less than 2%, without terminating the investigation against them. The Authority has therefore consistently in the past conducted sunset review investigations against such exporter(s) having zero duty on account of *de-minimis* dumping margin(s) at the stage of original anti-dumping investigation(s).
- iv. It is also worth noting that in another case M/s. Robin Resources Vs UoI, the CESTAT has already upheld the practice being followed by the Designated Authority. An appeal against this decision is pending in the Hon'ble Supreme Court since 2017. The Designated Authority has already filed an affidavit in the Hon'ble Supreme Court defending this practice.
- v. The Hon'ble CESTAT in the matter of Robin Resource vs Designated Authority, held as follows:

"We note that the DA can consider where an exporter was awarded zero duty in the original investigation and has now found to be dumping, which is likely the cause injury to DI, then AD duty can be considered for imposition with reference to dumping margin and injury margin established during the review. We note that the DA followed the requirements of Article 2 & 3 of the ADA and the relevant provisions of AD Rules. We also note that regarding appellants, the DA has examined and reviewed all the aspects of original investigation and in addition examined whether expiry of initial Notification is likely to lead a recurrence of dumping/ injury to the DI. As already noted, that this is like a fresh investigation in so far as appellant is concerned and we find no legal infirmity in such action by the DA."

- vi. The CESTAT held that the Designated Authority had examined and reviewed all the aspects of original investigation and it was like a fresh investigation against such exporter. Therefore, the Authority can examine the exporter having zero duty through sunset review investigation.
- vii. Since the appeal against the decision of CESTAT is pending in the Hon'ble Supreme Court, it is appropriate to continue with the existing practice of conducting sunset review investigations against individual exporters having de-minimis dumping margin.
- viii. Further, it is noteworthy that review investigations conducted by the Designated Authority – whether interim or sunset review – covers all aspects of an investigation and that the Designated Authority has been modifying the level of anti dumping duty also. Such being the case, the purpose of domestic industry is equally served by undertaking review investigations under Rule 23 and it may not be necessary to launch a fresh investigation under Rule 5.
- ix. In view of the above, it is considered appropriate not to undertake an investigation under Rule 5 and instead undertake review investigation under Rule 23 in such situations where exporter is not subjected to antidumping duty because of de-minimis dumping margin. Accordingly, the Authority terminates the present investigation while granting liberty to the domestic industry to seek appropriate remedy under Rule 23.

ANANT SWARUP, Designated Authority

सीमा शुल्क टैरिफ अधिनियम की धारा 9क की उप धारा (5) के अनुसार उक्त प्रतिपाटन शुल्क को आगे भी जारी रखने के लिए अनुरोध किया था;

और जहां कि केन्द्र सरकार ने उक्त विषयगत देशों में मूलतः उत्पादित या वहां से निर्यातित उक्त विषयगत वस्तु के आयात पर लगे प्रतिपाटन शुल्क को भारत सरकार, वित्त मंत्रालय (राजस्व विभाग) की अधिसूचना संख्या 11/2021-सीमाशुल्क (एडीडी), दिनांक 3 मार्च, 2021, जिसे सा.का.नि. 150 (अ), दिनांक 3 मार्च, 2021 के तहत भारत के राजपत्र, असाधारण, के भाग II, खंड 3, उप खंड (i) में प्रकाशित किया गया था, के तहत 7 जून, 2021 तक (जिसमें यह तारीख भी शामिल है) बढ़ा दिया था;

और जहां कि उक्त विनिर्दिष्ट प्राधिकारी ने उक्त विषयगत देशों में मूलतः उत्पादित या वहां से निर्यातित उक्त विषयगत वस्तु पर लगे प्रतिपाटन शुल्क को और आगे भी जारी रखने के लिए अनुरोध किया है।

अतः अब उक्त नियमावली के नियम 18 और 23 के साथ पठित उक्त सीमा शुल्क टैरिफ अधिनियम की धारा 9क की उप धारा (1) और (5) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, एतद्वारा, भारत सरकार, वित्त मंत्रालय (राजस्व विभाग) की अधिसूचना संख्या 6/2016-सीमाशुल्क (एडीडी), दिनांक 8 मार्च, 2016, जिसे सा.का.नि. 284 (अ), दिनांक 8 मार्च, 2016 के तहत भारत के राजपत्र, असाधारण के भाग II, खंड 3, उप खंड (i) में प्रकाशित किया गया था, में और आगे भी निम्नलिखित संशोधन करती है, यथा:-

उक्त अधिसूचना में, पैराग्राफ 3 में अंक, अक्षर और शब्द “7 जून, 2021” के स्थान पर अंक, अक्षर और शब्द “31 अक्टूबर, 2021” को प्रतिस्थापित किया जाएगा।

[फा. सं. सीबीआईसी-190354/16/2021-टीओ (टीआरयू-1)-सीबीईसी]

गौरव सिंह, उप सचिव

नोट:-प्रधान अधिसूचना संख्या 6/2016-सीमा शुल्क (एडीडी), दिनांक 8 मार्च, 2016 को सा.का.नि. 284(अ), दिनांक 8 मार्च, 2016 के तहत भारत के राजपत्र, असाधारण, के भाग II, खंड 3, उप खंड (i) में प्रकाशित किया गया था और इसमें अंतिम बार अधिसूचना संख्या 11/2021-सीमा शुल्क (एडीडी), दिनांक 3 मार्च, 2021, जिसे सा.का.नि. 150(अ), दिनांक 3 मार्च, 2021 के तहत प्रकाशित किया गया था, के द्वारा संशोधन किया गया है।

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 3rd June, 2021

No. 33/2021 -Customs (ADD)

G.S.R. 389(E).—Whereas, the designated authority *vide* initiation notification No. 7/41/2020-DGTR, dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 31st December, 2020, has initiated review in terms of sub-section (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) read with rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the said rules), in the matter of continuation of anti-dumping duty on imports of ‘Phenol’ (hereinafter referred to as the subject goods), originating in or exported from European Union and Singapore (hereinafter referred to as the subject countries), imposed *vide* notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 6/2016-Customs (ADD), dated the 8th March, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 284(E), dated the 8th March, 2016, and had

requested for extension of the said anti-dumping duty in terms of sub-section (5) of section 9A of the Customs Tariff Act;

And whereas, the Central Government had extended the anti-dumping duty on the subject goods, originating in or exported from the subject countries up to and inclusive of the 7th June, 2021, *vide* notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 11/2021-Customs (ADD), dated the 3rd March, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 150(E), dated the 3rd March, 2021;

And whereas, the designated authority has requested for further extension of the anti-dumping duty on the subject goods originating in or exported from the subject countries.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 23 of the said rules, the Central Government hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 6/2016-Customs (ADD), dated the 8th March, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 284(E), dated the 8th March, 2016, namely-

In the said notification, in paragraph 3, for the figures, letters and word “7th June, 2021”, the figures, letters and word “31st October, 2021” shall be substituted.

[F. No. CBIC-190354/16/2021-TO(TRU-I)-CBEC]

GAURAV SINGH, Dy. Secy.

Note: The principal notification No. 6/2016-Customs (ADD), dated the 8th March, 2016 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 284(E), dated the 8th March, 2016 and was last amended *vide* notification No. 11/2021-Customs (ADD), dated the 3rd March, 2021, published *vide* number G.S.R. 150(E), dated the 3rd March, 2021.

अधिनियम की धारा 9क की उप धारा (5) के अनुसार उक्त प्रतिपाटन शुल्क को आगे भी जारी रखने के लिए अनुरोध किया है।

अतः अब उक्त नियमावली के नियम 18 और 23 के साथ पठित उक्त सीमा शुल्क टैरिफ अधिनियम की धारा 9क की उप धारा (1) और (5) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, एतद्वारा, भारत सरकार, वित्त मंत्रालय (राजस्व विभाग) की अधिसूचना संख्या 23/2016-सीमा शुल्क (एडीडी), दिनांक 6 जून, 2016, जिसे सा.का.नि. 574 (अ), दिनांक 6 जून, 2016 के तहत भारत के राजपत्र, असाधारण के भाग II, खंड 3, उप खंड (i) में प्रकाशित किया गया था, में और आगे भी निम्नलिखित संशोधन करती है, यथा:-

उक्त अधिसूचना में, पैराग्राफ 2 के पश्चात और स्पष्टीकरण के पहले, निम्नलिखित पैराग्राफ को अंतःस्थापित किया जाएगा, यथा:-

“3. पैराग्राफ 2 में निहित किसी भी बात के बावजूद यह प्रतिपाटन शुल्क 31 अक्टूबर, 2021 तक, जिसमें यह तारीख भी शामिल है, यदि इसके पहले इसे वापस नहीं ले लिया जाता है, इसका अधिक्रमण नहीं होता है या इसमें संशोधन नहीं किया जाता है तो, लागू रहेगा।”

[फा. सं. सीबीआईसी-190354/17/2021-टीओ (टीआरयू-1)-सीबीईसी]

गौरव सिंह, उप सचिव

नोट:- प्रधान अधिसूचना संख्या 23/2016-सीमा शुल्क (एडीडी), दिनांक 6 जून, 2016 को सा.का.नि. 574 (अ), दिनांक 6 जून, 2016 के तहत भारत के राजपत्र, असाधारण, के भाग II, खंड 3, उप खंड (i) में प्रकाशित किया गया था और इसमें अंतिम बार अधिसूचना संख्या 22/2017-सीमा शुल्क (एडीडी), दिनांक 16 मई, 2017, जिसे सा.का.नि. 477 (अ), दिनांक 16 मई, 2017 के तहत प्रकाशित किया गया था, के द्वारा संशोधन किया गया है।

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 3rd June, 2021

No. 32/2021 -Customs (ADD)

G.S.R. 388(E).—Whereas, the designated authority vide initiation notification No. 7/47/2020-DGTR, dated the 12th February, 2021, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 12th February, 2021, has initiated review in terms of sub-section (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) read with rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the said rules), in the matter of continuation of anti-dumping duty on imports of ‘Polytetrafluoroethylene’, originating in or exported from Russia, imposed vide notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 23/2016-Customs (ADD), dated the 6th June, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 574(E), dated the 6th June, 2016, and has requested for extension of the said anti-dumping duty in terms of sub-section (5) of section 9A of the Customs Tariff Act.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 23 of the said rules, the Central Government hereby makes the following further

amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 23/2016-Customs (ADD), dated the 6th June, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 574(E), dated the 6th June, 2016, namely :-

In the said notification, after paragraph 2 and before the Explanation, the following paragraph shall be inserted, namely-

“3. Notwithstanding anything contained in paragraph 2, the anti-dumping duty shall remain in force up to and inclusive of the 31st October, 2021, unless revoked, superseded or amended earlier.”.

[F. No. CBIC-190354/17/2021-TO(TRU-I)-CBEC]

GAURAV SINGH, Dy. Secy.

Note: The principal notification No. 23/2016-Customs (ADD), dated the 6th June, 2016 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 574(E), dated the 6th June, 2016 and was last amended vide notification No. 22/2017-Customs (ADD), dated the 16th May, 2017, published vide number G.S.R. 477(E), dated the 16th May, 2017.