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F. No.6/18/2018-DGAD  
(Case No. CVD - 05/2018)  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Trade Remedies  
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**Dated 19<sup>th</sup> June, 2019**

**FINAL FINDING NOTIFICATION**

**Subject: Countervailing/ Anti-Subsidy Duty investigation concerning imports of “Saccharin” originating in or exported from People’s Republic of China.**

**F. No. 6/18/2018- DGAD:** Having regard to the Customs Tariff Act 1975, (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, 1995, (hereinafter also referred to as the “Rules”) thereof:

**A. BACKGROUND OF THE CASE**

1. Whereas, M/s. Swati Petro Products Private Limited (hereinafter also referred to as the “Petitioner” or “Applicant”) filed a petition before the Designated Authority (hereinafter also referred to as the “Authority”) seeking initiation of anti-subsidy investigations and imposition of anti-subsidy duties in accordance with 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 for imposition of Anti-Subsidy duty on imports of “Saccharin” originating in or exported from China PR (hereinafter also referred to as the “subject country”).
2. And, whereas, the Authority, on the basis of sufficient evidence submitted by the Petitioner, issued a public notice vide Notification No. 6/18/2018 – DGAD dated 10<sup>th</sup> August, 2018, published in the Gazette of India, initiating the subject investigation in accordance with the Rules to determine existence, degree and effect of the alleged injury caused to the domestic industry due to the subsidization of the subject goods, originating in or exported from the subject country, 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**

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 China PR in India about the receipt of the anti-subsidy application before proceeding to initiate the investigation in accordance with Sub-Rule (2) Rule 7 of Rules.
  - b) The Authority invited the Government of China PR (hereinafter also referred to as “GOC”) 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 (ASCM). The consultation was held on 20<sup>th</sup> July, 2018 in New Delhi, which was attended by the representatives of the GOC.
  - c) During the consultations, the GOC claimed that the evidence in the petition was incomplete in certain critical respects, the alleged subsidy schemes/ programs have already been rescinded and the Authority should not consider the petition for initiating the investigation. Post-consultation, GOC submissions which have been summarised in appropriate paragraph in this notification.
  - d) The Authority notes that the GOC did not provide any substantiated evidence in support of their claims made during the pre-initiation consultations.
  - e) The Authority considered the petition and the contentions of the GOC and held that it was appropriate to initiate and conduct countervailing duty investigations in order to determine whether the producers/exporters of the product under consideration were benefited from countervailable subsidies and, whether such subsidized imports were causing injury to the domestic industry and if so, whether it is appropriate to recommend imposition of countervailing duty measures (hereinafter referred to as "CVD" or "anti-subsidy duty") on imports of the Product Under Consideration (hereinafter also referred to as “PUC”) from China PR and if so, to determine the quantum of CVD that should be imposed on the imports of the product under consideration.
  - f) The Authority issued a notification on 10<sup>th</sup> August, 2018, published in the Gazette of India, extraordinary, initiating anti-subsidy/countervailing duty investigations.
  - g) The Authority sent a copy of the initiation notification dated 10<sup>th</sup> August, 2018 to the Embassy of China PR in India, known producers/exporters from China PR, known importers/users in India, other Indian producers of subject goods and the domestic industry as per the addresses made available by the petitioner and advised them to make their views known in writing within 40 days of the initiation notification.

- h) The Embassy of China PR in India was requested to advise the producers/exporters 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 the Embassy of China PR along with the names and addresses of the known producers/ exporters from China PR.
- i) The Authority provided a copy of the Non-Confidential Version (hereinafter also referred to as “NCV”) of the application to the known producers/exporters from China and to the Embassy of China PR in accordance with Rule 7(3) of the Rules .
- j) The Authority sent a questionnaire to the GOC seeking relevant facts/information with regard to various schemes/programs where countervailable benefit might have been conferred onto the producers/exporters of the product under consideration The GOC has refrained from filing any questionnaire response.
- k) The Authority sent questionnaires to elicit relevant information to the following known producers/ exporters in the subject country in accordance with Rule 7(4) of the Rules:
  - (i) M/s. Suzhou Fine Chemicals Group Company Ltd.
  - (ii) M/s. Shanghai Fortune Chemical Co. Ltd.
  - (iii) M/s. Kaifeng Xinhua Fine Chemicals
  - (iv) M/s. Tianjin Changjie Chemical Co. Ltd.
  - (v) M/s. PMC Beijing Chemical Co. Ltd.
- l) In response, only Shanghai Fortune Chemical Co. Ltd has filed Exporter’s Questionnaire response in the prescribed format.
- m) The Authority sent Importer’s Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with the Rules:
  - 1) Eagle Trading Company
  - 2) Colgate Palmolive India Ltd.
  - 3) General Import Co. India
  - 4) Jagmohandas & sons
  - 5) C J Shah & Co.
  - 6) Nectar Drugs P Ltd
  - 7) Procter & Gamble Hygiene and Health
  - 8) Neeru Marketing P Ltd
  - 9) Speciality Chemicals
  - 10) Nandial Bankatlal Pvt. Ltd.
  - 11) Sun Shine Cosmetics Ltd.
  - 12) Grauer & Weil (India) Ltd.

### 13) Sandeep Organics

- n) Only M/s. Grauer and Weil (India) Ltd. has responded with questionnaire response.
- o) 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.
- p) Request was made to the Directorate General of Commercial Intelligence and Statistics (hereinafter also referred to as “DGCI&S”) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigations, 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.
- q) The Non-Injurious Price (hereinafter also referred to as “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 (hereinafter also referred to as “GAAP”) 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.
- r) 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 Final Finding.
- s) 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 present Final Finding.
- t) The Period of Investigation (hereinafter also referred to as “POI”) for the purpose of the present anti-subsidy investigation is from 1<sup>st</sup> April, 2017 to 31<sup>st</sup> March, 2018 (12 Months). The injury investigation period has however, been considered as the period from 2014-15, 2015-16, 2016-17 and the POI.
- u) In accordance with Rule 7(6) of the Anti-Subsidy Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 22<sup>nd</sup> January, 2019. All the parties who had attended the oral hearing were advised to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and were advised to offer their rebuttals.
- 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 Final Finding.
- 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) 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 findings on the basis of the facts available.
- y) A Disclosure Statement was issued to interested parties on 06.06.2019 containing essential facts under consideration of the Designated Authority, giving time up to 14.06.2019 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.
- z) The exchange rate adopted by the Authority for the subject investigation is US\$1=₹ 65.33

#### **C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

- 4. The product under consideration in the present investigation is “Saccharin in all its forms”.

##### **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) Saccharin is a non-nutritive sweetener and considered to be a low calorie substitute for cane sugar. It is a white crystalline powder form and is odourless. Saccharin is more than 500 times sweeter than sugar. Saccharin can be divided into two types, *i.e.*, soluble and insoluble Saccharin.
  - b) Saccharin is produced in two physical forms that is, granular and powder. Sodium Saccharin in granular form is used in situation where Saccharin will be dissolved powder form which has been grounded and spray dried is used in dry mixes and pharmaceuticals.
  - c) Saccharin can be used for a variety of industries such as food and beverages, personal care products, table top sweeteners, electroplating brighteners, etc. The difference in Saccharin, industrial Saccharin and for food and beverages is the purity of the Saccharin.
  - d) Alleged differences regarding the specifications of the imported product and that produced by the domestic industry have been claimed confidential without sufficient justification. In any case, the responding importer has itself been a regular buyer of

the products of the domestic industry which indicates that there is no change in the product produced by the domestic industry and imported by the importer.

### **Submissions made by the other interested parties**

6. Following submissions have been made by the other interested parties with regard to product under consideration and like article.
  - a) The product sold by the domestic industry has different specifications and does not match requirements of the user industry.

### **Examination by the Authority**

7. The product under consideration in the present investigation is “Saccharin in all its forms”. “Saccharin is a non-nutritive sweetener and considered to be low calorie substitute for cane sugar. Primarily there are two types of Saccharin *i.e.* soluble and insoluble. In market parlance soluble saccharin is called sodium saccharin whereas insoluble saccharin is called saccharin or saccharin acid. Saccharin is produced in two physical forms, *viz.* granular and powder. Sodium saccharin in granular form is used in situations where saccharin will be dissolved, the powder form which has been grounded and spray dried is used in dry mixes and pharmaceuticals. It is slightly soluble in water. Insoluble form of saccharin is used in many pharmaceutical and medical applications. Saccharin is used in a variety of industry such as food and beverage, personal care products, table top sweeteners, electroplating brighteners, pharmaceuticals, etc. All forms of Saccharin are within the scope of the present investigation.
8. Saccharin is classified under Chapter 29 of the Customs Tariff Act, 1975 under subheadings No. 29251100. However, import of subject goods takes place under several other tariff sub-headings as well. The Customs classification is indicative only and not binding on the scope of the investigations.
9. With regard to the claim on specifications of the product imported from the subject country being different from that of the product being manufactured by the petitioner, the Authority notes, that no evidence has been provided by the interested parties substantiating such argument. Further, the petitioner has placed on record in this regard, the sales invoices for the subject goods sold to the responding party which clearly establishes that the responding party has on multiple occasions procured the subject goods from the petitioner as well. This establishes the fact that the subject goods are being interchangeably used by the consumers.
10. After considering the information on record, the Authority considers that there is no known difference in product under consideration exported from the subject country and the subject good produced by the domestic industry. The subject goods produced by the domestic industry are comparable to the subject goods exported from subject country in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The

two are technically and commercially substitutable. The consumers are using the two interchangeably.

11. The Authority holds that the subject goods produced by the applicant domestic industry are like article to the product under consideration exported from the subject country, in accordance with the Rules.

#### **D. SCOPE OF DOMESTIC INDUSTRY & STANDING**

##### **Submissions made by the Domestic Industry**

12. 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 application has been filed by M/s. Swati Petro Products Private Limited. The applicant has not imported nor is related to any importer or exporter of the subject goods. The application has been supported by M/s. Shree Vardayini Chemical Industries Pvt. Ltd, M/s. A.S. Chemopharma Pvt. Ltd and M/s Blue Circle Organics Pvt. Ltd.
- b) To the best of the petitioner's knowledge and as per the market intelligence, there exist only 4 other producers in the country apart from the petitioner itself namely, M/s Blue Circle Organics, M/s. AS Chemopharma Pvt. Ltd., M/s. Shree Vardayini Chemical Industries Ltd. and M/s. Vishnu Chemicals. M/s. Blue circle, M/s. AS Chemopharma and M/s. Shree Vardayini have already expressed their support to the petition. In any case, the share of those producers who have provided injury data exceeds 50%. The Authority has itself conducted 3 investigations on the subject goods in past and undertook an investigation on subject goods from Indonesia. It was observed that these are the only producers of subject goods in the Indian market. None of the other producers have responded to any of the investigation. Other named producers are likely to be traders or are producers who merely process saccharin further.
- c) Since information of one of the supporters, M/s. Blue Circle Organics Pvt. Ltd., was placed on record for an anti-dumping investigation against imports of the same product from Indonesia, the same has been filed in the present investigation also for the sake of consistency. However, M/s. Blue Circle Organics Pvt. Ltd. has imported 23 MT of the subject goods. The Authority may consider the scope of the same for the purpose of standing.
- d) M/s. Shree Vardayini Chemical Industries Pvt. Ltd., M/s. A.S. Chemopharma Pvt. Ltd. are small scale companies and have supported the petition.
- e) The combined information for Blue Circle and Swati Petro Products Pvt. Ltd. shows injury being suffered by the domestic industry in the POI. For sake of clarity, injury

statement considering (a) Swati Petro as the domestic industry and (b) Swati Petro and Blue Circles as the domestic industry has also been submitted.

- f) Petitioner alone constitutes a major proportion of total Indian production under the Rules and agreement. There is no benchmark as to what can be considered as a major proportion. WTO jurisprudence and past cases of the DGTR prove that even below 50% is a “major proportion”. Reference is laid on WTO Panel Report on Argentina – Definitive anti-dumping duties on Poultry from Brazil.
- g) The Authority has also considered proportion less than 50% as a major proportion of total Indian production in the past. Interested parties have argued existence of other producers based on website extracts. Website extracts of some of the companies’ shows a long list of products. These named producers are likely to be traders of the subject goods or are producers who merely process saccharin further. Authority may kindly seek relevant information from the concerned department and may also seek information from the alleged producers of subject goods.

### **Submission of other interested parties**

13. Other interested parties have made the following submissions:

- a) Deliberate selection of M/s. Swati Petro Products Pvt. Ltd. as sole petitioner is for magnifying injury to the domestic industry. Petitioners in the previous investigations have opted not to file an application for the present investigation. There has been clear cherry picking for the present investigation only to magnify that M/s. Swati Petro Products Pvt. Ltd. is suffering injury.
- b) Petitioner does not constitute "domestic industry" and has conveniently stated its share as 30% based on only 5 producers. It has ignored the existence of at least 11 other producers identified by respondent. It is highly unlikely that the petitioner constitutes a major proportion of total Indian production. This figure is bound to be lower after consideration of all other Indian producers. Such a share as claimed is insufficient to consider a major proportion.
- c) The Authority is required to seek data of supporters also as filing petition on behalf of the domestic industry by those with limited share along with simple support letters of major producers has become the norm.
- d) Claims on the number of producers was misleading; another oral hearing be granted after determination of standing.
- e) Discriminatory selection of domestic producers – M/s. Blue Circle has a capacity about 5 times that of the petitioner while M/s. Vishnu alone has a capacity twice of the petitioner yet the same have not been considered as petitioners. While it was claimed that other small scale producers are not capable of filing complex proforma, the very same producers were constituent domestic industry in the previous investigations for the subject country.

- f) As regards the eligibility of importer producers, Authority is of the view that it has discretion under the Anti-Dumping Rules but not under the CVD Rules. Such an interpretation would lead to certain anomalies and absurdity which need to be avoided. Definition in the two statutes have to be read in the context of the entire scheme and not in isolation particularly when different terms exist in the two parallel provisions. The word 'shall' under CVD rules have to be read as 'may' to ensure that the interpretation is harmonious.
- g) Decision of the Authority that "the petitioner with its other supporters constitutes major share of Indian production and petitioner meets the requirement of the standing in terms of Rule 2(b)" is legally erroneous. Petitioner itself admits that it constitutes a major share of the Indian production only when the information relating to the supporters is taken into account. Conclusion of the Authority that the petitioner itself "meets the requirement of the standing in terms of Rule 2(b)" is contradictory to the previous statement. It follows that if the major share of the domestic production is constituted of the production of the petitioner as well as the supporters, the domestic industry also ought to be defined taking into account the production of the said supporters.
- h) The Authority has to ensure that the state of the selected domestic industry is reflective of the entire industry of that product in India. "Major proportion" test is not purely mathematical wherein upon reaching a specified number domestic producers would automatically constitute domestic industry. Reference laid on WTO Appellate Body in EC – Fasteners (China) Case wherein it was stated that "a major proportion" should be understood as "a relatively high proportion that substantially reflects the total domestic production" and should have "both quantitative and qualitative connotations." A test that would be purely quantitative would not necessarily ensure that the domestic industry defined on that basis substantially reflects the total domestic production.
- i) In the present investigation M/s. Blue Circle is being considered relevant for one investigation and not for the other even when the period of investigation remains identical for both investigations. Further, the injury determination for both the investigations is also done under the same provision of the Act.
- j) Domestic industry has arbitrarily excluded other Indian producers from the purview of the domestic industry even when they have supported the application. Reference is laid on Trade Notice No. 13/2018 dated 27.09.2018.
- k) Domestic producers have brought forward the most inefficient industry and the state of other Indian producers is different from the domestic industry as is evident from the email dated 21.01.2019.

### **Examination by the Authority**

14. Rule 2(b) of CVD 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 subsidised article, or are themselves importers thereof, in which case such producers shall be deemed not to form part of domestic industry".*

15. The present application was filed by M/s. Swati Petro Products Private Limited and supported by M/s. Shree Vardayini Chemical Industries Private Limited, M/s. Blue Circle and M/s. A.S. Chemopharma Private Limited.
16. During the course of the investigation, M/s. Blue Circle Organics placed on record its complete information vide letter dated 10th August, 2018. The examination of the submissions revealed that M/s. Blue Circle Organics Pvt. Ltd. has imported 23 MT of the subject goods from the subject country. The Rule 2 (b) of the CVD Rules categorically states that producers who are themselves importers of subject goods shall not form part of the domestic industry. The Rules do not allow for a discretionary approach to be taken by the Authority. Therefore, Authority decided that M/s. Blue Circle Organics Pvt Ltd is not part of the eligible domestic industry. A communication to this effect that M/s. Blue Circle is outside the scope of domestic industry for the purpose of the present investigation was sent to all the stakeholders' post oral hearing.
17. As regards, the claim regarding existence of other domestic producers who have not been considered as a part of the investigation, the Authority notes that no evidence has been provided to show that other producers, in fact, produce subject goods. Further, none of the other producers have come forward to either support or oppose the investigation being conducted. In several anti-dumping investigations have been conducted by the Authority including the recently concluded anti-dumping investigation against the imports of subject goods from Indonesia and no evidence was put forward that the domestic market has any other producers of subject goods. In view of the above, the Authority holds that the known domestic producers of subject goods are M/s. Swati Petro Products Private Limited (petitioner), M/s. Shree Vardayini Chemical Industries Private Limited, M/s. Blue Circle and M/s. A.S. Chemopharma Private Limited and M/s. Vishnu Chemicals Ltd.
18. The Authority has determined the share of production by the petitioner in total Indian production. It is seen that the share of petitioner is 56 % excluding M/s. Blue Circle's production from total Indian production. Further the share of petitioner's production is 32 % after including M/s. Blue Circle's production in total Indian production. The Authority notes that the petitioner constitutes "a major proportion" of total Indian production in either situation. Further, the petitioner has neither imported subject goods nor is related to any producer or exporter thereof. It is also noted that the petition has been supported by M/s. Shree Vardayini Chemical Industries Private Limited, M/s. Blue Circle and M/s. A.S. Chemopharma Private Limited. These supporters have also submitted their injury information.

19. In view of the above, the Authority holds that the petitioner satisfies the standing requirement in terms of the Rule 6(3) of the CVD Rules and constitutes the domestic industry in terms of Rule 2(b) of the CVD Rules.

**E. MISCELLANEOUS SUBMISSIONS**

**Submissions made by domestic industry**

20. The following miscellaneous submissions have been made by the domestic industry:

- (i) Undue confidentiality has been claimed by the exporter. M/s. Shanghai Fortune Chemical Co. Ltd. is also known as “M/s. Shanghai Fuxin Chemical Co”. This fact was however not disclosed in the questionnaire response. M/s. Shanghai Fuxin Chemical Co. further has an affiliated company in the Xinsi community, known as “Shanghai Fuxin Chemical Xinsi Branch”, which has a different address to the headquarters and is involved in trading of the subject goods.
- (ii) M/s. Shanghai Fortune Chemical Co. Ltd has been acquired by M/s. Kaifeng Xinghua Fine Chemical Co. Ltd, which in turn, is a subsidiary of the Pingmei Shenma Group.
- (iii) The company's factory address was relocated in 2009, to the "Shanghai Chemical Industry Park" which is an industrial zone, primarily specializing in petrochemical and chemical businesses and is operated by Shanghai Municipality on behalf of the Central Government.
- (iv) Exporter has preferred to completely avoid answering any of the issues raised by the petitioner domestic industry.
- (v) On allegations made in context of the initiation of the investigation being bad in law, it is submitted that the Authority on the basis of prima facie evidence submitted to it initiated the investigation against the subsidized imports of the subject goods from the subject country. However, the same is only on the basis of the prima facie evidence submitted to the Authority. It is for the other interested parties contending the claim to prove otherwise by way of evidence.
- (vi) The domestic industry has claimed confidentiality in accordance with Rules and trade notices issued and the importer has practically given nothing in its questionnaire response. Complete blank pages have been provided by them. The importer claimed that the product sold by the domestic industry has different specifications and does not match requirements of the user industry. However, the alleged differences have been treated as confidential without any justification or rational reasons.
- (vii) Information submitted with the Authority is within the purview of the Rules and the investigation has been initiated by the Authority only after it satisfied itself on the sufficiency of the claims of confidentiality. It cannot be said that

excessive confidentiality has been claimed when the exporter itself has claimed excessive confidentiality in its own response filed.

- (viii) The importer has practically given nothing in its questionnaire response. Complete blank pages have been provided by them. Importer claimed that the product sold by the domestic industry has different specifications and does not match requirements of the user industry. Alleged differences have been treated as confidential without any justification or rational reasons.
- (ix) The performance of the domestic industry has undergone significant change from the previously concluded SSR investigation. The domestic industry is suffering material injury in the present POI on account of subsidized imports.
- (x) Vide letter dated 13<sup>th</sup> November, 2018, the domestic industry had already placed revised import statistics on the basis of transaction-wise import data of DGCI&S. The application was initially filed on the basis of the DGCI&S data procured up to the period January, 2018 which was further annualized for the period up to March, 2018 to cover the POI. Upon procurement of the DGCI&S data for the entire POI the same was duly filed vide the above mentioned letter. The domestic industry circulated the same data already filed with the Authority before the oral hearing. Even the revised data does not show any material change from the original data filed.

#### **Submissions made by other interested parties**

21. The following miscellaneous submissions have been made by other interested parties:

- a) EQR filed by respondent is complete and accurate and no subsidies were availed by the respondent.
- b) Initiation is bad in law as the data provided by the petitioner is not accurate and adequate. The investigation was initiated on the basis of incorrect and self-serving information without satisfying the requirements of rule 6.
- c) Revised data filed on 21st January is at a belated stage while no explanation provided for the difference between import data filed earlier and the revised data for the period 2014-15, 2015-16 and 2016-17. Revised data on economic parameters of the domestic industry has not been provided. Such non provision of data is a violation of Rules 6.1, 6.2 and 9.
- d) The anti-dumping duty on the subject goods has already been in force for over 10 years and the domestic industry has received adequate protection. The previous ADD was in force till 12<sup>th</sup> January 2018 and it is not understandable how within a span of six months domestic industry has started suffering injury again.
- e) Excessive confidentiality has been claimed - Information relating to total Indian Demand; Information pertaining to the market share; Information pertaining to the production and sales of other Indian producer; Information pertaining to Costing of the applicant industry; costing information in the petition. Industry is required to

furnish the non-confidential summary of such costing information; Certain other key information has been kept confidential setting new low standards of unwarranted and illegal claims of confidentiality.

### **Examination by the Authority**

22. Various submissions made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined and addressed as follows:

- a) The Authority initiated the present investigation after satisfying itself regarding the sufficiency of the prima facie evidence provided by the domestic industry. Further, elaborate discussions and consultations were held with the applicant as well as the Embassy of the subject country and upon satisfying itself on prima facie basis as regards to the existence of subsidies in China PR which were resulting in the unfairly prices and subsidized imports causing injury to the domestic industry the Authority initiated the present investigation.
- b) As regards to the claims of excessive confidentiality, the Authority notes that the 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 where warranted and such information has been considered as confidential and not disclosed to other interested parties. The parties providing information on confidential basis were directed to provide sufficient non-confidential version of that information.
- c) As regards the contention on the existence of other related parties, the exporter could not provide any evidence to counter the domestic industry's claim.
- d) As regards the contention that anti-dumping duty was in existence for a period of 10 years and thus the claimed injury is incomprehensible, the Authority notes in this regard that the POI covered in the earlier SSR anti-dumping investigation against imports from China was 'July 2015 to September 2016' and the POI considered in the present investigation is completely different *i.e.*, 'April 2017 to March 2018'. The Authority has independently investigated the present petition and facts and circumstances of the present investigation is unique as well as different than the previous ADD investigations.

### **F. ASSESSMENT OF SUBSIDY AND SUBSIDY MARGIN – METHODOLOGY AND PARAMETERS**

23. The petition filed by domestic industry provided prima facie evidence of existence of countervailable subsidies in the subject country. GOC was invited for consultation, which was held on 20<sup>th</sup> July, 2018 in New Delhi. The claims of the petitioners were disputed by GOC, however, no documentary evidence showing either withdrawal of these schemes or their non-applicability to the producers or exporters of saccharine in China PR was put as

record. Post consultations, the GOC filed the written submissions which have been summarised as below:

- a) *The petition failed to provide production data of the PUC such as the total number of producer of the PUC, the number of supporters as well as the opponents etc. Therefore, the standing of the petitioners cannot be established.*
  - b) *The petition failed to provide authoritative data of relevant economic factors and indices having a bearing on the state of the industry to prove injury and threat of injury, such as capacity, production, cost, profit, employment, productivity, wages, inventory, market share, utilization of capacity, demand, return on capital, etc. Since the petition failed to adduce sufficient evidence, the injury analysis is seriously flawed.*
  - c) *It is also mentioned by GOC that some of the importers of PUC in the petition are from the industry of the welded stainless steel pipes and tubes of India. Therefore, the CVD will hurt these importers as well as the development of the welded stainless steel pipes and tubes industry, and cause adverse effects on Indian national economy.*
  - d) *The petitioner failed to provide evidence of actual existence, amount and specificity of subsidy programs. As such, the petition could be evidently concluded as “simple accusation without substantiation”.*
  - e) *The anti-subsidy cases quoted in the petition were based on Adverse Fact Available, “AFA”, or Best Information Available, “BIA” and do not reflect the reality. It is also noted that there is WTO’s ruling in DS379, the determination in one case cannot be deemed as reasonable and sufficient explanation of another case. Therefore, the citations in current petition cannot be deemed as anti-subsidy evidences for initiating investigation.*
  - f) *Certain alleged programs are not administered by public bodies. A commercial entity cannot possibly perform governmental functions while conducting commercial activities, and thus could not be the party conferring subsidies.*
  - g) *There are certain Chinese laws, regulation and policies used as evidence of allegation have expired or do not exist.*
  - h) *GOC also submitted comments on some specific alleged subsidy programs. As a whole, these comments contain submissions relating to para (d) to (g) above. It is further noted that initiation notification states Program No. 52 as ‘Raw material for less than adequate remuneration /inputs/services’ while GOC has instead given specific comments for “*Provision of Electricity for Less than Adequate & Fair Market Value Remuneration,*” GOC has not given any specific submission with respect to the above said alleged program relating to raw material.*
24. No documentary evidences in support of above submissions have been provided to the Authority by GOC.
25. Post initiation, the GOC and producers/exporters from China PR were advised to file response to the questionnaire in the form and manner prescribed and were given adequate

time and 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.

26. The GOC has not filed any questionnaire response, M/s Shanghai Fortune Chemical Co. Ltd. (SFCCL), China PR had filed its questionnaire response. The questionnaire response filed by the said exporter was examined and the Authority holds that the same cannot be accepted for the following reasons:
- a) The company has stated that its legal structure is Private Limited Company. While it has been found in its EQR that it is a “Limited Liability Company (joint venture between Taiwan, Hong Kong and Macau and China)” and the details of the joint venture partners (including the information whether such partner is privately-owned or state-owned) has not been revealed in the EQR.
  - b) The corporate ownership structure given in the EQR is not complete, as the details of shareholders of its parent company, M/s. Fortune Knitting Factory Ltd. (a foreign enterprise who holds 96% shares in SFCCL) have not been mentioned.
  - c) In its EQR, the company has not provided in English translation the name of a raw material which alone accounts for 57% of the total turnover of the company. Moreover, the name of a Calcium Carbonate supplier has not been provided in English translation. Further, the EQR states “F1” as a raw material of the PUC. However, no relationship between F1 and saccharin could be found by the Authority from any source including web search.
  - d) Thus, insufficient and contradictory information in respect of related parties have been presented to the Authority by M/s. SFCCL.
  - e) The company has exported only \*\*\*, \*\*\*, and \*\*\* MT during 2015, 2016 and 2017 respectively. Therefore, the export volume of the subject company is not representative and the price thereof cannot be relied upon having regard to the volume and price of imports in India.
  - f) The company has mentioned in its EQR that it is providing VAT tax return and corporate income tax return of 2017. While actually it has supplied VAT tax return only for the month of Dec-2017 and the corporate income tax return only for the fourth quarter of 2017. Moreover, the submitted VAT tax return states the industry to be “tyre manufacturing” while the corporate income tax return in Exhibit-13 states the industry to be “sugar industry”.
  - g) The average export price of SFCCL is more than double the average export price of subject goods from China during the POI as per the DGCI&S data.
27. There is no other response from any other Chinese producer’s exporters.
28. The following submissions have been made by the domestic industry:

- a) The domestic industry has contended that the GOC is providing countervailable subsidies to its producers/exporters of the subject goods and has provided prima facie evidence of existence of such subsidy schemes in terms of legislation and policy documents. The domestic industry has identified existence of several countervailable subsidy schemes in China PR, within the meaning of ASCM and Indian Laws, Rules and have contended that the producers/exporters of subject goods in China PR have benefited from such subsidies.
- b) The programs of the GOC and other Public Bodies in China PR constitute a subsidy because of the following reasons:
  - (i) There is a financial contribution by Government or a public body, where the Government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), Government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits), Government provides goods or services other than general infrastructure, or purchases goods;
  - (ii) Benefit is thereby conferred on the Chinese producers/ exporters of the PUC; and
  - (iii) The program is specific within the meaning of Indian Rules and ASCM.
- c) Relevant Chinese laws and regulations, WTO reports, various Government reports, media reports and independent studies and analysis, findings of other investigating agencies in their anti-subsidy investigations clearly constitute sufficient evidence of the existence of countervailable subsidy programs in China PR. These evidences were made available by the petitioner to all interested parties, including the GOC and the known producers and exporters in China PR.
- d) For the purpose of this investigation, the "Government of People's Republic of China" covers all levels of government, *i.e.* Federal, Central, Provincial, Regional or Local Government such as Municipal or City or Township Government Village or Local legislative, administrative or judicial agencies/bodies; and State-owned enterprises, operating under the direct or indirect control or influence of the GOC which operate as 'public bodies' within the meaning of the term as defined in the ASCM.
- e) As per the petition the Chinese producers/exporters of the subject goods have received countervailable subsidies under the following programs at various levels of Government. The same have been classified under following six broad categories:
  - I. Grants
  - II. Tax and VAT incentives
  - III. Provision for Goods and Services
  - IV. Loans
  - V. Export Credit financing
  - VI. Provision of Goods and Services

### **Subsidy schemes as considered in the notice of initiation**

29. In the notice of initiation, the Authority identified the following potential CVD program that may be relevant to the present investigations:

#### **I. Identified Programs in the Form of Grants in China PR**

- i. Program No. 1: The State Key Technology Renovation Projects Fund
- ii. Program No. 2: Famous Brands Program
- iii. Program No. 3: Grants for Anti-Dumping Investigations
- iv. Program No. 5: Export Assistance Grant
- v. Program No. 6: Grants for Listing Shares
- vi. Program No. 7: Funds for Outward Expansion of Industries in Guangdong Province
- vii. Program No. 8: Grants provided through the Provincial Fund for Fiscal and Technological Innovation
- viii. Program No. 9: Various grants provided to Fuyang City
  - a. Grant for Enterprises Paying Over RMB 10 Million in Taxes
  - b. Grants under the Export of Sub-Contract Services Program
  - c. Grants under Excellent New Products/Technology Award
  - d. Investment grants from Fuyang City Government for key industries
  - e. Grants for Enterprises Operating Technology and Research and Development Centers
  - f. Local and Provincial Government Reimbursement Grants on export Credit Insurance Fees
  - g. Initial Public Offering (IPO) Grants from the Hangzhou Prefecture and the City of Fuyang (Zhejiang Province) & (Anhui Province)
- ix. Program No. 10: International Market Fund for Export Companies
- x. Program No.13: Small and Medium-sized Enterprise Support Funds
- xi. Program No. 14: Funds for supporting technological innovation for the technological small and medium-sized enterprises.
- xii. Program No. 15: Subsidies Provided in Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area
- xiii. Program No. 16: State Special Fund for Promoting Key Industries and Innovation Technologies
- xiv. Program No. 17: Enterprise Development Funds
- xv. Program No. 18: Direct Government Grants given by Jiangsu Province

- xvi. Program No. 19: Grants under the Science and technology Program of Jiangsu Province
- xvii. Program No. 21: Environment Protection Award (Jiangsu)
- xviii. Program No. 22: Changzhou Qishuyan District Environmental Protection Fund (Jiangsu)
- xix. Program No. 23: Changzhou Technology Plan (Jiangsu)
- xx. Program No. 24: Enterprise Innovation Award of Qishuyan District (Jiangsu)
- xxi. Program No. 25: Support Funds for Construction of Project infrastructure
- xxii. Program No. 26: Administration Commission of LETDZ (Jiangsu Province)
- xxiii. Program No. 27: Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin
- xxiv. Program No. 28: Enterprise Technology Centers (e.g. Tianjin City and Jinnan District)
- xxv. Program No. 29: Award for Maintaining the Growth by Beijing Governments
- xxvi. Program No. 30: Award by Beijing Technology Trading Encouraging Centre

## **II. Identified in form of Tax and VAT incentives**

- xxvii. Program No. 33: Two Free/Three Half Program for Foreign Invested Enterprises
- xxviii. Program No. 34: Tax Reductions for Export-Oriented FIEs / Income tax benefit for FIEs based on geographical location
- xxix. Program No. 35: Tax Offsets for Research and Development at FIEs
- xxx. Program No. 36: Income Tax Refund for Re-investment of FIE Profits by Foreign Investor
- xxxi. Program No. 38: Preferential Income Tax Policy for Enterprises in the Northeast Region
- xxxii. Program No. 39: Preferential Tax exemptions for Central & Western Regions
- xxxiii. Program No. 40: Tax Policies for the deduction of Research and Development (R&D) expenses
- xxxiv. Program No. 42: VAT Refunds for FIEs Purchasing Domestically Produced Equipment
- xxxv. Program No. 43: VAT and Tariff Exemptions for Purchases of Fixed Assets
- xxxvi. Program No. 44: VAT and Tariff Exemptions on Imported Equipment for Favored Industries

- xxxvii. Program No. 45: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)
  - xxxviii. Program No. 46: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
  - xxxix. Program No. 47: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
  - xl. Program No. 48: Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
  - xli. Program No. 49: Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
  - xlii. Program No. 50: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas
- III. Identified in form of provision for Goods and Services**
- xliii. Program No. 52: Raw material for less than adequate remuneration /inputs/services
- IV. Identified in form of loans**
- xliv. Program No. 53: Policy Loans
- V. Identified in form of Export Credit financing**
- xliv. Program No 55: Export Credit Subsidy Programs
  - xlvi. Program No. 56: Export Seller's Credits from Export-Import Bank of China-Credit Borrowing
  - xlvii. Program No 57: Export Buyer's Credit from Export-Import Bank of China
  - xlviii. Program No.58: Export Credit Insurance from the China Export and Credit Insurance Corporation
  - xlix. Program No. 59: Preferential Export Financing from the Export-Import Bank of China.
  - l. Program No 60: Provision of Credit Lines
  - li. Program No. 61: Preferential loans provided by the Export-Import Bank "going out (global)" strategy for outbound investment
- VI. Identified in form of equity infusions**
- lii. Program No. 64: Debt for equity swaps
  - liii. Program No. 65: Equity infusions

liv. Program No. 66: Unpaid dividends

30. After the consultation and examination of the schemes as provided in the petition, it was noted that the petitioner has provided insufficient evidence with regard to the following schemes showing any linkage to the subject goods or to the producers of subject goods. These schemes have therefore been dropped from the scope of present investigation at the stage of initiation itself.

**I. Identified Programs in the Form of Grants in China PR**

- i. Research & Development (R&D) Assistance Grant*
- ii. Project funds allowance*
- iii. Special Fund for Energy Saving Technology Reform*
- iv. Superstar enterprise grant*
- v. The Clean Production Technology Fund*
- vi. Grants for High and new technology industries*

**II. Identified in form of Tax and VAT incentives**

- i. Preferential tax policies for companies that are recognized as high and new technology companies/ Enterprise Income Tax Reduction for High and New Technology Enterprises*
- ii. Tax Preference Available to Companies that Operate at a Small Profit*

**III. Identified in form of provision for Goods and Services**

- iii. Provision of Electricity for Less than Adequate & Fair Market Value Remuneration*

**IV. Identified in form of loans**

- i. Credit Loan*
- ii. Deed Tax (restructuring)*

**V. Identified in form of equity infusions**

- xii. Dividend exemption between qualified resident enterprises*

**Examination of Actionability of subsidies for imposition of Countervailable measures**

**Subsidy schemes earlier held actionable in any of the previous investigations by the Authority and GOC has not further reported any material change after such previous determinations:**

31. The Authority had earlier conducted investigations wherein countervailability of a number of schemes were examined and it was found that a number of schemes/ program are

actionable (countervailable if any quantifiable benefit is thereby availed by the producer/ exporter) subsidies/ programs as listed below:

- i. Program No. 2: Famous Brands Program
- ii. Program No. 3: Grants for Anti-dumping Investigations
- iii. Program No. 5: Export Assistance Grant
- iv. Program No. 6: Grants for Listing Shares
- v. Program No. 7: Funds for Outward Expansion of Industries in Guangdong Province
- vi. Program No. 8: Grants provided through the Provincial Fund for Fiscal and Technological Innovation
- vii. Program No. 9: Various grants provided to Fuyang City
  - a) Grant for Enterprises Paying Over RMB 10 Million in Taxes
  - b) Grants under the Export of Sub-Contract Services Program
  - c) Grants under Excellent New Products/Technology Award
  - d) Investment grants from Fuyang City Government for key industries
  - e) Grants for Enterprises Operating Technology and Research and Development Centers
  - f) Local and Provincial Government Reimbursement Grants on export Credit Insurance Fees
  - g) Initial Public Offering (IPO) Grants from the Hangzhou Prefecture and the City of Fuyang (Zhejiang Province) & (Anhui Province)
- viii. Program No. 10: International Market Fund for Export Companies
- ix. Program No. 13: Small and Medium-sized Enterprise Support Funds
- x. Program No. 14: Funds for supporting technological innovation for the technological small and medium-sized enterprises.
- xi. Program No. 15: Subsidies Provided in Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area
- xii. Program No. 16: State Special Fund for Promoting Key Industries and Innovation Technologies
- xiii. Program No. 33: Two Free/Three Half Program for Foreign Invested Enterprises
- xiv. Program No. 34: Tax Reductions for Export-Oriented FIEs / Income tax benefit for FIEs based on geographical location
- xv. Program No. 38: Preferential Income Tax Policy for Enterprises in the Northeast Region
- xvi. Program No. 39: Preferential Tax exemptions for Central & Western Regions

- xvii. Program No. 40: Tax Policies for the deduction of Research and Development (R&D) expenses
  - xviii. Program No. 42: VAT Refunds for FIEs Purchasing Domestically Produced Equipment
  - xix. Program No. 43: VAT and Tariff Exemptions for Purchases of Fixed Assets
  - xx. Program No. 45: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)
  - xxi. Program No. 46: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
  - xxii. Program No. 47: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
  - xxiii. Program No. 50: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas
  - xxiv. Program No. 52: Raw material for less than adequate remuneration /inputs/services
  - xxv. Program No. 53: Policy Loans
  - xxvi. Program No. 64: Debt for equity swaps
  - xxvii. Program No. 65: Equity infusions
  - xxviii. Program No. 66: Unpaid dividends
32. The GOC has not brought forward or contested any changes in these schemes after these were last examined by the Authority in the matter of Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products (Final Finding dated 04.07.2017) and thereafter in the matter of New Pneumatic Tyres for Buses and Lorries (Final Finding dated 25.03.2019). The Authority holds them actionable for the present investigation, however, the Authority is not able to quantify/compute the quantum of subsidy availed as the domestic industry has not quantified Subsidy margins at any stage of this investigation neither there is any acceptable questionnaire response nor there is any other relevant publicly available information with regard to the availment of benefits under these schemes. Therefore, no countervailing measure (Subsidy margin) has been quantified in these schemes.

**Subsidy schemes earlier held actionable in certain previous investigations by the Authority and GOC has further reported material changes after such previous determinations:**

33. With regard to certain schemes, the GOC informed that there are material changes with regard to non-existence/ expiry/ rescinding of these schemes in the CVD investigation of “New Pneumatic Tyres for Buses and Lorries” from People’s Republic of China”. The domestic industry has not brought any evidence to counter such claims of GOC. Therefore,

no further examination including Subsidy margin has been considered in these schemes. These schemes are listed as below:

- xxix. Program No. 1: The State key technology Renovation Projects Fund
- xxx. Program No. 35: Tax Offsets for Research and Development by Reduced Tax Rate for Productive FIEs Scheduled to operate for a period not Less Than 10 Years
- xxxi. Program No. 36: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
- xxxii. Program No. 48: Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
- xxxiii. Program No. 49: Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas

**Subsidy schemes never examined with respect to actionability in any of the previous investigations by the Authority:**

34. The domestic industry in the present petition has alleged the existence of certain actionable schemes in China PR which have not been examined by the Authority in the past. However, the purpose of calculation of countervailing measures under these actionable schemes/ programs, the domestic industry has not quantified Subsidy margins at any stage of this investigation nor there is any acceptable questionnaire response nor there is any other relevant publicly available information with regard to the availment of benefits under these schemes. Thus, in the absence of any information required for quantification of countervailing measure (Subsidy margin) under these schemes, the Authority considers that examination of actionability of a program is merely an academic exercise. Therefore, the Authority has not examined actionability of these programs. These programs are as below:

- xxxiv. Program No 17: Enterprise Development Funds
- xxxv. Program No 18: Direct Government Grants given by Jiangsu Province
- xxxvi. Program No 19: Grants under the Science and technology Program of Jiangsu Province
- xxxvii. Program No 21: Environment Protection Award (Jiangsu)
- xxxviii. Program No 22: Changzhou Qishuyan District Environmental Protection Fund (Jiangsu)
- xxxix. Program No 23: Changzhou Technology Plan (Jiangsu)
  - xl. Program No 24: Enterprise Innovation Award of Qishuyan District (Jiangsu)
  - xli. Program No 25: Support Funds for Construction of Project infrastructure
  - xlii. Program No 26: Administration Commission of LETDZ (Jiangsu Province)

- xl.iii. Program No 27: Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin
- xl.iv. Program No 28: Enterprise Technology Centers (e.g. Tianjin City and Jinnan District)
- xl.v. Program No 29: Award for Maintaining the Growth by Beijing Governments
- xl.vi. Program No 30: Award by Beijing Technology Trading Encouraging Centre
- xl.vii. Program No 44: VAT and Tariff Exemptions on Imported Equipment for Favored Industries
- xl.viii. Program No 55: Export Credit Subsidy Programs
- xl.ix. Program No 56: Export Seller's Credits from Export-Import Bank of China- Credit Borrowing
  - 1. Program No 57: Export Buyer's Credit from Export-Import Bank of China
  - li. Program No 58: Export Credit Insurance from the China Export and Credit Insurance Corporation
  - lii. Program No 59: Preferential Export Financing from the Export-Import Bank of China.
  - liii. Program No 60: Provision of Credit Lines
  - liv. Program No 61: Preferential loans provided by the Export-Import Bank "going out (global)" strategy for outbound investment

**Subsidy schemes, whether alleged or found otherwise, where CVD quantification has been determined for imposition of countervailable measures:**

- 35. The schemes which have been found countervailable earlier in other investigation and domestic industry has alleged subsidy have been examined for the present investigation.
- 36. The domestic industry has provided quantification of benefits under these schemes on the basis of publicly available information. Further, the Authority has evaluated all the relevant material available with it for quantification of the schemes. The Actionability of these subsidies have been discussed under the respective paragraphs herein below.

**Grants**

- 37. The petitioner has provided the annual report of the M/s. Pingdingshan Tianan Coal Industry Co. Ltd., which is the parent company of M/s. Kaifeng Xinhua Fine Chemical Co. one of the non-responding producer/ exporter of the PUC in the present investigation. Analysis of this annual report shows that the company has received subsidies from the Government Authorities in China under the head of "Government Subsidies" for projects involving Government Grants. Therefore, the Authority holds that it is a financial contribution in the form of discretionary government grants by a public body (by the Govt. authorities, as reported in the annual report under the head "Government subsidies")

within the subject country conferring a benefit to the company concerned, and therefore is specific. Hence, a benefit has been specifically conferred onto the above said company, as reflected in the annual report of the parent company. Accordingly, the subsidy margin under the head of ‘Grants’ reported in the annual report has been considered. For the purpose, total amount reported in the annual report of the parent company under the head “Govt. subsidies” has been considered as the benefit conferred. Further, since the benefit has been reported in the annual report of the parent company, this benefit conferred has been apportioned over the gross turnover of the parent company. The amount of CVD margin thus determined is 0.30%.

### **Tax incentives and VAT**

38. The GOC and its agencies administer a number of tax programs, which provide tax exemption/ reduction/ remission to certain categories of enterprises based on their location or nature of the enterprises or technological innovation. It is noted that the program numbers ‘33 to 50 except 37 and 41’ provide similar tax benefits as per the income tax law of China PR. Further, the countervailability of the programs have already been analyzed earlier by the Authority in the past CVD investigations. Therefore, the Authority has relied upon the past determinations as the best available information for the present investigation. Accordingly, the subsidy margin under this head has been quantified as 2.14%.

### **Provision of Goods & Services for Less Than Adequate Remuneration (LTAR)**

#### **Land-use right**

39. The Authority notes that earlier the existence of countervailable subsidies in the form of land use rights in the CVD investigation of New Pneumatic Tyre was examined in detail. The Authority noted that GOC is providing land use rights to certain enterprises at less than adequate remuneration. Provision of land use rights at less than adequate remuneration amount to financial contribution in the form of provision of services. The Authority also observed that the land use rights provided at less than market rates amounts to conferring of benefit. This subsidy program is also specific because it is limited to certain type of enterprises in China PR. Therefore, the Authority has held that the provision of land use rights by the GOC is a countervailable subsidy program. Accordingly, the subsidy margin under this head has been quantified as 6.37%.

#### **Raw materials**

40. The Authority notes that the financial contribution arises, if raw materials becomes available to a business enterprise at less than adequate remuneration under a policy or program of the Government or a public body. In such a situation, benefit is conferred on the recipient of goods by virtue of access to raw materials at less than adequate remuneration. Such subsidy is also specific because it is limited to the enterprise which

uses such raw material/ goods. Thus, the Authority holds that the raw materials availed at less than adequate remuneration is an actionable subsidy.

41. In view of non-cooperation by the Chinese producers and GOC, the Authority has considered relevant international prices of raw materials as benchmark prices. Further, the consumption norms and actual purchase price of the major raw materials involved in producing the PUC has been considered as per the best information available with the Authority.
42. The difference between the benchmark cost of raw material so determined and actual purchase cost of specific raw materials have been considered as the countervailable benefit to the Chinese producers/ exporters. Accordingly, the Subsidy margin on account of 'provision of raw material at less than adequate remuneration' has been quantified as 73.52 %.

### **Utilities (Electricity)**

43. The Authority in the previous investigations noted that GOC is providing electricity to enterprises as actionable/ countervailable subsidy at preferential prices and at less than adequate remuneration. Further, the GOC has not provided any evidence to show that this program in any of its form does not exist or does not confer countervailable subsidy. Accordingly, the Authority holds that the subsidy under this program is an actionable subsidy.
44. In the absence of cooperation from the GOC and the Chinese producers/ exporters, the Authority has quantified the subsidy margin based on the best fact available. The subsidy margin thus quantified is 2.74%.
45. The Authority sought information from the GOC regarding the specific companies that produced the input products/ raw materials/ other goods & services that saccharin producers along with their respective cross-owned companies purchased during the POI. Specifically, information was sought from the GOC that would allow *determinatio* whether such producers or service providers are "public bodies" within the meaning of the Act or Rules. However, GOC did not file the questionnaire response in the present investigation, or given any other information/submission to evaluate whether the privately-owned suppliers of goods or service providers are "public bodies" within the meaning of the Rules. In view of above, the Authority in the present investigation holds that the evidence provided by the applicant shows that the Chinese producers/ exporters are eligible to receive a number of subsidies, as discussed in detail in the succeeding paragraphs, granted by the Government of China or "public bodies" within the meaning of the Act and Rules. The other Authorities have taken similar stand in CVD investigations against China PR. The alleged subsidies consist of direct transfer of funds, 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.

## **Conclusion**

46. Since there is evidence of actionable subsidies and Subsidy margins have been quantified and assessed by the Authority, these schemes are considered for the purpose of determination of countervailable measures in the present investigation.

## **G. INJURY ASSESSMENT AND CAUSAL LINK**

### **Submission made by the Domestic Industry**

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

- (i) Demand for the PUC has increased over the injury period.
- (ii) Subsidized imports from the subject country increased in absolute terms in POI as compared to the previous years. While there was a decline in imports from subject country during 2015-2016 as compared to base year; the imports increased thereafter, with a sharp surge during the POI.
- (iii) Imports in relation to production and consumption have increased significantly in the POI. This is despite Indian industry having enough capacity to meet entire Indian demand.
- (iv) Import price from subject country declined significantly in the POI without corresponding decline in the raw material costs. This has been the primary reason for the injury caused to the domestic industry.
- (v) As a result of the decline in import price, there was significant increase in imports in the POI.
- (vi) Landed price of imports from subject country has been below the net sales realization and even below the cost of production of the domestic industry. Imports are undercutting the prices of the domestic industry.
- (vii) During 2016-17, cost of sales and selling price declined, wherein the decline in costs was more than the decline in selling price. During the POI cost declined further but decline in selling price was more significant than the decline in cost. Domestic industry was compelled to reduce the selling price during this period as the landed value declined significantly, even below the level of selling price and cost of sales. This establishes that declining landed value of imports has forced the domestic industry to keep its prices depressed during the POI to retain the market share.
- (viii) Capacity of the domestic industry remained same throughout the injury period. The production and sales of the domestic industry increased over the injury period. DI maintained and increased their sales volumes but such sales were made much below the cost of production.

- (ix) Increase in production has not been supported by proportionate increase in sales. Resultantly, inventories with the domestic industry increased significantly.
- (x) Market share of the DI as a whole declined significantly in the POI. This is when the domestic industry is trying to increase its sales at the cost of prices.
- (xi) Profits improved slightly in 2015-16, thereafter they turned negative in 2016-17 and the losses intensified significantly during the POI. Cash profits also showed the same trend as that of profits and turned significantly negative in the POI. ROCE improved in 2015-16, however declined again in the POI and became negative. The significant decline in import prices has led to significant deterioration in profits, cash profits and ROCE.
- (xii) Inventories have been insignificant in the past. However, they increased considerably in the POI with surge in imports from the subject country.
- (xiii) Employment level has increased over the injury period and the wages paid have also increased over the injury period.
- (xiv) Landed value of imported material from subject country is below the selling price of the domestic industry. The only factor governing the domestic industry prices are the import prices of the subject goods and the cost of production of the domestic industry.
- (xv) The existing capacity is largely unutilized. With current capacity being unutilized and losses being incurred, the ability to raise capital has weakened.
- (xvi) Growth during the injury period in respect of profits, PBIT, cash profits and return on investments was negative because of subsidized imports.
- (xvii) Imports are further threatening material injury to the domestic industry. Imports of the subject goods have increased significantly in investigation period as compared to the preceding year. This clearly shows threat of further increase in imports. Such rise in the import volumes coupled with unfair prices will decimate the domestic industry.
- (xviii) Imports prices from subject country have declined significantly in POI without corresponding decline in cost of the subject goods. Imports are undercutting the prices of the domestic industry and are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports. The DI has claimed that, it is seen from the ADD investigations concluded in the past that the price undercutting levels of the subject imports remained significantly high in the investigation period but declined significantly in the period of review, thereby evidencing the manipulation of export prices by the exporting producers then for not wanting the extension of the then ADD. Post cessation of the then duty undercutting levels have risen significantly and have in fact been the highest in the entire investigation period.

- (xix) In view of the fact of significant capacity available with the producers in the subject country, it can fairly be assumed that the foreign producers can scale up production in a short period.
- (xx) The subject country producers have had a history of exporting the subject goods at low prices and in significant volumes which is likely to intensify further in case of non-imposition of duty.
- (xxi) Subject country has significant freely disposable capacity which is being directed to India. The previously concluded sunset review investigation on subject goods, noted the fact of excess capacity and high export orientation of the producers in the subject country.
- (xxii) For the purpose of determining threat of material injury, only the injurious imports of the subject goods from the subject country should be considered.
- (xxiii) While calculating injury margin, the Authority should consider only those transactions that are below non injurious price for calculation of injury margin. Reference is also made to the Hon'ble Tribunal's order in the matter of *Kothari Sugars & Chemicals Limited versus Designated Authority* which allowed considering transactions above NIP to calculate injury margin.
- (xxiv) The domestic industry considered in the sunset review investigation was incurring losses till 2014-15 and showed profits in 2015-16 and POI of the SSR case (*i.e.*, July 15-September 16). The POI of SSR case only has 6 months in common of 2016-17. Monthly imports enclosed with the submission will show that import prices were at the peak in the POI considered in the sunset review investigation. Import prices reached up to the level of Rs 700/kg during that period and import prices witnessed decline in H2 of 2016-17 and declined to Rs 580 in the month of March 2017. Thus import prices declined so significantly that the petitioner also had to reduce its prices below costs level to maintain market share which resulted into losses. Same trend may be seen from the data filed by the two supporters. M/s. Vardayini incurred losses in 2016-17 and the profits of M/s. AS Chemopharma declined by more than 50%!!
- (xxv) Further, the performance of domestic industry with the previous SSR should also be seen as the same would then show that the domestic industry is suffering material injury in the present POI on account of subsidized imports.
- (xxvi) No other factors apart from the subsidized imports are causing injury to the domestic industry.
- (xxvii) Performance of the domestic industry has undergone significant change from the previously concluded SSR investigation. The domestic industry is suffering material injury in the present POI on account of subsidized imports. Thus, it cannot be said that the duty imposed for 10 years has served its intended purpose. Reliance is laid on the comparison of the performance of the domestic industry over the years.

## Submission by other interested parties

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

- (i) M/s. Swati was into losses and suffering from poor ROCE in the POI of SSR – II. While the ROI of the then domestic industry was positive (3 petitioners) it has declined and is negative for 2016-17 and POI in the present investigation. The injury is due to inherent factors specific to M/s. Swati only.
- (ii) The Authority should bring forward the data of the remaining 60-70% of the major producers and consider their costs and data for determination of NIP. Injury determination should be based on data of the domestic market rather than the data that represents only a part of the domestic producers of the like product
- (iii) Data of petitioner alone is insufficient to reflect the overall economic health of the domestic industry.
- (iv) DI is not suffering any injury – Fair comparison of import volume in POI with import volume in previous years is not possible: Imports in previous years were suppressed due to anti-dumping duties
- (v) There has been an improvement in economic parameters of M/s.Swati Petro Products Pvt Ltd.
- (vi) Absence of Causal Link between Subsidized Imports and Injury – injury being suffered only by Swati; Comparison of data filed in SSR would show that petitioner was suffering losses even when ADD was in force; The landed value of goods from Indonesia is comparable to landed value of the goods from the present subject country, injury being caused due to dumped imports from Indonesia.
- (vii) Revised import statistics filed have been contradictory to the data filed earlier as despite the addition of two months in the revised data the import volumes have decreased. Imports from other countries shows decline. Even the data for previous years is also different. This has been done to achieve different outcomes in different investigation (with reference to the Indonesia Case).
- (viii) Complete imports data was not provided and has thus precluded us from making effective comments and assist the Authority accordingly.
- (ix) Because of not taking other producers into consideration volume and sales information is also unreliable.
- (x) The Authority should analyse performance of other Indian producers before concluding on injury. Reference is laid on the WTO Panel in China PR – Anti-Dumping and Countervailing Duty Measures on Broiler Products from United States wherein it was noted that an investigating Authority is not allowed to ignore the situation of other domestic producers in its injury determination.
- (xi) There is no injury to the domestic industry. Comments are limited to the data provided by the domestic industry in the petition as the data (import) provided

through mail dated 18.01.2019 was provided on the brink of hearing. Further revised Proforma IV A was not filed showing imports in relation to production, consumption, actual demand etc.

- (xii) Sales of the domestic industry and of the other Indian producers increased, imports from other countries increased while those from China PR decreased; market share of domestic industry and that of other countries increased while that of other Indian producers and Chinese imports decreased; landed prices from China PR declined in the POI and so did the prices of the DI, when the prices of Chinese imports increased so did the prices of the DI. The prices of the Chinese imports are only influenced by the prices of the DI. Injury is on account of imports from other countries and lowered price of domestic industry to acquire share of other Indian producers.
- (xiii) Prices and profitability seem to be misleading as domestic industry is selling goods at much higher prices in the domestic market. Selling prices were not disclosed even in the form of range or indexed numbers in the NCV. Financials of the petitioner have been obtained from the MCA website. Selling prices as listed therein are not correct as the goods have been purchased at higher prices. Claims that the prices were below Rs. 400/Kg are incorrect and that substantial quantity has been bought from the petitioner in excess of Rs. 600/Kg. Prices declared by petitioner need to be thoroughly investigated and compared with prices at which goods are being transacted in Indian market from the books and accounts maintained by user industry.
- (xiv) Profits of the petitioner and the selling prices of the other producers need to be examined. Profits in the SSR increased for 2015-16 and POI *i.e.*, 6 months of 2016-17 (July 2015- September 2016), while data of domestic industry in the present case shows an opposite trend when they demonstrate 295% losses in 2016-17. Correct NCV of the same should also be provided.
- (xv) The trend of profitability witnesses a drastic change when the financial information of the supporter namely, Blue Circle is also taken into account. Data provided vide email dated 21.1.2019 shows that there is enough reason to believe that the other producers behaved differently from the petitioner during the POI.
- (xvi) Capacity utilization, domestic sales, number of employees, productivity and average capital employed increased. While the selling price shows a marginal decline, the cost of sales decreased much more.
- (xvii) In the 6 months of 2016-17 there was no price underselling; further the petitioner has failed to show any price underselling.
- (xviii) There is absence of causal link – imports from China have declined while those from Indonesia have increased; injury is due to competition between the Indian producers and the domestic industry has reduced prices only to increase market share; further the goods have been booked at suppressed prices in their financial records.

- (xix) The anti-dumping duty on the subject goods has already been in force for over 10 years and the domestic industry has received adequate protection. The previous ADD was in force till 12th January 2018 and it is not understandable how within a span of six months, domestic industry has started suffering injury again.

### **Examination of the Authority**

49. 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 country.
50. Rule 13 of the Countervailing Duty Rules, 1995 deals with the principles governing the determination of injury.

#### **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.*

51. Further, the Rules listed the relevant economic parameters that are required to be evaluated in order to determine the consequent impact of subsidized imports to the domestic industry.
52. The Authority has considered submissions made by various interested parties and relevant legal provisions. The Authority has examined injury to the domestic industry having regard to these legal provisions. The examination here in below *ipso facto* deals with the submissions made by the domestic industry and interested parties concerning injury to the domestic industry.

## Volume Effect of Subsidized Imports on the Domestic Industry

### Assessment of Demand/Apparent Consumption

53. 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 is as below:

Particulars	Units	2014-15	2015-16	2016-17	POI
Sales of Domestic Industry	Indexed/MT	100	141	151	152
Sales of Other Indian Producers	Indexed/MT	100	118	110	106
Imports from Subject Country	MT	441	581	308	520
Imports from Other Countries	MT	481	308	277	633
<b>Total Demand/Consumption</b>	<b>Indexed/MT</b>	<b>100</b>	<b>111</b>	<b>94</b>	<b>122</b>

54. It is noted that the demand showed a marginal decline in the year 2016-17 as compared to 2015-16 but increased in the POI. Overall demand shows increase over the injury period. It is seen that the subject imports in relation to production declined till 2016-17 but have increased significantly in the POI and on overall basis.

### Import Volumes from subject country

55. With regard to the volume of the subject imports, the Authority is required to consider whether there has been a significant increase in subject imports from subject country, either in absolute terms or relative to production or consumption in India.

Particulars	Units	2014-15	2015-16	2016-17	POI
Subject Country	MT	441	581	308	520
Other Countries	MT	481	307	277	633
Total imports	MT	922	888	585	1,153

56. It is seen that imports of the subject goods from the subject country declined in 2016-17 and thereafter increased significantly in absolute terms in the POI. Imports from other countries, (mainly Indonesia) have also increased and in a separate investigation it was determined that imports from Indonesia are being dumped causing injury, therefore anti-dumping duty of USD 1.63 per Kg has been imposed on them with effect from 03.05.2019.

## Price Effect of Subsidized Imports on the Domestic Industry

57. 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 (COP), Net Sales Realization (NSR) of the domestic industry have been compared with the landed cost of imports from the subject country.

### Price Undercutting

58. 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 country. 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 is determined for comparison with the landed value of the subsidized imports. Accordingly, the undercutting effects of the subsidized imports from the subject country work out as follows:

Particulars	Unit	2014-15	2015-16	2016-17	POI
Landed price of imports	Rs./KG	478	580	638	473
Net Selling Price	Indexed/Rs./KG	100	116	112	99
Price Undercutting	Indexed/Rs./KG	100	81	(17)	104
Price Undercutting	Range %	10-15%	7-12%	0-(5)%	12-17%

59. From the aforesaid table, it can be seen that the price undercutting from the subject country has been positive for the entire injury period except 2016-17. The extent of price undercutting has also increased significantly in the POI.

Particulars	Unit	2014-15	2015-16	2016-17	POI
Landed price of imports	₹ ./KG	***	***	***	***
Index		100	121	133	99
Cost of Sales	₹ /Kg	***	***	***	***
Index		100	114	113	109
Selling Price	₹ /Kg	***	***	***	***
Index		100	116	112	99

### Price Suppression and Depression

60. In order to determine whether the subject 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, the changes in the costs and prices over the injury period, were compared as below:

61. It is noted from the table above cost of sales and selling price of the domestic industry increased till 2015-16 and declined thereafter. However, the decline in selling price in the POI is much more than the decline in cost of sales. The level of selling price is below the level of cost of sales. Further, landed price of imports have remained below the level of cost and selling price of the domestic industry throughout the injury period barring 2016-17. Thus imports have had depressing effect on the domestic industry prices.

### **Price Underselling**

62. The price underselling is an important indicator of assessment of injury. 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. It has been stated by DI that the subject imports are having underselling effect on the domestic industry by a significant margin.

Particulars	Rs/KG	USD/KG
Non injurious price	***	***
Landed value	473.43	7.25
Price Underselling	***	***
Price Underselling %	18-23%	18-23%

### **Economic Parameters of the Domestic Industry**

63. 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 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, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

64. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

### **Production, Capacity, Capacity Utilization and Sales**

65. Capacity, production, capacity utilization and sales of the domestic industry over the injury period is given in the following table: -

<b>Particulars</b>	<b>Unit</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>POI</b>
Installed Capacity	Indexed/MT	100	100	100	100
Production	Indexed/MT	100	142	152	172
Capacity Utilisation Percentage	Indexed/%	40-45%	55-60%	60-65%	68-73%
Domestic Sales	Indexed/MT	100	141	151	152

66. From the above table, it is noted that:

- a) The capacity of the domestic has remained constant over the injury period.
- b) Production of the domestic industry increased over the injury period. However, the same is much below the level of capacity installed.
- c) The capacity utilization of the domestic industry has also increased over the injury period.
- d) Domestic sales have increased over the injury period. However, the same has not been in proportion to the increase in production resulting into increase in inventories, as shown in table below.

<b>Unit</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>POI</b>
Indexed/MT	100	45	14	734

### **Market share in demand**

67. The Authority notes that the market share of the subject imports remained about the same over the injury period and market share of other countries increased. Market share of the domestic industry increased in 2016-17 however, declined in the POI. Market share of the Indian industry also increased in 2016-17, but declined in the POI.

<b>Particulars</b>	<b>Units</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>POI</b>
Domestic industry	Indexed/%	100%	127%	160%	127%
Other Indian Producers	Indexed/%	100%	105%	119%	86%
Import from China PR	%	23%	27%	17%	22%
Other Countries imports	%	25%	14%	15%	27%
Total Demand	Indexed/%	100%	100%	100%	100%

### Profitability, return on investment and cash profits

68. Profitability, return on investment and cash profits of the domestic industry over the injury period is given in the table below: -

Particulars	Unit	2014-15	2015-16	2016-17	POI
PBIT per unit	Indexed/Rs/Kg	100	160	(120)	(1,100)
Total PBIT	Indexed/Rs Lacs	100	243	(179)	(1,771)
Cash Profits	Indexed/Rs Lacs	100	217	(117)	(1,350)
PBIT as % of Avg Capital Employed	Indexed/%	100%	250%	-200%	-1750%

69. It is noted that the domestic industry was incurring losses and became profitable only in 2015-16. However, with increase in subsidized imports and dumping from other sources the domestic industry again started incurring losses in the POI.

70. ROCE, PBIT and cash profit has also followed the same trend and is significantly negative in the POI.

### Employment, wages and productivity

71. Employment and wages over the injury period are given in the table below.

Particulars	Unit	2014-15	2015-16	2016-17	POI
No. Of Employees	Indexed/Nos	100	105	118	125
Productivity per day	Indexed/MT/Day	100	141	151	172

72. It is noted that the employment and wages have increased over the injury period. Further, productivity per day has also increased.

### Inventories

73. Inventory position with the domestic industry over the injury period is given in the table below:

Particulars	Unit	2014-15	2015-16	2016-17	POI
Opening	MT	100	49	17	4
Closing	MT	100	36	8	2,220
Average	MT	100	45	14	734

74. It is noted that the inventories with the domestic industry have increased significantly in the POI.

## Growth

75. Growth of the domestic industry with regard to production and domestic sales has been positive. However, growth in terms of cost of sales, selling price, profit/loss, cash profit and ROI turned positive only in 2016-17 but turned significantly negative in the POI. Thus, imports have caused an adverse impact on the domestic industry in the POI.

Particulars	UOM	2014-15	2015-16	2016-17	POI
Production	%	-	41.93	7.17	13.2
Domestic Sales	%	-	41.24	6.94	0.94
Cost of Sales	%	-	14.43	-1.36	-3.85
Selling Price	%	-	15.66	-3.34	-11.66
Return on investment	%	-	116.55	-177.32	-756.37

## Ability to Raise Capital Investments

76. The Authority notes that in view of the largely unutilized capacities available with the domestic industry and the losses being suffered by the domestic industry, their ability to raise any further capital for investments has been compromised.

## Factors affecting domestic prices

77. The examination of the import prices from the subject country, 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 has been undertaken. The data shows that the landed value of imported subject goods from the subject country is below the selling price and the non-injurious price of the domestic industry, causing price undercutting and price underselling in the Indian market. The Authority notes that the prices of the product under consideration in general should move in tandem with the prices of key raw materials. Domestic industry has claimed that they are forced to align its prices to the market prices, which are dictated by the prices offered by the foreign producers/exporters from the subject country. Thus, the landed value of subject goods from the subject country is an important factor for determination of domestic prices. The Authority notes that the domestic industry is getting affected by the import of subject goods at unfairly subsidized prices.

## Causal Link & Non Attribution Analysis

78. Injury to the domestic industry has been caused by subsidized imports. Further, injury, if any, due to other factors has been segregated as discussed herein below:
- Volume and prices of imports from third countries- During POI, imports of the subject goods from the imports of product under consideration from Indonesia were significant and at lower price. The Authority has recently concluded antidumping investigation against such imports and the anti-dumping duties have been recommended by the

Designated Authority and imposed by Ministry of Finance vide Notification dated 3rd May 2019.

- b. Changes in Demand- There is no contraction in the demand during injury period. Demand for the product has increased over the injury period.
- c. Changes in the patterns of consumption- The pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have contributed to the injury to the domestic industry.
- d. Trade restrictive practices of and competition between the foreign and domestic producers- There is no known trade restrictive practice which could have contributed to the injury to the domestic industry.
- e. Developments in technology- None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.
- f. Export performance of the domestic industry- The domestic industry has not undertaken exports during the injury period. Thus, possible decline in exports volume or profits could not have caused claimed injury to the Domestic Industry.
- g. Performance of other products being produced and sold by the domestic industry- Claimed injury to the domestic industry is on account of product under consideration. The petitioner has provided information which pertains only to the product under consideration.

79. Various interested parties have argued that injury is solely caused to the petitioner and the other domestic producers have not suffered injury, the Authority notes that M/s Blue Circle Organics Pvt. Ltd have filed complete information. M/s. Shree Vardayini Chemical Industries Pvt. Ltd and M/s. A.S. Chemopharma Pvt. Ltd have also filed Format H prescribed vide Trade Notice 14/2018 dated 1<sup>st</sup> October, 2018. Performance of the supporters shows as follows:

A. M/s Blue Circle Organics Pvt. Ltd

- a. Capacity increased in the POI. However, production and capacity utilization has declined in the POI. Sales improved marginally in POI
- b. Company was incurring losses upto 2015-16, and earned profits in 2016-17, however again stated incurring losses in the POI.
- c. Cash flow, ROI also shows the same trend. ROI is significantly negative in the POI.

B. AS Chemopharma:

- a. Capacity has remained constant, however capacity utilization has declined. Production and sales increased till 2016-17, however declined thereafter in the POI.
- b. Profitability improved till 2016-17 and the same declined significantly in the POI.
- c. Cash flow, ROI also shows the same trend. ROI has again come down to one digit.

C. Shree Vardayini Chemicals

- a. Capacity has remained constant, however capacity utilization has declined. Production and sales increased till 2015-16, however declined thereafter in the POI.

- b. Profitability improved till 2015-16, however, started incurring losses in in 2016-17 which aggravated significantly in the POI.
- c. Cash flow, ROI also shows the same trend. ROI is significantly negative in the POI.

It is thus seen that the performance of the supporters have also declined in the POI as is the case with the petitioner.

**Magnitude of Injury and Injury Margin**

80. The Authority has determined Non-Injurious Price for the domestic industry on the basis of principles as per the Rules. 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 each of the subject country for calculating injury margin. For determining NIP, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been done to utilities. The best utilisation of production capacity over the injury period has been considered. The production in POI has been calculated considering the best capacity utilisation and the same has been considered for arriving per unit fixed cost. 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 as pre-tax profit to arrive at the NIP as prescribed and being followed. The non-injurious price so determined has been compared with the landed prices of imports from the subject country to determine the injury margin as follows:

SN	Producer Country	Producer	Landed Value (USD/MT)	NIP (USD/MT)	Injury Margin (USD/MT)	Injury Margin %	Range
1.	China	Any	***	***	***	***	15-25

**H. POST DISCLOSURE COMMENTS**

81. The post disclosure submissions have been summarized as below:

**a) Views of the Domestic Industry**

82. The Domestic Industry made the following submissions:

- i. The other two supporters are small sized companies, lacking necessary resources and since the filing of data involves significant exercise, they could not file relevant elaborate information within the time limits. However, these companies supported the petition. These producers have also filed their information with the Authority which would show the performance of these companies. It is not a ceremonial support. It is a support with

relevant information with regard to their performance. The information clearly shows that these companies have also suffered

- ii. The petitioner fully supports the disclosure statement. There should be a presumption of availment of benefit, once the petitioner has shown existence of the alleged schemes and applicability to producers of the PUC.
- iii. The schemes may not be ignored only for the reason that there is no information on record to show that these schemes were availed by the Chinese producers/ exporters.
- iv. Hon'ble Supreme Court in Holder Topsoe vs DA has clearly laid down on how the non-cooperation principle has been practiced by the authority in the dumping law and the same should be adopted in the subsidy law by applying the highest CVD margins for non-cooperating exporters.
- v. Other investigating authorities, where the exporters preferred non-cooperation, the authorities have concluded that the exporters have "not acted to the best of their ability" for e.g. final finding issued by China in the matter of Ortho Chloro Para Nitro Aniline Originating from India where CVD margin was 166.8% and final finding issued by US in the matter of Large Diameter Welded Pipe from India, where CVD margin was 541.15% on the basis of non-cooperation of GOI and exporters.
- vi. The Authority should determine CVD margin in each of these schemes as done globally by other authorities.
- vii. The authority may consider the CVD margins on the basis of either Facts available (FA) or Adverse facts available (AFA) for the schemes that have been held countervailable (28 schemes) and for the schemes which were never examined by the Authority in the past (21 schemes) or where there is no evidence provided by the Chinese producers regarding either termination of the scheme or non-applicability to the manufacturers of Saccharin.
- viii. The petitioner has provided the evidences showing the existence of 5 schemes which have been claimed as non-existent/ expired/ rescinded, the Authority has been misled by the GOC. The proof with regard to the existence of these schemes or the benefits under these subsidies has been submitted by the petitioner.
- ix. Since the CVD quantum determined in the disclosure statement is significantly higher than the injury margin determined, the petitioner does not wish to further raise its concerns regarding the CVD margin determined or countervailability of schemes.
- x. If the Authority decides to reconsider the disclosure statement either with regard to countervailability of schemes or quantification of CVD margin where CVD margins have been determined at present, the petitioner requests the authority to then kindly consider the submissions made herein above and determine subsidy margin in other schemes for which no CVD margin has been determined at present.
- xi. Imports are threatening material injury to the domestic industry. Existence of excess capacities, high export orientation and positive price undercutting shows that imports are likely together the market at significantly subsidised prices.
- xii. Only injurious transactions should be considered for injury margin and price undercutting.

### **Submission made by Other Interested Parties**

83. The comments of other interested parties on Disclosure Statement have been summarised as under:
- i. The Authority has disclosed that the respondent's EQR is proposed to be rejected. Such action has been taken on the basis of certain listed grounds. However, according to the respondents each of them are incorrect and unsound.
  - ii. All the information that the Authority finds "insufficient" here was a matter of one question to the Respondent which was not sought.
  - iii. As regards the proposition that exporter is a Private Limited Company, but have claimed to be a "private limited liability company" in the EQR, it is submitted that the correct description has been provided and it is further clarified that the company is a private limited Liability company as evidenced in Business License and shareholder structure of the company enclosed with the EQR.
  - iv. As regards the proposition that the details of the joint venture partners (including the information whether such partner is privately-owned or state- owned) have not been revealed in the EQR, it is submitted that there was no specific question in this regard in the questionnaire response. Document now enclosed with the comments show that M/s. Fortune Knitting Factory Ltd., are individuals and not state-owned enterprises.
  - v. The Authority's reference to the major raw material accounting for 57% of the total turnover of the company is not clear and a clarification is requested in this regard. The costliest raw material of the PUC is Methanesulfonamide. The Authority can reconcile the total purchase amount of Methanesulfonamide during the POI with the total amount sourced from different suppliers.
  - vi. It has been stated that no relationship between the raw material, namely, F1 and PUC could be found by the Authority from any source including web search. However, Respondent's EQR shows that the product which was exported to India (calcium saccharin) does not utilize F1 as a raw material at all.
  - vii. Regarding the proposition that name of one of the two suppliers has not been provided in the EQR, the Respondent admits the oversight. The name of the supplier is Shanghai Noucheng Pharmaceutical Co., Ltd. which is a privately-owned company- a fact disclosed in Exhibit-14 of the Respondent's EQR.
  - viii. The insufficient and contradictory information as mentioned in the Disclosure Comment in respect of related parties have not been clearly laid out. A clarification should have been sought and the insufficiency could have been cured promptly
  - ix. The data provided by the Respondent and the data available with the DGCI&S matches. The data is absolutely reliable and reflects the actual transaction made. Thus, the Authority's statement that the price is "unreliable" is unclear.
  - x. Authority cannot reject our export volume and price merely because it appears to be "unrepresentative" of overall Chinese exports to India. The interested party cannot be penalised for not exporting at subsidised/injurious price. The Respondent failed to export in large volume during 2015, 2016 and 2017 mainly because of the implementation of the anti- dumping measures by India.

- xi. There is no provision under the WTO CVD Agreement or the Indian CVD Rules which allows the Authority to reject a response in a countervailing duty investigation, owing to the reason that the volume of sales to India was unrepresentative
- xii. Respondent had filed a letter seeking verification of its data on 22 April 2019, explaining in detail that the pricing of its products to India is comparable to pricing of its products to third countries as well as to the domestic market, when the volumes are so low. This letter and its submissions have not even been mentioned by the Authority in the Disclosure Statement. Exports made to India and third country are comparable in terms of prices.
- xiii. The Authority has grossly violated the confidentiality requirements of the Indian CVD Rules and the WTO ASCM in publishing the volumes exported by the Respondent to India over the last three years.
- xiv. The data for the Income Tax Return of 2017 and VAT Returns of 2017 have been provided to the Authority and contain data that may be well cross verified with the Annual Report of 2017 of the Respondent. The Authority has incorrectly noted that the data for 2017 was not provided, when it is available with the Authority in the very same documents that are being cited by the Authority
- xv. The Authority never sought any clarifications and has simply failed to assess the response. Thus, the Authority's failure to seek out information in a timely manner cannot prejudice the Respondent's participation and allow use of facts available standard.
- xvi. In view of the supporters' data, it needs to be examined whether the injury suffered by the Petitioner is isolated to it, or whether it reflects an industry wide situation. Perusal of the supporters' data shows that the other domestic producers performed much better than the Petitioner during the POI. Reference is made to Coated paper Findings
- xvii. We are disappointed to note that the Authority has not even considered the argument of the respondent with regard to correctness of selling price of domestic industry in its examination. While the submission of the respondent has been reproduced in parts in para 47(xiii), the Authority has not dealt with the same.
- xviii. The user has accepted in its questionnaire response that \*\*\* MT of the subject goods have been purchased from the domestic producers and only \*\*\* MT of the subject goods is imported. Only the insoluble saccharin produced by Domestic Industry does not pass the requirement of user industry and the names of major labs along with the differences in technical characteristics of the imported products with those of domestic products was also provided.
- xix. In case the Authority is not willing to do a general exclusion of the product grade mentioned by the respondent, the Authority may kindly exclude the insoluble saccharin imported by responding importer.
- xx. When the interested parties provided names of other domestic producers, the Authority ought to have carried out independent inquiry as to the existence of other domestic producers instead of merely holding that no evidence in this regard has been supplied by the interested parties.
- xxi. Format-H by supporters cannot be accepted as they have been filed beyond timeline and even after the hearings. Such information cannot under any circumstances be taken on record as it did not provide any opportunity to the interested parties to offer their comments and to defend their interests.

- xxii. Format-H does not cover all the mandatory factors as envisaged under Article 3.4 of the Anti-dumping Agreement and para (iv) of Annexure II of the Anti-dumping Rules. Specifically, the Format-H does not contain information with regard to wages, market share, growth, ability to raise capital investment, negative effect on cash flows and factors affecting domestic prices.
- xxiii. Supporters have not provided any information with regard to the "price effect" which is a precondition along with "volume effect"
- xxiv. Neither the Domestic Industry nor the Authority has provided any consolidated information of the industry as a whole
- xxv. Parties are handicapped to make any effective comments on the injury suffered by the Domestic Industry as Authority has kept even the volume related information as confidential despite their own Trade Notice No. 10/2018 dated 7/9/2018
- xxvi. The Domestic Industry is not suffering any injury on account of the alleged subsidized imports from China
- xxvii. The interested parties have contended that the Designated Authority has not identified or linked any of the CVD programs to producers of the product under consideration, nor provided methodology for quantification, has presumed that the subsidies found in "tyres case" or "steel case" ipso facto applicable to the present product. With regard to land use right, tax schemes and benefit on account of electricity, it has been contended that the subsidy quantum found in other cases cannot be directly applied. As regards raw materials, the interested parties have contended that the authority has not identified the name of the raw material, benchmark considered and calculation of CVD margin. Grants available/received by the parent company cannot be applied to the producer of the product. Further, the interested parties have contended that questionnaire response of the exporter is the best available information even in a situation where the Authority has decided to reject the response.

#### **Examination by the Authority**

- 84. It is noted that the issues raised at post disclosure stage have already been examined by the Authority and addressed appropriately in above relevant paragraphs. Further, additional argument found relevant have been addressed as under:
  - i. As regards the contention that the deficiencies pointed out for rejection of questionnaire response is incorrect and could have been resolved with a simple clarification, the Authority notes that the exporter questionnaire response has been rejected on account of number of deficiencies and discrepancies in the questionnaire response coupled with the fact that the export volume and export price itself appears to be not representative. While contending that the law does not provide for rejection of exporter questionnaire on account of export volume and prices, the Authority notes that the volume of business in individual sales transactions and demand for the product, coupled with the price cannot be completely ignored while considering the claim. Further, it is not the first time that the Authority found the volume and price of export doubtful. The volume and price of the responding exporter was inappropriate even in the first sunset review of

anti-dumping investigations concerning imports of subject goods from subject country which was not accepted by the Authority in the said investigation. The decision of the Authority was challenged by the exporter, but was upheld by the Hon'ble CESTAT. It is noted that the exporter has not given any cogent reason to justify either its price or volume. The situation that the responding exporters are able to sell in Indian market at much higher prices as compared to the average import prices for the subject goods is difficult to comprehend or make business sense. The export transaction could not be proved normal by the exporter. Keeping this factor in consideration and having regard to the facts of the present case wherein negligible amount has been exported at almost double the prices of the average import price of subject goods, the Authority find the export transaction itself is unreliable and cannot be accepted for determination of individual subsidy margin. Further, even while some of the deficiencies have been replied to by the Respondent through its comments, pertinent facts relevant to examine subsidy have still not been answered. The chemical/trade name of F1 has still not been disclosed. Mere fact that F1 is not a part of calcium saccharin which have been exported to India is insufficient ground for withholding such information. Further, the fact of existence of other related parties which has been emphasized by domestic industry and evidenced through web article quoting notice from Department of Industry and Information Technology of Henan Province, China and the same has not been rebutted at all. In the absence of any rebuttal with verifiable evidence, the Authority considers this as a material suppression of facts.

- ii. As regards the argument that the supporter's data must be examined, the Authority notes that the same have been examined appropriately in relevant paras in this Finding.
- iii. As regards the argument that correctness of selling price of the domestic industry was not examined, the Authority notes that the information pertaining to domestic industry considered relevant by the Authority in the present investigation was duly verified and accepted.
- iv. As regards the contention that Format H filed by supporters cannot be accepted as they were submitted beyond time lines and because they do not have all the information required for injury analysis, it is noted that information of M/s Blue circle was filed by the domestic industry, however the same was not accepted or considered on account of their ineligibility to be considered as an eligible domestic producer. As for M/s AS Chemopharma and M/s Vardayini Chemicals, the information was sought to have a comprehensive analysis of causal link and non-attribution factors, however, the supporter information has not been considered for injury analysis as per the general practise of the Directorate.
- v. As regards the argument that insoluble saccharin sold by domestic industry does not pass technical specification required and thus the importer, Grauer & Weil has to import insoluble saccharin, it is noted that the domestic producer has in fact sold insoluble saccharin to the said importer as was made known during verification. Therefore, importer's statement is baseless and incorrect to this extent.
- vi. With regard to contentions of the interested parties on countervailabilty of scheme, their applicability to the PUC and quantification thereof, the Authority notes that the petitioner had filed petition alleging existence of a large number of countervailable

subsidy programs and schemes and provided all relevant evidence in support thereof. The petitioner had identified various schemes applicable to various saccharin producers by identifying nature of the business enterprise, its location and linking the same to various schemes. Further, a large number of schemes were linked to exports. After receipt a petition, an opportunity for consultation was provided to the GOC, which was duly availed by the GOC on 20th July 2018, followed by written submissions of their statement. However, the GOC did not provide any verifiable documents at the time of consultation.

- vii. Since the GOC and the Chinese producers have not come forward with details/documents contesting the claims of existence of subsidises, the Authority has made determination on the basis of available information. Further, the Authority has also relied upon recently conducted investigation in the matter of “New Pneumatic Tyres for Buses and Lorries” from China PR vide notification no F. No.6/8/2018-DGAD dated 25th March, 2019, and held them countervailable, however, the subsidy have been quantified/ not-quantified as per the detailed reasoning given in para 32 – 42 above.
- viii. As regards CVD margin determined for grants, the Authority has given detail rationale in the para 37 above.
- ix. As regards to countervailability of raw materials, tax, land use rights and electricity, the Authority notes that the petitioner provided relevant information with regard to various schemes, their countervailability and applicability to the producers of the product under consideration. A copy of the petition was made available to the Chinese Govt. prior to initiation. The Chinese Govt. attended consultation, but did not provide any verifiable documentary evidence to disprove the claims of the petitioners. Nor has the GOC filed questionnaire response post initiation of investigations. The Authority holds in this regard that relevant information for examination of countervailability and determination of CVD margin is in possession of the Govt. of China and the Chinese producers. When these parties have preferred non-cooperation, the Authority is required to determine CVD margin on the basis of best available information. Accordingly, the detailed rationale for subsidy margin under these heads are given in para 38, 39, 41& 42 above.

## **CONCLUSION ON INJURY AND CAUSATION**

85. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the Authority concludes that:
- i. The product under consideration has been exported to India from subject countries at subsidized value, thus resulting in subsidization of the product.
  - 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 country.

86. The Authority notes that there is sufficient causal link between subsidies being provided by the subject country benefitting the product under consideration and causing injuring the domestic industry.

### **INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

87. 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.
88. 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, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

### **RECOMMENDATION**

89. The Authority notes that the investigation was initiated and notified to all interested parties including Government of China PR 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 China PR in the form and manner described hereunder.
90. 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, 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, the definitive countervailing duty as a percentage of the landed value of imports as mentioned in Col 6 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, originating in or exported from China PR.

**Duty Table**

S. No.	Heading/Sub heading	Description of goods	Country of Origin/Export	Producer	Duty amount as % of CIF value
(1)	(2)	(3)	(4)	(5)	(6)
1	29251100	Saccharin in all its forms	China	Any	20

91. 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.
92. 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.

**(Sunil Kumar)**  
**Additional Secretary & Designated General**