

14/29/2010-DGAD
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi

NOTIFICATION

Dated the 23rd July 2012

Preliminary Findings

Subject: - Anti-dumping investigation concerning imports of ‘Resin or other organic substances bonded wood or ligneous fibre boards of thickness below 6mm, except insulation boards, laminated fibre boards and boards which are not bonded either by resin or other organic substances’ originating in or exported from China PR, Indonesia, Malaysia and Sri Lanka.

No. 14/29/2010-DGAD: - Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred as the AD Rules);

- 2** The Designated Authority (hereinafter referred to as the Authority), under the AD Rules, received a written application from M/s. Balaji Action Buildwell, (hereinafter referred to as the Applicant) in accordance with the Act and the AD Rules, alleging dumping of ‘Resin or other organic substances bonded wood or ligneous fibre boards of thickness below 6mm, except insulation boards, laminated fibre boards and boards which are not bonded either by resin or other organic substances’ (hereinafter also referred to as the subject goods) originating in or exported from China PR, Indonesia, Malaysia and Sri Lanka (hereinafter also referred to as the subject countries) and requested for initiation of anti-dumping investigation and levy of anti dumping measures.
- 3** Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented. The Authority on the basis of sufficient evidence submitted by the

Applicant to justify initiation of the investigation, decided to initiate the investigation concerning imports of the subject goods originating in or exported from the subject countries.

- 4 The Authority notified the High Commissions / Embassies of the subject countries in India about the receipt of the application containing, *inter alia*, allegations of dumping and consequent injury to the domestic industry before proceeding to initiate the investigation in accordance with Rule 5(5) of the AD Rules.
- 5 Accordingly, the Authority initiated an investigation into the alleged dumping, and consequent 'injury' to the domestic industry in terms of the Rules 5 of the AD Rules, to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti-dumping measure, which, if levied, would be adequate to remove the injury to the domestic industry.

A. PROCEDURE

- 6 The procedure described herein below has been followed:
 - i. The Authority issued a public notice dated 11th November 2011 published in the Gazette of India, Extraordinary, initiating Anti-dumping investigation concerning imports of the subject goods originating in or exported from the subject countries, in accordance with the Rule 6(1) of the AD Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.
 - ii. The Authority sent a copy of initiation notification dated 11th November 2011, to the High Commissions / Embassies of the subject countries in India, known exporters from the subject countries, known importers/ users and the domestic industry as per the addresses made available by the Applicant and requested them to make their views known in writing within 40 days of the initiation notification.
 - iii. The Authority provided a copy of the non-confidential version of the application to the known exporters and the High Commissions / Embassies of the subject countries in India in accordance with Rule 6(3) supra.
 - iv. High Commissions / Embassies of the subject countries in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the AD Rules with a request to advise the exporters/producers from their country to respond to the questionnaire(s) within prescribed time limit. A copy of the letter and questionnaire(s) sent to the exporters/producers was also sent to them along with the names and addresses of the known exporters/producers.

- v. The Authority sent questionnaire(s) to elicit relevant information to the following known exporters/producers in subject countries in accordance with Rule 6(4) of the AD Rules:

S.N.	Name of Producer/Exporter
	M/s. Tomrich International Trading Limited, Pudong, Shanghai, China PR
	M/s Nanjing ETAI Trading Co Limited, Jinshajing Nanjing, China PR
	M/s Linyi Hongfu Timber Co Limited, Yitang Town, Linyi Shandong, China PR
	M/s Shouguang Guihe Economic and Trade Co Limited, Shandong, China PR
	M/s Linyi Baideli International Trade Co Ltd. Nan Lou Zone, Yitang Town, Lanshan District, Linyi City Shandong China PR
	M/s Zhanjiang Kingstar Building Material Co Limited, Zhanjiang Guangdong, China PR.
	M/s Wenzhou Timber Group Co. Ltd., Zhejiang, China PR
	M/s Daiken Miri Sdn. Bhd., Miri Sarawak, Malaysia
	M/s Merbok MDF Lanka Pvt Limited, Horana, Sri Lanka
	M/s Robin Resources (Malaysia) Sdn Bhd, Pahang. Malaysia.
	M/s. Evergreen Fibre Berhad (JB) SDN. BHD, Johor, Malaysia
	M/s PT Andalan Karya Bersama, Kakarta Raya, Indonesia
	M/s La Mobila Pannelli PT, Rukan Enclave Bukit Golf, Pantai Indah Kapuk Indonesia

- vi. In response to the above notification, following interested parties including exporters/producers/ Association etc. have responded:

S.N.	Name of Producer/Exporter
1	M/s. Magna-Foremost SDN, BHD, Malaysia
2	M/s Masonite Components, Ireland
3	M/s Merbok MDF Lanka (Private) Ltd., Sri Lanka.
4	M/s Segamat Panel Boards Sdn, Bhd, Malaysia
5.	M/s P.T. Masari Dwisepakat, Indonesia
6.	M/s P.T. Sumatera Prima Fibre Board, Indonesia
7.	M/s. Evergreen Fibre Board Berhad (EFB), Malaysia
8.	M/s Evergreen Fibre Board (JB) SDN BHD, Malaysia
9.	M/s Evergreen Fibre Board (Nilai), Sdn. Bhd (EFN), Malaysia
10.	M/s Daiken Miri Sdn. Bhd., Miri Sarawak, Malaysia
11.	M/s. P.T. Hijau Lestari Raya Fibre Board, Indonesia

12.	Ministry of International Trade & Industry, Malaysia
13.	Embassy of Republic of Indonesia, New Delhi.
14.	Director General, Kejra Sama Industri International, Jakarta, Indonesia.
15.	M/s. Dongwha Fibre Board SDN. BHD, Malaysia

- vii. Questionnaires were sent to the following known importers / users/Association of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:

S.N.	Company's Name
1	M/s C.L. Gupta Exports Ltd., Village Jival, J.P. Nagar, UP
2	M/s. Venugopala Slate Industries, Markapur, Andhra Pradesh
3	M/s Moradabad Handicrafts Exporters Association, Moradabad, UP
4	M/s Thamarappally Brothers, M.G. Road, Ernakulam , Cochin
5	M/s Spacewood Furnishers Pvt. Ltd. T-48, MIDC Road, Nagpur-440 016
6	M/s Feroke Boards Ltd , Kaarad , Feroke College ,Via- Malappuram , Kerala
7	M/s R.J.Metals , XL/4039 Faba Complex, Jews Street, Ernakulam Cochin, Kerala
8	M/s Kalinga Imports & Exports Pvt..Ltd 18/777 Kallai Road, Calicut, Kerala
9	M/s Victory Plywood Distributors, Stadium Complex, Kannur, Kerala
10	M/s Mathewsons Exports & Imports P.Ltd , Kaloor ,Cochin, Kerala
11	M/s Ply Point , Kodampuzha Road , Petta Feroke, Kozhikode Kerala
12	M/s Label Sales Corpn, Indradhanush Apartment , Shope No. 7,8 & 9 T.D.Road , Cochin, Kerala
13	M/s Srivari Traders, Odanthurai Metupalayam, Tamil Nadu
14	M/s Krishna Plywoods, Kamraj road, Karur Tamil Nadu
15	M/s Thamarappally Brothers, Ernakulam , Kochi, Kerala
16	M/s Jacsons Veneers And Panels P. Ltd , Ernakulam , Kochi, Kerala
17	M/s Kutty Flushdoors and Furniture Co. Pvt. Ltd. Koyambedu, Chennai
18	Association of Furniture Manufacturers of India (AFMI), Mumbai

- viii. In response to the above notification, following importers/ users, Association have responded:

S.N.	Importer's Name
1.	M/s. Venugopala Slate Industries, Markapur, Andhra Pradesh
2.	India Moulded Panel Shutters Manufacturers Association
3.	Moradabad Handicrafts Exporters' Association, Moradabad, U.P.
4.	M/s. C.L. Gupta Exports Ltd., Uttar Pradesh (UP), India.
5.	Indian Moulded Panel Shutters Manufacturers Association

- ix. A Market Economy Treatment (MET) questionnaire was forwarded to all the known exporters/producers and Embassy of China PR in New Delhi. For the purpose of initiation, the Normal value in China PR was considered based on the constructed cost of production of the subject goods in China PR, as the applicant pleaded that the information for market economy third country is not available to them. The Authority informed known exporters that it proposes to examine the claim of the applicant in the light of paras 7 and 8 of Annexure I of the AD Rules. The exporters/producers of the subject goods from China PR were therefore requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 of the Annexure of the AD Rules to enable the Authority to consider whether market economy treatment be granted to co-operative exporters/producers from China PR.
- x. 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.
- xi. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods for the past three years, including the period of investigation.
- xii. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the Applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xiii. Investigation was carried out for the period starting from **1st April 2010 to 30th June 2011** (POI). The examination of trends, in the context of injury analysis, however, covered the periods April 2007-March 2008, April 2008-March 2009, April 2009-March 2010 and the Period of Investigation (POI) viz. 1st April 2010 to 30th June 2011.
- xiv. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xv. 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 recorded these findings on the basis of the 'facts available'.

- xvi. *** in this notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the AD Rules.

B. Miscellaneous Issues

7 Submissions made by other interested parties

The submissions made by interested parties, in brief, are as follows:

Submissions made by M/s Venugopala Slate Industries

- Application filed by the Applicant is grossly erroneous, insufficient to justify initiation and also resorted to excessive confidentiality.

Submissions made on behalf of M/s Segamat Panel Boards Sdn. Bhd, and M/s Merbok MDF Lanka (Private) Ltd, Sri Lanka

- That the non-confidential version of the petition is wholly deficient and inadequate to enable the other parties to render their comments.
- That as per initiation notification, POI is April-2010 to June-2011 but the copy of non confidential version of the application provided by the domestic industry appears to be taking into account April 2010 - March 2011 as the POI.

Submissions on behalf of M/s. Magna-Foremost SDN and M/s. Masonite Components, Ireland

- The Authority, has initiated this investigation in violation of Article 5.3, despite insufficient evidence to justify doing so. The Authority has in its wisdom, suo moto, changed the period of investigation and injury investigation period from those filed by the Applicant.
- The Authority extended by 3 months the period of investigation originally proposed by the Applicant, i.e., April 2010 – March 2011 (12 months). In addition, the Authority affixed the injury investigation period between 2007 and 2010 despite the fact that no domestic industry had even existed for MDF until at least February 2010. As stated in the Petition, the Applicant did not commence commercial production of MDF until February 2010, while the Supporter commenced production much later, in December 2010. The Authority has provided no rationale for amending the said periods. More importantly, however, the changed periods effectively render the evidence provided by the Applicant insufficient to justify initiating this investigation.

Submissions made on behalf of Evergreen Fibreboard Berhad (EFB), Malaysia; Evergreen Fibreboard (JB) Sdn. Bhd. (EJB), Malaysia and Evergreen Fibreboard (Nilai) Sdn. Bhd.(EFN), Malaysia

- That the non-confidential version of the petition provided is deficient as it does not contain the information for the whole period of investigation i.e. April 10 to June 11 (15 months). It contains the information only for part of the POI i.e. April 10- March 11 (12 months). Further, the Applicant has not provided the raw import data received by it from IBIS along with the petition nor it indicated that the same has been provided to the Authority.
- That the domestic industry has claimed excessive confidentiality and there is no statement of confidentiality being claimed by the Applicant enclosed with the non-confidential version of the petition.

Submissions made on behalf of M/s PT. Masari Dwisepakat Fiber, Indonesia and M/s PT. Sumatera Prima Fibre board (SPF), Indonesia

- That the non-confidential version of the application filed by the Domestic Industry and supplied to us is not in accordance with the new guidelines being followed by the Designated Authority in all the current cases. there is no index to the application for us to appreciate what all documents have been filed in the confidential version, there is no running pagination, there is no reasons in tabular form giving reasons for confidentiality, etc.
- That the Applicant industry has not given Application Proforma as are required to constitute a valid and fully documented application. Necessary evidence as prescribed in the Proforma was also not supplied in accordance with the requirement under the garb of excessive confidentiality. The questions in the format application have been changed to suit their own requirements. The certifications given about self imports and relationship are not for the POI by the applicant or by the supporter.
- Confidentiality: The non-confidential version of the application filed by the Domestic Industry and supplied to the exporters not in accordance with the new guidelines being followed by the Designated Authority in all the current cases. The following information has been kept confidential without cogent reasons:
 - a. That the full functional production flow chart is there on the website of the applicant. Therefore, there is no reason to claim confidentiality on this.
 - b. Methodology adopted for excluding excluded products from the import data for calculation, because on the basis of the widths and thickness all the characteristics of the subject goods are not covered.
 - c. Whether imports made by Balaji are excluded or not from the import data and what is the quantity they have actually imported.
 - d. Non-confidential summary and indexed numbers of the project report on which the applicant relied upon.
 - e. Basis of construction of normal value. It is also not clear whether they have used power rate and other information which is available in the public domain of the subject countries or they have used their own rates. Further, the power information attached in the non-confidential is of no use because it is not for the period of Investigation and there are different rates for different usage.

- f. The applicant has not provided any source for the information provided in the application in relation to constructed normal value and for calculating export price. Source information given in some places is obsolete and not working. Audited balance sheets are not provided for the injury investigation period.
 - g. Proper certification from the applicant in relation to its relation with export or import Statement of confidentiality is not provided.
- Erroneous Period of Investigation and Injury Period: The period of investigation and injury examination period fixed by the Authority is erroneous and unfair. In the instant case the period of Investigation is April 2010 – June 2011 i.e., of 15 months. The applicant is only new entrant in the market and has only completed 2 months in April 2010. Therefore, the determination of dumping and injury tends to be skewed as the variable costs and fixed costs would be very high for the applicant and no proper or comprehensive analysis can be undertaken. The Authority has not considered the financial year 2010-11, which was the only full financial year that could be analyzed. It is submitted that, although the recently concluded financial year is subsumed in the period of Investigation, the data for the same should have been specifically taken as one of the injury period.
 - Adequacy & Accuracy: the investigations have been initiated without adhering to the requirements of Rule 5 of the Anti-dumping Rules, which specifically deals with the Initiation of investigation. The mandated parameters were not examined prior to reaching a determination for initiation of the present investigation. In absence of following, we are unable to offer our comments on adequacy and accuracy of the information in the application:
 - a. The date of application and correspondence exchanged with the applicants prior to initiation.
 - b. Letters addressed to concerned ministry or other producers in India.
 - c. Annual Reports for the past three years for applicant and the supporting producer
 - d. Non-confidential version for calculations done and methodology for Normal Value/Export Price. It may be seen from the non-confidential version of the application that the Applicant Industry has not given any details of the calculation of the constructed normal value and the export price. Further, in terms of the ruling of the Hon'ble Supreme Court cited earlier, such information has to be provided to the opposing interested parties to enable them to offer their comments.
 - e. It has been claimed by the Applicant Industry that there are no significant difference in manufacturing process adopted by the Applicant Industry compared to the one adopted by the exporters from subject countries. In such a situation we are unable to understand as to why confidentiality has been claimed by the Applicant on the process of manufacture.
 - There has been substantial delay in making available application that formed the basis of initiation of the present case. The raw import data may be provided as received from IBIS and also list containing excluded entries with explanation for such exclusions.

Submissions made by the domestic industry

8 The submissions made by the domestic industry, in brief, are as follows:

- As regards the contention that NCV petition is wholly deficient and inadequate to enable the other parties to render their comment; referring to the relevant rules & regulations, the Applicant has stated that the petition filed by the domestic industry in fact contains much more than what is the obligation on the domestic industry.
- As regards the contention that POI as per initiation notification is April 2010 to June 2011 but the NCV has data only up till March 2011 and therefore information relied upon by the Authority was incomplete; the Applicant has stated that there is no legal requirement that the DA should have, at the time of initiation, information on record for the period of investigation. The “period in the petition” for which petition has been filed and “period of investigation” chosen by the Designated Authority for elaborate investigations is altogether two different factors/. While the petition must identify a period and must contain all relevant period for the said period; the Designated Authority is at a liberty to consider any other period, including the period suggested by the Applicant for detailed investigation. In fact, the argument advanced by the interested parties is highly undesirable and is not in public interest and is dangerous in suggesting that the Applicant can frame the most appropriate period and thereafter force the authority to adopt the same.
- It is really amazing that an interested party is suggesting consideration of 2010-11 as an investigation period in the present case. Firstly, the case was initiated in November 2011 and therefore investigation period of 2010-11 would have implied a stale period for the present purpose. Secondly, period longer than as could have been considered can certainly not prejudice the interests of any party. If the period 2010-11 would have been appropriate for the present purpose, certainly, addition of subsequent quarter is no less inappropriate.
- As regards the contention relating to erroneous period of investigation and injury period fixed is erroneous and unfair: it is submitted that in the previous Para, the interested parties have argued that Applicant is an existing company. In this Para, the interested parties have argued that the Applicant is a new entrant in the market. If Applicant is a new entrant, admittedly, this case falls under material retardation to establishment of an industry, unless opposing parties establish that there was already a production and sale of the product under consideration in the country. It would be relevant to point out in this regard that the previous petition filed in respect of Medium Density Fiber Board included all thicknesses of fiber board. The interested parties, however, strongly argued for exclusion of thin board on the grounds that there was no company in India producing thin board. After due consideration, the Authority came to a conclusion that fiber board below 6 mm was not being produced in the country and accordingly restricted the scope of product under consideration to fiber board of 6 mm and above.

- As regards the contention that mandated parameters were not or examined prior to reaching a determination for initiation of the present investigation; there is no such mandated requirement. Further, since Applicant filed updated petition and since this updated petition formed the basis of initiation of investigations, the correspondence exchange with the Applicant prior to initiation becomes meaningless. As regards, letters addressed to concerned ministry or other producers in India; there is no such mandated requirement under the law. As regards, Annual reports for the past three years for the applicant and supporting producer; there is no mandated requirement for the annual report of the supporting producer. With regard to annual report of Applicant, the issue was earlier raised by the DGAD and addressed by the Applicant. Copies of the letters written by the Applicant are enclosed with these submissions. As regards, NCV version of the calculations done and methodology for normal value/ export price; the petition is relied upon which contains relevant information.
- As regards production flow chart; Applicant has provided sufficient information on the product process. The same provides sufficient information with regard to flow chart as well. The flow chart enclosed with the petition is the actual production plant flow chart of the Applicant and therefore the same has not been disclosed.
- As regards the contention that there has been substantial delay in making information available to the interested parties; the interested party have been provided sufficient time. It is not the case where interested parties have been given 40 days time from the date of initiation of investigation. The Authority has in fact given 40 days time to the interested parties from the date on which letters were communicated/sent to the interested parties. Thus, interests of opposing parties, in any case, have not got prejudiced. In fact, it is only the domestic industry which has suffered in the process.

Examination by the Authority

- 9 As regards the contention that the non-confidential version of the petition provided was deficient as it did not contain the information for the whole period of investigation i.e. April 10 to June 11 (15 months); the Authority notes that the revised information/data for the POI was duly sought from the Applicant in the instant matter and the same was placed in the public file that was open for inspection by all the interested parties.
- 10 The Authority has taken note of the above submissions regarding confidentiality and notes that the information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. 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 recorded these findings on the basis of the 'facts available'.

- 11 As regards the contention pertaining to period of investigation is concerned; the same has been chosen considering the facts and circumstances of the present case and has been appropriately chosen to cover the latest available data on the subject. Further, it is not correct to state that while the POI as per initiation notification is April 2010 to June 2011 but the NCV has data only up till March 2011 as the information for the POI was duly obtained from the domestic industry and placed in the public file as per the AD Rules. Besides, it is reiterated that the application contained sufficient evidence to justify initiation of an anti-dumping investigation in the present matter.
- 12 The Authority further notes that that mandated parameters were duly examined and sufficient evidence was available on record to justify initiation of the investigation in the instant matter.
- 13 As regards the contention regarding delay in making information available to the interested parties; the Authority notes that interested parties have actually been benefitted as 40 days time was duly provided to all known interested parties from the date on which letters were forwarded to the interested parties. Thus, no adverse impact has apparently been caused to their interests.

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

Submissions made by other interested parties

- 14 The submissions made by interested parties, in brief, are as follows:

Submissions made by Indian Moulded Panel Shutters Manufacturers Association

- 15 The submissions made by Indian Moulded Panel Shutters Manufacturers Association, in brief, are as follows:
- It is not clear whether the door skins are under product under consideration as PUC as defined in the initiation notification is too broad and vague. For the purpose of volume and price, the domestic industry in their petition has excluded the imports of HDF and Door Skin from the subject countries but some subsequent submissions shows the issue is open ended for the decision of Authority. Huge variance in import price of Door Skin and that of the PUC itself shows that Door Skin ought to be outside the PUC. Door Skin prices are higher in comparison to MDF or HDF and door skins are a distinct product. The raw material for HDF Door Skins are MDF and HDF board while for MDF and HDF raw materials are wood, resign and others which shows that Door Skins are value added and a separate product. Door Skins cannot be interchangeable with other applications except door. Thus, HDF and MDF are not commercially interchangeable because price of door skin are higher by 200% as compared to MDF. Fibre Board Moulded Door Skin can only be produced from Fibre Board of 3mm thickness with its density above 800 kg/m³. The applicant industry may at best be producing Moulded Door Skin from MDF Board only. Thus, the

Moulded Door Skin is a value added product for Applicant in comparison to simple fibre board MDF/HDF. In other words, MDF/HDF is an input material in the process for making door skin for the domestic industry in concern. The average prices for Moulded Door Skins were higher than those for thin MDF (150-200% on average). Further, prices for thin HDF are also significantly higher than thin MDF. Thus, prices between MDF, HDF and Moulded Door Skin are not comparable.

- Applicant deliberately avoided parameter of density and thickness while defining the scope of PUC. It has consequences as the raw material consumption per CBM governs the density of the Board. HDF consumes higher amount of raw materials and is of higher density as compared to MDF. Even catalog itself of applicant domestic industry shows Door Skin is separate from MDF or HDF. The claim that import price of high density board is even lower than the average import price is baseless. Correct evaluations would have made HDF outside the scope of PUC.

Submissions made by M/s Venugopala Slate Industries

16 The submissions made by M/s Venugopala Slate Industries, in brief, are as follows:

- Complete raw import data relied upon by the Applicant needs to be provided to assess whether the methodology adopted by the Applicant to compile the import data for PUC is correct or not as altered import data provided is not sufficient to do the same.

Submissions on behalf of M/s. Magna-Foremost SDN and M/s. Masonite Components, Ireland

17 The definition provided in the Initiation Notification makes it evident that moulded door facings, also known as door skins, are excluded from the scope of the product under consideration, and this is confirmed by the Applicant's express exclusion of data pertaining to door skins from its product headings and import data. There are differences in production process, differences in applications. Door skins are used exclusively as door skins – i.e., used in the manufacture of doors to form the outward panels of a door. Because of their chemical properties and dominant surface contours, they cannot be reshaped or resized into other fibre board products and therefore do not compete with or substitute for the vast majority of the Applicant's MDF products.

Submissions made on behalf of M/s Segamat Panel Boards Sdn. Bhd, and M/s Merbok MDF Lanka (Private) Ltd, Sri Lanka

18 The submissions made on behalf of M/s Segamat Panel Boards Sdn. Bhd, and M/s Merbok MDF Lanka (Private) Ltd, Sri Lanka, in brief, are as follows:

- That the domestic industry has stated that it has adopted the transaction-wise import data provided by IBIS because product under consideration does not have a dedicated customs classification code. Such raw import data falling under chapter sub-heading 4411 provided by IBIS should have imports reported in different descriptions and

units. However, domestic industry has provided in the application only altered import data with methodology used to compile import data of subject product. Thus, we are not able to understand, whether compilation of import data for subject product by domestic industry is correct or not as complete raw import data has not been provided in the application.

Submissions made on behalf of Evergreen Fibreboard Berhad (EFB), Malaysia; Evergreen Fibreboard (JB) Sdn. Bhd. (EJB), Malaysia and Evergreen Fibreboard (Nilai) Sdn. Bhd.(EFN), Malaysia

19 The following submissions, in brief, have been made on behalf of Evergreen Fibreboard Berhad (EFB); Evergreen Fibreboard (JB) Sdn. Bhd. and Evergreen Fibreboard (Nilai) Sdn. Bhd.:

- The product under consideration in the present investigation has been kept too wide. The domestic industry has included the type of products which are not even manufactured by the Applicant. The same are also not technically and commercially substitutable by the imported products. The domestic industry has included all types of boards below 6mm be it medium density boards or high density boards. The domestic industry is not capable of producing widths below 2.5mm and the same are required to be excluded from the purview of the investigation.

Submissions made on behalf of M/s PT. Masari Dwisepakat Fiber, Indonesia and M/s PT. Sumatera Prima Fibre board (SPF), Indonesia

20 The following submissions, in brief, have been made on behalf of M/s PT. Masari Dwisepakat Fiber, Indonesia and M/s PT. Sumatera Prima Fibre board (SPF), Indonesia:

- Wrongful inclusion of non-product under consideration in the import data: Transaction wise examination reveals that the data included transactions relating to High Density Boards. From the transaction wise description, it is not evident as to how insulated boards and other non-product under consideration were excluded. They are not in a position to understand whether filtration of raw data was undertaken for excluded categories specifically when the narration of each transaction does not give any description of special features like laminated fibre board etc. In any case, the Tariff Heading 4411 not only includes boards that are bound by resins or other organic substances but also includes within its scope board that may not be bound by resin or other organic substances. The Authority may also review the import data and exclude all entries that relate to non-product under consideration. While undertaking such an exercise, the applicants be called upon to disclose the methodology adopted by them when they excluded the products from the raw data and listing of all such exclusions.

- Scope of the Product under Consideration: the present investigations should exclude Thin Fibre board below 3mm thickness from the purview of Product under consideration as the same are neither produced nor sold by the Domestic Industry. Thickness of a Board is a critical parameter for any particular application and different thicknesses cannot be technically or commercially substituted for each other. For instance, if the design requirement is to use 3mm thick Board, it would not be technically possible for any user to substitute the same with any other Board with a different thickness. The end-use of thinner fibre boards is entirely different from thicker sizes. The product scope selected by the applicant is vague and not defined appropriately. The description does not deal with an important factor viz. density. It appears that the approach adopted for not defining the product under consideration through its density is to strategically include within the produce scope density that is not being produced by the applicants. It appears that the applicant Industry has withheld information relating to captive consumption of the product under consideration. The applicant is mainly into the business of high price subject goods which required plain fiber boards as raw material. In view of the above , the Authority should exclude the followings from the scope of the product under consideration:
 - Fiber Boards below the thickness of 2.5 / 3 mm depending upon what the Domestic Industry has produced and “actually” supplied during the POI.
 - All Medium Density Boards having emission standard of E2, E3 and any other standard which is not equivalent to E1 emission standard.
 - Fire Retardant Particle Board
 - Veneered MDF and Particle Boards

In view of aforementioned submissions, the Authority may also review the import data and exclude all entries that relate to non-product under consideration. While undertaking such an exercise, the applicant be called upon to disclose the methodology adopted by them when they excluded the products from the raw data and listing of all such exclusions. We are presently not in a position to understand filtration of raw data was undertaken for excluded categories specifically when the narration of each transaction does not give any description of special features like laminated fibre board etc. In any case, the Tariff Heading 4411 not only includes boards that are bound by resins or other organic substances but also includes within its scope board that may not be bound by resin or other organic substances.

- False declaration about substitutability: Applicant has mentioned in the application that there is no known viable technical and commercial substitute of the subject goods. In this context, the exporters have raised serious objection as there are several viable substitutes available in the market. It is also submitted that the Applicant himself provided the differences between subject goods and other substitutes on its website. Therefore the submission made by the Applicant is incorrect and need to be rejected.

Submissions made by domestic industry

21 The following submissions, in brief, have been made on behalf of the domestic industry:

- As regards the contention that the Applicant has mischievously included Non-PUC while examining various parameters in terms of law; T/T data reveals that data related to high density boards have been included; the Applicant takes strong objection to unwanted, uncalled for and unnecessary usage of words such as “mischievous”, whose sole purpose is to create bias and impede the investigations. The Applicant requests the authority to call upon the parties to first establish the basis for such uncalled for words. Assuming the Applicant has included some import data of Non-PUC; firstly, how it becomes mischievous and secondly how such inclusion is material to the present determination? The Applicant has reviewed the entire import data once again and found that there is no import entry of Non-PUC that has been included in volume and value of imports of the product under consideration.
- As regards the contention that the PUC defined is vague and not defined properly and that the description does not deal with density, which is an important factor; it is stated that there is no ambiguity or vagueness in the description. The basis of allegation is not understood as the interested party has not shown how density as a parameter governs/impacts the price. The Applicant has reviewed import listing and finds no consistent pattern with regard to density and price. Price of low density product is sometime higher than higher density product and sometime lower. Unless there is a consistent pattern of product pricing based on a parameter, it must be concluded that the parameter, in fact, has not been followed by the parties concerned. Further, the interested parties have not shown any consistent pattern in this regard.
- As regards the contention that the Applicant only produces thickness ranging from 2.5 to 5mm; it is stated that the present application is in respect of material retardation to establishment of domestic industry. Therefore, the fact of no production during the injury period becomes irrelevant in the present case. The domestic industry is not yet fully established. It is obvious that the domestic industry would not have produced and sold all variants of the product. It may be noted, the domestic industry produced fiber board of 2.1 mm in presence of officers at the time of on the spot verification just to demonstrate that the domestic industry can produce fiberboard below 2.1 mm and the interested parties have resorted to mere allegation. Lab test reports of 2.1 mm fiber board produced by the domestic industry have been separately filed. The Applicant has produced particle board of E1 standard. If the Applicant can produce particle board of E1 standard, the Applicant can certainly produce product under consideration of E1 standards. The present petition is in respect of dumping causing material retardation of establishment of domestic industry. As regards Fire retardant particle board; there is no factual basis for the claim. The Applicant has so far produced only selected few categories of product and the petition is in respect of material retardation of establishment of domestic industry. The Applicant, obviously

cannot supply all range and types to begin with the production. The moment production is commercialized the Applicant shall offer all those products which are required in the market. However, even the most popular product types produced by the Applicant could not be sold to the extent of production and the Applicant was faced with piling up of inventories. Further, the Applicant was forced to sell the goods produced at significantly adverse price in view of dumping of the product.

- As regards Tariff heading 4411 not only includes boards that are bound by resin but also includes boards that may not be bound by resin; the Applicant is aware and the application is in respect of boards that are bound by resin but also includes boards that may not be bound by resin. The fact that board may be bound by other organic substance does not render the position any different. The Applicant submits that the product under consideration in the present investigations is “resin or other organic substances bonded wood or ligneous fibre boards of thickness below 6mm,” hereinafter, referred to as ‘fibre board’ in the petition. Fibre board is custom wood or craft wood composite engineered product, and is made of heat pressed resin bonded wood fibre. Fibre board can be further mechanically processed, such as laminated, surface coated, carved, molded, etc. Scope of the product under consideration in the present petition includes all products classifiable under customs heading 4411, except (a) fibre boards of thickness 6mm or above, (b) insulation boards, (c) laminated fibre boards and (d) boards which are not bonded either by resin or other organic substances. Besides, Manufacturers may classify the product based on emission standards, as per guidelines set by international organizations, like CARB (California Air Resources Board). Emission standards can be achieved by use of appropriate resin. All producers of fibre board in subject countries and Indian producers are in a position to produce and supply the product under consideration with different emission standards. To make E-1 fibre boards, worldwide the technology used is to add some additives in the Glue of E-2 and lower the Formaldehyde emissions. The Applicant has produced E-1 standard boards.
- As regards Sanding, it can be done on the product under consideration. Sanding is a process wherein the surface of the board can be made extremely smooth by removing material. Imports are generally being made in un-sanded form. This is because of the fact that application areas of MDF from 2mm to 5.5 mm do not require any sanding. The sanding is done on any fibre board due to two factors (i) rough surface (ii) thickness variation. In case of production of 2mm to 4 mm thickness boards, the heat penetration is good, the curing of board take place in short time, the board surface become smooth and the thickness of board is also similar in the Fibre Board across the width and length and thickness variation is $\pm 0.1\text{mm}$ and therefore does not affect the quality. So generally manufacturers do not do sanding on fibre boards of thickness 2mm to 4mm.
- As regards Density and Thickness; Density and thickness are correlated with each other. Generally density of thin MDF ranges from 750 to 850 kg/cbm. The BIS norms allow density variation of 10%. In reality, if any manufacturer increases the density the cost of raw materials will increase because of more consumption of raw material,

power and also the productivity would be down as higher the density higher would be the curing time. It would also be seen that the production declines with lower thickness. However, it is seen that density overlaps between different thicknesses but the variation is not significant. Therefore, there has not been any impact of density and thickness in the product prices. Before the Authority considers any parameter as relevant for price comparison, the interested parties must first establish that the prices varied significantly and consistently with the parameter. If there is no consistent difference in the prices, the parameter in any case is required to be ignored. The interested parties have not kept any consistent difference in the prices on the basis of thickness and density. Such being the case, the Authority may kindly ignore the difference. Mere existence of a factor resulting in difference is insufficient. Such factor must have been recognized in the commerce as a factor that affects the prices. Such factor must have been consistently applied by the producers.

- As regards the contention that there are several viable substitutes available in the market as against what is stated by the applicant; the petition requires information on “viable substitute” for the product. The viable substitute has to be considered on the basis of technical and commercial substitutability of the product. It is a clear position that there is no technical or commercial substitute for the product under consideration. None of the interested parties have identified any such technical and commercial substitute for the product. Further, if indeed there is any such technical and commercial substitute for the product; the interested parties should not be bothered about the present investigation. They can switch to such viable substitute.
- As regards the contention that T/T data has been adopted by the DI which has imports reported in different descriptions and units and only altered import data along with the methodology adopted has been provided and that complete raw data must be furnished so as to assess the correction of the compilation of import data; there is no such legal requirement for providing raw data. In terms of the prescribed application proforma in its relevant part, the petition should contain (a) volume and value of imports, country wise; and (b) source of information. Evidently, the T/T information itself need not be annexed with the petition. The only obligation on the Applicant is to identify the source and quantified volume and value of imports. Despite this, the domestic industry provided information showing transaction wise imports.
- Like Article: There is no known difference in the product produced by the Applicant company and exported from subject countries. Both the products have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc. Comparison of essential product properties in respect of domestic product and imported product would show that the goods produced by the domestic industry are comparable to the imported goods in terms of essential product properties. The subject goods are produced and sold in a number of variants to meet specific end applications. Different product types are produced using the same or similar raw materials, employing the same or similar production process, technology, employees. Fact of production or non

production of a particular product type in the case of the Applicant depends on the market requirements. Further, since the Applicant is in the process of establishing itself in the Indian market, the Applicant is gradually offering different variants.

Examination by the Authority

- 22 The product under consideration in the present investigation is *'Resin or other organic substances bonded wood or ligneous fibre boards of thickness below 6mm, hereinafter, referred to as 'fibre board', except insulation boards, laminated fibre boards and boards which are not bonded either by resin or other organic substances'*.
- 23 From the product description, it would be amply clear that it covers wood or ligneous fibre boards of thickness below 6mm that are bound by resin but also includes boards that may not be bound by resin except insulation boards, laminated fibre boards and boards which are not bonded either by resin or other organic substances.
- 24 Fibre board is a custom wood or craft wood composite engineered product, and is made of heat pressed resin bonded wood fibre. Fibre board can be further mechanically processed, such as laminated, surface coated, carved, moulded, etc. Scope of the product under consideration includes all products classifiable under customs heading 4411, except (a) fibre boards of thickness 6mm or above, (b) insulation boards, (c) laminated fibre boards and (d) boards which are not bonded either by resin or other organic substances.
- 25 Fibre boards are wood based boards, available in different sizes and thicknesses. However, unlike solid wood made of single piece, they are high-strength engineered product - made from wood or lingo cellulosic material- refined into fibres, and then reconstituted with a resin binder at elevated temperatures, to form boards.
- 26 Fibre boards, being an engineered product, have certain advantages over solid wood (made out of single solid piece of wood). Fibre board has stronger tolerance to moisture changes, as compared to solid wood, because it is made of wood fibre arranged in overlapping pattern. It has better adaptability to environmental changes, and is very versatile. Fibre board has various applications, like in furniture, handicraft, consumer articles, etc.
- 27 The product under consideration is classified under Chapter 44 of the Customs Tariff Act. The product under consideration does not have a dedicated customs classification code. Customs classifications are indicative only and in no way binding on the scope of this investigation.
- 28 The Authority concurs with the view that Door Skins are value added and a separate product. Besides, prices of door skin are significantly higher as compared to normal Fibre board. It is further noted that Fibre Board Moulded Door Skin can only be produced from Fibre Board of 3mm thickness with its density above 800 kg/m³. As Moulded Door Skin is a value added product, the same is not within the ambit and scope of the investigation.
- 29 It is noted that the PUC is defined properly. There is no ambiguity in the description. It is further noted that the interested parties have merely filed their submissions seeking exclusions of different types within the PUC without appropriate reasoning. It is noted that the domestic industry has essentially claimed injury' on the basis of material retardation of establishment of their industry. In such a case, it certainly cannot be expected that it must

have necessarily produced and sold the subject goods in all its forms in order to claim injury as presence of the dumped imports in the Indian market have materially impacted their business decisions so far as the PUC is concerned.

- 30 As regards density vis a vis the prices, no consistent pattern has been noted. In fact, the co-operating exporters/producers have not made any distinction in their Appendix 8 data on this account.
- 31 As regards the contention that the Applicant only produces thickness ranging from 2.5 to 5mm; it has been noted that the domestic industry is capable of producing thickness below 2.5mm and hence the same is not required to be excluded. Besides, the injury in the instant matter is essentially in respect of material retardation to establishment of domestic industry; therefore, no production of a particular type of the subject goods not relevant in the present case as the domestic industry is not yet fully established; nay has been prevented from doing so due the presence of dumped imports. The Authority notes that the Applicant domestic industry has the capacity to produce different types of the subject goods and hence the claims made by interested parties on this account do not have any merit.
- 32 As regards the contention that there are several viable substitutes available in the market, the same has not been substantiated. It is seen that the domestic industry has disputed the claim. The Authority proposes to examine the issue further during the course of the investigation, particularly while conducting the on –the site verification.
- 33 The Authority notes that the imports data used in the present analysis pertains to the PUC. The data has been determined based on the ambit and scope of the PUC as defined in the initiation notification.
- 34 The Applicant has claimed that there is no known difference in the product produced by the Applicant company and exported from subject countries and that both the products have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, distribution & marketing and tariff classification, etc. A comparison of essential properties in respect of the domestic like product and the imported subject goods show that the domestic like product is comparable to the imported subject goods. The subject goods are produced and sold in a number of variants to meet specific end-use applications. Different types of the subject goods are produced using the same or similar raw materials, employing the same or similar production process, technology, employees etc.
- 35 Thus, the subject goods produced by the Applicant are being treated as like article to the product under consideration imported from the subject countries within the meaning of the AD Rules for the purpose of this investigation.

D. Scope of ‘Domestic Industry’ & ‘Standing’

- 36 At the time of the initiation of this investigation, Rule 2(b) of the AD Rules defined domestic industry as under:

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

37 However, this Rule has been subsequently amended to read as follows:

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

Submissions made by other interested parties

38 The submissions made by interested parties, in brief, are as follows:

Submissions made by M/s Venugopala Slate Industries

- Applicant did not have the *Locus standi* for being considered as ‘domestic industry’ and the investigation should be terminated immediately as the Applicant has already admitted that it had imported the subject goods during the period of investigation and sold the same in the market at profit.

Submissions made on behalf of M/s Segamat Panel Boards Sdn. Bhd, and M/s Merbok MDF Lanka (Private) Ltd, Sri Lanka

- The Applicant has admitted that it had imported the subject goods during the period of investigation and sold the same in the market at profit. Thus, being an importer of the subject goods, the Applicant falls outside the ambit of ‘Domestic Industry’ as defined in the statute.

Submissions made on behalf of Evergreen Fibre board Berhad (EFB), Malaysia; Evergreen Fibreboard (JB) Sdn. Bhd. (EJB), Malaysia and Evergreen Fibre board (Nilai) Sdn. Bhd.(EFN), Malaysia

- The determination of standing of the Applicant as domestic industry is not in accordance with law as the Applicant has admitted the fact of imports in the period of investigation and hence there is no reason to treat the Applicant as domestic industry in view of the aforesaid. The domestic industry has made contradictory statements regarding imports. On page 10 and as well as in the initiation notification, it is

disclosed that the imports were made in order to bench-mark the product being produced by the company by research and development and not for trading and that the volume of imports is miniscule in comparison with the production of the Applicant. Conversely, on page 12 of their petition, they have stated that they have sold the imported material in the domestic market and made significant profits.

Submissions on behalf of M/s. Magna-Foremost SDN and M/s. Masonite Components, Ireland

- The Applicant does not have the standing to qualify as the “domestic industry” under Articles 4.1 and 5.4 of the AD Agreement and Rule 2(b) of the Anti-dumping Rules because the Applicant is itself an importer of the subject product.

Submissions made on behalf of M/s PT. Masari Dwisepakat Fiber, Indonesia and M/s PT. Sumatera Prima Fibre board (SPF), Indonesia

- Self Imports of Subject Goods for Benchmark: The domestic industry to get over the requirement of Rule 2(b) has mischievously offered defense by stating that the self imports were for benchmark purposes. Such an object can be well achieved by buying imported goods from the local market and not by importing full containers of subject goods. Interestingly, on page no. 10 para 37, of the petition, it is mentioned by Applicant that they imported the subject goods for research and development but not for trading. On the contrary, in para 44 of page no. 12, they have categorical mentioned that they have sold the imported material at significant profit, that means they have traded the subject goods and earned profit also. Trend analysis for imports faulty due to self imports of applicants prior to POI and during POI. That the website of the Applicant admits that prior to POI they were only resorting to imports. That the case needs to be terminated for another reason as the determinations on standing and pre-conditions of Rule 5 cannot be made under Rule 12 or Rule 17.

Submissions made by domestic industry

- The Applicant Company has not imported the subject goods, barring small volume of imports made after the commencement of commercial production. The product of different thickness from different companies was imported in small quantities for the comparison with the product produced in house. The product comparison is effective only when the whole batch of the product is imported so that the extent of moisture content, glue content and various other product specifications can be compared with the same product range produced by the Applicant. These imports were made in order to benchmark the product being produced by the company by research and development and not for trading. In fact, the volume of imports is miniscule in comparison with the production of the Applicant. Bills of entry in respect of such imports have been provided to the Authority. The Applicant is not related (either directly or indirectly) to any exporter or importer of product under consideration in the subject countries.

- With regard to imports made by the Applicant, the reasons for imports have been given hereinabove. It is not a case where the Applicant has sold the imported material at significant profits. It is clarified that the statement in the application should not be read to mean that the Applicant has sold the product. In fact, the Applicant has not sold the product as such. It has consumed the product in downstream product and sold such downstream product (in downstream products also, the Applicant is suffering financial losses). The Applicant is not resorting to imports in order to benefit from dumping. Thrust of the Applicant has not turned to imports and the thrust continues to be on own production. The Applicant should therefore be considered as eligible domestic industry within the meaning of the Rules.
- In respect of contention that the Applicant does not have the *locus standi* on account of importing goods during the POI; the argument is without any legal and factual basis. Contrary to the claim made, the definition of domestic industry provides that the Authority shall ordinarily consider “domestic producers as a whole”. Further, in case a domestic producer has imported the product from subject countries, the rules provide that the Authority “may” “construe” such a domestic producer as ineligible domestic industry. It may be noted that firstly, the rule does not say that the Authority shall consider such a company as an ineligible domestic producer. Secondly, because of the usage of the word ‘may’, an interested party must establish before the Authority that such a producer as ineligible domestic producer. This is more so given the ordinary meaning of word domestic industry. In other words, while inclusion should be assumed, the need to exclude must be established.
- In respect of imports made for benchmark purpose and that contradictory statements have been made; it is submitted that the domestic industry has given actual defense for self imports and that the allegation is without basis. Thin Board was not being produced in India before the Applicant started production. Therefore, question of buying the same from local market for benchmarking purposes does not arise. Further, the product imported for benchmark purpose need not be stored indefinitely. Business prudence demands that the same is disposed off once the purpose is achieved. The Applicant has not sold the imported product in the market and has consumed the imported product in downstream product and thereafter sold the product. In fact, it would be seen from the information that the Applicant has suffered losses in downstream products as well.
- A statement showing production by various producers and share of Applicant including that of the supporting company is contained in the application. From the mentioned data, it is evident that there are two companies in India namely Balaji Action Buildwell (the Applicant) and Green Ply Industries, who have recently commenced the production of the product under consideration. Green Ply Industries has commenced the commercial production of product under consideration very recently in December’2010. Green Ply Industries Ltd. has supported the present application. Thus, the Applicant constitutes “a major proportion” in the total Indian

Production. Production of the Applicant accounts for more than 50% of the total Indian production (87% approx) and therefore should be considered as majority producer of the product under consideration. The application has been made by or on behalf of the Domestic Industry and therefore satisfies the requirements of standing under Rule 5(1) of the AD Rules.

Examination by the Authority

- 39** The Authority has noted the arguments raised by the interested parties. The Authority notes that the AD Rules confer discretion on the Authority to, *inter alia*, include or exclude a domestic producer that has imported the subjected goods from the ambit & scope of the domestic industry on the facts & merits of each case. The amendment dated 1st December 2011 to Rule 2(b) of the AD rules does not alter the situation; but clarifies the same. Rule 2(b) of the AD Rules stipulates that domestic producers which are either related to the exporters or importers or which are themselves importers of the allegedly dumped articles may be excluded when determining the domestic industry in certain situations. The Authority notes that a domestic producer might import the product under consideration for one or more *bona-fide* reasons, including for testing, research & development, seed-marketing purposes (imports of the product to test the quality etc).
- 40** It is noted that the Applicant Company has imported the subject goods of different thickness in small quantities for the comparison with the product produced in-house to the extent of *** cbm during 2010-11, which accounts for approximately *** % of the total imports. It is noted that these imports were made by the Applicant for bench-marking the product being produced by the company for research and development of its products and not for trading. The volume of imports is miniscule in comparison with the production of the Applicant. It is also noted that the imports do not form the core activity of the company and it has not abdicated its role of a domestic producer.
- 41** As per the application, there are two producers of the product in India, namely M/s. Balaji Action Buildwell (the Applicant) and M/s Green Ply Industries Ltd. M/s Green Ply Industries Ltd. has supported the present application. Thus, the applicant along with the supporter account for 100% of the production of the subject goods in India.
- 42** The Applicant has claimed that the company's thrust continues to be on own production rather than on imports and the Applicant should therefore be considered as eligible domestic industry within the meaning of the AD Rules.
- 43** In view of the above, it would be inappropriate to exclude such a domestic producer from being treated as domestic industry. The Authority finds merit in the claim of the Applicant that it should not be excluded as a domestic producer of the subject goods in India and be considered as the domestic industry for the purposes of this application.
- 44** The Applicant accounts for more than 50% of the total Indian production (87 % approx) and therefore is a major producer of the subject goods. Thus, the application has been made by or on behalf of the domestic industry and satisfies the requirements of 'Standing' under Rule 5

of the AD Rules. Further, the Applicant constitutes ‘Domestic Industry’ in terms of Rule 2(b) of the AD Rules.

E. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

Submissions made by other interested parties

45 The submissions made by interested parties, in brief, are as follows:

Submissions made on behalf of Evergreen Fibreboard Berhad (EFB), Malaysia; Evergreen Fibreboard (JB) Sdn. Bhd. (EJB), Malaysia and Evergreen Fibreboard (Nilai) Sdn. Bhd.(EFN), Malaysia

- The normal value has been incorrectly determined on the basis of high consumption norms of the domestic industry for raw material and utility whereas the consumption norm for raw material and utility are much lower for the exporters.

Submissions made on behalf of M/s PT. Masari Dwisepakat Fiber, Indonesia and M/s PT. Sumatera Prima Fibre board (SPF), Indonesia

- Selection of Surrogate Country: The Authority failed to follow proper procedure as prescribed under paragraph 7 of Annexure I to select appropriate market economy third country. Under the procedure, the domestic industry was required to provide sufficient evidence and names of producers for the Authority to propose such selection in the initiation notification. Neither did the domestic industry provide any material or evidence nor did the Authority make any efforts to select an appropriate market economy third country out of the three countries proposed. No efforts whatsoever had been made by the Authority to seek appropriate information. Further, the Authority failed to appreciate that in spite of the legal obligation under paragraph 7, it failed to put the parties to the investigation at notice without unreasonable delay about selection of the third country market economy or surrogate country. The applicant has not even specified as to which country was proposed to be taken as a surrogate country, despite having full knowledge of several similar economies involved in the production of the subject goods and also of their participation in the current investigation.
- Adjustments in the Export Price: In the initiation notification, the Authority has only considered ocean freight, marine insurance, documentation charges, cleaning charges and manifestation charges for calculating ex factory price for exports, but in the petition the Applicant has considered commission also. In this regard, the Authority should provide the final export price used for initiation purpose. Further, the commission charged by the Applicant is very high. In most of the cases commission is considered as 1% of FOB price.

Submissions made on behalf of the domestic industry

- As regards the contention that Authority failed to follow proper procedure under para 7 of Annex. 1 to select appropriate market economy third country etc; it is stated that the stage of application of Para 7 by the Authority has not even arrived as yet. The Applicant submits that normal value for China PR could not be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not available to the Applicant. It is noted that such normal value must be “comparable price in the ordinary course of trade for the like article when meant for consumption in such market economy third country”. In order to arrive at normal value on this basis, the Authority shall require complete & exhaustive verifiable information on all domestic sales made by a cooperating producer in such third country, along with its cost of production and all other associated information and evidences (including all information in the ordinary course of trade). Principles of fair comparison as laid down under Article 2.4 of the Agreement are also relevant in this respect. The Applicant has not been able to procure such information from a producer in market economy third country.

The Applicant submits that India is an appropriate surrogate country for China PR. Not only the consideration of India as a surrogate country would result in access to accurate and adequate information, there is no factual basis to consider that India would not be a proper surrogate country. India has been considered as an appropriate surrogate by other Investigating Authorities too. The normal value in China can be determined on any of the above-mentioned basis. The normal value in China can thus be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. The normal value has been determined accordingly on the basis of cost of production in India, duly adjusted, in view of the fact that the selling price is a loss making price.

Further, the Applicant refers to Para 8 of Annexure-I to the rules which provides that the Authority shall examine whether the product or the producers in China are operating in market economy environment. The Authority is required to provide sufficient opportunity to the parties concerned in this regard. It is only thereafter that the Authority can consider application of Para 7 and a question of surrogate country shall arise. Information from such surrogate country at this stage shall imply a presumption on the part of the Authority that the Chinese exporters, in any case, would not claim market economy status either for the product or in respect of the companies.

- As regards the contention that in the initiation notification adjustment to export price included does not include commission, whereas the Applicant has claimed adjustment on account commission in the application; the DA need not accept all the claims made by the Applicant; nor rejection of the claim with regard to commission would make dumping margins significantly different. The application should contain sufficient prima facie evidence of dumping. It is not the argument of the interested party that acceptance or rejection of commission shall make materially different position in this regard.

- As per information known to the Applicant, a number of producers are engaged in production of the product under consideration in the subject countries. Before accepting any response, the Applicant requests the Authority to kindly cross check the claims made by these interested parties with the Indian Customs data. Static import price despite rising raw materials is a clear evidence of dumping. It would be seen that there is a significant increase in the input costs. If the import prices are adjusted for the increase in the input prices, it would be seen that the import prices in fact have significantly declined [i.e. cost adjusted import prices show huge decline over the period. It is thus evident that dumping has intensified over the period.

Examination by the Authority

- 46** The Authority notes that the Applicant domestic industry is required to provide information that is reasonably available to it and sufficient information was made available to justify initiation of the investigation in the instant matter.
- 47** As regards the issue that normal value has been incorrectly determined on the basis of high consumption norms of the domestic industry for raw material and utility whereas the consumption norm for raw material and utility are much lower for the exporters, the same is incorrect. As recorded in the initiation notification, the Applicant had estimated the Normal values in the subject countries by considering the constructed normal value approach. For the purpose, it had estimated cost of production of the foreign producers by adopting such information as is reasonably and publically available. The Authority had prima-facie considered the normal value of the subject goods in the subject countries on the basis of constructed values for the purpose of the initiation of this investigation. The Authority, however, notes that it expected concerned exporters/producers from the subject countries to co-operate in the investigative process by filing their exporter's questionnaire response for facilitating appropriate determination of the dumping margins so that the Normal values could be determined based on their respective questionnaire responses. It is noted that a few exporters /producers from the subject countries (except from China PR) have filed their exporter questionnaire's response. An examination of the exporters' questionnaire response along with additional information /data sought by the Authority, shows that the dumping margins are significantly positive.
- 48** As regards the contention that Authority failed to follow proper procedure under para 7 of Annex. 1 to select appropriate market economy third country etc; the Authority notes that the issue has been raised by an Indonesian exporter, who should not be concerned with this issue as para 7 is not applicable to them at all. No Chinese exporter/producer has sought to question the same. Notwithstanding the same, the Authority notes that the Applicant had submitted that Normal value for China PR could not be determined by them on the basis of price or constructed value in a market economy third country as relevant information was not accessible to them. It needs to be noted that appropriate market economy third country must be comparable keeping in view the level of development of the country concerned and the product in question. The Authority notes that it did not have any reliable information that was made available to it at the time of initialing this investigation. Besides, the Applicant had submitted that India is an appropriate surrogate country for China PR as not only India has

been considered as a surrogate country to China PR in the past by WTO Members but it would also result in access to accurate and adequate information. The normal value had thus been determined on the basis of cost of production in India, duly adjusted. While doing so, the Authority had moderated the claims of the Applicant and it was thus determined that there was sufficient evidence on record in this respect to justify initiation of the investigation.

- 49 As regards adjustments in the Export Price at the time of initiation notification; it is clarified that the Authority had considered ocean freight, marine insurance, documentation charges, cleaning charges and manifestation charges and had disregarded the claim with respect to commission for the purposes of estimating ex factory price of the subject goods from the subject countries. Thus, rather than considering commission @ 1% of FOB price as suggested by the interested party, the Authority had not made any adjustment in the export price for the same.
- 50 The Authority sent questionnaire to the known exporters/producers from the subject countries, advising them to provide information in the form and manner prescribed. Response to the questionnaires were received from the following:

S.N.	Name of Producer/Exporter
1	M/s. Magna-Foremost SDN, BHD, Malaysia
2	M/s Masonite Components, Ireland
3	M/s Merbok MDF Lanka (Private) Ltd., Sri Lanka.
4	M/s Segamat Panel Boards Sdn, Bhd, Malaysia
5.	M/s P.T. Masari Dwisepakat, Indonesia
6.	M/s P.T. Sumatera Prima Fibre Board, Indonesia
7.	M/s. Evergreen Fibre Board Berhad (EFB), Malaysia
8.	M/s Evergreen Fibre Board (JB) SDN BHD, Malaysia
9.	M/s Evergreen Fibre Board (Nilai), Sdn. Bhd (EFN), Malaysia
10.	M/s Daiken Miri Sdn. Bhd., Miri Sarawak, Malaysia

- 51 M/s Daiken Miri Sdn. Bhd., Miri Sarawak, Malaysia has stated that they have not exported the subject goods during the POI.

Examination of Market Economy claims in respect of China PR by the Authority

- 52 The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules.
- 53 As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy can be rebutted, if the exporter/producer(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The co-operating exporters/producers of the subject

goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 of Annexure I of the AD Rules in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether: -

- the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- the exchange rate conversions are carried out at the market rate.

54 The Authority indicated, in the initiation notification that the applicant has claimed that China PR should be treated as Non Market Economy and therefore Normal value in case of China PR should be determined in accordance with Para 7 and 8 of Annexure I of the AD Rules. The applicant has submitted that they have not been able to access information from a market economy third country for the purposes of determination of Normal value in respect of China PR and has pleaded that India can be considered as an appropriate market economy third country for determination of normal value in China PR. The Authority informed known exporters/producers from China PR that it proposes to examine the claim of the Applicant in the light of para 7 and 8 of Annexure I of the AD Rules. The exporters/producers of the subject goods from China PR were therefore requested to furnish, *inter alia*, necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 of the Annexure I of the AD Rules to enable the Authority to consider whether market economy treatment be granted to cooperative exporters/producers from China PR.

55 The Authority notes that consequent upon the initiation notice issued by the Authority; none of the Chinese producer/exporter has submitted its questionnaires' response including the market economy questionnaire response and thus has not sought to rebut the non-market economy presumption.

Determination of Normal value in respect of Exporters / Producers from China PR

56 Para 7 of Annexure I of the AD Rules provides that

In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or

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

57 The Authority notes that sufficient information and evidence is not available on record in respect of the price or constructed value of a market economy third country that has the comparable level of development *vis a vis* China PR, particularly considering the subject goods. Thus, in view of the above facts, the Authority, for the purpose of preliminary determination, proceeds to provisionally determine the Normal value in respect of exporters/producers from China PR on available reasonable basis, in terms of second proviso of para 7 of Annexure 1 to the AD Rules. Accordingly, the ex-works Normal Value of the product under consideration have been provisionally determined based on constructed costs of production, duly adjusted. The Normal Values have been constructed as per the methodology described below:

Methodology adopted for constructing Normal Value in case of China PR

58 Accordingly, the Authority has constructed Normal value for producers in China PR on the basis of:

- the price of inputs as procured by the domestic industry,
- efficient consumption norms of raw materials of domestic industry as considered in the NIP.
- the utilities cost and conversion costs of the domestic industry as considered in NIP.
- After arriving total cost of production for CNV as above, 5% profit has been allowed.

59 For the purpose of preliminary findings, the normal value so determined comes to US\$ *** /CBM.

Normal value in respect of Indonesia, Malaysia and Sri Lanka – responding exporters

60 Response to the questionnaire were filed by the following companies:

S.N.	Name of Producer/Exporter
1	M/s. Magna-Foremost SDN, BHD, Malaysia
2	M/s Masonite Components, Ireland
3	M/s Merbok MDF Lanka (Private) Ltd., Sri Lanka.
4	M/s Segamat Panel Boards Sdn, Bhd, Malaysia
5.	M/s P.T. Masari Dwisepakat, Indonesia
6.	M/s P.T. Sumatera Prima Fibre Board, Indonesia
7.	M/s. Evergreen Fibre Board Berhad (EFB), Malaysia
8.	M/s Evergreen Fibre Board (JB) SDN BHD, Malaysia
9.	M/s Evergreen Fibre Board (Nilai), Sdn. Bhd (EFN), Malaysia
10.	M/s Daiken Miri Sdn. Bhd., Miri Sarawak, Malaysia

61 M/s. Magna-Foremost SDN and M/s. Masonite Components, Ireland has stated that they have not exported the subject goods to India and that they have only exported door-skins. Since it has already been clarified that door-skins are not part of the PUC, no further examination of their data has been undertaken for determining individual dumping margin in their case, subject to further verification as may be deemed appropriate.

General methodology followed for the responding exporters for determination of Normal Values

62 The Authority has determined individual dumping margin in respect of co-operative exporters / producers who have provided the requisite information. The general methodology adopted for determination of Normal value is as follows:

63 It was first seen, whether the domestic sales of the subject goods by the responding exporters/producers in their domestic markets were representative and viable for permitting determination of Normal values on the basis of their domestic selling prices and whether the ordinary course of trade test was satisfied as per the data provided by the respondents and sought by the Authority. Wherever the respondents have provided transaction-wise details of the sales of the like article in their home markets, the information so provided has been relied upon to determine the Normal value for the subject goods after carrying out the ordinary course of trade test and sufficiency test subject to further investigation and verification.

64 For carrying out the OCT test, the costs of production have been examined with reference to the exporter's/producer's questionnaire responses filed by them and in terms of the additional information sought by the Authority, subject to further investigation and verification. Wherever discrepancies in the information/data filed have been noted, the Authority has provisionally constructed the cost to make and sell the goods based on best information available on record, subject to further investigation and verification.

- 65 Wherever, there were no domestic sales or no sufficient domestic sales, the Normal value has been determined by the Authority on the basis of ‘facts available’ in terms of Rule 6(8) of the AD Rules.
- 66 In their responses, the respondents have provided transaction-wise details of sales made of the subject goods in their home markets. The information so provided has been provisionally relied upon to determine separate weighted average domestic selling price of the subject goods, subject to further investigation and verification. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods/ constructed costs, to determine whether the domestic sales were in the ordinary course of trade. It was also seen whether the loss-making transactions account for over 20% of the sales or not. Wherever the profitable domestic sales transactions were found to be accounting for more than 80% of total sales, the weighted average price of all the domestic sales have been taken into consideration. However, wherever the profitable sales volume was found to be less than 80%, the weighted average price of the profitable domestic sales has been taken into consideration.

Determination of Normal value in respect of Co-operative Exporters / Producers from Indonesia, Malaysia and Sri Lanka

M/s Evergreen Fibreboard Berhad (EFB)

- 67 From the perusal of the response of the company it is seen that the company does not follow product coding system and the type of product is identified on the basis of the description given on the invoice/sales contract etc. However, for the comparison purposes, the exporter has devised a product control number (PCN) for each type of the product sold by the company on the basis of the following properties/ features of subject goods manufactured by the company:
- a. Low Emission Boards
 - b. Standard / Normal Boards
 - c. Sanding Process
 - d. Thickness
 - e. Width
 - f. Length
- 68 It has been stated that the goods having the same PCN sold in the domestic market and the export markets are identical. Further, the company has claimed that there are no differences in the goods sold or produced in the domestic market or sold to countries other than India in physical/ technical / chemical characteristics from those exported to India.
- 69 The questionnaire’ response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant Appendixes of their response. It is noted that M/s Evergreen Fibreboard Berhad (EFB) has a subsidiary, namely M/s Evergreen Fibreboard (JB) Sdn. Berhad (EJB), which has also filed

its questionnaire response. Besides, it is also noted that there is another group company M/s Evergreen Fibreboard (Nilai) Sdn. Bhd, which is producing and selling the subject goods in the domestic market but no response has been filed on behalf of this company. In response to query from the Authority, it was clarified that the response has not been filed as the company has not exported the subject goods to India.

70 It is noted from the published data available on the web-site of the company that the company has a number of related entities engaged in activities associated with production of the subject goods including plantation, power generation, manufacturing of glue required for manufacturing the subject goods. Further, the information submitted by the company in Appendixes 7 & 8 includes credits for inadmissible receipts. It is also noted that though the company has stated that the analysis be undertaken on PCN-wise basis; but it is noted that the company does not maintain the Appendix 8B data on PCN-wise basis. Therefore, for the purposes of preliminary findings, the analysis has been done for PUC as a whole. After adjustments for inadmissible credits as above, it is noted that the company has earned profits on domestic sales. In the circumstances, the Authority has provisionally determined the Normal value based on domestic sales, subject to further investigation and verification, which works out as US \$ *** /cbm.

M/s Evergreen Fibreboard (JB) Sdn. Berhad (EJB)

71 From the perusal of the response of the company it is seen that the company does not follow product coding system and the type of product is identified on the basis of the description given on the invoice/sales contract etc. However, for the comparison purposes, the exporter has devised a product control number (PCN) for each type of the product sold by the company on the basis of the following properties/ features of subject goods manufactured by the company:

- a. Low Emission Boards
- b. Standard / Normal Boards
- c. Sanding Process
- d. Thickness
- e. Width
- f. Length

72 The goods having the same PCN sold in the domestic market and the export markets are identical. Further, the company has claimed that there are no differences in the goods sold or produced in the domestic market or sold to countries other than India in physical/ technical / chemical characteristics from those exported to India.

73 The questionnaire' response submitted by the company was perused. It is noted that M/s Evergreen Fibre board (JB) Sdn. Berhad (EJB) is a subsidiary of M/s Evergreen Fibre board Berhad (EFB). It is further noted that there is another group company M/s Evergreen Fibre board (Nilai) Sdn. Bhd, which is producing and selling the subject goods in the domestic market but no response has been filed on behalf of this company. In response to query from

the Authority, it was clarified that the response has not been filed as the company has not exported the subject goods to India.

- 74 On a perusal of the company's response, certain discrepancies were noted in respect of Appendixes 3,4,7,&8 of the response. An opportunity to clarify the same was provided to the company. Though the company sought to clarify the issues raised but the same were not found to be satisfactory as the information filed was contradictory in nature. In the circumstances, the Authority is constrained to proceed further by provisionally constructing the Normal value subject to further investigation and verification, which works out as US \$ *** /cbm.
- 75 In view of the fact that once company is the subsidiary of the other; the Authority has provisionally decided to determine a single dumping margin for both the respondents, that is, M/s Evergreen Fibreboard Berhad and M/s Evergreen Fibreboard (JB) Sdn. Berhad.

M/s Segamat Panel Boards Sdn. Bhd.

- 76 From the perusal of the response of the company it is seen that the company has claimed that the products which are sold in India and in the domestic market are identical, however each thickness has its own price in the market. SPB only produces thin MDF ranging from 2.2 MM thickness to 6.00 MM.
- 77 The questionnaire' response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant Appendixes of their response. The examination of the questionnaire response filed by the company along with the additional information/data sought by the Authority indicates that the company has incurred financial losses on the overall sales of the subject goods after excluding the realisations from the non-cost items. In response to the query from the Authority, the company clarified that its domestic operations for the subject goods are making profits whereas the losses are only in third country exports (other than India). Pending further examination and verification of the data, the Authority has accepted the contention of the company. The adjustments claimed by the company have been provisionally accepted, subject to further investigation and verification. Thus, the normal vale based on the domestic sales of the company works out as US \$ *** /cbm.

PT SUMATERA PRIMA FIBREBOARD

- 78 From the perusal of the response of the company it is seen that the company has claimed that the goods sold in the home market are identical to the exported goods for the same specifications. Therefore, the comparison of prices in the two markets ought to be made for each product code.
- 79 The questionnaire' response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant

Appendixes of their response. However, the company has not given code-wise Appendix 8B data. After examination of the submissions of the company, certain discrepancies were noted and the company was advised to clarify the same. While some discrepancies in the data still remain, the information/data filed by the company has been provisionally accepted subject to verification. It is seen that the domestic sales transactions are overwhelmingly loss-making and hence, the Normal value has been provisionally constructed based on their Appendix 8B data, subject to verification. Accordingly, the normal value for the exporter has been determined which works out as US \$ *** /cbm.

PT. Masari Dwisepakat Fiber

80 From the perusal of the response of the company it is seen that the company has claimed that it mostly sells premium quality product in the home market. The Indian market does not place too much attention on the product quality. Therefore, they mostly sell Grade A2 and B products to India. However, the goods sold in the home market are identical to the exported goods for the same specifications. Therefore, the comparison of prices in the two markets ought to be made for each product code.

81 The questionnaire' response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant Appendixes of their response. However, the company has not given code-wise Appendix 8B data. The information/data filed by the company has been provisionally accepted subject to verification. Accordingly, the Normal value has been determined after carrying out the sufficiency and OCT test. The adjustments as claimed by the company have been provisionally accepted, subject to verification. Accordingly, the normal value for the exporter has been determined which works out as US \$ *** /cbm.

M/s Merbok MDF Lanka (Private) Limited

82 From the perusal of the response of the company it is seen that the company has claimed that there is no difference between the goods sold in the home country compared with the goods exported to India except thickness and brand and that there are no differences in the goods sold or produced in the domestic market or sold to countries other than India in physical/ technical/ chemical characteristics from those exported to India except thickness and brand.

83 The questionnaire' response submitted by the company was perused. It was found that the respondent has provided selling price and other details of the subject goods in relevant Appendixes of their response. The examination of the response filed by the company shows that the company has received significant financial support from its holding company as interest-free loan. In the Appendixes 7 & 8 of the questionnaire's response filed by the company, no expenses on account of finance costs have been reflected. It was noted that after considering the interests costs on the loan so obtained, the company has incurred losses for its domestic operations. Hence, the Authority has provisionally constructed the Normal value

based on their cost of production after appropriate adjustments for interest costs, subject to further investigation and verification, which works out as US \$ *** /cbm.

Determination of Normal value in respect of Non-Co-operative Exporters / Producers

- 84 The Authority notes that none of the other exporters/producers from EU and USA have responded to the exporter's questionnaire. Therefore, the normal value in their cases has been determined on the basis of 'facts available'.

F. EXPORT PRICE

Export price for the responding exporters

M/s Evergreen Fibreboard Berhad (EFB)

- 85 The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by the respondent. The export prices have been allowed as claimed by the respondent, subject to further investigation and verification. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of Overseas Freight, Inland Transportation, Local Insurance, Packing, Customs handling and Clearance Charges and Bank Charges have been claimed and are provisionally being accepted subject to further investigation and verification. The ex factory export price thus works out as US \$ *** /cbm.

M/s Evergreen Fibreboard (JB) Sdn. Berhad (EJB)

- 86 The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by the respondent. The export prices have been allowed as claimed by the respondent, subject to further investigation and verification. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of Overseas Freight, Inland Transportation, Packing, Local Insurance, Customs handling and Clearance charges and Bank Charges have been claimed and are provisionally being accepted subject to further investigation and verification. The ex factory export price thus works out as US \$ *** /cbm.

M/s Segamat Panel Boards Sdn. Bhd.

- 87 The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by the respondent. The export prices have been allowed as claimed by the respondent, subject to further investigation and verification. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of Inland Transportation, Overseas Transportation, Handling & Other Charges have been claimed. As regards the adjustments, the same are provisionally being accepted subject to further investigation and verification. The ex factory export price thus works out as US \$ *** /cbm.

PT. Sumatera Prima Fibreboard

- 88 The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by the respondent. The respondent has furnished information in Appendix 2 relating to exports to India. After examination of the submissions of the company, certain discrepancies were noted and the company was advised to clarify the same. While some discrepancies in the data still remain, the information/data filed by the company has been provisionally accepted subject to verification. The export prices have been allowed as claimed by the respondent, subject to further investigation and verification. The adjustments on account of Commission, Rebate, Inland Transportation, Ocean Freight have been claimed and are provisionally being accepted subject to further investigation and verification which works out as US \$ *** /cbm.

PT. Masari Dwisepakat Fiber

- 89 The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by the respondent. The export prices have been allowed as claimed by the respondent, subject to further investigation and verification. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of Overseas Transportation, Inland Transportation and Bank Charges have been claimed and are provisionally being accepted subject to further investigation and verification. The ex factory export price thus works out as US \$ *** /cbm.

M/s Merbok MDF Lanka (Private) Limited

- 90 The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by the respondent. The export prices have been allowed as claimed by the respondent, subject to further investigation and verification. The respondent has furnished information in Appendix 2 relating to exports to India. The adjustments on account of Inland transportation, Overseas transportation, Overseas insurance and Credit costs have been claimed and are provisionally being accepted subject to further investigation and verification. The ex factory export price thus works out as US \$ *** /cbm.

Determination of Export Price in respect of Non-Co-operative Exporters/Producers

- 91 Since no other response has been received from any other producer/exporter of the subject goods; the Authority has determined the Export price as per 'facts available' in terms of Rule 6(8) of the AD Rules. The data has been collated as per the information provided by the applicant and the information provided by the co-operative exporters.

G. DUMPING MARGIN

92 Considering the Normal values and Export prices as determined above, the dumping margins have been determined as follows:

In US\$/Cbm

S.No.	Country- Producer/Exporter	Normal Value	Net Export Price	Dumping Margin	Dumping Margin %	Dumping Margin Range
China PR						
1.	All producers and exporters	***	***	***	***	185-195
Indonesia						
2.	Pt Sumatera Prima Fibreboard	***	***	***	***	60-70
3.	PT. Masari Dwisepakat Fiber	***	***	***	***	35-45
4.	All other producers and exporters	***	***	***	***	105-115
Malaysia						
5.	M/s Segamat Panel Boards Sdn. Bhd.	***	***	***	***	11-16
6.	M/s Evergreen Fibreboard Berhad (EFB) / M/s Evergreen Fibreboard (JB) Sdn. Berhad (EJB)	***	***	***	***	34-39
7.	All other producers and exporters	***	***	***	***	90-95
Sri Lanka						
8.	M/s Merbok MDF Lanka (Private) Limited	***	***	***	***	25-30
9.	All other producers and exporters	***	***	***	***	75-80

H. INJURY AND CAUSAL LINK

Submissions made by other interested parties

93 The submissions made by interested parties, in brief, are as follows:

Submissions made by M/s Venugopala Slate Industries

- There is no merit in the Applicant's claim that their selling price is lower than the prices projected in the project report. Such projection lacks reasonableness and relevancy as international prices have all along been significantly lower than Indian prices during injury period. Any error in their judgment ought not to be corrected through anti-dumping mechanism. It is incorrect to compare the actual selling price *vis-à-vis* selling price assumed in the project report disregarding the prevailing international price.
- Applicant has misinterpreted provisions of material retardation as Rule 11 (1) provides for mutually exclusive provisions; hence the claim lacks any factual and legal basis. Applicant cannot claim nascent stage after almost 17 months of commercial production and they should not be allowed to misuse anti dumping mechanism to care for their higher cost of production caused by their inherent inefficiency in terms of higher raw material rate, higher fixed cost etc. No Material Injury has been caused to the Domestic Industry as per the data contained in the petition. Arguments on levels of imports are exaggerated; whereas factually imports from subject countries have slightly increased by approx 1% which is negligible and it should be seen along with an admittedly miniscule production and increase in demand. Market share of alleged dumped imports has declined despite the growth in demand. Various other injury parameters showed superb growth and any sign of injury can be seen. The cost of production of the applicant is abnormally high as compared to other East Asian countries as compared to the co-operating exporters. Fixed conversion cost of domestic industry appears to be very high; hence, higher amount of fixed cost should be removed from the injury examination to ensure fair analysis.
- Raw material cost of PUC is influenced by two variables i.e. raw material rate and actual consumption of raw material per unit of output. Raw material rates and consumption norms appear close to double of international rates. Such inefficiencies and losses due to other reasons should be examined and cannot be attributed to injury caused by dumping. Any losses to the Applicant, if any, can be attributable only to higher cost of production. Any imposition of anti dumping duty would be against public interest in the present case as any duty would lead to passing on burden of higher cost due to inefficiencies on importers which in turn seriously affect the interest of user industry.
- Landed price from subject countries have increased whereas selling price of applicant are showing declining trend in the same period. This reflects an inverse relationship and shows no correlation between landed prices *vis-à-vis* domestic selling prices.
- The Applicant has commenced their production recently. Hence, any injury on account of factors such as Start up cost, Un-established sales and distribution channels, increased marketing expenses coupled with higher discounts, higher cost of production etc cannot be attributed to alleged dumping.

Submissions made on behalf of M/s Segamat Panel Boards Sdn. Bhd and M/s Merbok MDF Lanka (Private) Ltd, Sri Lanka

- If any, injury to the domestic industry was on account of wood price and consumption norms during the injury period.
- Reasonableness of the projections made in the Project Report: In support of their claim for injury the Applicant has claimed that the price at which the company is forced to sell the product in the market is below than the prices projected in the project report. In this regard, it is submitted that the least selling price of Applicant was approx Rs. 16,935 per CBM during 2009-10 and declined to Rs 15,164 per CBM in POI. We have estimated such selling price from the trending of price undercutting. Pertinently, prices of subject goods in international market have all along been significantly lower than these Indian prices during injury period. While it is for the financial institution for make realistic profitability projections while appraising project for financing having regard to current prevailing prices in the international market, any error in their judgment ought not be corrected through anti-dumping mechanism which is meant to counter act the effect of unfair trade practices. Under anti dumping laws, there are set practices for price comparison under free trade regime. It is incorrect to compare the actual selling price vis-à-vis selling price assumed in the project report disregarding the prevailing international price. It is also relevant to note that the Indian producers of subject product in the country commenced their production recently and they could achieve a price realization higher than international levels.
- Literal meaning of the term “materially retards the establishment of any industry in India” reflects a situation when dumping prohibits the commencement of any industry in India though the plant is ready to declare its commercial production. The term commencement cannot and should not be misinterpreted to denote growth and expansion by the domestic industry which the applicant have tried to do. The use of words ‘import of such article into India causes or threatens material injury to any established industry in India or material retards the establishment of any industry in India’ in Rule 11 (1) makes it amply clear that Material injury, threat of material injury and material retardation are mutually exclusive. However, initiation notification states that domestic industry has suffered apparently material retardation and also material injury. Hence, test of material retardation relied by the Applicant is inapplicable to the Applicant as plant is already in operation.
- The Applicant has commenced the commercial production w.e.f. 2nd February 2010. It is strange that even after 17 months of commercial production, applicant industry claims to be in its nascent stage. In addition, it is submitted that the claim of the applicant industry for material retardation when they have actually realized selling price above international prices is unfounded and untenable. Further, if the cost of production of the domestic industry is higher due to their inefficiencies, higher raw material rate and higher fixed cost etc then how such industry can claim material retardation as nascent industry and attribute the same to dumping.
- The Authority has stated in the initiation notification that the imports from the subject countries have substantially increased, which should have declined, given that the

domestic industry has set up new production facilities and supporting company has also commenced the production of the product under consideration. However, imports from subject countries was 44,009 MT in 2009-10 which slightly increased to 44,562 CBM in the proposed POI and the rate of such increase was approx 1% only which is very negligible.

- There is no material injury to the Domestic Industry. The data contained in the petition does not show existence injury to the domestic industry on account of alleged dumped imports. In fact, Proforma IVA shows that the production, capacity utilization, market share and sales of the domestic industry have all improved during the POI vis-à-vis the previous year. It is a peculiar situation when operating injury parameters have shown improvement, its market share has improved, and realizing selling prices above the prevailing international prices yet domestic industry is claiming injury. That capacity utilization of Applicant which was only 27% during 2009-10 improved to 32% during POI, thus showing no injury.
- That the domestic industry is not at all competitive when its cost of production is higher by 100% over the international levels. We have tried, (based on our estimation) to compare the actual cost of production and selling price of our exporter vis-à-vis domestic industry. This indicates that the cost of production of the Applicant was abnormally higher as compare to exporters and reasons of higher cost of Applicant have been analyzed as under:
 - a. Higher Fixed Conversion Cost of Applicant: that fixed conversion cost of the Applicant was Rs. 6,372 per CBM whereas it should be Rs. 2,246 per CBM at normal utilization (90%). Thus, fixed conversion cost of domestic industry was high by Rs. 4,126 per CBM during POI due to lower capacity utilization. Further, actual fixed costs of the applicant industry are more than double of the exporters. Therefore, higher amount of fixed cost should be removed from the injury examination to ensure fair analysis as the injury suffered by the Applicant due to this cannot be attributable to alleged dumped imports from the subject countries.
 - b. Raw Material Rate and Consumption Norms of Applicant: It is submitted that raw material cost of PUC is influenced by two variables i.e. raw material rate and actual consumption of raw material per unit of output. A comparison of raw material rates of applicant industry with the corresponding rates of exporters, it may be seen that raw material rates of domestic industry are close to double of cooperating exporter. This difference in rates, explains partially the reason for difference in cost of production of applicant domestic industry vis-à-vis exporters. This is further compounded when we compare the actual consumption of raw material per unit of output of exporter with applicant industry which is higher by about 28%. This is nothing but inefficiency of operation by applicant industry. The possibility of padding up of costs by showing higher consumption material cannot be ruled out which may be critically looked into by the Authority. There

are differences in raw material cost and such difference in raw material cost cannot and should not be attributed to alleged dumping.

- c. Thus, the cost of the Applicant is over by almost Rs. 9,142 per CBM only on account of inefficiencies in terms of low capacity utilization and higher consumption of raw material. Hence any losses caused on account of such other reasons cannot be attributable to dumping.
- That the Applicant has suffered losses when the least net selling price of Applicant was Rs. 15,164 per CBM and such price was higher than international prices which were 12,000 per CBM. We have estimated such selling price from the trending of price undercutting. Therefore, reason of losses to the Applicant was higher cost due to inefficiencies. The landed price from subject countries have increased from Rs. 12,024 MT in previous year to Rs. 12,730 MT in the period of investigation whereas selling price of applicant are showing declining trend in the same period. This reflects an inverse relationship and shows no correlation between landed prices vis-à-vis domestic selling prices.
 - That the Applicant has commenced their production recently. Therefore, it is quite known that the Applicant would suffer injury on account of various factors such as (i) Start up cost; (ii) Un-established sales and distribution channels; (iii) increased marketing expenses coupled with higher discounts. There is no causal link.

Submissions made on behalf of Evergreen Fibreboard Berhad (EFB), Malaysia; Evergreen Fibreboard (JB) Sdn. Bhd. (EJB), Malaysia and Evergreen Fibreboard (Nilai) Sdn. Bhd.(EFN), Malaysia

- The rule lays down that there are three types of injury that may be caused to the domestic industry i.e. material injury to an established industry, threat of material injury to an established industry or threat of material retardation of establishment of an industry. The word 'or' used in the above Rule makes it clear that there cannot be a finding of all three types of injury or any two types of the injury existing at the same time. Therefore, injury in the form of material retardation and material injury cannot co-exist. It is also important to mention that the Applicant nowhere in the petition has mentioned that it is a case of material injury. It has merely stated for material retardation and there is no material retardation of the establishment of the domestic industry.
- The import analysis is wholly incorrect. It is amply clear that total imports have conversely declined substantially in 2010-11. Further, a negligible increase of about 1% in the imports from the subject countries over the same period cannot be regarded by any stretch of imagination as substantial increase. That the import data has been incorrectly sorted by the domestic industry.
- The initiation notification, with regard to injury it has been mentioned that the domestic industry has suffered material retardation of its establishment. The domestic industry

has been successfully producing the subject goods for 17 months including the period of investigation and also continues to manufacture the subject goods beyond the period of investigation.

- There is no material injury to the domestic industry as may be seen from the following:
 - i. *Capacity*: The installed capacity of the Applicant has increased significantly from 8333 to 50000 m³ in 2010-11 as compared to previous year.
 - ii. *Production*: The production of the Applicant has substantially increased from 2262 m³ in 2009-10 to 15860 m³ in 2010-11.
 - iii. *Capacity Utilization*: The capacity utilization of the Applicant has increased from 27% in 2009-10 to 32% in 2010-11.
 - iv. *Sales*: The sales of the Applicant have also substantially increased from 334 m³ to 15347 m³ in a single year which is more than 4600%.
 - v. *Inventories*: The domestic industry in 2010-11 produced 15860 m³ and sold 15347 m³ and the balance of 423 m³ is stock for this year. That the stock of mere 2.67% of production in 2010-11 or less than 10 days of inventory cannot be regarded as piling up of inventories.
 - vi. *Market Share*: The market share of the Applicant has increased from 0.63% in 2009-10 to 25.23% in 2010-11.
 - vii. *Profitability, Return on capital employed, Cash profits and price undercutting*: The injury with respect to them, if any is not because of the alleged dumped imports from subject countries but because of its high cost due to high per unit cost on account of start-up cost, high raw material cost, high utility cost, high fixed cost, high labour cost, high interest cost and high depreciation cost.
 - viii. *Wages*: It is submitted that the wages paid to the employees have substantially increased in 2010-11 over the previous year.
 - ix. *Number of Employees*: there is no decline in the number of persons employed by the Applicant.
 - x. *Productivity*: The productivity of the Applicant has increased.
- There is no causal link between the injury, if any to the domestic industry and alleged dumped imports. It is submitted that injury, if any has been suffered by the Applicant on account of inter-se competition between the two domestic producers.

Submissions made on behalf of M/s PT. Masari Dwisepakat Fiber, Indonesia and M/s PT. Sumatera Prima Fibre board (SPF), Indonesia

- The applicant Industry has withheld information relating to captive consumption of the product under consideration. It is mainly into the business of high price subject goods which required plain fiber boards as raw material.
- After 15 months of commercial production, no industry can claim to be in its nascent stage and claim material retardation.

- The applicants have not substantiated how the present case falls within the scope of material retardation. There is no basis to claim also that the industry is still in its nascent stage. The applicant is an already established industry in India. The present case is a case in which the applicant's production line is being supplemented with another line with a different thickness. As an established industry player in this market, the applicants have been benefited by their current setup as they already possess some of the common equipment, employees, expertise, existing distribution network and systems, existing customer bases, and/or other components, raw material suppliers needed to produce and distribute the fiber board below 6 mm and are able to leverage these factors for purposes of their additional production line operations. In view of the above, and specific language of the initiation notification, we are of the considered opinion that present case is not a case seeking protection for retardation of establishment of an industry in India due to dumped imports and injury as a result thereof. It is settled jurisprudence that a case of material retardation can be made only and only when production has not begun or the industry has not yet achieved its commercial volumes.
- The initiation notification is like a show cause notice and has not put any party to notice that the claim of applicants for material retardation has been accepted by the Authority. In the absence of an initiation for material retardation, we are presently not offering any further comments on material retardation.
- The period of investigation and injury examination period fixed by the Authority is erroneous and unfair. In the instant case the period of Investigation is April 2010 – June 2011 i.e., of 15 months. The applicant is only new entrant in the market and has only completed 2 months in April 2010. Therefore, the determination of dumping and injury tends to be skewed as the variable costs and fixed costs would be very high for the applicant and no proper or comprehensive analysis can be undertaken.
- As per the application there is only one more producer (Green Ply) of the subject goods in India and such new producer also started producing the subject goods from December 2010. The applicant has only provided the production figures in the non-confidential version of the application and all the other injury related information is missing. The Designated Authority may also ascertain such factual claims made by the applicants from other authentic sources.
- Injury parameters: In this connection we wish to point out following:
 - a. Figures of depreciation, interest, and wages are negative.
 - b. Productivity per employee and per day has also increased.
 - c. In Proforma IV-A, interest shown shows sudden increase from base year. This sudden increase may be one of the reasons why the Applicants are not doing well.
 - d. Applicant has not shown captive consumption in Proforma IV A.
 - e. Average inventory has decreased in comparison to base year, when they have started their production.

- f. When we compare inventory by diving by per day sale it is seen that the inventory comes down significantly.
 - g. Information relating to GFA, NFA, Working Capital and Price underselling not provided.
 - h. As per the revised Proforma IV-A Applicant has performed well as compared to base year 2009-10.
 - i. Applicant is mainly selling value added products which is costly as compared to plain MDF. They are making door skin, MDF coated boards, melamine boards out of this line and exterior grade MDF. Therefore, we would request the Authority to kindly consider the issue to captive consumption while computing the cost and NIP of the Applicant and also kindly provide the non-confidential version of calculation sheet for our effective comments.
- The imports from Indonesia remained more or less same throughout the injury investigation period. As shown in the table that the value increased 21.70% during 2010-11 whereas the volume increased by 20%. In the Annualized figures the value of Indonesian imports increased by around 20%, whereas volume increased only by 12% as compared to 2009-10.

Submissions on behalf of M/s. Magna-Foremost SDN and M/s. Masonite Components, Ireland

- The claims of material retardation and material injury are mutually exclusive: where a domestic industry is in fact already established, it cannot claim material retardation. The fact that the Applicant accounts for approximately 87% of total Indian production of the subject product strongly evidences that, in this case, the domestic industry is already established. The Applicant – which admits to having commenced production in February 2010, 21 months before this investigation was initiated – can hardly be considered to be not yet established, making any claim of material retardation improper in this case.

Submissions made by the domestic industry

The submissions made by the domestic industry, in brief, are as follows:

- In respect of contention that DI is forced to sell the product in the market below than the prices projected in the project report; it is submitted that mere fact that the export price was comparable to some other “international” price does not mean anything. In fact, there is nothing like “international price”. Even two transaction prices need not be the same. Prices to two customers can differ. Under this economic reality, the exporter is projecting one of the “international price”. The selling price of the domestic industry, in fact, is required to be compared with the target price in order to determine price underselling. It is universally accepted principle to determine price underselling by considering target prices and actual selling price.

- As regards the contention that even with 17 months of commercial production, domestic industry claims to be in the nascent stage and that the claim of material retardation in the case when selling price has been realized above the international prices is unfound and untenable; it is submitted that the Authority is required to assess injury to the domestic industry by comparing domestic industry performance during investigation period with preceding years. By practice, the Authority is considering preceding three years and compares the performance in period of investigation with preceding three years. Thus, typically, the Authority considers period of investigation and preceding three years for injury assessment. In the present case, however, the Applicant does not have actual operational history for period of investigation and preceding three years. This, itself, establishes that the case of the Applicant is that of nascent industry. Notwithstanding the Applicant has established injury on both ways –
 - By considering its actual performance for the period of its existence;
 - By comparing its performance with the projected/target performance

Both clearly establish that the domestic industry has suffered injury.

- In respect of the contention that rate of increase in imports from a year prior to the POI was only 1%, whereas rate of increase in demand was 16%, whereas the level of production by the DI was miniscule; it is submitted that the very fact that the production by the domestic industry was miniscule despite significant capacities and demand in the market itself establishes that the domestic industry is not able to produce to the extent of its capacities, establishes injury suffered by the domestic industry. In the facts and circumstances of an industry like present, where commercial production commenced in February, 2010 and where demand for the product is significantly high and domestic industry has significant capacities, inability of the domestic industry to reach the target levels of capacity utilization itself establishes that the domestic industry is being prevented from commercializing production to the targeted extent. Establishment of an industry must be seen with reference to the way it was projected to establish. The domestic industry projected that its capacity utilization shall be *** %, *** % and *** % in first, second and third year of its operation respectively. Thus, it is clear that the domestic industry would be in establishment unless it reaches *** % of its capacity utilization. As opposed to this target levels, the capacity utilization of the domestic industry have been woefully low. The Authority should consider the capacity utilization of the exporter and compare the same with the capacity utilization of the domestic industry. Information on month wise production and sale of the exporters may be called for and be compared with the capacity utilization levels achieved by the exporters. If, it is found that the capacity utilization achieved by some of the exporters are far higher than the capacity utilization achieved by the domestic industry, it must be explained by the exporters why capacity utilization of domestic industry is so low. If the cause for the same is presence of dumped imports in the market, it must be concluded that dumping of the product is causing injury to the domestic industry.

- In respect of the contention that Proforma IV-A shows that the production, capacity utilization, market share and sales of the DI have increased in the POI as compared to the previous year; it is submitted that the argument lacks appreciation of the way a domestic industry commencing production from a new production facility shall perform. Having commenced commercial production in February, 2010, it is obvious that the domestic industry will make efforts to increase its production and sale over the period. It is obvious that the domestic industry would not achieve 100% capacity utilization on day one. The capacity utilization would gradually improve. Thus, increase in production and sale over the injury period is clearly reflective of the efforts of the domestic industry to get established in the market. However, the capacity utilization of the domestic industry was substantially below the levels it had projected. If dumping is not the cause of injury to the industry to the domestic industry, than why domestic industry is faced with such adverse capacity utilization as compared to the levels projected. If the argument of the interested parties is that Applicant is not able to run the plant at this level, it is submitted that Applicant has in fact run the plant at high levels. However, such levels could not be maintained for long period, as the same resulted in huge piling up of inventories and Applicant thereafter had to curtail the production. It would also be seen from the injury information that the Applicant had to reduce its selling price immediately after commencement of sales in the market on finding that it was unable to dispose off the product in the market. Further, after reducing the prices, the Applicant had to increase discounts etc. in order to push the sales. The selling price of the domestic industry declined immediately after start up of production and sale. Further, the net sales realization of the domestic industry declined over the period. This decline in net sales realization and reduction in selling price was despite lower prices offered by the domestic industry. Further, appreciating that the Applicant had somewhat higher fixed cost due to initial start up operation, the Applicant has determined its cost structures by adopting higher level of optimum capacity utilization, whereby the Applicant would have posted profits in its first quarter of operations, but suffered financial losses towards the end of the investigation period. In other words, if starts up cost are excluded, the Applicant had started operation with profitable prices; but went into losses because of dumping of the product in the country. From a comparison of net sales realization of the domestic industry and sales volumes, it would be seen that as the domestic industry reduced its realization, its sales volume improved. In other words, the domestic industry had to compromise on selling price in order to get some volumes. From a comparison of selling prices of the domestic industry and weighted average landed price of imports from subject countries, it would be seen that –
 - When the domestic industry offered its product in the market, the price difference between the domestic product and imported product was quite significant.
 - The domestic industry reduced the prices in order to somewhat bridge the gap between domestic and imported product. However, in view of very significant price difference between the domestic product and imported product, the volume of imports remained significant and did not decline.

- The import volumes should have declined substantially after commencement of production by the domestic industry. Given that the domestic industry product was an “*import substitutive product*”, it was a legitimate expectation of the domestic industry that imports of such a product would substantially fall as the domestic production ramps up production and takes over the demand in the market.
- In respect of the contention relating to the cost of production in India; it is submitted the Applicant has set up the latest plant in this industry and is having machines comparable to the machines available with the foreign producers. Given comparable technology and plant & equipment, it is impossible that the conversion cost of the domestic industry would be substantially different (and higher) as compared with the conversion costs of the foreign producers. Any such claim implies that the foreign producers have manipulated their data and have suppressed true conversion cost. There are limited machine suppliers in this trade, while minor variation might come from country to country in view of difference in price factors, significant difference in conversion costs are impossible. It only implies that facts are being suppressed from or misrepresented to the Authority. The machine deployed by the Applicant at the least can be considered more efficient than the other producers in the subjected countries. There is no basis for the presumption that the fixed costs of the domestic industry are higher than the exporters. While some elements of fixed cost on per CBM basis may be higher due to start up operations, if the costs are considered at reasonable level of capacity utilization, no significant difference shall be found. Applicant submits that the foreign producers are producing and selling a number of products. It is quite likely that they have resorted to apportionment of expenses in such a manner that the costs are understated for the product under consideration and expenses are diverted to other product. It is pointed out in this regard that there is no mandatory requirement under accounting principles to maintain separate information for different products. It is, therefore, very easy for the foreign producers to manipulate their cost data and report lower cost of production. Thus, it is not a question of inefficiencies but a question of manipulated/fabricated data being provided by the exporters to the Authority.
- In respect of the contention relating to Selling prices of domestic industry vis a vis landed price of the imports ; it is submitted that the domestic industry started its journey by pricing its product which were just above the optimum cost of production where it would have fetched some nominal profit, albeit below reasonable levels. Despite so realistic and reasonable price offered by the domestic industry, so significant was the price difference between domestic industry price and import price that the domestic industry had to immediately take a corrective action and reduce the price, despite which the sales volumes were not moving to the levels the domestic industry has production capacities. Therefore, the domestic industry was further forced to offer increasing discounts in order to somehow attract customers to buy domestic product. However, since the price difference still remains significant, the domestic industry could not eventually achieve optimum levels of production.

- In respect of causal link; it is submitted that the injury to the domestic industry is on account of dumped imports as significant price difference between imported and domestic product has prevented the domestic industry from selling its product to the extent of production capacities, which led to reduction in price and low level of sales volumes, reduction in net sales realization, significant difference between non injurious price and landed price of imports on one hand and inability of the domestic industry to increase its production to the extent of target levels on the other hand, significant loss of production man hours, increase in inventories with rising production, decline in production due to rising inventories, collectively and cumulatively establishes that the domestic industry is suffering injury as a result of dumped imports.
- In respect of Public Interest; it is submitted that the present claim of public interest has been made by an exporter or a foreign producer. Suffice it would be to say that the exporter should not be concerned with public interest in India. The Applicant is a part of a responsible and highly respected business house in the Country, whose promoters have been instrumental in setting up and running a 500 bed super specialty hospital in Delhi for the general welfare of the public at large. The group has significant presence in the Country and is well aware about the public interest in India. The Applicant is in fact in a position to provide the product at reasonable price in the country. In any case, the exporter has not established how the anti-dumping duty imposition shall not be in public interest. Since the entire argument is a mere conjecture on the part of exporter, the authority may kindly reject the argument. It is also submitted that the word public interest is a much wider terms and implies interests of producers, consumers and public at large. In any case, it does not mean importers interest. The imposition of duty shall be in public interest, as it would help the domestic industry fully establish itself in the country, which is in the interests of the consumers as well. The consumers shall not be left at the mercy of foreign producers.
- In respect of the contention that the Applicant has withheld information relating to captive consumption of the PUC; it is submitted that sufficient information is already on record. Should the Authority require any further information, the Applicant will provide the same.
- In respect of the contention that substantial imports are reported by the Applicant and other supporting producer in India and entire analysis has been undertaken without taking into account such vital facts; it is submitted that there is no substance in the argument as the imports by the Applicant are not substantial. The imports by the Applicant were *** cbm in a market size of 68,273 cbm and against a capacity of 50,000 cbm.
- In respect of the contention relating to “materially retardation of the establishment of any industry in India; it is submitted that the understanding with WTO members with regard to material retardation makes the meaning of material retardation very clear. Even in a situation where the product is already being produced, the Authority may record a finding of material retardation. Further, material retardation does not mean that company should not have commenced commercial production. Contrary to the arguments of the interested

party, in fact, the jurisprudence emerging on the subject is very clear, i.e., the Authority must examine injury information of the domestic industry to the extent it exists. Proposition advanced by the interested party, in fact, implies that only a company not commencing commercial production can bring application. This would in fact imply that an anti-dumping duty may be imposed even when a company may not have commenced commercial production. Notwithstanding above, the information filed by the Applicant domestic industry in any case clearly establishes that its performance was adverse and deteriorated over the period. The Applicant relies upon the application and the past determinations by the Authority. It has set up manufacturing facilities for production of the product under consideration in the country. There is no other producer of the product in the country who was producing the product under consideration in the country before the Applicant commenced commercial production. The previous investigation by the Authority included all kinds of medium density fiberboard at the stage of initiation. The interested parties heavily argued for exclusion of thin boards on the grounds that the same was not being produced in India. The Authority having satisfied itself that there was no production of thin board in India restricted the scope of the product under consideration to 6mm and above. Further, the Applicant has provided information with regard to its injury to the extent it has produced and sold over the injury period. The Authority may examine the performance of the domestic industry to the extent of its existence.

- The contention that the Applicant is already an established industry in India and that their production line is only being supplemented with another line with a different thickness is without basis as the Applicant did not have any production line for production and sale of fiberboard before the present set up. There was no “current setup” of the company. The Applicant intended to setup three production lines – (i) Thin Fiber Board line, (ii) Thick Fiber Board Line (the same is still being setup) and; (iii) Particle Board Line. Further the Applicant has set up facilities for other downstream products such as Floor Tiles, Door Skin, Laminated Flooring, Direct Printed Board, Insulation & Hard Board, Flush Doors, Ply Boards, Veneer Coated Board, Furniture & Fixture Comp., Composite Board, Decorative Laminated Board, Block Board, UV Coated Board, and Laminated Particle & MDF Boards. Assuming that the company was already an “existing” company and efforts were being made to supplement the existing setup with addition of a production line of a product not hitherto produced in the Country, the same would still fall in the category of material retardation to the establishment of the domestic industry, so long as the product under consideration was not being produced earlier and fresh production facilities have been setup for production of product under consideration.
- In respect of contention relating to data collection; it is really amazing that an interested party is suggesting consideration of 2010-11 as an investigation period in the present case. Firstly, the case was initiated in November 2011 and therefore investigation period of 2010-11 would have implied a stale period for the present purpose. Secondly, period longer than as could have been considered can certainly not prejudice the interests of any party. If the period 2010-11 would have been appropriate for the present purpose, certainly, addition of subsequent quarter is no less inappropriate.

- With regard to the argument that variable cost and fixed cost would be high for the Applicant, the Applicant has provided information with regard to cost of production assessed by them at the time of setting up of the plant. These costs are not at low level of production. These costs are at much higher level of capacity utilization. In any case, the mere fact that the cost of production of the Applicant may be higher is insufficient to deprive the Applicant relief under the law. It only implies that there may be another factor of injury, i.e., start up operation. Further, the law requires/provides for adjustment on account of such “other factors”. The law does not provide that a negative finding of injury must be recorded, the moment the Authority comes to a conclusion that there is some other factor as well causing injury to the domestic industry. Evidently, the interested parties are trying to interpret “a” causal link as “the” causal link.

- As regards the contention that only production figures of the other Indian producer (green ply) has been given, all the other injury related figures are missing; the Applicant has contended that there is no legal requirement to provide injury information in respect of “other domestic producers”. Applicant has provided injury information in respect of “domestic industry”. Applicant has claimed that it constitutes “domestic industry” and has accordingly provided information in respect of its own operations. Applicant has not claimed that Applicant and Greenply constitute domestic industry. The rules require determination of injury in respect of domestic industry and therefore information concerning Greenply with regard to injury to the domestic industry becomes wholly irrelevant. It is, however, pointed out that Greenply has not even fully commenced production of the product under consideration in view of dumping of the product.

- As regards the contention relating to injury; there is no such negative figure. Improvement in productivity does not imply that the domestic industry has not suffered injury. The present petition is in respect of material retardation. As the Applicant is augmenting its production after commencing the same, it is obvious that all business expenses would show an initial growth expected from any company commencing commercial production. As regards captive consumption, relevant information is available to the Authority. A comparison of inventory with production and sale clearly shows that-
 - i. The company was producing much below the projected levels.
 - ii. Inventories were rising despite such low level of production.
 - iii. The company had to reduce/curtail production despite low levels, in order to contain/restrict inventories.
 - iv. Rise in inventories along with production, fall in inventories along with restriction on production clearly establishes that the domestic industry has been regulating its production in order to contain inventory levels. Applicant submits that the man hour worked and available itself will clearly establish that the domestic industry has been forced to substantially keep the plant idle because of dumping of the product in the country.

- As regards Information regarding GFA, NFA and price underselling not provided; the relevant information is available with the authority. Under the rules, the authority is required to determine injury considering return on investment and not considering GFA and NFA. Further, price underselling is required to be determined by the authority and is not required to be determined by the Applicant. The prescribed format nowhere requires this information to be provided by the Applicant.
- As regards the contention that imports from Indonesia remained more or less same through the injury period; Low volume of imports from an individual country does not imply that the same has not caused injury. It is nobody's argument that volume of imports from Indonesia were below *de-minimis* or the dumping margin in respect of Indonesia is *de-minimis* or conditions of competition between Indonesia and other subject countries were materially different so as not to cumulate the injury to the domestic industry. Whereas injury to the domestic industry is required to be cumulatively assessed, the fact that the volume of imports from particular company has remained relatively flat becomes irrelevant.
- Annexure-I to the Rules provides, *inter-alia*, that due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability. It would be seen that mere existence of a factor resulting in difference is insufficient. Such factor must have been recognized in the commerce as a factor that affects the prices. Such factor must have been consistently applied by the producers. For example, if the foreign producers have sold boards of different thickness at prices which did not consider thickness as a parameter, it may not be necessary to determine separate normal value, export price and dumping margin for boards having different thickness. The Authority may therefore first examine the questionnaire responses and the import data and ascertain whether at all the foreign producers have consistently followed some parameters for fixing the prices. If not, any such parameter can be ignored at least for the purpose of the preliminary findings.

Examination by the Authority

- 94 The Authority has taken note of various submissions of the interested parties on injury to the domestic industry and has analyzed injury to the domestic industry considering the facts available on record and applicable law as follows. The submissions made by the interested parties have been considered to the extent found pertinent and have been examined as follows and in the relevant sections of these findings:
- 95 As regards the contention that initiation notification does not mention 'material retardation' as reflective of injury to the domestic industry; the Authority notes the contention is fallacious and misleading as para 26 of the initiation notification reads as follows:

"In view of the above, the domestic industry has apparently suffered material retardation of its establishment. Besides, the domestic industry has also

apparently suffered material injury to the extent of its existence. The product under consideration is being exported from the subject countries below associated normal value, resulting in dumping of the product. The domestic industry has suffered 'Injury', which has apparently been apparently caused by the dumped imports."

- 96** As regards the contention that the export price was comparable to the international price does not mean that the subject goods have not been dumped. In fact, a perusal of the exporters' questionnaires responses show that the subject goods have been dumped into India.
- 97** As regards the contention that even after 17 months of commercial production, the domestic industry claims to be in the nascent stage and that the claim of material retardation in the case when selling price has been realized above the international prices is unfounded; the Authority notes that the domestic industry commended its production of the subject goods in February 2010 only and hence the claim is justified. 'Injury' even after 17 months of commercial production only prove the claim of the domestic industry as the same can no more be attributed to teething troubles and start up operations. The Authority notes that the domestic industry has been adversely impacted when considering its actual performance for the period of its existence as well while comparing its performance with the projected/target performance.
- 98** As regards the contention that the rate of increase in the imports was only 1%, whereas the rate of increase in demand was 16%; the Authority notes that the same needs to be examined in the backdrop that there was no domestic producer of the subject goods in India till very recently and hence the entire demand was being met by the imports. The very existence of domestic producers in the market is likely to impact the market share as now the users would have the option to procure the subject goods through the indigenous sources as well. The domestic industry has installed significant capacities but it has not been able to reach the target levels of capacity utilization; as a result thereof its capacity utilization has been dismally low.
- 99** As regards the contention that Proforma IV-A shows that the production, capacity utilization, market share and sales of the domestic industry have increased in the POI as compared to the previous year; the Authority notes that the performance of the domestic industry is expected to improve considering that it has recently commenced production of the subject goods. Any producer is expected to take steps to improve its performance as regards its production and sales over the period. As a result thereof, the capacity utilization gradually improves. Thus, the increase in production and sales over the injury period is clearly reflective of the efforts made by the domestic industry to establish itself in the market. However, its capacity utilization has been significantly below the projected levels.
- 100** As regards the contention pertaining to cost of production in India; it is noted that the Applicant has set up its plant recently and has claimed to have installed machines comparable to the machines available with the foreign producers. It has been contended by them that considering comparable technology, plant and equipment, the conversion costs of the domestic industry would not be significantly higher as compared to the conversion costs of

foreign producers. It has been further contended that there are limited machine suppliers in this trade and that while minor variation might be there due to difference in price factors but significant difference in conversion costs is not possible. The Authority finds merit in the domestic industry's claim that there could be higher costs due to start up operations because of some elements of fixed cost on per CBM basis but if these costs are considered at reasonable level of capacity utilization, no significant difference would be found.

- 101** As regards the issue of Public Interest; the interested party has not substantiated as to how imposition of the anti-dumping duty in the instant matter would not be in the public interest. The phrase 'public interest' would reflect the interests of all the stake holders such as producers, users/consumers and public at large. The Authority further notes that the purpose of the anti-dumping duties, in general, is to eliminate 'injury' caused to the domestic industry by the unfair trade practices of 'dumping' so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of the anti-dumping measures would not restrict imports from the subject countries/territory in any way, and, therefore, would not affect the availability of the subject goods to the consumers. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury caused to the domestic industry. On the contrary, imposition of the anti-dumping measures would remove the unfair advantages gained by the dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.
- 102** As regards the contention that substantial imports have been made by the Applicant domestic industry; the Authority notes the contention is devoid of any merit as the imports effected by the Applicant were to the extent of *** cbm, which cannot be considered as significant *vis a vis* the market size of 68,273 cbm and the domestic industry's installed capacity of 50,000 cbm.
- 103** As regards the contention relating to 'material retardation of the establishment of any industry in India'; the Authority notes that there could be a situation where although the product is being produced, yet a finding of material retardation could be recorded as 'material retardation' does not imply that there should not have been any production of the goods in question. It is seen that the information filed by the Applicant domestic industry shows that its performance has deteriorated over the period. The Rules & Regulations are silent on the evaluation of material retardation of the establishment of a domestic industry. In this case, the Applicant has made efforts to establish its industry in respect of the subject goods in India, as would be apparent from the fact that the Plant has been installed and considerable investment has taken place; but before viable commercial production could take place, dumped imports have caused the installed plant to be largely unutilized. In the circumstances, the Authority notes that 'injury' to the domestic industry has been caused

whether it is treated as established industry or merely 'nascent'. Huge financial losses resulting in the non-utilization of domestic industry's plant and manpower are considered as material, whether related to an established industry or an existing industry which was in an infant or nascent state. In the latter instance, the dumped imports have 'clearly materially retarded the development of a domestic industry, established or otherwise, by causing delays in the adoption of decisions that would have occurred in a fair market environment'.

- 104** As regards the contention that material retardation and materials injury cannot co-exist; the Authority does not concur with the same. An interesting illustration of the effect of dumped imports can be found in the EU Japanese DRAMs case (Regulation (EEC) 165/90, OJ L20, 25.1.90). In this case, the volume of imports, the prices at which they were offered, the condition of the domestic industry, led the EU Authorities to determine the effect of the dumped imports had caused injury to the domestic industry. The facts of the case were considered to support a finding both of material injury and of injury in the form of material retardation.
- 105** As regards the contention that the Applicant is already an established industry in India and that their production line is only being supplemented with another line with a different thickness; the Authority notes that the same is factually incorrect as the Applicant did not have any production line for production and sale of fiberboard before the present set up.
- 106** As regards the contention relating to data collection; the Authority notes that the present case was initiated on 11th November 2011; thus, period of investigation as 2010-11 period would have been relatively old. Besides, a longer period would enable the Authority to take on board relatively recent data for determination of alleged dumping and consequent injury.
- 107** As regards the contention that only production figures of the other Indian producer (M/s Green ply) has been given and all the other injury related figures are missing; the Authority notes that M/s Greenply had not even fully commenced production of the product under consideration.
- 108** As regards the contention relating to injury; the Authority notes that the application in the instant matter is essentially in respect of material retardation. Besides, it is only expected that the Applicant having augmented its production would initially show a positive growth. A comparison of inventory with production and sales clearly shows that the company was producing much below the projected levels. Its inventories were rising despite such low level of production; whereby it had to reduce/curtail production despite low levels, in order to contain/restrict inventories. The domestic industry has claimed that it has been regulating its production in order to contain inventory levels because of the presence of dumped imports.
- 109** As regards the contention that imports from Indonesia remained more or less the same through the injury period; the Authority notes that similar volume of imports from Indonesia

would not mean that these would not caused injury to the domestic industry. The volume of imports from Indonesia is above *de-minimis* and the dumping margins are significant.

- 110** Other injury related issues such as pertaining to cost of production, capacity utilisation by the applicant company, market share, capacity *vis a vis* demand, relationship between the sales price of the applicant and the import prices, price undercutting or price underselling, profitability, productivity, increase in cost of raw materials and wages, absence of causal link etc have been examined appropriately in the relevant sections of these findings.

Cumulative assessment

- 111** Annexure II para (iii) of the AD Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that: -

- a. the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively accounts for more than seven percent of the import of like article and
- b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

- 112** The Authority notes that:-

- The subject goods are being dumped into India from a number of countries.
- The margins of dumping from each of the subject countries are more than the *de-minimis* limits prescribed;
- The volume of imports from each of the subject countries is more than the negligible limits prescribed;
- Cumulative assessment of the effects of imports is appropriate as the exports from the subject countries directly compete with the like articles offered by the domestic industry in the Indian market, which is evident from the following:-
 - a. The products manufactured by the producers from the subject countries and the products manufactured by the Applicant have comparable properties. In other words, goods supplied by various subject countries and by the domestic industry are *inter-se* like articles.
 - b. There are common parties who are resorting to use of the imported subject goods from various sources and the goods produced by the domestic industry.

Both, the imported and the domestic subject goods, are being used interchangeably and there is direct competition between the domestic product & imported products and *inter-se* amongst imported products.

- c. The exporters from the subject countries and domestic industry have sold the product in the same periods to the same set of customers. The sales channels are comparable.
- d. The volume of imports from each of the subject countries is significant.

113 In view of the above, the Authority considers that it would be appropriate to assess injury to the domestic industry cumulatively from exports of the subject goods from the subject countries

114 Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like article in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

115 As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the AD Rules states as follows: “The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”

116 The Applicant domestic industry has claimed that dumping of the product in India is materially retarding the establishment of the domestic industry. It has commenced commercial production in February 2010 and thus does not have operational history for more than three years. Therefore, the economic analysis of the performance of the domestic industry for the purpose of examination of the impact of the dumped imports on the domestic industry concerned has been carried out for the period during which the petitioner has produced and sold the product. The analysis has been done first on an annual basis and thereafter by considering performance of domestic industry on a quarter by quarter basis. However, for the purpose of import volumes and market share, the Authority has considered the investigation period and the preceding three years.

Volume Effect of Dumped Imports and Impact on Domestic Industry

Demand/consumption in India

- 117** Demand of the product in the Country has been assessed as the sum of domestic sales of the domestic producers and imports from all sources.

Annual Analysis

Particulars	Unit of Measurement	2007-08	2008-09	2009-10	April'10- June'11 (POI)	Annualized (POI)
Sales of Domestic Industry	CBM	-	-	334	21,297	17,038
Sales of Other Indian Producer	CBM	-	-	-	4,030	3,224
Subject Countries imports	CBM	10,936	32,223	44,009	58,504	46,803
Other Countries imports	CBM	975	11,704	8,618	1,510	1,208
Demand in India	CBM	11,911	43,927	52,961	85,341	68,273

Quarterly Analysis

Demand	UOM	Feb'10- March'10	April'10- June'10	July'10- Sep'10	Oct'10- Dec'10	Jan'11- March'11	April'11- June'11
Sales of Domestic Industry	CBM	***	***	***	***	***	***
Sales of Other Indian Producer	CBM	-	-	-	***	***	***
Subject Countries imports	CBM	8,259	10,486	8,807	10,284	14,985	13,942

Other Countries imports	CBM	959	306	236	260	382	326
Demand in India	CBM	9,552	13,016	12,870	15,852	21,161	22,443

- 118 It is noted that the demand for the product under consideration in India has increased significantly over the period.

Import Volume from Subject Countries

- 119 The volume of imports of the subject goods from the subject countries and other countries have been examined based on the transaction-wise imports data as obtained by the domestic industry from IBIS. It is noted that the product under consideration does not have a dedicated Customs classification code and therefore summarized Customs data (as released by DGCI&S) has not been relied upon. Thus, individual transaction wise data, as made available by the secondary source (IBIS), has been relied upon. Therefore, the imports volume reported by the IBIS has been considered for volume analysis. Volume of imports of the subject goods have been as follows:

Annual Analysis

Imports Volume	UOM	2007-08	2008-09	2009-10	April'10- June'11 (POI)	Annualized (POI)
Indonesia	CBM	-	39	6,957	10,177	8,142
Malaysia	CBM	2,943	20,244	22,783	22,052	17,642
Sri Lanka	CBM	7,934	11,171	13,270	20,410	16,328
China PR	CBM	59	769	999	5,865	4,692
Total Subject Countries	CBM	10,936	32,223	44,009	58,504	46,803
Other Country	CBM	975	11,704	8,618	1,510	1,208
Total Imports	CBM	11,911	43,927	52,627	60,014	48,011

Quarterly Analysis

Import Volume	UOM	Feb'10- March'10	April'10- June'10	July'10- Sep'10	Oct'10- Dec'10	Jan'11- March'11	April'11- June'11
Indone	CBM	3,553	3,690	1,984	1,130	1,568	1,805

sia							
Malay sia	CBM	2,417	3,873	4,221	3,643	6,131	4,184
Sri Lanka	CBM	2,093	2,663	2,334	4,371	5,332	5,710
China	CBM	196	259	269	1,140	1,955	2,243
Total Subject Countries	CBM	8,259	10,486	8,807	10,284	14,985	13,942
Other Country	CBM	959	306	236	260	382	326
Total Imports	CBM	9,218	10,792	9,043	10,543	15,368	14,268

120 The Authority notes that

- (a) Imports from the subject countries have increased significantly. Imports have increased, when considered over the injury period or on quarterly basis within the investigation period;
- (b) Given that the domestic industry has commenced commercial production in February 2010, the import volumes should have declined with the commencement of the production by the domestic industry. But no decline in the volume of imports from the subject countries was noted except in the quarter July 2010 – September 2010 over the previous quarter. Further, in the subsequent quarter the volume increased, instead of showing a natural decline and are now much higher than before;
- (c) The increase in the imports is quite significant. Whereas the volume of imports in 2007-08 was 11,911 cbm, the volume of imports in April-June, 2011 quarter itself was 14,268 cbm. On an overall basis, the increase in volume of imports was more than 300% over the injury period;

Market share in demand

121 The table given below analyses the trends in the market share of imports *vis-à-vis* the share of the domestic industry on an annual basis and quarterly basis:

Annual Analysis

Particulars	UOM	2007-08	2008-09	2009-10	April'10- June'11
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					(POI)
Domestic Industry	%	-	-	0.63	24.96
Other Indian Producer	%	-	-	-	4.72
Total Subject Countries	%	91.82	73.36	83.10	68.55
Other Country	%	8.18	26.64	16.27	1.77

Quarterly Analysis

Market Share in Demand	UOM	Feb' 10- March' 10	April' 10- June' 10	July' 10- Sep' 10	Oct' 10- Dec' 10	Jan' 11- March' 11	April' 11- June' 11
Domestic Industry	%	***	***	***	***	***	***
Other Indian Producer	%	***	***	***	***	***	***
Subject Countries	%	86.46	77.99	66.22	64.87	73.81	62.12
Other Country	%	10.04	2.28	1.78	1.64	1.88	1.45

- 122** The Authority notes that the domestic industry has commenced the commercial production of the subject goods in the year 2009-10. During this period the domestic industry functioned for only 2 months. The year 2010-11 was the first year of commercial production of the petitioner company. The quarter wise analysis of the share of the subject countries indicates that while the share of imports of the other countries has declined significantly, no decline in the volume of imports for the subject countries has been noted. Further, the share of domestic industry in the total demand has fluctuated on a quarter to quarter basis.

Production, sales, capacity and capacity utilization

- 123** The production, sales, capacity and capacity utilization of the domestic industry has been analyzed as follows:

Annual Analysis

	UOM	2009-10	April'10- June'11 (POI)	Annualized (POI)
Total Production	CBM	***	***	***
Below 6mm	CBM	2,262	22,980	18,384
Above 6mm	CBM	-	***	***
Sales volume	CBM	334	21,297	17,038
Captive consumption	CBM	***	***	***
Capacity	CBM	8,333	62,500	50,000
Capacity utilization (@@)	%	***	***	***

@@ Based on total production

Quarterly Analysis

	UOM	Feb'10- March'10	April'10- June'10	July'10- Sep'10	Oct'10- Dec'10	Jan'11- March'11	April'11- June'11
Production	CBM	***	***	***	***	***	***
Below 6mm	CBM	***	***	***	***	***	***
Above 6mm	CBM	***	***	***	***	***	***
Sales volume	CBM	***	***	***	***	***	***
Captive consumption	CBM	***	***	***	***	***	***
Capacity	CBM	***	***	***	***	***	***
Capacity utilization	%	***	***	***	***	***	***

124 The above analysis shows that the production, sales and capacity utilization of the domestic industry shows improvement. However, it is noted that the domestic industry had projected to achieve ***% capacity utilization in the first year of its operation and ***% in the second

year operation; but as against this projected capacity utilization, the capacity utilization of the domestic industry has remained significantly low. Thus, the domestic industry has not been able to utilize production capacities to the extent it could have, in the absence of dumping.

PRICE EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC INDUSTRY

125 With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. Annual movement of the import prices has been analyzed as follows:

Rs/cbm

CIF Import Price	2007-08	2008-09	2009-10	April'10-June'
Indonesia	-	12,831	11,104	11,362
Malaysia	10,980	11,609	10,726	11,797
Sri Lanka	12,352	13,236	11,929	12,616
China	7,488	10,234	11,307	11,198
Total Subject Countries	11,956	12,142	11,162	11,947
Other Countries	12,785	12,378	11,434	13,619
Total Imports	12,024	12,205	11,206	11,989

126 Quarter wise movement of the import prices has been analyzed as follows:

CIF Import Price	Feb'10-March'10	April'10-June'10	July'10-Sep'10	Oct'10-Dec'10	Jan'11-March'11	April'11-June'11
Total Subject Countries	11,572	11,764	11,847	11,818	11,934	12,256
Other Countries	12,288	12,802	14,993	14,497	13,264	13,108
Total Imports	11,647	11,794	11,929	11,884	11,967	12,276

127 The Authority notes from the above that there is no noticeable change in the CIF price of imports from the subject countries during the injury period and the period of investigation. Further, the CIF price of imports from the other countries was noted to be higher than the CIF price from the subject countries. In the second and third quarter of the year 2010-11, the CIF import price from the subject countries was lower than the subject countries by as much as 21%. The Authority further notes that CIF prices were significantly lower than the projected sales price as project report of the domestic industry.

128 As noted above, no changes in the CIF prices of imports from the subject countries have been noted during the injury period and the POI. The Authority has undertaken an analysis of the trends in the prices of raw material for the subject goods during the relevant period. In this context, the Authority notes that the wood, glue cost and other chemicals are important elements in the cost of production. The analysis of the data submitted by the domestic industry and the other interested parties, shows that the element of wood, glue cost and other elements in the total cost of production is more than 50%. An analysis of the trends in the cost of production of the domestic industry indicates that there has been a significant increase in the prices of wood over the prices as projected in the project report. With regards to the movements in the prices of raw materials i.e. wood in respect of other exporters from the subject countries, the Authority notes that the information with regards to trends in the prices of wood, as available at the website of one of the co-operating exporters M/s Evergreen indicates the following trends:

Indexed	2007-08	2008-09	2009-10	2010-11	POI
Wood price indexed *	136	132	121	148	160
Indexed wood prices	100	97	89	109	118

*with year 2005 as base year

129 The Authority notes from the above that there has been an increase in the price of wood during the injury period and the POI by as much as 18%. However, this is not reflected in the changes in the CIF price of imports from the subject countries. The trends, as above, reflects that the exporters from the subject countries have absorbed the increase in the cost of production, as the same is not reflected in the changes in the CIF export prices.

130 The Authority further notes that apart from wood, glue is an important element in the production of the subject goods. Glue is manufactured by using a combination of different chemicals, most important of them being Paraffin Wax, Urea, Melamine and Methanol. An analysis of trends in the import prices of these raw materials, as summarized below also indicates that there has been a substantial increase in the rates of some of these raw materials.

	Unit	07-08	Indexed	April' 10- June' 11(POI)	Indexed	% increas

)		e
Input price movement						
Paraffin Wax	Rs.Kg	40.26	100	57.21	142	42
Urea / (Carbamie)	Rs.Kg	12.32	100	13.24	107	7
Melamine	Rs.Kg	50.56	100	67.18	133	33
Methanol	Rs.Kg	36.12	100	40.61	112	12

131 It is noted that there has been a significant increase in the input costs for glue and other major inputs. However, no upward trends have been noted in the CIF export price of the subject goods from the subject countries. In view of the same, the Authority notes that escalation in the cost of inputs has been absorbed by the exporters.

Price undercutting and underselling effects

132 Price undercutting has been determined by comparing the weighted average landed value of dumped imports from the subject countries over the entire period of investigation with the weighted average net sales realization of the domestic industry. For this purpose landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the value reported in the IBIS data of import prices from the subject countries.

133 In order to determine the net sales realization of the domestic industry, discounts, commissions, etc. offered by the domestic industry and the central excise duty paid, if any, have been deducted from the total sales realization.

134 For the purpose of price underselling determination the weighted average landed price of imports from the subject countries has been compared with the Non-injurious selling price of the domestic industry determined for the POI.

Price Undercutting

135 The comparative analysis of the Net Sales Realization of the domestic industry with the landed value of imports indicates that the imports are undercutting the domestic industry's prices to the extent mentioned below:

Price undercutting	UOM	2009-10	April'10-June'11 (POI)
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NSR of Domestic Industry	Rs/CBM	***	***
Indonesia			
Landed Price	Rs/CBM	12370	12657
Undercutting	Rs/CBM	***	***
Undercutting	%	***	***
Undercutting	% Range	30-40	20-30
Malaysia			
Landed Price	Rs/CBM	11948	13142
Undercutting	Rs/CBM	***	***
Undercutting	%	***	***
Undercutting	% Range	30-40	20-30
Sri Lanka			
Landed Price	Rs/CBM	11929	12616
Undercutting	Rs/CBM	***	***
Undercutting	%	***	***
Undercutting	% Range	35-45	20-30
China PR			
Landed Price	Rs/CBM	12569	12474
Undercutting	Rs/CBM	***	***
Undercutting	%	***	***
Undercutting	% Range	30-40	25-35
Total Subject Countries			
Landed Price	Rs/CBM	12024	12807
Undercutting	Rs/CBM	***	***

Undercutting	%	***	***
Undercutting	% Range	30-40	20-30

Note: Landed Price calculation for 2009-10 full year imports and NSR for DI only two months Feb '10 to March'10.

- 136** The Authority notes from the above that the landed prices from all the subject countries were undercutting the sales price of the domestic industry. The Authority further notes that while there was a marginal increase in the landed value of imports during the POI over the year 2009-10, the quantum of undercutting declined on account of significant decline in the NSR of the domestic industry. The Authority, therefore, notes that the domestic industry was forced to reduce its selling prices in line with the landed value of imports, although it continued to incur losses, as elaborated subsequently in these findings.

Quarterly Analysis

Price undercutting	UOM	Feb'10- March'10	April'10- June'10	July'10- Sep'10	Oct'10- Dec'10	Jan'11- March'11	April'11- June'11
NSR of Domestic Industry	Rs/CBM	***	***	***	***	***	***
Indonesia							
Landed Price	Rs/CBM	12681	13062	11898	11963	12387	13335
Undercutting	Rs/CBM	***	***	***	***	***	***
Undercutting	%	***	***	***	***	***	***
Undercutting	% Range	30-40	20-30	25-35	25-35	25-35	20-30
Malaysia							
Landed Price	Rs/CBM	11572	12341	13135	12942	13225	13945
Undercutting	Rs/CBM	***	***	***	***	***	***
Undercutting	%	***	***	***	***	***	***
Undercutting	% Range	35-45	25-35	20-30	20-30	20-30	15-25

Sri Lanka							
Landed Price	Rs/CBM	13171	12626	12449	12464	12604	12807
Undercutting	Rs/CBM	***	***	***	***	***	***
Undercutting	%	***	***	***	***	***	***
Undercutting	% Range	25-35	25-35	20-30	20-30	20-30	25-35
China PR							
Landed Price	Rs/CBM	13954	15298	17953	12317	12207	1180
Undercutting	Rs/CBM	***	***	***	***	***	***
Undercutting	%	***	***	***	***	***	***
Undercutting	% Range	20-30	10-20	Negative	25-35	25-35	30-40
Total Subject Countries							
Landed Price	Rs/CBM	12511	12740	12822	12562	12783	13056
Undercutting	Rs/CBM	***	***	***	***	***	***
Undercutting	%	***	***	***	***	***	***
Undercutting	% Range	30-40	20-30	20-30	20-30	20-30	20-30

Note: Landed Price calculation only considered Feb '10 & March'10 (2 Months)

Price Underselling

- 137** Comparison of non injurious price with the selling price of the domestic industry shows that the domestic industry was forced to undersell the product:

In Rs/CBM

	UOM	April'10-June'11 (POI)
Non injurious price	Rs/CBM	***
Landed value (subject countries)	Rs/CBM	12807
Price underselling	Rs/CBM	***

Underselling	%	***
Underselling	% Range	50-60

- 138** The Authority notes that the Net Sales Realization of the domestic industry during the POI was below the non-injurious price of the domestic industry. Therefore, the domestic industry was not able to recover reasonable profit on its sales of the subject goods.

Injury margin

- 139** Comparison of non injurious price with landed price of imports shows significant injury margin.

Injury Margin	UOM	NIP	Landed Price	Injury Margin	Injury Margin %	Injury Margin % Range
Indonesia	Rs/CBM	***	12657	***	***	55-65
Malaysia	Rs/CBM	***	13142	***	***	65-75
Sri Lanka	Rs/CBM	***	12616	***	***	55-65
China	Rs/CBM	***	12474	***	***	75-85
Total Subject Countries	Rs/CBM	***	12807	***	***	55-65

- 140** As a result of significant injury margins from all the subject countries during the POI, the domestic industry has suffered financial losses and has not able to achieve the projected level of profitability as per the project report.

Profits/Loss

- 141** Profits earned by the domestic industry from the sales of the subject goods in the domestic market were as follows:

	UOM	2009-10	April'10-June'11 (POI)
Cost of sales	Rs/CBM	***	***

Indexed	Trend	100	34
Selling Price	Rs/CBM	***	***
Indexed	Trend	100	90
Profit/ (Loss) per unit	Rs/CBM	***	***
Indexed	Trend	(100)	(8)
Profit/ (Loss)	Rs Lacs	***	***
Indexed	Trend	(100)	(519)

- 142** The Authority notes from the above that in the year 2009-10 since the domestic industry operated for only 2 months, due to start-up operations and low level of capacity utilization, its actual cost, profits / losses per unit and the profit / losses in absolute terms were very high. In view of the period 2009-10 being only a start-up period, no trend analysis / conclusions could be drawn by the Authority. However, subsequently in the period of investigation, the domestic industry has operated for the complete financial year. During this period also the financial performance of the domestic industry was noted to be negative. The Authority notes that the sales realization of the domestic industry declined during the period and the domestic industry suffered financial losses.

Analysis of operating parameters vis-à-vis projected estimates

- 143 The Authority notes that the unit commenced commercial production only in February 2010. In the absence of any trends on the past performance of the domestic industry and considering that the domestic industry has claimed material retardation on account of dumped imports, the Authority has undertaken a comparative analysis of the actual vis-à-vis projected performance. The comparative analysis in this regards is summarized below:

	UOM	Project Report 1st year	Actual	
			April'10- June'11 (POI)	Annualised (POI)
Capacity Utilisation	%	***%	***%	***%
Production	CBM	***	22,980	18,384
Cost of sales	Rs/CBM	***	***	***
Selling Price	Rs/CBM	***	***	***
Profit/ (Loss) per unit	Rs/CBM	***	***	***
Profit/ (Loss)	Rs Lacs	***	***	***

- 144 The Authority notes from the above that the domestic industry's performance during the first year of its commercial operations was significantly below the projected level of operations / profitability as per its project report. Both the production as well as the capacity utilization of the domestic industry was lower than that projected for the first year in the project report. The Authority further notes that there was substantial difference in the cost of production of the domestic industry as per actual *vis-à-vis* projections. The differences in the cost of production have been noted by the Authority to be on account of the changes in the prices of raw materials as well as on account of low level of capacity utilization. This trend is also reflected in the significantly higher selling price realized by the domestic industry than projected. The fact remains that the domestic industry suffered financial losses during POI whereas as per projections it was likely to make profits from the first year of operations.

Return on investment

- 145 Return on investment earned by the domestic industry from the sale of the subject goods in the domestic market were as follows:

	UOM	2009-10	April'10- June'11 (POI)	Annualized (POI)	As per Project Report
Profit before interest	Rs Lacs	***	***	***	***
Profit before interest (Indexed)	Rs Lacs	-100	-235	-235	***
Capital employed	Rs Lacs	***	***	***	***
Capital employed (Indexed)	Rs Lacs	100	90	90	***
Return on capital employed	%	***	***	***	***
Return on capital employed (Indexed)	%	-100	-44	-44	***

- 146** The Authority notes from the above that the capital employed by the domestic industry during the POI on an annualized basis was lower than the projections of the capital employed as per project report. Therefore, no cost overruns have been noted by the Authority in the commissioning of the plant for manufacture of subject goods. The Authority, however, notes that the domestic industry was not able to achieve the projected level of returns on capital employed as it suffered financial losses during the POI on account of dumped imports of the subject goods.

Cash flow

- 147** Impact of dumping on the cash flow of the domestic industry was determined by considering cash profits earned by the domestic industry from the sales of the subject goods in the domestic market were as follows:

Actual	UOM	2009-10	April'10-June'11 (POI)	Annualized (POI)	As per Project Report
Profit/ (Loss)	Rs.Lacs	-100	-416	-416	***
Depreciation	Rs.Lacs	100	203	203	***

Cash Profit	Rs.Lacs	100	-259	-259	***
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- 148** The Authority notes that due to price undercutting and price underselling on account of dumped imports, the company has suffered cash losses during the POI as against projections of making cash profit as per the project report.

Employment and wages

- 149** The trends in the employment and wages in the domestic industry are tabulated below:

	UOM	2009-10	April'10-June'11 (POI)
Employment	Nos.	90	113
Wages	Rs.Lacs	100	1399

Inventories

- 150** The trends in inventory holding of the domestic industry has been summarized below:

	UOM	2009-10	April'10-June'11 (POI)
Stocks	CBM	***	***
Stocks Indexed		100	119
Production	CBM	2,262	22,980
Average stock for POI	CBM	-	1318
Average stock equivalent no. of months production			0.86

- 151** The Authority notes from the above that during the POI, which was the first year of full operations of the domestic industry, the domestic industry was maintaining on an average stocks equivalent to 0.86 months production. Since, the domestic industry has claimed that it has not been able to sell the subject goods to the extent it was able to produce, the Authority has undertaken a month-wise analysis of the trends in the production, sales and stocks of the

inventories of the domestic industry during the POI. The analysis of the same is given in the table below:

Monthly	Opening Stock	Net Production excluding Captive	Capacity Utilisation %	Sales	Closing Stock	Closing stock as no of Days sales
Apr-10	***	***	***	***	***	***
May-10	***	***	***	***	***	***
Jun-10	***	***	***	***	***	***
Jul-10	***	***	***	***	***	***
Aug-10	***	***	***	***	***	***
Sep-10	***	***	***	***	***	***
Oct-10	***	***	***	***	***	***
Nov-10	***	***	***	***	***	***
Dec-10	***	***	***	***	***	***
Jan-11	***	***	***	***	***	***
Feb-11	***	***	***	***	***	***
Mar-11	***	***	***	***	***	***
Apr-11	***	***	***	***	***	***
May-11	***	***	***	***	***	***
Jun-11	***	***	***	***	***	***

152 The Authority notes from the above that in the first quarter of the POI the domestic industry gradually increased its capacity utilization. However, during the same period there was a significant buildup of the inventories. As a consequence, in the subsequent quarter the production and the capacity utilization of the domestic industry were noted to be significantly lower. During the third and fourth quarter, generally the production, sales and the closing stocks noted uniform trends. In the last quarter of the POI, when the domestic industry

increased its level of operations, once again significant levels of inventories were noted. The Authority, therefore, notes that due to significant buildup of inventories, the domestic industry was not able to operate at the optimum level of capacity utilization as projected in the project report.

Productivity

153 The productivity of the domestic industry has been examined with reference to production per day and per employee as follows:

	UOM	2009-10	April'10-June'11 (POI)
Productivity per day	CBM/day	37.70	67.81
Productivity per Employee	CBM/Nos	150.13	211.17

154 It is noted that productivity has improved over the period.

Growth

155 It may be noted that domestic industry commenced commercial production at a new production facility. Therefore, growth of the domestic industry should have been quite high. However, the domestic industry is faced with poor growth.

Ability to raise fresh Investment

156 It may be noted that the domestic industry has set up a new plant and the investments made by the domestic industry. However, should the performance of the domestic industry remain so dismal, fresh investments are likely to suffer.

Factors affecting prices

157 Consideration of factors such as the import prices from the subject countries and other countries, cost structures for the product, competition in the domestic market, factors other than the dumped imports that might be affecting the prices of the domestic industry in the domestic market shows that the landed value of imported material from subject countries are significantly below the selling price of the domestic industry, causing severe price undercutting in the Indian market. It is further noted that the benchmark for the Indian producers prices are the import prices from subject countries. There is no viable substitute for this product. Demand for the product was showing significant jump and could not have been a factor responsible for low prices. It is thus evident that the only factors responsible for the domestic industry prices are the subject import prices of the product and the cost of

production of the domestic industry. As the information and data shows, while the cost of production was higher, the import prices have been much lower than the domestic prices and have prevented the domestic industry from charging prices in line with the costs.

Conclusion on injury

- 158** Considering the various injury parameters, it may be concluded that the performance of the domestic industry has remained substantially below the expected level considering the commencement of the new plant. The imports from the subject country have substantially increased, whereas the imports should have declined, given that the domestic industry has set up new production facilities and supporting company has also commenced the production of the product under consideration. Level of price undercutting is very significant. Despite offering low prices, the domestic industry had to immediately reduce its prices in view of its inability to sell the product. The domestic industry is facing price depression effects due the significantly low priced dumped imports. The domestic industry has been forced to sell the product at significant financial losses, resulting in negative return on investments and cash flow. The performance of the domestic industry was much below the projected levels, despite sufficient demand for the product in the Country. Even after adjusting the cost of production of the domestic industry for the start up operations, the domestic industry was unable to recover its cost of production and earn reasonable profits.
- 159** It may, thus, be noted that the domestic industry has thus suffered injury. Imports are retarding establishment of the domestic industry in the market. Further, performance of the domestic industry much below the expected levels and shows that the domestic industry suffered material injury.

I. Causal Link

Submissions made by the Domestic Industry

- 160** The Domestic Industry has submitted that injury to the domestic industry is on account of dumped imports as significant price difference exists between imported and domestic product, which has prevented the domestic industry from selling its product to the extent of its production capacities. This led to reduction in price and low level of sales volumes, reduction in net sales realization. There is significant difference between non injurious price and landed price of imports on one hand and inability of the domestic industry to increase its production to the extent of target levels on the other hand. The domestic industry has suffered from significant loss of production man hours, increase in inventories with rising production, decline in production due to rising inventories, which collectively and cumulatively established that the domestic industry is suffering injury as a result of dumped imports.

Submissions made by other interested parties

Submissions made on behalf of M/s Segamat Panel Boards Sdn. Bhd and M/s Merbok MDF Lanka (Private) Ltd, Sri Lanka

161 The petitioner has commenced their production recently. Therefore, it is quite known that the petitioner would suffer injury on account of various factors such as (i) Start up cost; (ii) Un-established sales and distribution channels; (iii) increased marketing expenses coupled with higher discounts. Further, we have already quantified as above the main reasons for higher cost of production of applicant industry caused by inherent inefficiencies. Therefore, the Authority is requested to kindly take into account the above facts which would clearly demonstrate that no injury has been caused to the domestic industry on account of the alleged dumped imports and if there is any injury to the domestic industry during POI which was on account of their inefficiencies. Further, while landed prices have gone up during POI, the selling prices of domestic industry have declined clearly showing inverse relationship not to speak of causal link.

Submissions made on behalf of Evergreen Fibreboard Berhad (EFB), Malaysia; Evergreen Fibreboard (JB) Sdn. Bhd. (EJB), Malaysia and Evergreen Fibreboard (Nilai) Sdn. Bhd.(EFN), Malaysia

162 There is no injury to the petitioner in terms of its capacity, production, capacity utilization, sales, market share, wages, number of employees, productivity, inventories etc. The injury with respect to profitability, return on investment, cash flow and price suppression, if any is not because of the alleged dumped imports from subject countries but because of its high cost due to high per unit cost on account of start-up cost, high raw material cost, high utility cost, high fixed cost, high labour cost, high interest cost and high depreciation cost. While making a causal link analysis in the petition, the petitioner has not made any analysis with respect to sales of the other Indian producer nor provided any details in the petition. It is submitted that injury, if any has been suffered by the petitioner on account of inter-se competition between the two domestic producers. Thus there is no causal link between the injury, if any to the domestic industry and alleged dumped imports.

Examination by the Authority

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

- a. **Volume and Price of imports from third countries:** The Authority notes that imports from third countries are either negligible or their volume is *de-minimis* during the POI. Thus, imports from third countries could not have caused injury to the domestic industry.

- b. Contraction in Demand and Changes in pattern of consumption:** It is noted that the demand of the subject goods has increased over the injury period. There is also no indication of any change in the consumption pattern.
- c. Trade Restrictive Practices of and Competition between the Foreign and Domestic producers:** The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The domestic industry competes with the landed prices of the subject goods. The price of the domestic industry is influenced significantly by the landed price of the subject goods. Moreover, no evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers do not exist or have undergone any change.
- d. Development of Technology:** None of the interested party has raised any issue with regard to developments in technology as being the cause of injury to the domestic industry. No information, in respect of any significant development in technology is on record that could be the principal cause of injury to the domestic industry.
- e. Export Performance:** The Authority notes that the Applicant domestic industry has not exported the subject goods.

164 The Authority notes that while listed known other factors do not show injury to the domestic industry, the following parameters show that injury to the domestic industry has been caused by dumped imports.

- a) Imports of the product under consideration have increased significantly and the market share of the subject countries increased.
- b) Apparently, the domestic industry has lost its sales volumes due to the presence of the dumped subject goods in India.
- c) The imports, from the subject countries as a whole, are significantly undercutting the prices of the domestic industry.
- d) The imports are significantly underselling the domestic prices.
- e) The deterioration in the domestic industry's profits and return on capital employed are apparently as a result of the dumped imports.
- f) The domestic industry's performance has become negative in respect of a number of parameters as the Domestic industry has not been able to attain the projected levels of Physical and Financial performance on a number of parameters.

Magnitude of injury and injury margin

165 The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the AD Rules, as amended.

Co-operating Exporter

Name of the company	NIP	Landed Price	Injury Margin	In US\$/cbm
				Injury Margin range in %
Pt Sumatera Prima Fibreboard	***	***	***	60-70
PT. Masari Dwisepakat Fiber	***	***	***	55-65
M/s Segamat Panel Boards Sdn. Bhd.	***	***	***	50-60
M/s Evergreen Fibreboard Berhad (EFB)/ M/s Evergreen Fibreboard (JB) Sdn. Berhad (EJB)	***	***	***	40-50
M/s Merbok MDF Lanka (Private) Limited	***	***	***	60-70

Non-Co-operating Exporter

Particulars	Unit	China PR	Indonesia	Malaysia	Sri Lanka
NIP	US\$/cbm	***	***	***	***
Landed Price	US\$/cbm	***	***	***	***

Injury Margin	US\$/cbm	***	***	***	***
Injury Margin(%) range	%	***	***	***	***

J. Conclusions:

166 After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority provisionally concludes that:

- a. The product under consideration has been exported to India from the subject countries below the associated normal values, thus resulting in dumping of the subject goods from the subject countries.
- b. The domestic industry has suffered ‘injury’, viz. material retardation of the establishment of its industry and also material injury in respect of the subject goods.
- c. The ‘injury’ to the domestic industry has been caused by the dumped imports of the subject goods from the subject countries.

K. Indian industry’s interest & other issues

167 The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate ‘injury’ caused to the domestic industry by the unfair trade practices of ‘dumping’ so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the subject goods to the consumers.

168 It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury caused to the domestic industry. On the contrary, imposition of the anti-dumping measures would remove the unfair advantages gained by the dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

L. Recommendations

169 The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having

initiated and conducted a preliminary investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having provisionally established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of provisional duty is required to offset dumping and 'injury' pending completion of the investigation. Therefore, the Authority considers it necessary and recommends imposition of provisional anti-dumping duty on imports of the subject goods originating in or exported from the subject countries in the form and manner described hereunder.

170 Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the provisional anti-dumping duty equal to the amount indicated in Col 8 of the 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 subject goods originating in or exported from the subject countries.

Duty table

Sl. No	Heading/ Sub-heading*	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount in US \$ /cbm
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	4411*	'Resin or other organic substances bonded wood or ligneous fibre boards of thickness below 6mm, except insulation boards, laminated fibre boards and boards which are not bonded either by resin or	China PR	China PR	Any	Any	165.71

		other organic substances'					
2.	4411*	do	Any country other than the subject countries	China PR	Any	Any	165.71
3.	4411*	do	China PR	Any country other than the subject countries	Any	Any	165.71
4.	4411*	do	Indonesia	Indonesia	Pt Sumatera Prima Fibreboard	Pt Sumatera Prima Fibreboard	88.60
5.	4411*	do	Indonesia	Indonesia	PT. Masari Dwisepakat Fiber	PT. Masari Dwisepakat Fiber	85.99
6.	4411*	do	Indonesia	Indonesia	Any other than combination at Sr. Nos. 4& 5		168.97
7.	4411*	do	Any country other than the subject countries	Indonesia	Any	Any	168.97
8.	4411*	do	Indonesia	Any country other than the subject countries	Any	Any	168.97

9.	4411*	do	Malaysia	Malaysia	M/s Segamat Panel Boards Sdn. Bhd.	M/s Segamat Panel Boards Sdn. Bhd.	26.11
10	4411*	do	Malaysia	Malaysia	M/s Evergreen Fibreboard Berhad (EFB) / M/s Evergreen Fibreboard (JB) Sdn. Berhad (EJB)	M/s Evergreen Fibreboard Berhad (EFB) / M/s Evergreen Fibreboard (JB) Sdn. Berhad (EJB)	83.69
11	4411*	do	Malaysia	Malaysia	Any other than combination at Sr. Nos. 9& 10		178.30
12	4411*	do	Any country other than the subject countries	Malaysia	Any	Any	178.30
13	4411*	do	Malaysia	Any country other than the subject countries	Any	Any	178.30
14	4411*	do	Sri Lanka	Sri Lanka	M/s Merbok MDF Lanka (Private) Limited	M/s Merbok MDF Lanka (Private) Limited	66.27
15	4411*	do	Sri Lanka	Sri Lanka	Any other than combination at Sr. No. 14		167.46
16	4411*	do	Sri Lanka	Any country other than the subject countries	Any	Any	167.46
17	4411*	do	Any country	Sri Lanka	Any	Any	167.46

			other than the subject countries				
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Please Note: The product under consideration is classified under Chapter 44 of the Customs Tariff Act. However, the product under consideration does not have a dedicated customs classification code. Thus, Customs classifications are indicative only and in no way binding on the scope of this investigation.

M. Further Procedure

171 The following procedure would be followed subsequent to notifying the preliminary findings:

- (a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- (b) Exporters, importers, the applicant and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the dispatch of the these Preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- (c) The Authority would hold a hearing to hear the views of various interested parties orally;
- (d) The Authority would conduct further verification to the extent deemed necessary;
- (e) The Authority would disclose essential facts as per the AD Rules before announcing final findings.

(Vijaylaxmi Joshi)
Designated Authority