

F. No. 15/20/2014-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti Dumping & Allied Duties)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi-110001

Date: 5th February, 2016

NOTIFICATION
(Final Findings)

Subject: Sunset Review of anti-dumping duty imposed on the imports of Synchronous Digital Hierarchy Transmission Equipment originating in or exported from China PR and Israel -reg.

No 15/20/2014-DGAD:- Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules or the AD Rules) thereof;

A. BACKGROUND OF THE CASE

2. Whereas, the Designated Authority (hereinafter referred also to as the Authority or DA) had issued a Public Notice dated 21st April 2009, initiating the anti-dumping duty investigation concerning imports of Synchronous Digital Hierarchy Transmission Equipment [hereinafter referred to as SDH Equipment or the subject goods or the Product Under Consideration (PUC)] originating in or exported from China PR and Israel (hereinafter referred to as the subject countries). The Authority, having regard to the Act and the Rules, investigated the matter and then recommended imposition of provisional anti dumping duty on the imports of the subject goods originating in or exported from the subject countries vide Notification dated 7th September, 2009, and provisional antidumping duties were imposed by the Ministry of Finance vide Notification No. 132/2009-Customs dated 8th December, 2009.
3. And whereas the Authority issued Final Findings Notification No 14/2/2009-DGAD dated 19th October, 2010, recommending imposition of the anti-dumping duties on the imports of the subject goods originating in or exported from the subject countries and the antidumping duties were imposed by the Ministry of Finance vide Notification No.125/2010-Customs dated 16th December, 2010.
4. And whereas some interested parties filed appeals before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, challenging the Final Findings dated 19th October, 2010 and the Customs Notification No.125/2010-Customs dated 16th December, 2010. The Hon'ble CESTAT, after extensively hearing

the interested parties and the domestic industry, remanded the matter back to the Authority for affording post-decisional hearing to the appellants and other interested parties, if any, and for making such modifications to the Final Findings as might be necessary as a result of such post decisional hearing. The Authority, vide its Final Findings Notification No 14/2/2009-DGAD dated 10th February, 2012, issued its post decisional Final Findings confirming the Final Findings earlier notified vide Notification No. 14/2/2009-DGAD dated 19th October, 2010.

5. And whereas in terms of the Rules, M/s Tejas Networks Limited (hereinafter referred to as the petitioner or the applicant) representing the Domestic Industry approached the Authority with an application requesting for continuation of the antidumping duties in force imposed by the Central Government vide Notification No.125/2010-Customs dated 16th December, 2010. The request is based on the grounds that dumping has continued in spite of imposition of antidumping duty on the import of the subject goods from the subject countries and the domestic industry continues to suffer injury on account of dumping from the subject countries as the form and quantum of anti dumping duty in force has been insufficient. The petitioner has further argued that expiry of the measure against the subject countries would be likely to result in continuation or recurrence of dumping and injury to the domestic industry. The petitioner also claims that the revocation of anti-dumping measures would result in intensified dumping and consequent injury to the domestic industry and, therefore, the duty is required to be continued for a further period of five years
6. And the Authority, on the basis of prima facie evidence given by the petitioner, initiated the sunset review (SSR) investigation in accordance with Section 9A(5) of the Act read with Rule 23 of the AD Rules, vide Notification No.15/20/2014-DGAD dated 6th December, 2014, to review the need for continued imposition of the duties in force in respect of the imports of the subject goods, originating in or exported from the subject countries and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The Ministry of Finance, vide its Notification No 1/2015 dated 5th January, 2015 extended the anti dumping duty imposed vide Customs Notification No 125/2010-Customs dated 16th December, 2010, up to 7th December, 2015.

B. PROCEDURE

7. The procedure described below has been followed in this investigation:
 - (i) The Authority notified the embassies of the subject countries in India about the receipt of application before proceeding to initiate the investigation in accordance with the Rules.
 - (ii) The Authority issued a public notice No.15/20/2014-DGAD dated 6th December, 2014, published in the Gazette of India, Extraordinary, initiating the sunset review anti-dumping investigation concerning imports of the subject goods originating in or exported from the subject countries.

(iii) The Authority sent copy of the initiation notification dated 6th December, 2014 to the embassies of the subject countries in India, known exporters from the subject countries, known importers and other interested parties, and the domestic producers, as per available information. The known interested parties were requested to file questionnaire responses and make their views known in writing within the prescribed time limit. Copies of the letter and questionnaires sent to the exporters were also sent to embassies of the subject countries along with a list of known exporters/producers, with a request to advise the exporters/producers from the subject countries to respond within the prescribed time limit.

(iv) The copy of the non-confidential version of the application filed on behalf of the applicant was made available to the known exporters, other domestic producers and the embassies of the subject countries in accordance with Rule 6(3) of the Rules.

(v) The Authority forwarded a copy of the public notice initiating the sunset review to the following known producers/exporters/representative organizations in the subject countries and gave them opportunity to make their views known in writing within the prescribed time limit in accordance with the Rules:

- a) Huawei Technologies Co., Ltd, China
- b) Wuhan Fiberhome International, China
- c) ZTE Corporation Ltd., China
- d) Hangzhou ECI Telecommunications Co. Ltd., China
- e) Hi Silicon Technologies Ltd, China
- f) ECI Telecommunication Co. Ltd. Israel
- g) Alcatel Lucent Shanghai Bell Co. Ltd., China
- h) UT Starcom Ltd China, Hong Kong
- i) UT Starcom Ltd, Hangzhou, China
- j) Ciena Corporation, USA
- k) Ceragon Networks Ltd, Israel
- l) RAD DATA Communication, Israel
- m) China Chamber of Commerce for import and export of machinery and electronics products, China

(vi) In response to the initiation of the subject investigation, the following producers/exporters from the subject countries responded by filing questionnaire response:

- a) ZTE Corporation Ltd., China PR
- b) Huawei Technologies Co. Ltd., China PR

- c) Huawei International PTE, Singapore
 - d) Huawei Tech Investment Co. Ltd., Hong Kong
 - e) Hangzhou ECI Telecommunications Co. Ltd., China PR
 - f) ECI Telecom Co. Ltd. Israel
 - g) Alcatel Lucent Shanghai Bell Co. Ltd.
- (vii) The Market Economy Treatment (MET) questionnaire was also forwarded to the known producers/exporters in China PR and the embassy of China PR in India with the request to provide relevant information to the Authority within the prescribed time limit. The following producers/exporters from the subject countries filed MET questionnaire response:
- a) Huawei Technologies Co. Ltd., China PR
 - b) Hangzhou ECI Telecommunications Co. Ltd., China PR
 - c) Alcatel Lucent Shanghai Bell Co. Ltd.
- (viii) The questionnaires were sent to the following known importers/users/associations of subject goods in India, calling for necessary information, in accordance with the Rules:
- a) Aircel Limited
 - b) Prithvi Information System
 - c) Dishnet Wireless Limited
 - d) Punjab Communications Limited
 - e) Bharati Airtel Limited
 - f) HTL GST
 - g) Bharat Sanchar Nigam Limited
 - h) Huawei Telecommunications (India) Co. Pvt. Ltd. (Huawei India)
 - i) Tata Teleservices Limited
 - j) ZTE India
 - k) Tata Teleservices (Maharashtra) Limited
 - l) ECI India
 - m) Idea Cellular Limited
 - n) Alcatel Lucent
 - o) Vodafone Essar Limited
 - p) Nokia Siemens Networks
 - q) Railtel Corporation of India Limited

- r) Erricson
- s) Tata Communications
- t) Himachal Futuristic Communications
- u) Reliance Communications Limited
- v) ICOMM
- w) Shyam Telelinks
- x) Vuppalamritha Magnetic Components Ltd, Hyderabad

(ix) In response to the above notification, importers questionnaire response has been filed by the following:

- a) Huawei Telecommunications (India) Co. Pvt. Ltd.
- b) M/s Alcatel-Lucent India Ltd.
- c) ECI Telecom India Pvt Ltd.

(x) Further, Huawei Technologies Co. Ltd., Huawei Telecommunications (India) Co. Pvt. Ltd., Huawei Tech Investment Co. Ltd. and Huawei International PTE Ltd. have filed combined legal submissions on the initiation.

(xi) Legal submissions have also been filed on the initiation by the Association of Unified Telecom Service Providers of India & Cellular Operators Association of India, New Delhi and Telecom Equipment Manufacturers Association of India.

(xii) The period of investigation for the purpose of the present review is April, 2013 to June, 2014. However, injury analysis covered the periods April, 2010-March, 2011, April, 2011-March, 2012, April, 2012-March, 2013 and the POI.

(xiii) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange for details of transaction wise imports data of the subject goods for the past three years, including the period of investigations, which was received by the Authority. The Authority has relied upon the DGCI&S imports data for computation of the volume and value of imports.

(xiv) The Authority has examined the information furnished by the domestic producer to the extent possible on the basis of guidelines laid down in Annexure III to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

(xv) In accordance with Rule 6(6) of the AD Rules, the Authority provided opportunity to the interested parties to present their views orally in an oral hearing held on 18th September, 2015. The following, who presented their views in oral hearing, filed their written submissions of the views expressed orally:

- a) Huawei Group companies

- b) Alcatel-Lucent Shanghai Bell Group companies
 - c) ECI Group companies
 - d) Idea Cellular Ltd
 - d) Fibcom India Ltd
 - e) Association of Unified Telecom Service Providers of India and Cellular Operators Association of India, New Delhi.
 - f) Telecom System Design & Manufacturers Association and Telecom Equipment & Services Export Promotion Council.
 - g) ZTE Corporation Ltd
 - h) Tejas Networks Ltd
- (xvi) The submissions made by the interested parties during the course of this investigation have been considered by the Authority, wherever found relevant, in this investigation.
- (xvii) The verification of the information and data submitted by the domestic industry and the responding exporters was carried out to the extent deemed necessary.
- (xviii) The information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims 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.
- (xix) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the findings on the basis of the facts available.
- (xx) At the request of the Authority, the Central Government granted extension of time upto 05.03.2016 for completing the investigation and notifying the final findings.
- (xxi) A Disclosure Statement containing the essential facts in this investigation which would have formed the basis of the Final Findings was issued to the interested parties on 18.01.2016. The post Disclosure Statement submissions were received from the domestic industry and opposing interested parties have been considered, to the extent found relevant, in this Final Findings Notification.
- (xxii) *** in this Final Findings Notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- (xxiii) The average exchange rate of 1US\$ = Rs 60.77 prevailing during the POI has been adopted by the Authority in this investigation.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

8. The product under consideration as defined below the duty table in the original Final Findings Notification No 14/2/2009 dated 19th October, 2010 read with Corrigendum No 14/2/2009 dated 22nd October, 2010 and further read with Final Findings

Notification No 14/2/2009 dated 10th February, 2012, was as under:

***Note 1. The product under consideration will include “Synchronous Digital Hierarchy transmission equipment, viz. STM-1, STM-4, STM-16, STM-64, STM-256 in assembled, CKD, SKD form, its assemblies and sub-assemblies or fitted with eventual broadband / cellular equipment. Product under consideration will also include Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), and Digital Cross Connect (DXC) (For SDH Application only), Populated Circuit Boards (For SDH Application Only) and parts / components imported as a part of equipment, so long they are imported along with the equipment or its assemblies / subassemblies. The Product under consideration will also include Software meant for SDH, which is an integral part of these equipments, which may be bought either as a part of the equipment or separately. However components/ parts imported on a standalone basis are outside the purview of Product under Consideration*

***Note 2. SDH Equipment essentially transmits signals through the medium of Optical Fibre. There may be SDH equipment meant for transmission through electrical Copper Medium or Microwave Radio Medium. The SDH Equipment transmitting the data through optical fibre alone shall be subject to levy of antidumping duty.*

***Note 3. When SDH is imported as a part of eventual broadband / cellular equipment, the AD Duty shall be payable only on the SDH portion of the imports. Similarly when eventual Broadband / Cellular equipment is imported as a part of the SDH equipment, the AD Duty shall be payable only on the SDH portion of the imports.*

***Note 4 PDH, CWDM, DWDM, Microwave systems, GPON ,DSLAM, MSAN, BITS, Routers, PDSN, SGSN, MGW, BTS, BSC, MSC, ONT, HLR, HSS and MRP being non-SDH in any of its form are outside the scope of PUC and therefore not subject to levy of AD Duty.*

***Note 5. Microwave Radio Terminals which could have an STM-1 interface to the SDH transmission equipment and act as a physical media to enable the connectivity between the radio and the SDH equipment are outside the purview of payment of AD Duty*

C.1 Submissions made by the Domestic Industry

9. The following submissions have been made by the domestic industry (DI) with regard to product under consideration and its scope:
 - i. The product under consideration in the present petition is “Synchronous Digital Hierarchy transmission equipment, its accessories, associated software and its essential parts & components, in assembled, CKD, SKD form or fitted with eventual broadband/cellular equipment”.

- ii. SDH transmission equipments are also known as multiplexers, Add Drop Multiplexers (ADM), Multiple Add Drop Multiplexer (MADM), digital cross-connects. Populated PCBs, Power supply, Lasers, Chassis and software meant for SDH transmission equipment, etc. consist of essential parts of a SDH transmission equipments and are within the scope of the product under consideration provided the said components are meant for SDH transmission equipment application only.
- iii. SDH transmission equipments can be bought either as transmission equipments or forming part of another equipment, e.g., broadband and/or cellular (both GSM and CDMA) equipment. SDH transmission equipments forming part of broadband and/or cellular equipments are also within the scope of the product under consideration.
- iv. Product under consideration is an assembly of a number of electronic components and/or electronic printed circuit boards, which are designed to perform the specific intended function of multiplexing for combined lower speed signals into high-speed signals for transmission through optical fiber over distances (short or long). Since, among other applications, these are installed at Base Transmission Stations, switch exchanges and other point of presence, SDH equipments installed at different locations may differ in terms of the associated properties.
- v. Different SDH equipment are comparable in term of essential product characteristics including physical and optical, production technology, manufacturing process, R&D development, software capabilities, functions and usage, etc. Accordingly, various SDH equipments are one like product for the purpose of present investigation.
- vi. The product under consideration can be imported either as complete equipment, or in CKD, SKD or even component form. Further, a number of accessories are required for connecting/installing SDH transmission equipment in the network (E1 cables, PCM cables, power cables, racks, workstations, etc.). Software is an integral part of these equipments, which may be bought either as a part of the equipment or separately. These all are also within the scope of the product under consideration.
- vii. The key effort involved in the production of the subject goods is in the development of technology. Substantial research & development efforts are put in by the producers globally in design & development of the subject goods, the extent of which may be gauged by the fact that about 60% of the manpower deployed is in design & development of the product under consideration.
- viii. The core of production is in technology, know-how, design and development of the product. The actual process of manufacturing is, in fact, a much smaller part of the total activity involved in the production and supply of subject goods and comprises complex assembling of a large number of components on a PCB (populated PCBs) and then assembling and testing them as finished products.
- ix. The production in the present product is an activity comprising design and development of complex hardware, embedded software and network management software as well as the final assembly and testing of the finished product. The

petitioner, the producers in subject countries and other global players, all undertake combination of all these activities.

- x. The production process can be divided into the fifteen step criteria mentioned in the original Final Findings.
- xi. Any consumer of the product insists on a combination of all the above before placing orders on any party. Further, some of the consumers in India insist on sales & support being extended by someone from India. Therefore, the producers in subject countries have set up their own/related enterprises in India in order to provide sales and support services.
- xii. The design and development of the subject goods involves significant amount of resources on research and development. The petitioner has developed significant amount of intellectual property over the years. In similar fashion, the foreign producers have also developed significant amount of intellectual property over the years.
- xiii. The petitioner and major global players in this industry outsource a significant part of component manufacturing to specialized producers (Electronic Contract Manufacturers). These companies, who undertake a significant part of component manufacturing activities, are, however, mere job processors, having no knowledge whatsoever about the technology and design & development involved in the product. These job processors lack the knowledge of intellectual property required in production of the subject goods.
- xiv. The Indian Rules and WTO Agreement of Antidumping do not prescribe anything with regard to scope of the product under consideration, nor have these prescribed the parameters that should be considered for describing/ specifying the product under consideration.
- xv. The petitioner researched upon a large number of cases investigated by India, EC and the US in support of its claim of scope of product under consideration. These include decisions of the US ITC in the matters of Certain Tow-Behind Lawn Groomers and Parts Thereof from China PR; Diamond Sawblades and Parts Thereof From China PR and Korea; Gray Portland Cement and Cement Clinker From Japan; Hand Trucks and Certain Parts Thereof From China PR; Large Newspaper Printing Presses and Components Thereof, whether Assembled or Unassembled from Japan and Mechanical transfer presses from Japan. Further, the petitioner referred to decisions of the EC in the matters of Ironing boards, Steel tube and pipe fittings, Compact Disc Players (CDP).
- xvi. "SDH equipment" includes products in its various forms, different names and supplied in different forms. Multiplexers, Add Drop Multiplexers (ADM), Multiple Add Drop Multiplexer (MADM), digital cross-connects are different names of the same product. Populated PCBs, Power supply, Lasers, Chassis and software meant for SDH transmission equipment are various sub-set of the product.

- xvii. The product can be supplied in assembled form or broken into these various sub-sets of the product. An exporter can export either the finished ready to use equipment, or in sub-assembly, cards, CKD/SKD conditions and carry out the remaining operations in India (involving negligible value addition). Further, the product can be produced and supplied in various sizes to meet specific customer requirement.
- xviii. The way SDH equipment is produced and used and the jurisprudence emerging out of various cases investigated by various investigating authorities establish that the scope of the product under consideration is not wide in the present case. Further, inclusion of parts/components is fully justified, considering the production activities relating to the product under consideration.
- xix. The petitioner has sought imposition of anti-dumping duties only on parts/components for SDH application.
- xx. The petitioner has referred to the decision of EC in the matter of fasteners and argued that the fact of no production of some particular component/part of the product does not disqualify a company from seeking protection on the product. The domestic industry should be engaged in production of the product and is not required to be offering parts of the product in the market.
- xxi. The petitioner has sought inclusion of parts and components as (a) these are specifically designed for production of SDH equipments, (b) these have no other application but for production of the product, (c) production of the product from the stage of parts/components/assemblies/sub-assemblies involves only a screw driver technology and, therefore, exclusion of these from the scope would imply permitting imports of these at dumped prices, which would lead to continued dumping and injury in spite of imposition of anti dumping duties. The domestic industry also raised a question that if anti-dumping duties on product under consideration is justified, why imports of such items should be permitted and why such imports would not cause injury to the domestic industry. The domestic industry has also contended that the Authority can specify that such duty on parts, components, sub-assemblies can be implemented on declaration basis and the same can be specified in the relevant customs notification as well.
- xxii. DWDM Multiplexors and PDH multiplexors are different products. The Authority may specifically clarify the same to eliminate all doubts unnecessarily created by some interested parties. Further, the Authority may consider such other arguments of opposing parties with regard to appropriate descriptions and clarify the same in the final findings in order to ensure clarity at the time of implementation of the duty.
- xxiii. It is well settled law that the product description remains dispositive and customs classifications are given only for convenience. Merely because import of a product has been reported under a classification specified under an anti dumping duty notification, the same does not imply that anti dumping duty would be charged on the same.

- xxiv. With regard to claims of the interested parties to specifically exclude certain products, the domestic industry has claimed as follows –
- i. STM-1, 4, 16 - There is no dispute for inclusion of these types.
 - ii. STM-64 - The domestic industry has produced and supplied these. The claim is without basis. The company produces STM-64 which are also DXC. The mere fact that Tejas did not bid in a specific tender for a specific product type for a specific customer doesn't mean that the company does not produce the particular product. Non participating in a particular tender does not imply that the company is not manufacturing the particular product.
 - iii. STM-256 - There is no requirement so far for STM-256 in India. STM-256 is nothing but SDH equipment. None of the consumers has deployed STM-256 and also there is no approved specification (TEC GR) for STM-256 system. A product can be produced only if demand/requirement for the same exists. It is understood that none of the telecom operators in India has deployed any STM-256 system and even worldwide only very few telecom operators have deployed STM-256 in their network. Tejas has already made significant R&D investments in developing STM-256 technology and Tejas can provide STM-256 capabilities on its systems, as and when required.
 - iv. Multiplexers - Multiplexers is a broad term. SDH equipments also have multiplexers. Domestic industry has produced and supplied these. These have been imported in India. The Authority may, however, clarify that only SDH multiplexers are within the scope of the product under consideration
 - v. DWDM - These are not SDH equipments and are beyond the scope of product under consideration. The interested parties have sought this exclusion only to confuse the Authority.
 - vi. Parts & components of SDH equipments - These cannot be excluded.
- xxv. The eventual consumers are interchangeably consuming goods supplied by domestic and foreign producers. All major telecom service providers in India like BSNL, Bharti, Aircel are buying Huawei product and Tejas product and that too for the same network, same application and against the same specification.
- xxvi. Multiplexers or other equipments operating on DWDM technology are not covered under the PUC. The petitioner supplies SDH multiplexer or DXC.
- xxvii. Tejas manufactures both SDH products and carrier Ethernet products. Tejas will pay the applicable duty if it will source dual usage components for SDH use and if the same is within the product scope. The petition is only in respect of one article, albeit in its various forms. The rules nowhere prevent inclusion of different forms of an article within the scope of the product under consideration. There may hardly be any investigation conducted so far wherein product under consideration did not have multiple forms.

- xxviii. SDH equipment, accessories, associated software, parts and components, Populated PCBs, Power supply, lasers, Chassis, EI cables, PCM cables, power cables, racks, collectively form an SDH equipment (excluding work stations). Individually, none of these have any end use. For example, a tube light requires a tube, a choke, a starter and a base. It cannot be said that each of these four items are different articles, merely because they have their own distinguished character.
- xxix. The requirements of rule 5 are to be satisfied in respect of product under consideration and not individual forms of the product under consideration. The product under consideration is SDH transmission equipment. When the “different technology equipment” is imported with “SDH-1 interfaces”, then duties will not be imposed on the full value of “different technology equipment” but only on the parts related with SDH-1 technology.

C.2 Submissions made by exporters/importers/ users/other interested parties

10. With regard to the product under consideration and its scope, the following submissions have been made by the exporters/importers/users/other interested parties:
- (i) There is a mismatch in the product scope proposed by the domestic industry and the product scope based on which the present initiation has taken place and, therefore, does not account for a “Duly Substantiated Request” In a sunset review, the product scope ought to remain the same as the original investigation. The domestic industry has requested for a sunset review on a product scope which is much wider than the product under consideration on which duties are presently applicable. However, if the initiation has taken place based on the above petition itself, then the present initiation is in contravention of the requirements of the Anti-dumping Rules, particularly because the present Petition is for a different product scope and, therefore, does not account for a “Duly Substantiated Request”. It is critical to note that any continuation of duties cannot take place for a different product scope as compared to the product scope in the original investigation. The Designated Authority, being a quasi-judicial authority, cannot deviate from its earlier decisions and is bound to follow its earlier decisions for consistency and predictability. The Authority in the past as a practice held that product scope cannot be enlarged in reviews.
 - (ii) The scope of PUC cannot be expanded at the time of sunset review and no new product can be brought within its scope. The alleged domestic industry has demanded the expansion of the PUC by way of inclusion of Printed Circuit Boards which are also called as Bare Boards. Printed Circuit Boards are being imported by the alleged domestic industry itself from the subject country (China) as per the original final findings.
 - (iii) The Applicant should disclose transaction wise information including description and volume of imports made by them so that the other interested parties would also

get a chance to see whether the imports made by the Applicant are that of PUC or not. In absence of the same, the Authority should not accept the uncorroborated claims of the Applicant.

- (iv) The Applicant neither manufactures STM 64 and STM 256 nor sells these products. Therefore, it cannot be alleged by the Applicant that it is suffering injury on account of imports of these products. DGAD should not continue with these incorrect and illegal inclusion within the scope of PUC.
- (v) The alleged DI had claimed in the original investigation that it had provided STM-64 in commercial quantities to BSNL. DI has never participated in any tender process for STM-64 till date. The same has been confirmed by BSNL vide letter dated 17.10.2009. Accordingly, there arises no question of commercial supply of STM-64 to BSNL by the alleged DI. The DGAD, in the final findings, changed its stand and claimed that during the on the spot verification, it was found that such product had been supplied in commercial quantities to Quicktel (and not BSNL). No entity by the name of Quicktel had obtained orders from BSNL. Therefore, it is submitted that the claim of the alleged DI in this regard is absolutely false and malicious.
- (vi) The alleged domestic industry has never entered the Indian domestic market for STM-256. STM-256 has never been imported into India and moreover, the technical approvals/permissions for the deployment of STM-256 are not yet in place in India. When this basic condition has not been met, the question of inclusion of STM-256 within the PUC and thereby imposition of ADD does not arise.
- (vii) Further, STM-1, 4, 16, 64 and 256 etc. are substantially different articles, as per own admission by the Applicant in the Petition. Therefore, these products should not have been clubbed together under a broad category of PUC by the Applicant in its Petition. STM-256 is neither imported into India nor is it deployed in India. Therefore, it would not be fair to include STM-256 within the scope of PUC.
- (viii) STM-Interface may be there in other telecom equipments also and these STM Interface need not only be STM-1 Interface. Therefore, any product other than SDH having STM Interface to SDH transmission equipment and acting as physical media to enable connectivity between the radio and SDH equipment must be outside the purview of PUC.
- (ix) The PUC manufactured by the Applicant does not have the same physical and technical characteristics. The technology used by the Applicant is obsolete and it supplied low end SDH equipment whereas exporters from outside India manufacture all categories of transmission equipment, which can be managed in a single Network Management System (NMS) or Operations Support System (OSS).
- (x) Certain products have been wrongly included within the ambit of PUC by the Applicant after publication of Final Finding without affording an opportunity to us to be heard. As also mentioned in the Petition, SDH is based upon standard ITU-T Standard No. G 707. Therefore, it is requested to specifically exclude OTN from the scope of PUC since it is neither SDH product nor based upon ITU-T Standard No.

G 707 which is meant for SDH but due to non specific exclusion of the same from the PUC, it is causing confusion among the custom authorities.

- (xi) PTN was originally mentioned in the exclusion list as per Note 4 of the Final Findings dated 16.10.2010, but later through amendment, it was removed from the exclusion list causing confusion thereby. It is submitted that this was done unilaterally without affording us an opportunity of being heard. PTN was neither a part of the original investigation, nor was covered under the PCN devised. PTN is not an SDH equipment and, therefore, it is/was not covered under PUC and hence appropriate clarification should be issued by the Authority at the earliest in this regard to avoid confusion and unnecessary litigations and delays in clearance of our products.
- (xii) Further, the present request of the Applicant to include Printed Circuit Boards (PCBs) within the scope of PUC on the ground that PCBs are being imported in increased quantities for manufacture of PCBAs and to avoid payment of anti-dumping duty is unwarranted. It is submitted that it is an admitted fact by the Applicant in the Preliminary Findings in the Final Findings in the original investigation that the Applicant itself imports PCBs from China and the Applicant has raised this point to put undue pressure upon the DGAD so that its attention is diverted from the point that PCBAs (Populated Circuit Board Assemblies), which are not being manufactured by the Applicant, remain within the scope of PUC.
- (xiii) Further, despite the customs notification no. 125/2010 dated 16/12/2010 clearly stating in regard to the Populated Circuit Board Assemblies that they should be for SDH application only; and only when they are imported along with the equipment or its assemblies or subassemblies, still the customs authorities have gone ahead and demanded duty on such PCBAs, even when they are not being imported along with the SDH transmission equipment.
- (xiv) Classification of PCNs cannot reflect the characteristics of the product concerned. PCN serves fair comparison purposes in an anti-dumping investigation by classifying the PUC into numerous sub-categories, which is needed essentially to reflect cost and price differences among each of the specified PCN. However, the accounting system, sales of activities, costing structure and management of a company are not set up on the basis of PCN because a company that is engaged in the production of the PUC is interested in gaining overall profits along with the progress of installation of the concerned equipment into proper operation.
- (xv) There is lack of clarity in the present investigation with regard to the inclusion of components. The Authority should clarify that the present scope includes only full SDH products and not components. If indeed components are included, then the Authority may clarify that only components exclusively used for SDH are part of the product scope.
- (xvi) DXC has been erroneously included in the PUC on the ground that it is an SDH transmission equipment. DXC is not an SDH transmission equipment. It has a

different functionality vis-à-vis an SDH transmission equipment. While an SDH transmission equipment is used for multiplexing and transport applications, DXC is used for traffic grooming and switching functions. The domestic industry had sought protection against SDH transmission equipment. However, the PUC has erroneously included in it a switching equipment also. While every STM equipment will have some digital cross connect functions, DXC is a specific device designed to perform cross connect functions only. Accordingly, it is submitted that DXC is not an SDH transmission equipments. While an SDH transmission equipment is used for multiplexing and transport applications, DXC is used for traffic grooming and switching functions. Without prejudice to the aforementioned, it is submitted that the alleged DI had sought protection against SDH transmission equipment, the PUC has erroneously included in it a switching equipment also. On the basis of the aforementioned, it is submitted that DXC ought to be kept outside the scope of PUC in as much as it is not an SDH transmission equipment and the ADD levy is only to be restricted to SDH.

- (xvii) The description of the product under consideration is far from providing any clarity for customs purposes. It is, therefore, requested to the DGAD that the scope of PUC be very precise stating technical specifications, so that there is no scope of ambiguity in interpreting the PUC by the customs authorities. It may kindly be laid down that neither the equipment OTN nor DWDM, which are different technology than SDH, nor the cards, PCBs used therein resulting in a non-SDH output, can be considered to be the PUC.
- (xviii) The claim of the petitioner that SDH equipment imported into India in component form in different baskets cannot be excluded from the scope of the product under consideration is without merit. The components and parts which are not imported along with the equipment / its assemblies / sub-assemblies or are imported on a standalone basis are outside the scope of the investigation. Therefore, it is requested to clarify the product scope.
- (xix) The customs department is collecting anti-dumping duties even on components / parts imported on a standalone basis and other products which are outside the purview of Product under Consideration. Therefore, it is requested to clarify the product scope so that the interested parties do not have to suffer the undue hardship in the form of payment of the anti-dumping duties even on those products which are outside the scope of this investigation in case the Authority decides to extend the duties in force.
- (xx) It is further submitted that the SDH capacity of DI accepted by them of the cross connect only extends to a maximum of 320g for STM-64. On perusal of relevant products of alleged DI (TJ1400, TJ1600, TJ1400 PTN, TJ1600 PTN, TJ1100, TJ1270, TJ1100ME, TJ1500, TJ1600, TJ2031, TJ2051, TJ5500) available in their website it is observed that they have not developed higher technology such as 1000g as claimed. If DI had achieved such a technical advancement it would have

mentioned the same in its website. The alleged DI has not shared relevant details/information on their capabilities except a public statement during the PH and nothing is available in the public domain including in their website to substantiate their claim. The claim of alleged DI in this regard vis-à-vis customer supply evidence may be verified by the DGAD.

- (xxi) Therefore, it is clear that even for SDH application where the requirement is of 1.2 TB, i.e., including any equipment beyond 320g, obviously the domestic industry is not in a position to supply such equipment and such equipment for this reason itself have to be kept outside the purview of imposition of any ADD. Thus, even if the equipment is of SDH specification in the example cited, the same cannot invite ADD. Similarly, having regard to the maximum cross connect capacity made available by DI for STM-1, STM-4 and STM-16, there should be ADD restricted to only such cross connect capacities irrespective of the baseless claims of the alleged DI. Regard should be paid to the factual position that DI is not even known for higher speed and it has even admitted to the same to the customers.
- (xxii) It is submitted that if any of the items are imported not for SDH application, such items cannot be subjected to anti-dumping duty under the notification 125/2010 – Custom dated 16/12/2010. However, owing to the ambiguous definition of the PUC, it has been seen that the customs authorities have gone way beyond in interpreting the definition of product under consideration and have even assumed the goods falling under the OTN and DWDM category to be covered within the scope of PUC. For instance, the customs authorities has issued show cause notices to the interested parties in regard to the OSN 9500, the cards which are used for DWDM output, as to why ADD should not be paid on them.
- (xxiii) There is a duty demand also on certain imports which include coloured OTN line cards which support line rates different from STM 64 based on G. 707. Thus, even if the equipment imported are designed to support OTN line rates based on G. 709 and coloured interfaces based on G. 694, which being non SDH and clearly outside coverage of ADD, the customs authorities have still endeavored to levy duty on them.
- (xxiv) As it has already been acknowledged by note no. 5 of the operating part of the final findings that microwave radio terminals having an STM-1 interface to the SDH transmission equipment and act as a physical media to enable the connectivity between the radio and the SDH equipment are outside the purview of ADD, similar clarification may be issued in the course of these proceedings to the effect that the interfaces which are not specific to the SDH equipment should not form a part of the PUC, e.g., Routers, OTN, DWDM, CWDM, MS-OTN, PTN, Switches, MPLS, MPLS-TP, GPON, DSLAM, MSAN, BITS, DLC, BSC, MSC, SGSN, GGSN, PDSN, HLR, HSS, MRP, MGW, Microwave, etc. or any other telecom equipment other than SDH having any kind of STM interface such as STM-1, 4, 16, 64 and 256 meant to connect to act as a physical media to enable the connectivity between

aforesaid products and SDH equipment are outside the purview of ADD, since in the past due to lack of appropriate clarification, litigation has resulted.

- (xxv) There is also a stand taken in the show cause notices to the interested parties that the cards themselves are to be regarded as SDH equipment which is fundamentally wrong.
- (xxvi) Further despite the customs notification 125/2010 dated 16/12/2010 clearly stating in regard to the Populated Circuit Board Assemblies that they should be for SDH application only; and only when they are imported along with the equipment or its assemblies or subassemblies, still the customs authorities have gone ahead and demanded duty on such PCBAs, even when they are not being imported along with the SDH transmission equipment.
- (xxvii) It may please be appreciated that the current notification regarding imposition of ADD on SDH transmission equipment, has resulted in the levy of ADD on SDH technology rather than SDH product per se. It is pertinent that in order to remove all ambiguities the PUC also needs to be clearly defined to remove even an iota of doubt. The scheme of taxation under customs is based on classification of products rather than technology. Hence, the necessity to define the product precisely and not by way of technology.
- (xxviii) The ADD is not required to be paid whenever SDH equipment is being imported on the items, e.g., power cables, chassis, patch cords, connectors, rack, etc. since these are regarded as accessories. Consequently, when the DWDM/OTN etc. technology equipment are imported, any attempts on the part of the customs department to levy ADD on the specious reasoning that some interfaces have SDH technology therein may kindly be discountenanced and deprecated severely by the authority for the reasons that the items imported are geared to a totally different technology and no part of it can be subjected to ADD for the reasons that such equipment do not fall under that heading 851762 covering SDH equipment and also for the reason the interfaces in these equipment can never be said to be for SDH application only which is the paramount criteria for levying ADD. Even as per the general interpretative rules to the CTA, the essential character of the entire DWDM/OTN equipment including its constituents is only attributable as DWDM/OTN and for this reason also no part of the DWDM/OTN equipment can be subjected to ADD as representing SDH technology.

C.3 Examination by the Authority

11. A number of interested parties have disputed the scope of the product under consideration on a number of grounds. Since the present investigation is for sunset review of the anti dumping duty already levied, the scope of the product under consideration should normally remain the same as that of the original investigation. However, some of the interested parties have vehemently disputed inclusion of certain types of products under the category of the "Product Under Consideration" or the

“Subject Goods” and sought certain clarification on the product scope as also exclusion of some product types. The Authority notes that the majority of these submissions are repetition of what was claimed earlier during the course of the original investigation and nothing new in the form of hard evidence has been provided to the Authority by the opposing interested parties to change the product scope in the present sunset review investigation. The main issues raised by the opposing interested parties, though already settled, are still examined as follows:

- a. STM-64: The petitioner Tejas Network has produced and sold STM-64 in the Indian and overseas markets as was verified by the Authority. STM 64, therefore, will not be excluded from the product scope and it will remain part of the PUC.
- b. STM-256: Admittedly, STM-256 has neither been imported during the period of investigation in the sunset review investigation nor supplied by the domestic industry. In fact, the interested parties agreed that technical approvals/permissions to deploy SDH-256 are not even in place in the country. The Authority, however, observes that a claim for exclusion of a particular type cannot be entertained unless the same has been exported to India during the relevant period, as the fact of non supply of the like article by the domestic industry cannot be established unless the type is exported to India. The Authority, therefore, holds that no grounds have been made out in the present sunset review investigation justifying exclusion of STM- 256 from the product scope.
- c. PTN: Regarding the claim of the opposing interested parties that SDH and PTN are completely different technologies serving different needs and thus PTN be kept out of the scope of the Product Under Consideration in the sunset review investigation, the Authority notes that this issue has already been settled in the earlier Final Finding and the present investigation being the sunset review investigation, the Authority will retain the Note 4 in the Duty Table as it was in the Final Findings Notification No. 14/2/2009-DGAD dated 19th October, 2010, read with Corrigendum No 14/2/2009 dated 22nd October, 2010 and further read with Final Findings Notification No 14/2/2009 dated 10th February, 2012.
- d. Digital Cross Connects (DXC): The interested parties have argued for exclusion of digital cross connect. It has been stated in the previous findings that the investigation has shown that digital cross connect are actually the equipment used in telecommunications networks that allows lower-level signals to be rearranged and interconnected among higher-level signals. Digital cross connect can be produced in SDH technology and other technologies. Digital cross connect equipment of SDH technology is clearly SDH equipment. Digital cross connect of SDH technology has been produced

and supplied by the petitioner during the investigation period. The cost and price information included in the injury information and injury margin assessment includes the production and sale of digital cross connect of SDH technology. The Authority, therefore, holds that digital cross connect of SDH technology are rightly within the scope of the product under consideration. However, since digital cross connects are produced in other technologies as well, it is clarified again that digital cross connect of other technologies are beyond the purview of the product under consideration and the present sunset review investigation.

- e. Parts and Components: The petitioner has again sought inclusion of parts and components claiming that (a) these are specifically designed for production of SDH equipments, (b) these have no other application but for production of the product under consideration, (c) production of the product from the stage of parts/components/assemblies/sub-assemblies involves only a screw driver technology and, therefore, exclusion of these from the scope would imply permitting imports of these at dumped prices, which would lead to continued dumping and injury in spite of imposition of anti dumping duties. The domestic industry also raised a question that if anti-dumping duties on product under consideration is justified, why imports of such items should be permitted and why such imports would not cause injury to the domestic industry. In this regard, the Authority holds that the issue of non-inclusion of imports of stand-alone parts and components in the scope of the PUC has already been settled in the original investigation and the domestic industry has not provided any evidence justifying inclusion of imports of stand-alone parts and components in the scope of the PUC. The Authority, therefore, reiterates its stand in the present sunset review investigation that parts and components imported on stand-alone basis are outside the scope of the product under consideration.
- f. The domestic industry has also demanded the expansion of the PUC by way of inclusion of Printed Circuit Boards, which are also called Bare Boards. The Authority notes that the Printed Circuit Boards fall in the category of parts and components only. Further, it is a settled position in the original final findings that Printed Circuit Boards have been imported by the domestic industry itself from one of the subject countries, viz., China PR. If the domestic industry has not imported Printed Circuit Boards during the period of investigation of the present sunset review investigation, it cannot turnaround and claim that now their nature has changed and thus these should be included in the PUC. The Authority, therefore, reiterates its stand that Printed Circuit Boards imported on stand-alone basis are outside the scope of the product under consideration.
- g. As regards the clarifications sought in the product scope, the Authority has addressed all the concerns on inclusions and exclusions from the product scope in the previous findings and the Authority notes that the product under

consideration in all its forms as provided in the original Final Findings Notification No 14/2/2009 dated 19th October, 2010 read with Corrigendum No 14/2/2009 dated 22nd October, 2010 and further read with Final Findings Notification No 14/2/2009 dated 10th February, 2012, is subject to present investigation.

- h. The product under consideration is classified under Chapter 85 of the Customs Tariff Act, 1975. It is further classified under the heading 851762 and 851770 of schedule-I of Custom Tariff Act as per Indian Trade Classification. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

12. Rule 2(d) with regard to “like article” provides as under: -

"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation”.

- 13. The Applicant has claimed that there is no known difference between the subject goods produced by the applicant and exported from the subject countries. The subject goods produced by the applicant and imported from subject countries are having comparable characteristics in terms of parameters such as product characteristics including physical and optical, production technology, manufacturing process, R&D, software capabilities, functions and usage, etc.
- 14. The present application filed is for the review, continuation and enhancement of the quantum of the anti-dumping duty in force, and the issue of like article has been already dealt with in the previous investigations. In the earlier investigation, the Authority has already held that the subject goods produced by the domestic industry is like article to the subject goods imported from the subject countries and no new evidence has been provided by the opposing interested parties in this investigation that the subject goods produced by the domestic industry are not like article to the subject goods imported from the subject countries.
- 15. Product Control Number (PCN) System: The product under consideration is produced and sold in a number of different types and variants. Different types and variants are produced to meet specific customer requirements. In order to ensure fair comparison between normal value and export price, the Authority has segregated the product under consideration into different types based on parameters such as transmission capacity; cross connect capacity, E1 interfaces, electrical interfaces, optical interfaces, optics types, etc. etc. The Authority evolved a product control system (PCN) running into 15 digits. In the original investigation, all interested parties were directed to provide information on cost and price separately for each PCN. Although some attempt at standardization of parameters has been made by evolving the PCN criteria, such products are by their very nature not amenable to standardization as they are

completely non-standardized, made to suit the requirements of each network, functioning on a different frequency, contained diverse modules, the addition or deletion of which would lead to wide variation in costs and the costs were dependent on the interplay of technology, hardware and software used etc. Since the present investigation is the sunset review investigation, the basic PCN remain the same as were in the original investigation.

16. After examining the relevant submissions and claims of the domestic industry and the opposing interested parties, the Authority concludes that the product under consideration will remain as defined below the duty table in the original Final Findings Notification No 14/2/2009 dated 19th October, 2010 read with Corrigendum No 14/2/2009 dated 22nd October, 2010 and further read with Final Findings Notification No 14/2/2009 dated 10th February, 2012, i.e., as under:

***Note 1. The product under consideration will include “Synchronous Digital Hierarchy transmission equipment, viz., STM-1, STM-4, STM-16, STM-64, STM-256, in assembled, CKD, SKD form, its assemblies and sub-assemblies or fitted with eventual broadband / cellular equipment. Product under consideration will also include Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), and Digital Cross Connect (DXC) (For SDH Application only), Populated Circuit Boards (For SDH Application Only) and parts / components imported as a part of equipment, so long they are imported along with the equipment or its assemblies / subassemblies. The Product under consideration will also include Software meant for SDH, which is an integral part of these equipments, which may be bought either as a part of the equipment or separately. However components/ parts imported on a standalone basis are outside the purview of Product under Consideration.*

***Note 2. SDH Equipment essentially transmits signals through the medium of Optical Fibre. There may be SDH equipment meant for transmission through electrical Copper Medium or Microwave Radio Medium. The SDH Equipment transmitting the data through optical fibre alone shall be subject to levy of antidumping duty.*

***Note 3. When SDH is imported as a part of eventual broadband / cellular equipment, the AD Duty shall be payable only on the SDH portion of the imports. Similarly, when eventual Broadband / Cellular equipment is imported as a part of the SDH equipment, the AD Duty shall be payable only on the SDH portion of the imports.*

***Note 4. PDH, CWDM, DWDM, Microwave systems, GPON, DSLAM, MSAN, BITS, Routers, PDSN, SGSN, MGW, BTS, BSC, MSC, ONT, HLR, HSS and MRP being non-SDH in any of its form are outside the scope of PUC and, therefore, not subject to levy of AD Duty.*

***Note 5. Microwave Radio Terminals which could have an STM-1 interface to the*

SDH transmission equipment and act as a physical media to enable the connectivity between the radio and the SDH equipment are outside the purview of payment of AD Duty.

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

D.I Submissions made by the Exporters/Importers/ users/other Interested Parties

17. With regard to scope of the domestic industry and standing, following submissions have been made by the exporters/importers/users/other interested parties:
 - i. Huawei Telecommunications (India) Private Ltd. (Huawei India) has claimed that it is involved in the manufacturing of STM-1, STM-4, STM-16, STM-64, Add Drop Multiplexers for SDH Application, Multiple Add Drop Multiplexers for SDH Application, Digital Cross Connect for SDH Application and Populated Circuit Boards for SDH Application in India. The company has DTA Factory Manufacturing License for manufacturing telecommunication equipment including PUC and a Central Excise Registration Certificate has been issued to it. The Company has supplied SDH Equipment covered under PUC to customers in Indian market including Idea Cellular Limited, Sify Technologies Limited, Bharti Airtel Limited, Alstom T&D India Ltd, Dishnet Wireless Limited, Aircel Limited, Vodafone Cellular Limited among others.
 - ii. The Authority, in its Final Finding dated 19.10.2010 in the original investigation, arrived at the finding that there are 15 steps which constitute 'production' with respect to the PUC. Further, while a Company need not undertake each of these activities, it is possible that some of these steps might involve one or more sub-processes which might be carried out independently, or some of these processes may be integrated by some Company. Huawei India also stated that the company is producing the PUC at its plant site in Chennai where components are assembled and substantial transformation takes place for the manufacture of the PCBA.
 - iii. The development of software makes the Applicant Tejas Networks the producer of the software and not producer of the SDH equipment, which is produced using various components and software being only one of the inputs. These activities can best be considered to be activities related to manufacturing of SDH equipment and not manufacturing the SDH equipment itself.
 - iv. The Applicant Tejas Network should share the details of its Research & Development (R&D), i.e., is it for the manufacture of the PUC or other products, what is the cost, what is the real manufacturing cost by the Applicant which is the sole criteria etc., as it has been maintaining the stand that 60% of its manpower is engaged in the R&D and then itself is claiming that SDH product which was forming the part of the PUC has become obsolete technology.
 - v. The Applicant Tejas Network does not satisfy the criteria of standing under Rule 2(b) of the AD Rules. Even if the Applicant holds a major proportion of domestic production, it still does not meet the requirement of Rule 2(b) as it is an importer

itself.

- vi. Huawei India has made substantial investments in India during the last 4 to 5 years; satisfies the 15 production criteria listed as all the activities are being undertaken in India itself at their facility; has imported very few items falling under the scope of the subject product during the POI in the present sunset review investigation; essentially maintains a focus on domestic production itself and has become the biggest producer in India and this has been recognized by the DoT as well. Huawei India in fact was making profits in India in the same market where the Applicant has been claiming losses even after such high protection in the form of anti-dumping duties. The Authority is urged to re-examine the status of the domestic industry and clarify to all interested parties as to who is the actual domestic industry.
- vii. The Authority should independently seek capacity and production data from other producers. Such data should also be provided to all interested parties for examination and comments. It is to be noted that none of the producers mentioned has expressed support for the petition.
- viii. It is neither the intent of the WTO Agreement on Anti-Dumping nor of the Anti-Dumping Rules that a straight jacketed formula should be adopted while defining the “domestic industry”, suiting the requirement and interpretation of the law by the Applicant and thereby render all other domestic producers, on one or other ground as per the demand of the Applicant, ineligible for the status of ‘domestic industry’.
- ix. Huawei India, after the Final Findings in the original investigation, now undertakes the manufacturing of finished goods in India is a domestic producer and, therefore, it should not be treated as an importer of the PUC. The criterion adopted by the Applicant to classify domestic producer and importers of PUC is incorrect and contrary to the Anti-Dumping Rules.
- x. The Authority should treat Huawei India as a domestic producer and verify the locus standi of the Applicant as Domestic Industry and it should consider information submitted by Huawei India at the time of deriving non-injurious price.
- xi. On incorrect interpretation of the Domestic Industry, the Applicant has tried to classify Indian producers who manufacture the PUC by transforming the imported components into PUC as importers. Even the act of assembling imported components to get a final product which is different in nature from the assembled components would amount to the manufacture and the same proposition has even been admitted by the Authority in para 30 (ii) of the Final Findings.
- xii. The Applicant Tejas Network has original significant part of manufacturing PCBA to specialized Electronic Manufacturing Service (EMS) providers. This should have precluded the Applicant from forming part of the DI. There has been admission to this effect by the Applicant in the Annual Reports of 2007-08, in its petitions, in the Final Findings and various other filings of 2009 made by the Applicant.
- xiii. The Applicant Tejas Network is not engaged in the manufacture of PCBA as the

activity of populating the PCBAs is not done by the Applicant and this activity is outsourced to Electronic Manufacturing Services (EMS). Furthermore, software is also embedded on PCBA through the EMS. The PCBAs are thus manufactured by EMS and not by the Applicant and, therefore, the requirement of the Rule 2(b) read with para 30 (ii) of the Final Findings are not being met.

- xiv. The criterion of R&D applied by the Applicant for determining the status of 'Domestic Industry' is erroneous and legitimate Indian producers such as those who purchased components and had them assembled for sales of the product concerned have been wrongly excluded. R&D is a part of periodical cost forming an integrated full cost of production of a given product. In some circumstances, the cost of R&D is capitalized until a product is being developed for commercial purposes, and then begins amortization.
- xv. The Authority contradicted itself in providing for R&D activity as parameter for deciding domestic producer status, while on the other hand rejecting the plea of IPR for determining Country of Origin in case of CIENA.
- xvi. The Anti-Dumping Rules do not recognize the expense towards R&D, IPR and technical know-how for the purpose of determining value addition and to determine the activity of manufacturing. In this regard reference may kindly be made to Rule 25. Therefore, post the original Final Findings, even the Anti-Dumping Rules have specifically excluded from its ambit the criteria of IPR, technical know-how etc., thus aligning the Anti-Dumping Rules with the other laws such as Excise Laws for the purpose of determining the process of manufacturing, test for which is to determine visible substantial transformation of the input into output. This also goes in line with Rule 2(b) of the Anti-Dumping Rules wherein it has been mandated that the Domestic Industry must be engaged in the manufacturing and other connected activities. Here no departure can be made to the requirement of the "manufacturing" in the guise of some other activities such as R&D, IPR etc.
- xvii. The activity of populating a printed circuit board amounts to manufacture as per CCE, *Madras v Coromandal Electronics*, reported as 1997(90)ELT443. It is the EMS who has to be treated as the manufacturer of the PCBAs which is used to assemble for final product i.e. SDH by the Applicant.
- xviii. The Applicant has cleverly considered itself and a few others as domestic producers and has simply regarded all other producers in India as importers.
- xix. There is no requirement under the AD Rules to meet the 15 point criteria to satisfy that a company is undertaking production in India. The domestic industry argued that research and development is the most important component out of the 15 criteria. However if the domestic industry's contention is accepted, many other foreign companies who have invested billions of dollars in India would fail to qualify as domestic producers.
- xx. For most of the modern manufacturing in India, technology is being utilised under

“right to use” model or “technology transfer agreements”. Merely because a company is not undertaking research and development in India or does not have IPRs in India, it cannot be said that such a company is not a producer in India.

- xxi. The facts in the present review have completely changed from the time of original investigation. Other producers are now undertaking substantial production activities in India and the Authority is urged to verify the same. Huawei India submits that the 15 criteria adopted by the Authority to construe who is a producer in India should be disregarded in the present review as such criteria have no legal basis.
- xxii. The Applicant Tejas Network, on page 81 of the petition, in its letter dated 5 September 2014, states that it has not imported the subject product. On page 82A of the petition, however, information about the Applicant’s imports has been provided. It has to be clarified at the earliest what the Petitioner has imported. If the Applicant has imported the subject product, it does not qualify as domestic industry in the present review. The Designated Authority is, therefore, urged to direct the Applicant to disclose to interested parties its data on imports of the subject product. From industry sources and a letter by the association COAI dated 19 February 2015, it is understood that Petitioner is an importer of the subject product. Therefore, the Authority should terminate the present investigation.
- xxiii. There is no clarity on whether Huawei India is a part of the domestic industry or not. The analysis of the injury has to be in context to the domestic industry. This reasoning is affirmed by Rule 11 of the AD rules. Even if Huawei India is excluded from the scope of domestic industry, there must be immediate clarity on the issue and a clear determination must be made by the Authority at the earliest.
- xxiv. Huawei India is not merely a trading company but it has been undertaken Research and Development activities on a much larger scale than the Applicant and manufacturing activities too at substantial level. It is providing employment to approximately 5700 Indian employees and its investments in India are more than INR 1700 crore, carrying on its operations in India since the year 2000.
- xxv. Out of the list of 15 listed activities, the activities in the nature of ‘soldering and EMS activity’, ‘integration’, ‘preparation of test jigs’, ‘assembly’, ‘testing’ (i.e., all activities related to actual manufacturing) have been outsourced by the alleged DI to EMS (job workers) and only the R&D, product blue print and development activities have been under taken by the alleged DI on its own. The case of CIENA, wherein most of the 15 activities, including the complete R&D with respect to the products in question, have been undertaken by CIENA in USA, the Authority imposed anti-dumping duty on CIENA only on the ground that such products have originated from China. Applying the test laid down by the Authority in CIENNA’s case, the alleged Domestic Industry which also imports PCBAs from China and/or other countries should be ousted from the definition of ‘domestic industry’, irrespective of the fact that R&D has been undertaken by it in India.

- xxvi. The petitioner is primarily engaged only in the ancillary activities connected with manufacture, i.e., research and development of product design, and not in the actual manufacture of the product under consideration. It is a settled principle of law that Printed Circuit Boards being made into PCBAs by addition of capacitors, transistors, resistors and other components amounts to manufacture. This principle has been upheld in CCE, Madras V. Coromandal Electronics [1997 (90) ELT 443]; CC, Goa V. D-link India Pvt. Ltd. [2014 (306) ELT 479 (Tri. – Mumbai)]
- xxvii. The intention of the legislature is also to exclude expenses incurred by the alleged domestic industry towards job work, while computing the non-injurious price. Such provisions are further indicative of the fact that for a producer to be considered as the domestic industry, it is pertinent for such producer to be engaged in the manufacture of the subject goods (PUC) by itself.
- xxviii. Since the alleged DI's contribution in the production is negligible, they clearly account for less than 25% of the total domestic production, and cannot claim injury.
- xxix. The alleged DI has claimed that the PCBAs manufactured by it are unique and the propriety of the alleged DI. It has also maintained that it imports such PCBAs (job work manufactured) from Thailand and Singapore. In this regard, it is requested that the country of origin reflected in the Bills of Entry for such imports of PCBAs from Thailand and Singapore be scrutinized.
- xxx. The alleged DI has itself admitted that the actual process of manufacturing is a much smaller part of their total activity, and the alleged DI is mainly focusing on Design and Development of the subject goods. It is their self-admission that about 60% of manpower deployed by them is in design and development of the product under consideration. The objective/ purpose of the R&D undertaken by the alleged DI is not clear as STM -256 has been developed by the overseas suppliers many years ago while the alleged DI is not known for anything beyond STM-1, 4 and 16.
- xxxi. There is no clarity as to the nature of such R&D activities undertaken by the Applicant Tejas Network. During the oral hearing held on 18.09.2015, the alleged DI admitted that there is not much scope of R&D left with regard to SDH transmission equipment. It is clear that the alleged DI is not engaged in R&D with respect to the PUC. If the alleged DI's R&D activities are not undertaken with respect to SDH transmission equipment, but some other products then the cost of such R&D ought to be regarded as irrelevant to the present review/investigation and thereby, kept out of the computation undertaken for the determination of injury margin for the alleged dumping in the present case.
- xxxii. It is further submitted that despite the fact that R&D has been undertaken by Fibcom outside India, during the oral submissions, the alleged DI has supported Fibcom's submission that it has undertaken the manufacture of the PUC in India, and accordingly, it ought to be included in the category of 'domestic industry'. In this regard, it is submitted that similarly, Huawei India (one of the members of COAI) by

the same logic, should also be considered as ‘domestic industry’/domestic producer. Further, it is submitted that Huawei India set up its factory in 2010 and has commenced domestic production of the PUC from 2011 onwards after making substantial investments in India and has not turned itself merely into trading of the goods. Accordingly, Huawei India should also be included as one of the parties constituting the ‘domestic industry’. Alleged Domestic Industry is attempting to gain monopoly in the market and forcing the consumer industry whose interests are much wider and directly connected to the public interest to buy obsolete and non-competing products of the alleged DI.

- xxxiii. The alleged domestic industry is of the view that the Authority had held in the final findings of the original investigation that only if an entity performed the above 15 steps in India, it would be regarded as a producer of the subject product in India. However, it is submitted that nowhere in those final findings is there any observation by the Authority. The domestic industry is incorrectly interpreting the final findings in the original investigations.
- xxxiv. Further, there is no legal requirement under the AD Rules that an entity must undertake the 15 steps mentioned above to become eligible to be a producer in India. Further, there is no requirement under the law that only if an entity performed research and development in India and had IPRs in India, it would be considered as a producer in India. Therefore, the domestic industry’s arguments should be rejected.
- xxxv. Further, the domestic industry has relied on Ovum Reports to arrive at standing. It is submitted that Ovum Reports merely provide names of companies and their share in the market in value terms based on market information. Ovum Reports do not provide information on whether companies are domestically producing the subject product or importing the same. Therefore, Ovum Reports cannot be relied upon to determine standing in this case.

D.2 Submissions made by the Domestic Industry

18. The following submissions have been made by the domestic industry with regard to standing and scope of the domestic industry:
- i. The petitioner provided information which is adequate and accurate and the same clearly establishes that the petitioner’s production constitute a major proportion in Indian production.
 - ii. Huawei India cannot be considered as domestic manufacturer under the rules.
 - iii. Indian producers are companies who are undertaking production activity in India and who need to import parts/components from various global sources, including the subject countries, just like import of raw materials any domestic industry would have found to have been doing in numerous investigations conducted by the Designated Authority. So long as these imports constitute imports of inputs, the petitioner does not have any grievance on such imports.

- iv. Third country producers are companies such as Ciena. These companies might need to buy components from global sources, including subject countries. Further, these companies use EMS services located in China.
- v. Chinese or Israel companies who are manufacturing SDH equipment must pay duties whether they supply finished SDH equipment or in SKD/CKD form or in component form. If these companies export SDH equipment in component form, the remaining input required for the production process is technical know-how (which is Chinese) and the soldering services (which is a screw driver technology). These companies can, therefore, easily import SDH equipment in components form following customs clearance procedure, while bringing technical know-how into the country without customs clearance.
- vi. SDH equipment supplier - There are parties who are exporting SDH equipment to India in any of the forms well clarified in the final findings, admitting it as export of a product that falls within the scope of the product under consideration and paying appropriate ADD.
- vii. The Petitioner had earlier established that activities carried out by the company constitute production and activities carried out by other companies such as Prithvi, Huawei and VMCL did not constitute production. The Petitioner had advanced number of arguments which were brought out by the Authority in the findings and are summarized below. Petitioner reiterated following submissions made by the Petitioner at the time of original investigation and referred to the final findings in the original investigation:
 - a) Meaning of production cannot be the same in all products. Production for the purpose of the present investigations shall imply that production activity which results in “production” of the “product under consideration”. Further, the product is identifiable in terms of a number of parameters such as product characteristics, production technology, production process, functions & usage, pricing and customs classification. There are several steps/stages involved in the production of SDH equipment which include conceptualization, preparation of detailed drawings and designs (blueprint).
 - b) Based on operational requirements, Tejas identifies the specific components required and develops various kinds of software elements, which would make such hardware functional with regard to the desired operation. Based on the blueprint for the hardware, and the software developed, a fully functional prototype is produced. This ‘prototype’ contains both the hardware as well as the embedded software necessary for the operation of the equipment and its compatibility with other equipment in the network, as seen through a network management system. Prototype developed by Tejas is tested using test specifications and testing software. A fully functional prototype is comprises chasis, racks, PCB, cables software etc. After testing of SDH prototype, instructions are given to EMS for soldering of components on PCB as per Tejas requirement. Various softwares are

also provided to the EMS on a carrier media, for carrying out certain assembly line operations, principally soldering activities. The soldered non-functional PCBs are supplied by EMS to Tejas manufacturing facility in India as SDH equipment until integrated and tested with Tejas customized components such as chassis, racks, cables, software elements. Integration activity is followed by rigorous testing, debugging and quality control. The testing, debugging & reworking activity includes development of special test jigs, test specifications and testing software which is critical in manufacturing process of SDH equipment.

- c) Anti-Dumping Law does not define as to what would constitute “production” or “manufacture”. The scope of the term “domestic producer” would have to be inferred with reference to the purpose and object of Section 9A of the Act and the Rules made there under. Further, Rules differentiate between domestic industry and domestic manufacturer. Not all domestic producers are domestic industry.
- d) Definition of “manufacture” under other legislations cannot be imported for the purposes of understanding the scope of domestic industry under dumping law. This principle has been well set out in the recent decision of the Hon’ble Supreme Court in the case of Qazi Noorul HHH Petrol Pump Vs. Deputy Director, ESI Corporation reported in 2009 (240) ELT 481 (SC).
- e) There are numerous statutes, which define the term “manufacture”, “manufacturing process” or “manufacturer”. These include, for example, Factories Act, 1948, Special Economic Zone Act, 2005, Central Excise Act, 1944, Consumer Protection Act, 1986, Beedi and Cigar Workers Act, 1966 and Standard of Weights and Measures Act, 1976, and Foreign Trade Policy. The definition of production under these statutes are significantly different, which establishes that merely because a company pays excise duty and is therefore recognized as a producer under Excise Law and should not be treated as a producer for the purpose of the present law as well.
- f) Under Anti-Dumping Law, the considerations relevant for determining producer would be factors such as the level of investment in India, technical expertise involved in the activities carried out, extent of value addition in India, employment levels and other costs and activities carried out in India, which result in the production of the article.
- g) A very significant part of the value of the product is attributable to the software developed in India, which is partially loaded at the stage of assembly by the EMS, partially used for testing, debugging & reworking in India and also provided to users for functioning of SDH network. Development of software also constitutes production of goods.
- h) The Constitution Bench of the Hon’ble Supreme Court considered whether the term “goods” would include software and, therefore, whether development of software would constitute production of goods.

- i) Tejas develops software in India, a part of which is provided to the EMS on a carrier media and such activity constitutes production of “goods” by Tejas.
- j) Tejas also carries out substantial activities after the goods are returned from the EMS. At this stage the product is not functional as SDH equipment and is in an intermediate stage of production. Assembly and testing activities done by Tejas using “in house” developed software, test specifications & test procedures. Tejas also develops other SDH software elements like “network management software, element management software, application software etc.” which are necessary for the functioning of the SDH network.
- k) With regard to the argument that the job worker is also a manufacturer, Tejas has argued that where the entire process is carried out by the job worker, he may acquire the status of manufacturer. However, in a case where only a part of the production activity is outsourced and substantial activities are carried out by the manufacturer, it cannot be said that the identity as manufacturer of the finished article is lost on account of outsourcing of certain processes.
- l) The Hon’ble Supreme Court in the case of Shree Ram Vinyal & Chemical Industries Vs. CC, Mumbai reported in 2001 (129) ELT 278 (SC) has held that assembly cannot be equated with the expression manufacture. In the case of United Telecoms Ltd vs. CC, Bangalore reported in 2009 (241) ELT 380 (T), it has been held that mobile phones do not become so, until the software is loaded by the manufacture. Therefore, whether mere assembly would be manufacture would depend on the facts of each case. Merely because one or two of the processes involved in the production of the SDH equipment are outsourced, it cannot be said that Tejas is not a producer of SDH equipment.
- m) Under the normal definition of manufacture, the activities carried out by VMCL and Prithvi would not have constituted manufacture, but for the deeming provisions under the Central Excise Act. A deeming provision is to be construed strictly and only for the purpose of the Act in which it is enacted.
- n) The Petitioner provided a comparative of the various activities done by Tejas and Importers. Petitioner argued that production for the purpose of the present product implies activities such as Specification development and designing of Hardware and Software based on research & development carried out, collaborative components development with suppliers, Proto Type Product Development, Development of Network Management Software in India, Development of Element Management Software in India, Development of Test Procedures, Test Specifications and Testing software in India, Product verification w.r.t. the specifications and quality of Hardware and Software in India, Complete Verification w.r.t. the specifications and quality of the complete SDH proto type (hardware + software combined), Manufacturing of boards, Installation of Software in SDH Hardware, Final Assembly & Testing of the complete SDH box(hardware + software), Post Sales bug fixes”, Post Sales “product features enhancement

/upgrades”, Post Sales – Spares Supply/ Technology Support and claimed that Tejas performs all these operations necessary to be considered as a producer, whereas Prithvi, VMCL merely carry out assembly operations in India. Huawei does most of its operations outside India.

- o) Tejas has made huge investments to establish customer support and service centers in India. Tejas is capable of doing “installation services, enhancements, bug fixes” for its products within India.
 - p) Tejas identified various components and their procurement & development in or outside India and argued that taking help of EMS is substantially different from taking help in design & development itself. In case of VMCL and Prithvi, it is de-facto Huawei who is the producer of the product concerned, with assembly operations (if any) left to the VMCL and Prithvi. In case of Tejas, the company is the producer, with soldering operations left to EMS contractors.
 - q) With regard to activities of EMS, petitioner submitted that it is well accepted globally that EMS companies are only a contract manufacturer, with no ownership of product rights, IPR or knowhow, and they are only job-workers, who provide soldering/testing services to electronic products from different industries.
 - r) Petitioner has also relied upon USITC consideration of six factors to determine whether a company is a producer of product concern or not. These are:
 - the extent and source of a firms capital investment;
 - the technical expertise involved in U.S. production activity;
 - value added to the product in the United States;
 - employment levels;
 - quantities and types of parts sourced in the United States; and
 - any other costs and activities in the United States leading to production of the like product, including where production decisions are made.
 - s) The Petitioner has also referred to emerging jurisprudence in various books on Dumping and Subsidies by M/s. Stranbook & Hooper, The Law and Procedures Governing the Imposition of Anti-dumping and Countervailing Duties in the European Community by M/s. Clive Stanbrook and Philip Bentley, A Handbook on Anti-dumping Investigations by Judith Czako, Johann Human and Jorge Miranda, Cambridge University Press, Antidumping and Countervailing Duty Handbook of the United States International Trade Commission. Petitioner also referred to a number of decisions of the EC, India and US authorities.
- viii. DRI has conducted investigations against importers and demanded 6 telecom companies including Vodafone, Airtel, Idea etc to pay over Rs. 427 crores for allegedly evading anti-dumping duty while importing SDH equipment. Further the reports state that the officials had specific information available about telecom

companies misinterpreting the SDH either as non SDH or part of other equipment, so as to avoid anti-dumping duty. It is all the more important for the Authority to clarify the product under consideration so that such practices adopted by the importers can be prevented and the anti-dumping duty can serve its purpose.

- ix. Huawei India is not a manufacturer of the product under consideration for following reasons:
- a. Unlike Tejas, “Huawei India” has not developed any kind of SDH related software like “embedded software, testing software or management software”, which is essential for manufacturing of SDH boxes.
 - b. Huawei India is not involved in SDH product conceptualization, research & design and development of fully functional SDH prototype before the EMS stage. Even assembly and testing operation after EMS stage are carried out using specifications and software elements provided by their Chinese technology partner Huawei China. Huawei India’s capabilities are limited to merely carrying out the instructions given by Huawei, China.
 - c. Huawei India merely carry out assembly operations in India and its claim of “domestic producer” is baseless. Most of the operations relating to production are done outside India by Huawei China and hence Huawei India cannot be a domestic producer. In fact, companies such as Prithvi and VMPL have even not participated in the present investigations
 - d. Major R&D activities are not carried out by Huawei India in India. The company is using the technology of its parent company and does not own its software.
 - e. R&D expenses account for a significant proportion of money spent in various “Value Added Activities” related with product manufacturing (over and above the material cost). Thus R&D is the primary activity in product creation. In addition to R&D and technology development, which are the major activities, Tejas also does rigorous assembly and testing of “Like Products” based on the “Test Procedures and Specifications” developed in India by Tejas product design team in India. In contrast, Huawei India does not do any technology development or R&D for the subject products and even the final assembly and testing of imported products is done as per the specifications given by their foreign technology providers/manufacturer based in subject countries.
 - f. Huawei India does not have technological infrastructure to do “enhancements bug fixes” within India and they rely on their foreign technology providers/manufacturers to provide “enhancements & bug fixes”. The fact that despite claiming to be a SDH producer, they don’t even have their own “product documentation” (they are providing products of Huawei China for testing purposes), blatantly establishes the fact that they are only importers and traders, rather than a domestic producer of SDH.

- g. Further Huawei India claims to be manufacturing SDH Equipment models which were already developed by its parent company. Huawei India would not have or has not invested capital to carry out or has carried out R&D activities for such models, which are already developed and deployed by Huawei China.
- h. Huawei India has been filing the tenders and referring supplies made by Huawei China for showing its previous supply history. Therefore, it shows that Huawei India does not have its own capabilities of production of product under consideration in India and has to depend on its parent company to procure tenders. The petitioner fails to understand as to how if the two companies are separate legal entity, Huawei India can provide Huawei China's products for testing purposes in the tender documents.
- i. Huawei India imports bare PCBs and SMT device. After importing these, only populating the PCB and assembling the card is left to be carried out in India. Populating of PCB is being done by specialized entities and assembling cards is a screw driver technology. Huawei India is thus claiming itself as a producer by getting PCB populated by some other company and merely undertaking assembly of cards in India.
- j. The volume of production claimed by Huawei India is nothing but on the basis of the production facilities of Huawei China
- k. TRAI has distinguished between Indian product and Indian manufactured products. The products claimed to be manufactured by Huawei India is not an Indian product and, therefore, the company cannot be considered as manufacturer of the product in India.
- l. Electronic Manufacturing Services (EMS) contractors are substantially different from taking help in design & development itself. In case of Huawei India, it is de-facto Huawei China who is the producer of the product concerned, with assembly operations (if any) left to Huawei India. In the case of Tejas, the company is the producer, with soldering operations left to EMS contractors.
- m. Globally it is well accepted that EMS companies are only a contract manufacturer, with no ownership of product rights, IPR or knowhow, and they are only job-workers, who provide soldering/testing services to electronic products from different industries. Infact Huawei India is also taking services of EMS companies.
- n. Even if it is considered that Huawei India is an Indian manufacturer, the same is related to the exporter of the product under consideration and has imported the product. The company has filed Importer questionnaire response as well, while Huawei China has filed exporter's questionnaire response. Therefore, the company in any case is ineligible domestic industry and the production of the company cannot be considered for determining standing.

- x. The petitioner should be considered as eligible domestic manufacturer to file the present petition, notwithstanding that supplemental imports of components or sub-assemblies have been made by them.
- xi. TEMA (Telecom Equipment Manufacturers Association), an industry association in India, confirmed that Tejas is the majority SDH player and affirms our stance as to who is a producer and who is an importer/trader.
- xii. Other domestic producers, like Fibcom India Ltd (Fibcom) and Coral Telecom, clearly support Tejas stand and do not consider importers/assemblers like Huawei India, who merely imports products of foreign technology, as domestic SDH producer.
- xiii. The Authority held in the original findings that (a) production of petitioner constitutes a major proportion in the Indian production, (b) imports made by the petitioner from the subject countries do not constitute imports of the product under consideration as these are multi use components and not stand alone components, (c) imports made by the petitioner from the subject countries in any case are negligible, to disqualify the petitioner from being treated as domestic industry within the meaning of Rule 2(b), (d) without prejudice to the fact that activity conducted by parties such as Huawei is not sufficient to consider them as a producer, they are not, in any case, eligible producer because of significant imports made by them.
- xiv. As regards eligibility of the petitioner, the petitioner has been importing some stand alone components from non subject countries and subject countries, details of which are contained in the petition. Further details shall be provided, if required by the Authority now or during the course of the investigations. The stand alone components do not constitute import of the product under consideration, as the Authority has specifically excluded imports of the parts/components from the scope of the product under consideration in the original final findings.
- xv. The focus of the petitioner remains in original undertaking complete production process as identified by the Authority at the time of original investigation. It is specifically confirmed that all the activities found relevant by the Authority for holding that a company is a producer were being undertaken at the time of original investigations and are being undertaken at present by the petitioner. Further, the petitioner has been carrying on the essential production activities involved in production and sale of the product under consideration. The Petitioner submits that it is without basis that the activities of the petitioner are limited to mere R&D. In fact, it is be appreciate that the petitioner has sold equipment worth over Rs. 1000 crores over the current injury period itself and the petitioner has been in existence for the past 14 years.
- xvi. The activities being performed by the petitioner at present are the same as were being performed by the petitioner at the time of original investigation. Even at the time of original investigation, the petitioner was importing some parts/components from China. The petitioner has imported some parts/components from China even in the present period as well. Thus, the imports of parts/components made by the petitioner from China in any case should not disentitle the petitioner from being treated as domestic industry.
- xvii. The imports of such components made by the petitioner constitutes an insignificant percentage in relation to (i) total imports of the subject goods from subject countries to India during the

- POI (ii) the total Indian production, (iii) domestic sales of the domestic industry and, (iv) the total demand for subject goods in India.
- xviii. As regards the argument that Huawei India has become the biggest producer in India and the same has been recognized by the DoT and the company is earning profits, it is submitted that nothing has been provided either by Huawei India or any other interested party to prove the same.
- xix. The names of the claimed other producers listed by the parties have not established themselves to be a domestic manufacturers of the product under consideration. Further these companies have also not opposed the petition. Further TEMA (Telecom Equipment Manufacturers Association), an industry association in India, confirmed that Tejas is the majority SDH player and affirms our stance as to who is a producer and who is an importer/trader. Other domestic producers, like Fibcom and Coral Telecom, clearly support Tejas' stand.
- xx. The R&D activity is not only integral but also most critical part of the production process. Without designing and development, it is not possible to produce the product concern. The fact that the IPR is created in India, is owned by the Indian company which is under Indian management, is the most critical fact. It must be noted that EMS activity is an incremental value-added activity. Tejas first develops the complete product prototype in India and then Tejas shares with EMS necessary specifications of products for large scale soldering of PCBA. EMS functions on job work basis and they merely execute Tejas' instructions for soldering PCB. Post EMS activities like assembly, integration and testing activities are carried out in India. Tejas uses EMS companies in India, as well as abroad, on job-work basis, as and when needed.
- xxi. Further the opposing interested parties have not demonstrated as to how the 15 point criteria have changed. The petitioners have demonstrated in detail as to how Huawei India cannot be considered as Indian manufacturer of the product under consideration in its written submissions. No other company has claimed to be a manufacturer of the product under consideration.
- xxii. Carrying out research and development in India by Huawei India does not make Huawei India as a manufacturer of product under consideration. Research and development need to be of product under consideration and exclusively for Huawei India product and not for other group companies. It is requested to the Authority to visit the plant of Huawei India and see what all activities are carried out in their premises.
- xxiii. As regards DTA manufacturing license for manufacturing telecom equipment to Huawei India, it does not mean that the company is actually manufacturing the product concern.
- xxiv. As regards Central Excise Registration Certificate to Huawei India, the petitioner refers and rely on the final findings in the original investigation wherein the Authority stated that mere excise registration or payment of excise duty does not mean the company is a manufacturer of the product. The petitioner requests the Authority to follow the same approach.
- xxv. The Authority after detailed analysis in the original investigation, had determined what all activities would be termed as manufacturing of the product concern and on that basis the domestic industry can be defined. A company who does not own the IPR of the product and

does mere assembly operation for a foreign product cannot be considered as a domestic industry of the product under consideration in an anti-dumping investigation.

- xxvi. Huawei India itself agrees that they are only assembling the components and the Authority has clearly given its finding that mere assembly cannot be considered as manufacturing of the product under consideration. The Authority nowhere stated that while a Company need not undertake each of these activities, it is possible that some of these steps might involve one or more sub-processes which might be carried out independently, or some of these processes may be integrated by some Company. As regards inclusion of parts and components, assembly and sub assembly, the Authority has given detailed reasoning in the original final findings which is referred and relied upon.
- xxvii. The definition of manufacturer in the Central Excise Act cannot be applied for anti-dumping duty investigations.
- xxviii. As regards Huawei's market share, it is submitted that both Huawei China and Huawei India along with their other related companies have filed questionnaire response and dumping and injury margin would be established on the basis of their data.

D.3 Examination by the Authority

19. The arguments have been made by various interested parties questioning Tejas Networks Ltd's standing as eligible domestic industry with major proportion in the total Indian production. Further, Huawei India has also claimed that it is Huawei India who is the major manufacturer of the product concern as against Tejas Networks Ltd and thus has the standing to be treated as the domestic industry and not Tejas Network. However, Tejas Networks has contended that it is the eligible domestic industry with major proportion in the total Indian production and Huawei India, who has claimed to be a manufacture of the product under consideration, is in fact the importer of the product and not a manufacturer and thus cannot be treated as eligible domestic industry.

20. The Authority notes that Rule 2(b) provides as follows:

“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are relate 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”.

21. The Authority notes that the principle requirement under Rule 2(b) of the Anti Dumping Rules is that *such producers who are claiming to be the domestic industry are not related to the exporters of the alleged dumped article or themselves importers thereof*. In this regard, the Authority has noted that Huawei Telecommunications (India) Co. Pvt Ltd (Huawei India) by its own admission is a related party of Huawei Technologies Co. Ltd, China RP (Huawei China). Also, Huawei India has imported the PUC in the Period Of Investigation of the present sunset review investigation and filed importers questionnaire response. Since Huawei India is a fully owned group company of Huawei China and has also imported the PUC in the POI of the present sunset review investigation and filed the importers questionnaire response, Huawei India will not be considered the domestic industry within the meaning of Rule 2(b) of the Anti Dumping Rules for the purpose of the present sunset review investigation.
22. The application has been filed by M/s Tejas Networks Limited on behalf of the domestic producers of the subject goods in India. Further, on the basis of information furnished by the petitioner, the Authority notes that the petitioner has made imports of some standalone components from countries not under investigations and some standalone components have been imported from China PR. The Authority notes that this fact does not disqualify the petitioner from being considered as a domestic industry under Rule 2(b). Also, the imports of standalone parts or components made by petitioner in any case do not constitute imports of the product under consideration.
23. As to whether Tejas Network constitutes “Domestic Industry” of the product concern in India, the Authority notes that as per the information on record, Tejas Networks Ltd is the major producer of the subject goods and its production constitutes major proportion of the total Indian production as can be seen from the table below.

		2010-11	2011-12	2012-13	POI (April, 13 –June, 2014	POI Annualised
Tejas Networks	Nos	***	***	***	***	***
Others	Nos	***	***	***	***	***
Total		28,178	9,769	9,669	14,716	11,773
Tejas Networks	%	74	67	80	85	85
Others	%	26	33	20	15	15

24. After detailed examination the Authority holds that Tejas Networks Ltd accounts for a major proportion of the total domestic production of the subject goods during the POI

and constitutes domestic industry within the meaning of the Rule 2 (b) and satisfies the criteria of standing in terms of Rule 5 (3) of the Anti- dumping Rules.

25. The Authority also notes that a number of interested parties have disputed as to what constitutes production of SDH equipments; whether assembly operation should be considered as production; whether there is any legal requirement under the AD Rules to meet the 15 point criteria to satisfy that a company is undertaking production in India, etc. The Authority has carefully considered these arguments and notes that the issue has arisen in view of the peculiarities of the product, production process followed and the nature of activities carried out by the companies who are engaged in the manufacturing or assembling of the product under consideration in India and the subject countries. In this regard, the Authority notes that in the Final Findings dated 19th October, 2010 of the original investigation, the Authority had already concluded (i) that it would be appropriate to consider the meaning of production on case by case basis as a universal definition of production would not be appropriate, (ii) that in fact, different laws and regulations have defined/treated different meaning of production as is evident from different meaning/interpretation of production under different laws, (iii) that the meaning of production is required to be considered having regard to the specific law and regulation, the specific definitions and interpretation given therein and the objective and purpose for which the law has been created, (iv) that for the purpose of anti-dumping duties, in the present case, for example, it would be grossly inappropriate to hold that a company is a domestic producer merely because it is undertaking certain incremental production activities and (v) that for the purpose of anti-dumping law, the goods must be considered to have been produced only if the inputs undergo a “substantial transformation” into output. The Authority, therefore, notes that this issue has already been settled in the Final Findings of the original investigation and no new facts have come up in the Review investigation warranting the Authority to have a different view in the matter.

E. MISCELLANEOUS ISSUES

E.1 Submissions made by the Exporters/Importers/ users/other Interested Parties

26. Following miscellaneous submissions have been made by the exporters/importers/users/other interested parties:
- i. The argument of compulsory initiation is a gross misinterpretation of Rule 23(1B) of the Anti-Dumping rules and Article 11.3 of the Anti-Dumping Agreement. The Petitioner continues to rely upon an erroneous interpretation of other case laws to substantiate its arguments.
 - ii. The response of the Petitioner is deficient and the it has merely made assertions without providing any information or justification warranting confidentiality on the issues raised by the Domestic Industry. Information such as Extracts from Ovum Report, Dumping price, Injury Margin and price undercutting based on price offered by Tejas for lost

orders/ offers. With respect to the injury information provided by the Petitioner, they have not provided any figures with respect to Capacity Utilization. No index figures or summaries provided.

- iii. The Petition contains information for a different period than the period of investigation. It is clear from a bare reading of Annexure I that the dumping so determined under Rule 10 and the Annexure must pertain, without exception, to the period of investigation. By extension, it also means that dumping (and calculations thereof), wherever it appears in the Rules, must also pertain to the period of investigation – including Rule 5. Designated Authority has therefore failed in fulfilling its obligation to assess the accuracy and adequacy of the evidence in the application.
- iv. The present petition contains incomplete information, which is insufficient for the purposes of the present initiation. The Authority acted in violation of Article 5.3 of the WTO ADA by not examining the sufficiency of evidence presented along with the petition.
- v. The Petitioner has either not provided requested information at all or has not provided any basis or supporting evidence of the information provided in the petition. Petitioner has also refrained from providing any meaningful summary of the information provided by it on confidential basis. Petitioner has failed to provide a statement of reasons why information provided on confidential basis is not susceptible to summarization.
- vi. The Authority on its part cannot treat all the information as confidential merely because the party providing the information requests confidentiality.
- vii. In the petition, Petitioner was required to give a justification for claiming return on capital employed in Section VI – Costing Information. However, despite the requirement, Petitioner has claimed the information as confidential and chose not to reply and give an explanation.
- viii. Ovum Reports do not provide information on whether companies are domestically producing the subject product or importing the same. Ovum Report cannot be relied upon to determine standing in this case.
- ix. Petitioner has used Ovum Reports to calculate the production in India, imports of the subject product in India and market share of producers in India. reliance on Ovum Reports is patently incorrect and illegal. Market information in any journal or magazine cannot be a substitute to import statistics. It is the established practice of the Authority to rely on import statistics by DGCI&S to determine the import volume and value of product under consideration in every case.
- x. Nothing stops the Authority from procuring import statistics on its own from DGCI&S and provide the same to the interested parties. Trade journals such as Ovum Reports cannot be relied upon by the Designated Authority to determine parameters such as normal value, import volume and value, landed price etc. in view of CESTAT order in *Dye Stuff Manufacturers Association of India v. Government of India*.
- xi. Ovum Reports only provide market information pertaining to telecommunication equipment in India that too in value terms only. Ovum Reports provide market share of various companies in SDH transmission equipment in India but does not provide details on whether these equipment were domestically produced or imported. Petitioner has done

this conversion by dividing imports in value terms by its own average selling price for the subject product. It is not clear on what basis Petitioner has considered its average selling price; whether Petitioner has considered prices of its high value products or low value products or weighted average of its prices has to be clarified.

- xii. There are unsubstantiated claim of sales restrictions in other countries. On the contrary, the Applicant itself has claimed shrinking demand in India along with a shrinking import from subject countries.
- xiii. The Applicant has kept considerable information confidential without providing any justifiable reasons and this is not permissible under the Rules. Capability to properly defend our interests in the present proceedings has been substantially reduced in the absence of sufficient prima facie evidence and meaningful non-confidential summaries.
- xiv. Applicant has used unreliable data from secondary source, Ovum, to prove recurrence of dumping and likelihood of injury. The Applicant has used Ovum data and has quoted the market share of Huawei to be the sole market share of Huawei China. The market share of Huawei in this data includes cumulative share of Huawei India as well. Without verifying this fact, Authority should not proceed further. Authority must seek explanations from Ovum and Applicant at the earliest.
- xv. Ovum itself has refused to support the data which has been furnished by the Applicant in its Petition, source of which has been declared to be Ovum. Pursuant to a query raised by Huawei vide an email, representative of Ovum has responded that it does not support the numbers projected by the Applicant showing share of imports in relation to SDH and telecom equipment.
- xvi. Alleged DI has misrepresented the 'Ovum data' which is anyway a secondary source, and quoted the market share of Huawei to be the sole market share of Huawei China. However, it is submitted that the market share of Huawei as reflected in the said report is the cumulative share of Huawei India and Huawei China. Further, it is submitted that the imposition of duty as high as 266% has the capability to greatly change the trend of demand and supply in the market. On account of such high duty, the import from Huawei China to India during the period of the present review, was at a minimal level.
- xvii. Ovum officials have themselves said that alleged DI has erroneously interpreted the data in their report and they have expressed extreme disgruntlement on such misuse of the data as mentioned in their report by the alleged DI. They have also expressed their intention to take alleged DI into account by filing a complaint against such misuse of Ovum report's data, to the appropriate authorities
- xviii. The alleged DI has vehemently argued that after the import of parts and components all the ancillary activities take place in India. However, this stand is contradictory to the extent of the fact reflected in their Annual Report 2007-08, wherein they have clearly admitted that they have outsourced their manufacturing activities to global electronic manufacturing services companies such as Celestica Inc. and Flextronics International Ltd. Further, they have also admitted therein, that their products are being manufactured in India and Thailand Further even the DGAD in its Final Findings observes that the alleged DI has undertaken manufacturing of PCB in countries other than India like Thailand, Singapore, Taiwan, etc. It is therefore clear that the alleged DI has concealed

this fact in its petition for the sunset review, in as much as it has claimed that its manufacturing is in India. The alleged DI has also not provided the data of any specific goods imported by it, thereby making it impossible to determine what goods are actually being imported and from which country. Such excessive confidentiality is the in the violation of the principle of natural justice.

- xix. Information such as imports into India, export price, landed price, dumping margin, injury margin etc. are claimed on hypothetical basis, which is contrary to the provisions of law.
- xx. The petition does not contain any evidence with respect to import volume, import value, Normal Value and Export price. Import statistics have not been provided to the interested parties. An anti-dumping investigation is being conducted without any valid credible source of import statistics.
- xxi. If Petitioner was in a position to classify imported items in the DRI's list as per the product scope in Notification No. 125/2010-Customs dated 16 December 2010, it could have easily classified or categorized imports in the import statistics as well.
- xxii. If the import statistics are not even provided in a petition, the interested parties are severely hampered in meaningfully examining the petition.
- xxiii. Given the peculiar nature of the subject product, it is quite possible that parts/components that are outside the scope of the investigation might have been included in total imports. This aspect has to be investigated in detail.
- xxiv. The methodology followed to arrive at the normal value for the subject countries is not even explained in the petition. The petition provides no information on raw material cost, utilities and consumables, depreciation, labour and other costs and profit margin. Entire Section VI of the petition pertaining to costing has been kept confidential. The petition is grossly deficient and Petitioner has exercised excess confidentiality in the petition.
- xxv. Excessive claim of confidentiality by the Applicant in violation of Article 6.5.1 of the WTO AD Agreement and Rule 7 of the Anti-Dumping Rules:-The Applicant has kept considerable information confidential without providing any justifiable reasons and this is not permissible under the Rules. Instances of information which have been withheld under the garb of confidentiality are as follows: Production volume; Domestic Sales volume; Export Sales volume; Inventory in volume; COP per unit in Indexed; Selling price per unit in Indexed; Profit/(Loss) per unit in Indexed; Productivity; ROCE in percentage; Proforma IV-B; Costing Information in Format A to CII; ROC version of financial results etc. Ovum Reports and methodology in sorting import data has also been claimed confidential.

E.2 Submissions made by Domestic Industry

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

- i. As regards the argument that the import source adopted by the petitioner is absurd and does not reflect the correct position of imports into India, the petitioner procured importer wise data which shows that imports as per petition data does not reflect full extent of the imports of the product under consideration. Imports as per DGCI&S data does not reflect all the imports of the product under consideration.

- ii. Further DRI investigations have revealed that substantial imports are taking place by describing imports as non-SDH or parts/components. It is thus evident that all these imports are getting unreported and remained excluded from the petition because of absence of public information
- iii. All the responding exporters have resorted to excessive confidentiality claim which has completely prevented the Petitioner from offering its comments. The confidentiality claims are not in accordance with Rule 7 of the rules. For instance, every responding company has claimed product description as confidential information in the transaction wise details of exports to India. There is no justification for claiming such information as confidential business information. The interested parties have claimed entire information as confidential and not provided even the non confidential summary of the information filed by them. Non-confidential version of the questionnaire response is grossly inadequate. The interested parties have not disclosed all such information that they are obliged to disclose under the Rules. Even information that is publicly available has not been disclosed in the non-confidential version. Further the interested parties have not filed proper and sufficient non confidential summary of the information claimed confidential so as to enable the petitioner to give meaningful comments. The interested parties have merely given blank formats. This is in direct violation to principles of natural justice.
- iv. The petitioner has provided detailed information as prescribed and the Authority after being prima facie satisfied by the information provided by the petitioner has initiated the investigation. Nothing prevents the exporters to file relevant information to counter the claims of the petitioner. However opposing interested parties have restraint themselves by only providing blatant arguments without providing any evidence to corroborate the same.
- v. The petitioner has only claimed those information which are business sensitive information and otherwise not available in the public domain. The petitioner has provided sufficient non confidential summaries to the information provided except for those which are not susceptible to summarization unlike the responding interested parties who have resorted to excessive confidential information.
- vi. It is not possible to identify type of SDH equipment imported using either secondary source or DGCI&S data due to the fact that the imports of SDH equipment is not being made as equipment and the imports are in CKD-SKD or sub-assembly form. The product has been imported in these forms and thereafter assembled in India in the form of equipment and then supplied to the consumers. Therefore, it is not feasible to determine export price for individual imports made during the present period.
- vii. As regards the argument that exporters are subject to rigorous standards for providing information in their responses, the domestic industry, on the other hand is not subject to the same rigorous standards, it is submitted that the information provided by the petitioner is scrutinized at every stage of investigation unlike information by exporters.

- viii. The petitioner has provided detailed reasoning for compulsory initiation of investigation. However, since the Authority has on the basis of positive evidence initiated the investigation, the issue is irrelevant at this stage.
- ix. The petitioner has provided sufficient information for the purpose of initiation of investigation. The requirements of Rule 5 have adequately been met. Under Rule 5, the Director Designated Authority is required to be satisfied with regard to adequacy and accuracy of evidence for the purpose of initiation of investigations. The Authority has not recorded a finding recommending anti-dumping duties upon initiation of investigations. It is a well established principle that quantity and quality of evidence improves as an investigation progresses.
- x. The user association has filed its submissions. However, only one member of the user association has filed information. Other members have not provided any information regarding their volume of imports, import price etc. The notice of initiation provides opportunities to interested parties to provide relevant information to the Authority. The Association has, however, provided no information whatsoever which is relevant to the present investigation.

E.3 Examination by the Authority

- 28. As regards the contention that Applicant has not filed a 'duly substantiated' petition in terms of Rule 23(1B) of the Anti-Dumping Rules by providing sufficient and accurate information, the Authority notes that the present investigation was initiated by the authority only after being satisfied that there is sufficient prima facie evidence showing dumping, injury and causal link and justifying initiation of the investigation in accordance with the Act and Rules.
- 29. As far as confidentiality issues are concerned, the Authority notes that the information which are confidential in nature and provided by the interested parties on confidential basis have been treated so wherever warranted after due examination of the confidentiality claims as per the general practice followed by the Authority. To the extent possible, parties providing information on confidential basis are directed to provide sufficient non-confidential version of the information filed on confidential basis. Therefore, the concerns of the interested parties have been adequately addressed.
- 30. As regards the import source and reliance of the domestic industry on the Ovum Report, the Authority notes that the Authority has received transaction wise import data from DGCIS and relied upon it for import volume and injury analysis.

F. ASSESSMENT OF DUMPING – METHODOLOGY AND PARAMETERS

Market Economy Treatment, Normal Value, Export Price and Dumping Margin

F.1 Submissions made by Domestic Industry

31. The following submissions have been made by the domestic industry with regard to the Market Economy Treatment, normal value, the export price and dumping margin:
- a) The Normal Value cannot 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 publicly available. The petitioner has not been able to procure such information from a producer in a market economy third country. The product being such, the comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country cannot be determined unless detailed transaction wise imports along with importer wise data is available. The petitioner is not privy of such information. The petitioner has provided information to the best of its availability.
 - b) The Indian law does not provide for inviting views of the interested parties before initiation of the case. Further, now that the exporters have filed their response, the dumping margin and injury margin would be based on the data provided by the exporters.
 - c) The product is sold in domestic market to limited customers. The petitioner is also participating in various tenders and is aware of the tenders/orders which are lost by the petitioner. Petitioner is well aware of the specifications asked in the tenders and quoted its prices for the same specifications. Whether the purchase is from domestic or other sources, the product under consideration and its specification do not vary depending on the supplier. In fact, different suppliers must quote/offer price of the product conforming to the specifications laid down by the consumers. All these tenders are "closed tenders", but closely monitored by the sales team of all the suppliers and the petitioner. The Petitioner has compiled details of some of such tenders where the petitioner participated but lost to the producers in the subject countries
 - d) The petitioner has determined dumping margin considering the petitioner's price as export price (export price as such would be lower than this price), taking conservative approach. The real price is in fact lower than this price. Considering this price, the export price has been determined at ex-factory level, after adjusting the export price to all the expenses associated with exports to India
 - e) Nothing has been provided by the opposing interested parties to prove that the tenders lost by Tejas are due to factors other than price. The petitioner has been exporting the product world wide including the developed countries. This itself establishes the quality of product offered by the petitioner. Further, now that the exporters have responded, their data would be considered for determination of normal value and dumping margin. Further, most of the tenders have technical bid which take into account the other factors.
 - f) The undercutting and dumping margin have to be determined for imported products and not for domestic sales. The tenders won by the domestic industry are with respect

to their domestic sales. Notwithstanding, now that the exporters have responded, their data would be considered for determination of normal value and dumping margin

- g) As regards market economy treatment, the factual matrix remains the same since the original investigations and the reasons for rejection of MET claim in the original investigation hold good in the present case as well. Therefore, the Market Economy Treatment (MET) claim should not be accepted in the present case as well.

F.2 Submissions made by exporters, importers and other interested parties

32. The following submissions have been made by the exporters, importers and other interested parties with regard to MET, normal value, export price and dumping margin:

- i. The exporters have cooperated in full in the present investigation and, therefore, the DA is requested to allocate an individual margin to the cooperating exporters based on the figures placed on record in their comprehensive questionnaire responses.
- ii. There has been no material change to the operations or ownership of ECI companies which could impact the Market Economy Treatment accorded to ECI in the previous investigation. The Authority is, therefore, requested to allocate an individual margin to ECI companies.
- iii. A mere government shareholding would not by itself mean that the government is interfering in the affairs of the exporting company. The WTO Appellate Body in the case of United States - Definitive Anti-dumping and Countervailing Duties on Certain Products from China, DS379/AB/R dated 11.03.2011 has categorically held it. The phrase 'state interference' in the statute should be interpreted to mean interference of the government as a legislator.
- iv. In the past, in certain investigations, the DA has been determining separate dumping margins in similar cases for different products [Cold Rolled Steel Case and Theophylline & Caffeine Case]. Because of the difference in selling price of different capacity of PUC, it is not fair to use average price as has been done by the Applicant in the Petition. The Applicant has provided uniform average selling price for PUC with different configurations. The DGAD has erred in its approach in as much as it has determined a common weighted average dumping margin for each of the equipment included within the scope of PUC. It is submitted that each SDH equipment included within the scope of PUC has different configuration, functional capacity, characteristics and use.
- v. It is submitted that each of the equipment included under the scope of PUC is a separate type SDH equipment. It is further submitted that under Section 9A and Rule 17(3) of the Anti-Dumping Rules, the Authority has to determine an individual margin of dumping for each known producer or exporter under investigation. However, the DGAD by determining a single common dumping margin and by undertaking a common investigation for all the equipment included in the PUC has contravened the provisions of the Customs Tariff Act, 1975 and the ADD Rules, 1995.
- vi. The export price is based on Applicant's price and not actual 'export price' which is untenable under the AD Act and Rules. Thus, the applicant failed to prove any likelihood

aspect based on dumping margin determined in the original investigation and the current investigation. This ground is untenable.

- vii. The Petitioner has simply stated that it could not find any price details with respect to the prices in a market economy third country or the constructed normal value in a market economy third country. The application is clearly incomplete. The Designated Authority must exhaust the first two options provided in the AD Rules to arrive at the normal value in the present investigation.
- viii. Further, the Petitioner's submission and data on normal value is inconsistent with the investigating practices followed in various other countries and jurisdictions such as the EU. Any interpretation adopted by the Designated Authority for Para 7 of Annexure I to the AD Rules cannot be different from that applied by the European Commission as well as the Hon'ble Supreme Court of India's holding in Shenyang Matsushita case.
- ix. The Petitioner has erroneously equated its cost of production required for the computation of normal value with the costs incurred by it in India. Petitioner and the exporter from China PR are completely different entities functioning in different countries, in addition to innumerable variations in every functional aspect between the two. To equate the costs of two such entities is an absurd proposition. Petitioner's cost of production would be relatively different than such foreign producers, especially in China PR, who can procure all components locally to manufacture the subject product.
- x. The Petitioner has adduced no positive evidence or basis on which it adopted its cost of production for computing the normal value, thus, failing the test of evidentiary requirements under the WTO ADA.
- xi. If constructed normal value is fully accepted based on the petition, then the requirement to provide normal value with evidence will become redundant because whenever there is price undercutting/underselling, the normal value will show the assumed dumping behavior of the exporter even though there may not be any dumping with reference to actual normal value.
- xii. Anti-dumping duty may be imposed on verified figures from the cooperating exporter's records. But such an approach is required to be deprecated, otherwise it will render redundant the legal requirement that an applicant should make available prima facie evidence and the Designated Authority must examine the accuracy and correctness of such evidence.
- xiii. The Petitioner has calculated dumping margin based on the normal value which is based on its cost of production and export price which is the price of Petitioner. Further, the petition does not provide any information on the deductions that Petitioner has considered while arriving at the ex-factory export price. The Designated Authority has failed to notice these fundamental flaws in the petition.
- xiv. Pricing alone is not the only factor that is relevant to gain a tender. Quality of the product, brand value, reputation, after sales service and prior experience in honouring and completing tenders are all evaluated before award of tenders. It is quite possible that Petitioner lost tenders despite quoting the lowest prices because Petitioner lacked in other parameters. It would be incorrect to use Petitioner's prices to benchmark export prices

from subject countries. As a result, dumping margin calculation would be grossly incorrect.

- xv. The Petitioner should have taken weighted average of its prices in all the bids which it had won as well as lost to arrive at the export price. The Petitioner assumes that a competing bidder only supplies imported items. It is quite possible that other bidders are providing locally manufactured products as there are so many producers in India. Petitioner has provided no evidence that corroborates that other bidders are providing imported products. Petitioner could have easily determined ex-factory export price and landed price by categorizing imports in a similar manner as it did for the DRI.
- xvi. The computation methodology followed by the DI for computation of the normal value and dumping margin has not been provided as claimed by the DI to have been enclosed as annexure.
- xvii. The DI has nowhere provided any evidence to substantiate its claim that the imported goods have lower pricing.
- xviii. The importers data needs to be provided by the Petitioner as it forms the basis of the averments regarding injury analysis that are made by them. The exporter requests for the import data to be provided by the Petitioner from a reliable source such as the DGCI&S or IBIS as was done in the previous investigation.
- xix. The Petitioner has provided no actual evidence that exports of the product under consideration from China or Israel have declined to major markets where petitioners claimed that exports from Huawei are banned.

F.3 Examination of the Authority

33. Under section 9A (1) (c), the normal value in relation to an article means:

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

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the

country of export or such article is not produced in the country of exporter there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

Determination of Normal Value for producers and exporters in China PR

34. The Authority notes that in the past three years China PR has been treated as a non-market economy country in the 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 Rules.
35. As per Paragraph 8 of Annexure I of the Anti-dumping Rules, the presumption of a non-market economy can be rebutted, if the exporters 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 cooperating exporters/producers of the subject goods from China PR are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:
- a. 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;
 - b. 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;
 - c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and
 - d. the exchange rate conversions are carried out at the market rate.
36. The Authority notes that consequent upon the initiation notice issued by the Authority in the present sunset review investigation, the following Chinese companies have filed exporter's questionnaire response:
- a. ZTE Corporation Ltd., China PR
 - b. Huawei Technologies Co. Ltd., China PR (Huawei China)
 - c. Huawei International PTE, Singapore and Huawei Tech Investment Co. Ltd., Hong Kong (Group companies of Huawei China)
 - d. Alcatel-Lucent Shanghai Bell Co. Ltd., China PR

e. Hangzhou ECI Telecommunications Co. Ltd., China PR

37. The Authority notes that M/s Huawei Technologies Co. Ltd.; M/s Alcatel-Lucent Shanghai Bell Co. Ltd. and M/s Hangzhou ECI Telecommunication Co. Ltd. have filed market economy treatment(MET) questionnaire as well and rebutted the non-market economy presumption. The exporters questionnaire responses and the market economy treatment questionnaire responses of these responding producers and exporters were examined. The on the spot verification of records relating to market economy claim was carried out in respect of M/s Huawei Technologies Co. Ltd., China and M/s Hangzhou ECI Telecommunication Co. Ltd., China. In respect of M/s Alcatel-Lucent Shanghai Bell Co. Ltd., China, the verification of their records was done on the table-study basis. The position on the market economy claim, arising out of the verifications, is summed up as below.

Market Economy Treatment for M/s ZTE Corporation Ltd., China PR

38. M/s ZTE Corporation Ltd, China PR, did not file the Market Economy Treatment questionnaire and thus the MET status was not granted to the company.

Market Economy Treatment for M/s Huawei Technologies Co., Ltd., China PR

39. On the spot verification of the information/data submitted by the company was conducted at the premises of the company in China and a detailed verification report was issued to the company with an opportunity to offer comments thereon. Though the company had claimed Market Economy Treatment (MET) status, yet during the verification, the company could not provide evidence backed with documents about the complete details/sources of raw material suppliers and the sources of capital invested by its promoters. Therefore, the company was informed that since these basic documents/information which are crucial for examining the market economy treatment status have not been made available, there was no justification in going ahead with the verification of the data pertaining to the domestic sales and its related cost of production. The market economy status to M/s Huawei Technologies Co., Ltd., China PR was, therefore, not granted.

Market Economy Treatment for M/s Alcatel-Lucent Shanghai Bell Co. Ltd., China PR

40. In respect of Alcatel Lucent-Shanghai Bell Co. Ltd., (ASB), it was noted that there are four companies , namely, Alcatel-Lucent Participations China; Lucent Technology Investment Co. Ltd.; Alcatel-Lucent China Investment Co., Ltd. and China Hua Xin Postal and Telecommunication Economic Development Centre (“China Huaxin”), who hold the shares in Alcatel Lucent-Shanghai Bell Co. Ltd. Their shareholding pattern is about ***%; about ***%; about ***%; and about ***% respectively. The first three companies are part of Alcatel-Lucent Group. The fourth company is a state-owned company. State-owned Assets Supervision & Administration Commission of

the People's Republic of China ("SASAC"), through China Reform Holdings Corporation Ltd., holds a ***% equity stake in China Huaxin, which in turn holds ***% stake in Alcatel-Lucent Shanghai Bell Co., Ltd.

41. There are 8 Directors in the Board of ASB, out of which, 4 are nominees of China Huaxin. The remaining directors are nominees of M/s Alcatel-Lucent Participations Chine and M/s Alcatel-Lucent China Investment Co., Ltd. ASB has contended that the decision making in the company is not affected or influenced by the government nominees on the Board of Directors. However, the Authority notes that the company has significant government presence through shareholdings by state-owned enterprises. In fact, ***% nominees on the Board of Directors represent the State, out of which, a government nominee is also the Chairman of the Board of Directors.
42. In view of the above and with this significant state participation in ASB, state interference cannot be ruled out. Similar position existed during the original investigation also. There is nothing on the record, which indicates to the contrary. Therefore, the Authority proposes to hold that ASB cannot be granted market economy treatment status.

Market Economy Treatment for M/s Hangzhou ECI Telecommunication Co. Ltd, China PR

43. On the spot verification of the information/data submitted by M/s Hangzhou ECI Telecommunication Co. Ltd, China PR (HETC) was conducted at the premises of the company in China and a detailed verification report was issued to the company with an opportunity to offer comments thereon. HETC submitted that it is a producer which received Market Economy Treatment in the original investigation, and that there were no material changes to the ownership structure or operating processes of the company since the original investigation. The Authority verified from the records of the company that HETC operates under the complete control of ECI Telecom Limited, (ECI) which is based in Tel Aviv, Israel, and who continues to be the 100% owner of HETC, which was also the case in the original investigation. The Board of Directors comprises entirely of Israeli citizens and there are no Chinese (government or otherwise) citizens on the Board of Directors of HETC. The company, therefore, operates under the complete control of ECI, Israel. The company operates by engaging a job-worker known as Eastcom, which procures raw materials and supplies the subject goods to HETC. Eastcom purchases raw materials almost entirely on the instructions of ECI, Israel, and it is ECI, Israel which negotiates with various raw material suppliers, most of whom are international suppliers outside China. The Authority verified the cost of the raw material procurement and compared it with the raw material procurement in Israel. HETC demonstrated that the cost of materials and production in China is comparable to the cost of materials and production in Israel. HETC also provided the following documents in this behalf- i) Sample global supply contract for one of ECI's global suppliers, i.e., EZCHIP, ii) Full Turnkey Agreement between HETC and Eastcom, iii) Price Comparison between jobwork in Israel and

China, i.e., Flextronics and Eastcom, iv) Sample Power Invoices, v) Raw Material Sample List, and vi) Sample Freight Invoices. Considering the above, the Authority proposes to hold that M/s Hangzhou ECI Telecommunication Co. Ltd, China PR (HETC) has provided information and sufficient evidence to prove that the company is operating under market economy conditions and is, thus, entitled for Market Economy Treatment status.

Normal Value for cooperative producers/exporters from China PR

44. M/s ZTE Corporation Ltd.; M/s Huawei Technologies Co. Ltd. and M/s Alcatel-Lucent Shanghai Bell Co. Ltd. have cooperated with the Authority in his review investigation. However, having concluded they are not operating under market economy conditions, the Authority is not in a position to apply Para 8 of Annexure 1 to the Rules to the above named Chinese companies and has proceeded in accordance with Para 7 of Annexure- I to the Rules. According to these Rules, the normal value in China PR can be determined on any of the following basis:
- a. On the basis of the price in a market economy third country, or
 - b. The constructed value in a market economy third country, or
 - c. The price from such a third country to other countries, including India.
 - d. If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.
45. The Authority notes that as per the above rule position, the first option for the Authority is to see whether the price or constructed value in the market economy third country is available or not, and after having concluded that the same is not available, the Authority may move to the next option and likewise to the second and third option. In this regard, the Authority had written to the interested parties that since Israel has been treated as a market economy country by the Authority and further, keeping in view the level of development in Israel vis-a-vis China PR and, after having given due account to the reliable information made available to the Authority in respect of Israel as also the complex nature of product in question in this investigation, why Israel should not be adopted as the surrogate country and to construct the normal value for Chinese non-market economy companies on the basis of the costs/prices of the subject goods in Israel. In this regard, the following views have been offered by the opposing interested parties and the domestic industry:
- (i) The opposing interested parties have offered their comments that if HETC is being treated as a market economy company then its data should be adopted as this methodology will be in line with the AD rule position in this regard but if the Authority, for any reason cannot accept HETC then Israel should be adopted as a surrogate country.

(ii) The Domestic Industry, on the other hand, has argued against adopting Israel as a market economy country saying inter-alia that since the introduction of the non market economy provisions, the Authority has recommended anti dumping duties in a large number of products, scrutiny of which shows that the Authority has made recommendations in 81 products wherein the investigations involved another country in addition to China. However, the Authority has not adopted the normal value determined in other countries as the basis for normal value for China. Further, Israel was subject country at the time of original investigation as well, yet the Authority has not adopted normal value in Israel as the normal value for China. It would thus be seen that it is not a case that the Directorate was unmindful of the requirements or legal provisions and facts of the case while deciding this case. Such being the case, there is no occasion to even consider this route now in the present investigations. Further, in a number of investigations, the petitioning domestic industries have proposed with sufficient information/evidence for consideration of third country for determination of normal value and yet the Authority rejected such proposals. The issue of consideration of market economy third country has arisen in a number of cases. It has been pleaded by the domestic industries in several of these cases that actual cost of production or selling price in India should be adopted for determination of normal value, which is a direct prescribed requirement under the law. The Authority has, however, repeatedly rejected the argument and has not adopted actual cost of production or selling price in a market economy third country or in India.

46. The Authority has analysed the claims and counter claims of the opposing interested parties and the domestic industry. The Authority notes that (i) ECI, Israel has exported only the equipments to India whereas majority of the exports of Huawei Technologies Co., Ltd. to India are of the Cards and not equipments and M/s Alcatel-Lucent Shanghai Bell Co. Ltd. has exported only the Cards to India (ii) the PCNs of equipments and cards exported by the cooperative exporters are not strictly comparable with respect to their respective features and, therefore, a close scrutiny of each PCN exported by them is required (iii) and for this purpose, co-operation from ECI, Israel for making proper comparison of various features of the products produced and exported by them with the corresponding features of the products exported by these non-market economy Chinese companies is required. Similar is the position in respect of the products produced and sold by HETC, China. However, with reference to the sharing of the PCN data with the cooperating exporters, M/s ECI, Israel, in a written communication to the Authority, has stated that (i) their data should not be shared since it is a matter of fact that the PCN contains the unique structure/configuration which the telecom customers design for their use, (ii) this information is not available in public domain and will seriously compromise the commercial aspects which may give an undue advantage to their competitors, (iii) thus ECI would like to seek confidentiality on this issue and would like to rely upon the practice of the Authority in this behalf, wherein it is unprecedented for the data of the exporters/others interested parties to be shared inter-se and (iv) ECI would like to

submit that the exporters questionnaire filed and subsequent submissions contain the non-confidential data along with the reasons as to why the same is not being disclosed and would like to rely upon the same. Due to non-cooperation of ECI, Israel for sharing their PCNs with the cooperative exporters in this investigation, the Authority proposes not to consider Israel as a surrogate country for determining the constructed normal value of these non-market economy Chinese countries in this investigation. Therefore, the normal value in respect of ZTE Corporation Ltd.; M/s Huawei Technologies Co., Ltd. and M/s Alcatel-Lucent Shanghai Bell Co. Ltd. has been constructed on any other reasonable basis in terms of second proviso of Para 7 (d) of Annexure 1 to the Rules, as was done in the original Final Findings.

Normal Value for ZTE Corporation Ltd.; M/s Huawei Technologies Co. Ltd. and M/s Alcatel-Lucent Shanghai Bell Co. Ltd.

47. For the reasons mentioned above, the ex-works Normal Value of the product under consideration for M/s ZTE Corporation Ltd.; M/s Huawei Technologies Co. Ltd. and M/s Alcatel-Lucent Shanghai Bell Co. Ltd. is to be constructed based on the facts available in terms of second proviso of Para 7 (d) of Annexure 1 to the Rules.
48. In the present sunset review, the product has been exported in the form of full equipments (STM-1, STM-4, STM-16, STM-64) as well as in the CKD/SKD forms in the shape of cards, assemblies, PCBAs, Cross Connects etc. as per the requirement of the customers in India. It has been exported by ECI, Israel in the form of full equipments. From China, it has been exported by ZTE Corporation and Hangzhou ECI Telecom in the form of full equipments. However, Alcatel-Lucent Shanghai Bell Company Ltd has exported only cards for SDH use and Huawei China has exported full equipments as well as cards/PCBAs. The present investigation being a review investigation, exporting companies have submitted the relevant information regarding the type of equipments/cards/assemblies etc in the form of PCNs.
49. In this investigation, ZTE Corporation Ltd, Alcatel-Lucent Shanghai Bell Company Ltd and Huawei China are to be treated as the non-market economy companies. However, HETC, China is to be treated as a market economy company. Further, Israel is market economy country and ECI Telecom from Israel is being treated as a market economy company. The normal value for these non-market economy companies is to be constructed on the basis of the cost of production of the domestic industry. Therefore, to construct the normal values for the purpose of calculating the dumping margin for these non-market economy Chinese companies as also to determine the injury margin for these Chinese companies as well as ECI, Israel and HETC, China, efforts were made to match the PCNs of the domestic industry with those of the non-market economy and market economy companies. In this regard, to bring about fairness and transparency into mapping/comparing of the PCNs of the domestic industry with those of these companies, the PCN details of the domestic industry were shared with these companies and likewise, the PCN details of these companies were shared with the domestic industry by various formal communications.

50. In the case of ECI Telecom, Israel and HETC, China, their own data has been used to determine their normal value and export price. Thereafter, several one-to-one meetings were held with the technical experts of all the cooperative companies from Israel and China and the domestic industry for matching the PCNs of these companies. These meetings were held with them separately as well as in the presence of the domestic industry by the Authority. For each of the listed exported PCNs, the domestic industry was asked to match these to the nearest PCN sold by it in the domestic market during the Period of Investigation. Likewise, the individual exporting company matched their PCNs with those of the domestic industry in the meetings with the Authority. Then, for the sake of more transparency, common meetings were held by the Authority with the technical experts of the domestic industry on one side and the technical experts of the individual exporting company on the other side and both the parties were requested to thrash out the difference of opinion in the mapping done by both of them separately to arrive at a consensus. On some PCNs there was consensus in the sense that either the PCN mapping was acceptable to both the parties or where the PCNs did not match completely, both the parties agreed to notionally remove the extra parts like chassis, power cables, ports etc from nearly matching PCNs. For example, if the PCN of the domestic industry for a particular equipment or card included 2 ports and the nearly matching PCN for the similar equipment or card of the exporting company included 1 port, then consensus was arrived at by both the parties for deducting the price of the extra port from the PCN of the domestic industry to calculate the price of the nearly matching equipment or card. For some PCNs, there was no consensus. The three non-market economy Chinese companies submitted their written comments also on the PCN mapping and the PCN tools prepared by the domestic industry. Likewise the domestic industry has also submitted its comments on the PCN mapping and the PCN tools prepared by it with respect to the matching done with the PCNs of these three companies. In respect of some equipments and cards, there as consensus in matching. Wherever there was a deadlock, the Authority has used its own prudence and wisdom based on the discussions with the technical experts of both the parties and their written comments and thereafter mapped the PCNs by deducting the price of the extra parts/components appropriately on its own.
51. For constructing the normal values, firstly, the weighted average price of all the major components for the SDH equipments of different types of the domestic industry has been adopted based on the domestic industry's normated cost of production and the information provided by the domestic industry. Thereafter, wherever based on the above PCN matching/mapping methodology adopted by the Authority, the PCNs of the equipments of the these non-market economy Chinese exporting companies were found to be either completely matching or nearly matching with the equipment of domestic industry in terms of their usage, capacity, interface ports etc, the domestic industry's normated cost of production for these equipments has been adopted. Wherever the PCNs of the equipments or the cards of the these non-market economy

Chinese exporting companies were not found to be either completely matching or nearly matching in terms of their usage, capacity, interface ports etc., extra parts were notionally added or removed by following the above mentioned methodology and the average price of the relevant parts and components of the domestic industry has been appropriately adjusted. No adjustment has been made for customs duty since the PUC is attracting zero customs duty. Conversion cost and SGA expenses of the domestic industry have been adopted for constructing the normal values. After adding a reasonable profit margin, the normal values have been constructed. The weighted average ex-works normal values for the PCNs exported by these non-market economy cooperative Chinese exporters are as shown in the Dumping Margin Table below.

Normal Value for M/s Hangzhou ECI Telecommunication Co. Ltd, China PR

52. This producer / exporter was found to be operating under the market economy conditions as explained above. While filing the response to the initiation, they had submitted appendix-1 which reported the sales in the domestic market. It, however, came to the notice during the verification that the domestic sales constituted less than 5% of the exports made to India during the POI. Further, there are also no exports to third countries. The Authority notes that the product under consideration being in the finished, semi finished, CKD/SKD, sub-assemblies forms, and considering the manner in which the producers are invoicing the product, as also considering the fact that normal value is the price of “like article” and in the absence of identical article, another article is required to be considered, the normal value in this case considering the SKD/CKD prices and other costs as per the cost of production as per verified data of the producer / exporter plus reasonable profit. Accordingly, the normal value worked out is as indicated in the Dumping Margin Table below.

Normal Value for non-cooperative exporters from China PR

53. The Authority notes that no other producer/exporter from China PR has submitted the exporter’s questionnaire response. Therefore, the normal value is determined based on the facts available. Accordingly, the normal value so determined is as indicated in the Dumping Margin Table below.

Normal Value for cooperative producer/exporter from Israel

M/s ECI Telecom Ltd. Israel

54. The company has provided information in various appendices, along with Bill of Materials, which has been examined by the Designated Authority. The Authority notes that *** PCNs are exported to India and only *** PCNs have been sold in the domestic market, but these are not matching with the PCNs exported to India. This position got confirmed during the verification of the responding exporter. It, however, came to the notice during the verification that a number of PCNs sold in the domestic market in Israel did contain some assemblies / sub-assemblies which were the same as used in the PCNs exported to India. The Authority notes that the product under

consideration being in the finished, semi finished, CKD/SKD, sub-assemblies forms, and considering the manner in which the producers are invoicing the product, as also considering the fact that normal value is the price of “like article” and in the absence of identical article another article is required to be considered, the normal value in this case has to be constructed by considering the SKD/CKD prices and other costs as per the cost of production as per verified data of the producer / exporter plus reasonable profit. Accordingly, the normal value so worked out is as indicated in the Dumping Margin Table below.

Normal Value for non-cooperative exporters from Israel

55. The Authority notes that no other producer/exporter from Israel has submitted the exporter’s questionnaire response. Therefore, the normal value is determined based on the facts available. Accordingly, the normal value so determined is as indicated in the Dumping Margin Table below.

Export Price for cooperative producers/exporters from China PR

M/s ZTE Corporation, China PR

56. The subject producer/exporter has exported *** sets of *** different PCN variants to India for US\$ *** on CIF price basis during the POI. The export data of the producer/exporter was verified during on the spot verification at the office premises of the producer/exporter by the Authority. Adjustments on account of inland freight, overseas freight, handling & misc. charges, credit cost and bank charges have been claimed and the same have been allowed by the Authority for the determination of the PCN wise net export price at ex-factory level. Since both input and output VAT rate is the same, there is no adjustment on account of VAT. The weighted average net export price has been calculated and the same is shown in the Dumping Margin Table below.

M/s Huawei Technologies Co., Ltd. China PR (Huawei China)

57. M/s Huawei Technologies Co., Ltd. China PR (Huawei China) had filed PCN wise details of the exports of the product under consideration to India during the period of investigation. As per the records of the company verified by the Authority, it was found that during the POI, Huawei China group companies, namely, Huawei Technologies Co., Ltd. China PR; Huawei Tech Investment Co., Ltd., Hong Kong and Huawei International Pte Ltd., Singapore, have exported *** pcs of the product under consideration for CIF value US\$ *** under *** PCN variants against *** invoices. The product under consideration had been manufactured by Huawei China in all the cases. Huawei Technologies Co., Ltd. China PR had exported the PUC under *** invoices; Huawei Tech Investment Co., Ltd., Hong Kong had exported the PUC under *** invoice and Huawei International Pte Ltd., Singapore, had exported the PUC under *** invoice. Adjustments on account of airfreight and insurance have been claimed and the same have been verified and allowed by the Authority for the determination of the PCN wise net export price at ex-factory level. Since both input

and output VAT rate is the same, there is no adjustment on account of VAT. The weighted average net export price has been calculated and the same is shown in the Dumping Margin Table below.

M/s Alcatel-Lucent Shanghai Bell Co. Ltd., China PR (ASB)

58. The subject producer/exporter (ASB) has exported PUC and non-PUC items in *** transactions during the POI. These *** transactions include *** PCN variants having quantity of *** PUC numbers, with a CIF value of US\$ ***. For determination of ex-factory export price for ASB, the Authority has considered these *** PCNs which cover the PUC. All the exports to India were made on ex-works basis to its related company in India. ASB has claimed only credit cost as deduction from the export price. The same has been allowed for determination of net export price at ex-factory level. The net export price at ex-factory level in respect of each PCN has been worked out accordingly. Since both input and output VAT rate is the same, there is no adjustment on account of VAT. The weighted average net export price so determined is as indicated in the Dumping Margin Table below.

M/s Hangzhou ECI Telecommunication Co. Ltd, China PR through M/s ECI Telecom Ltd. Israel

59. As per the verified data, Hangzhou ECI Telecommunication Co. Ltd, has exported *** PCN variants covered under *** numbers of shelves to India during the POI for CIF value US\$ ***. Adjustments claimed on account of Inland Freight, Overseas Freight, Insurance, Storage, Credit Cost and Warranty as verified have been allowed for determination of Net Export Price at ex-factory level. Since both input and output VAT rate is the same, there is no adjustment on account of VAT. The weighted average net export price so determined is as indicated in the Dumping Margin Table below.

Export Price for non-cooperative exporters from China PR

60. The Authority notes that no other producer/exporter from China PR has submitted the exporter's questionnaire response. Therefore, the export price is determined based on the facts available. Accordingly, the exports price so determined is as indicated in the Dumping Margin Table below.

Export Price for cooperative producers/exporters from Israel

M/s ECI Telecom Ltd. Israel

61. As per the verified data, they have exported *** PCN variants covered under *** number of shelves to India during the POI for CIF value US\$ ***. Adjustments claimed on account of Inland Freight, Insurance Cost, Storage, Credit Cost Expenses and Warranty as verified have been allowed for determination of Net Export Price at ex-factory level. The weighted average net export price so determined is as indicated in the Dumping Margin Table below.

Export Price for non-cooperative exporters from Israel

62. The Authority notes that no other producer/exporter from Israel has submitted the exporter's questionnaire response. Therefore, the export price is determined based on the facts available. Accordingly, the exports price so determined is as indicated in the Dumping Margin Table below.

Dumping Margin

63. After comparing the weighted average ex-works Normal Values so determined with the weighted average Net Export Prices, the dumping margins so determined are as indicated in the Dumping Margin Table below.

Dumping Margin Table

Name of the company	Weighted Average Normal Value (US\$ Per No)	Weighted Average Export Price (US\$ Per No)	Dumping Margin (US\$ No)	Dumping Margin (%)	Dumping Margin Range (%)
M/s ZTE Corporation, China PR	***	***	***	***	45 to 55
M/s Alcatel-Lucent Shanghai Bell Co. Ltd., China PR	***	***	***	***	50 to 60
M/s Huawei Technologies Co. Ltd. China PR	***	***	***	***	35 to 45
M/s Hangzhou ECI Telecommunication Co. Ltd, China PR	***	***	***	***	0 to 10
All other producers/exporters from China PR	***	***	***	***	110-120
M/s ECI Telecom Ltd., Israel	***	***	***	***	(-)1 to 10
All other producers/exporters from Israel	***	***	***	***	5-15

G. ASSESSMENT OF INJURY

Determination and Examination of Injury and Causal Link

Submissions made by the exporters, importers and other interested parties

64. The following are the submissions made by exporters, importers and other interested parties regarding injury and causal link:
- i. The market share of the petitioner increased and that of the imports declined.
 - ii. Wages sharply increased to 143 indexed points in 2011-12 from 100 indexed points in 2010-11. Such sharp increase in wages may be the reason that the Petitioner is not able to improve its profitability in a desirable manner.
 - iii. It is a norm in the technology industry that cost of production for a new product is quite high during initial stages when a new technology is introduced in a market for the first time. Cost of production then substantially reduces over time. The Petitioner's cost of production has increased from 54 indexed points in 2012-13 to 72 indexed points in the POI. As per the petition, the Petitioner has not introduced any new like product or technology in the market that led to such increase.
 - iv. The Petitioner continues to focus on export markets, while it could have taken steps to increase its market presence in India. The Petitioner cannot take the plea that it is disposing its inventories in the export market because the subject product is made to order.
 - v. The domestic industry's price shows continuous increase whereas the demand for the product showed substantial decline.
 - vi. In the absence of information about imports from the subject countries, it needs to be seen as a mere argument which is untenable and of no relevance in an SSR investigation.
 - vii. It is an unsubstantiated claim that future demand in India would all be taken away by exporters from the subject countries. At the same time, the Applicant has not provided any information about future demand for the subject goods in other countries.
 - viii. Imports of the subject product have reduced over the injury period in line with reduction in the overall demand in India. Further, it can be seen that imports from the subject countries also fell in relation to production. Petitioner has cleverly relied on Ovum Reports to show inflated level of imports in this case. Further, the Petitioner itself admits that dumping margin is lower than the antidumping duty in force. Therefore, such heavy anti-dumping duties are not warranted to be continued in this case. Such low volume of imports cannot influence the production and sales of the domestic industry and, therefore, cannot be the reason for any material injury to the domestic industry.
 - ix. The Petitioner has failed to provide any data on price undercutting. Therefore, Petitioner's conclusion with respect to price underselling has to be rejected. Further,

the Petitioner is wrong in concluding that there is price underselling in the present case because the Petitioner has wrongly determined landed price. Landed price has to be determined based on a proper analysis of import statistics as well as based on the data provided by the interested parties.

- x. Alleged dumped imports of the subject product have been wrongly computed by the domestic industry. For a proper analysis, the Designated Authority should procure DGCIS import statistics for the subject product. The import volumes cannot increase during the injury analysis period in light of very heavy anti-dumping duties, which are to tune of 266% ad valorem rate in this case.
- xi. With regard to changes in the patterns of consumption of the subject goods, the DI has gone on to claim that the consumption pattern has changed in favour of PUC. However, at the same time, it has admitted that the demand for the product under consideration has declined. Such contrary statements made by the DI only verifies the fact that the DI has been freely concocting facts as to its convenience and requirement. Even it has claimed that data pertaining to export performance has been provided by it separately. However, no such data has been found in the said submissions.
- xii. The outsourcing of manufacturing activity by the DI to the job workers has led to its price escalation, and it is wrong to take the DI price as a benchmark for domestic price. There is no evidence to even substantiate that there was efficient utilization of raw materials, utilities, production capacities, etc. for the manufacture of the subject products by such job workers. For this, firstly the premises of such job workers have to be investigated and the production mechanisms, financial documentation, etc. have to be analyzed at a micro level. DI has no evidence to substantiate the efficient utilization of resources on its part and on the part of its job workers, it has also conveniently tried to claim that capacity and capacity utilization may be considered irrelevant parameter in the present case.
- xiii. The demand for PUC has recorded significant decline. This shows that there is no causal link between alleged dumped imports and any continued injury to the applicant and the continued injury being caused is on account of other factors such as decline in demand for PUC
- xiv. In the absence of basic import data from all sources pertaining to the Applicant, information on production and sufficient causal link, the right to a fair proceeding for an interested party is simply deprived, as it is unable to state its opinions effectively before the Designated Authority.
- xv. The claim of the petitioner regarding excess capacity in China is unsubstantiated argument when it is necessary to demonstrate not only the existence of excess capacity but how such excess capacities would be diverted to India in the event of revocation of duties.

- xvi. Any attempt of evasion of duties is required to be strictly dealt with under the relevant provisions of the law but the same is not any argument to suggest that the expiry of duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
- xvii. The Applicant has not submitted any reliable actual information and data is from unreliable secondary source based on net weighted averages.
- xviii. The petition suggests no nexus between the performance of the domestic industry and imports from the subject countries. The injury information as provided in Proforma IV A suggests that the domestic industry has not suffered any injury on account of continued imports from the subject countries. The imports from subject countries are attracting anti-dumping duties as high as 266% and if the domestic industry has suffered any injury thereafter, such injury is self-inflicted and not on account of any alleged dumping of PUC.
- xix. Even after lapse of years since imposition of anti-dumping duty on PUC, the domestic industry has not taken steps towards capacity building. There are certain high-end equipments included within PUC, which the Applicant does not have the capacity to produce. The Applicant cannot be allowed to take protection by imposition of anti-dumping duty when alleged injury to the Applicant is self-inflicted and is caused on account of the inefficiencies of the Applicant
- xx. The intent of the Applicant is to unfairly curb imports and monopolize domestic market in India.
- xxi. It is not the present level of dumping and injury which is important but the likely dumping and injury, which is more essential in a sunset review investigation. It is the practice of the Designated Authority to conduct post POI examination in a sunset review investigation. The Petitioner has not provided any post POI data to indicate continuance of dumping or injury being caused to it, in order to claim likelihood of recurrence of dumping and injury.
- xxii. The Petitioner has not provided data on capacity and capacity utilisation for the injury period.
- xxiii. Not only has Petitioner been unable to substantiate existence of continued dumping, but it has also failed to substantiate likelihood of recurrence of dumping and injury in future, if anti-dumping duties are revoked.
- xxiv. The Petitioner's profit/loss for the subject product, cash profit and PBIT have significantly improved over the injury period. The Petitioner's losses were least in the POI, even though imports from subject countries in the POI annualised had increased. The Petitioner's situation has been continuously improving over the injury analysis period and this trend is likely to continue in the future. Even after such heavy anti-dumping duties, if Petitioner is still not able to make profits, then it means there is something inherently wrong with the Petitioner.

- xxv. The Petitioner's data indicates consistent increase in depreciation over the injury analysis period. It seems that the Petitioner has invested significantly in new plant or machinery, which has led to high depreciation cost. If that is the case, the Petitioner's profits will naturally show a decline.
- xxvi. ROCE was -280 indexed points in 2011-12, which significantly improved to -66 indexed points in 2012-13. ROCE further improved during the annualised POI when it became -52 indexed points.
- xxvii. Interest cost substantially increased during the annualized POI. Such high interest cost is the reason that the Petitioner has been unable to improve its profitability.
- xxviii. The Petitioner is incorrect in stating that it could not increase its prices and there is price depression and suppression. The Petitioner's prices have drastically increased during the injury analysis period.
- xxix. None of the parameters mentioned above demonstrate that the domestic industry is facing injury. Profits, cash profits, PBIT and return on investment have continuously improved in the injury period. Huawei India, which also strongly claims to be domestic industry, has emphatically admitted during the public hearing that it is making profits in the same market where the Petitioner is claiming to suffer losses. Any injury to the Petitioner is definitely due to other reasons and not due to imports of the subject product.
- xxx. Despite such high protection, the domestic industry is deceptively claiming likelihood of recurrence or continuation of dumping and injury in the present case without any supporting data.
- xxxi. Sub-para (iii) of para (4) of Annexure III to AD Rules requires the Designated Authority to consider the best capacity utilisation over the past three years and period of investigation, while arriving at the non-injurious price. However, Petitioner has not even provided data pertaining to capacity utilisation in the petition. Similarly, sub-para (ix) of Para (4) of Annexure III to AD Rules provides that while examining the reasonableness of interest cost, details of term loans, cash credit limits, short term loans, deposits and other borrowings taken by the company need to be examined in detail.
- xxxii. The Petitioner has failed to acknowledge in Section V (Causal Link) of the petition that developments in technology are a relevant factor due to which demand of the subject product has been reducing over time. Injury due to such a factor cannot be attributed to imports of the subject product.
- xxxiii. Firstly, the Petitioner has made gross errors in computing import volumes in this case. Secondly, without prejudice to the above contention, the import data provided by the Petitioner itself shows decline in imports in the injury analysis period. Thirdly, it is impossible for imports to increase in light of such heavy anti-dumping duties on the subject product.

- xxxiv. Existence of surplus production capacity cannot be taken as posing a clearly foreseen and imminent threat of injury.
- xxxv. There is no information provided in the petition with respect to non-injurious price or price underselling analysis. The Petitioner has considered its own price that it offered in various tenders as export price in the petition. As a natural corollary, the Petitioner used its own price to arrive at the landed price of the subject product in India from both China PR and Israel. Petitioner has not determined non-injurious price based on principles enunciated under Annexure III of the AD rules. Such an arbitrary approach cannot be accepted.
- xxxvi. When the Petitioner has not even provided any information with regard to price undercutting, how can it claim price undercutting in the present case? Petitioner's claim in this regard has to be rejected outright. The Petitioner's data itself demonstrates that there is no price pressure on it from alleged dumped imports due to which it has been forced to sell at sub-optimal prices.
- xxxvii. In determining the non-injurious price for domestic industry, the AD Rules provide for a reasonable rate of return to be included. It would be quite unjustified on the part of the domestic industry to claim an exorbitant rate of return and the Designated Authority to allow such return as it may result in unduly high non-injurious price and thus colour the entire injury analysis.
- xxxviii. The imports by the subject countries in the period of investigation are the lowest in the last ten years. Further, the imports have seen a decline of 50% in the injury period itself. Therefore, an analysis of the import volume proves that there is clearly no indication of likelihood whatsoever.
- xxxix. India is no longer as large a market as it was. As the demand in India in the period of investigation has declined by 60% from 2010-11, India presently does not have the demand to attract any potential exports.
- xl. The volume of imports from Huawei China being at a minimal level during the POI, the question of recurrence of dumping does not arise.
- xli. The DI has not been able to establish continuance of any "supposed injury" and therefore this question necessarily has to be reviewed, during the present sunset review proceedings. Therefore, the question of determination of injury to the domestic industry is still open during the sunset review.
- xlii. The fact of continued dumping is baseless. During the period of investigation for the sunset review, Huawei India has made only five imports from Huawei China and even these imports have been restricted only to the products which have not been manufactured by the DI and the same were meant to meet the pending obligations under the erstwhile agreements.
- xliii. Huawei India undertakes the said 'substantial transformation' for the goods manufactured by it in India, and such production even constitutes a 'major proportion'

of the domestic production. Therefore, it offers a healthy competition to the alleged DI against which, the alleged DI has not been able to sustain itself. Accordingly, this so called injury is due to the stiff competition offered by Huawei India on account of the domestic production of the PUC by it.

- xliv. The DI's sale and profits fell sharply immediately after imposition of ADD while results should have been just the opposite. The DI's exports also dropped / did not improve which as such were not impacted by dumping. Thus drop in sale of the DI products cannot be attributed to alleged dumping since the DI was recording higher sale in the no ADD period.
- xlvi. Breach of Causality: The Authority must establish a causal link between the injury suffered and the subject imports. It is submitted that there is a severe breach in causality in the present investigation, which arises primarily out of the plummeting demand in the Indian market and the poor investment choices of the Petitioner.
- xlvi. Inefficiencies of the Petitioner: It is submitted that another reason that the Petitioner has suffered injury is its own operational inefficiency and poor managerial decisions. A glaring example of this is the fix asset investments made by the company in 2010-11 and 2011-12. While demand for the product under consideration was plummeting, the Petitioner was making heavy investments in fixed assets for the product under consideration. It is not surprising that in a poorly performing market, the Petitioner ended up suffering a loss after making such heavy investments. Thereafter, the profitability of the Petitioner has only improved except for the skew suffered from 2010-11 to 2011-12 which was evidently on account of the above. Therefore, it is submitted that there is no correlation between the imported Product under Consideration and the injury faced by the Petitioners. Evidently, there are non attributable factors such as the Petitioner's inefficacy and the decline in demand which have caused an injury to the Petitioner.
- xlvi. Absence of causal link between alleged dumping and injury caused to domestic industry: - The demand for PUC has recorded significant decline. This shows that there is no causal link between alleged dumped imports and any continued injury to the Applicant and the continued injury being caused is on account of other factors such as decline in demand for PUC. The Applicant wrongly concludes that demand for the subject product is likely to increase in India in view of tenders which are likely to come up. The truth is that SDH technology will phase out soon and will be replaced by DWDM, OTN and PTN technology. These are much better technologies that provide higher network bandwidth and also provide network access at high speeds to larger distances. In fact, network suppliers are already shifting to these technologies and have demanding the same in their tenders. The Applicant cannot expect its production for the subject product to increase as SDH technology is slowly being phased out by all users.
- xlvi. Given that development in technology has resulted in multiple products / functions being available in one single unit which hitherto were available only as independent products, likewise development in technology has resulted in SDH, OTN and DWDM

being available together in one box, which earlier were available as separate products only. Given this important development, levy of anti-dumping duty should be restricted to only those goods which are SDH as a whole and not where SDH is part of one box having multiple technologies.

- xlix. Apart from the competition faced by the domestic producers, one another factor to be considered for the decline in demand of the product of the alleged DI is the development in technology. The injury margin should be calculated PCN wise so as to depict the clear picture in the context of the price behavior of the exporter in their domestic and export market.
- i. The Authority is requested to grant fresh opportunity to present the views orally due to the reason that the petitioner has filed the petition for the POI consisting of April 2013 - March 2014, but the POI has been extended by the Authority vide notification dated 06.12.2014 by three months
 - ii. The Petitioner has provided contradictorily information regarding imports from the subject countries in different parts / section of their petition. The Petitioner has claimed that the selling price has declined even more than the decline in the cost resulting in price depression. However, on the contrary the information provided in the petition shows that the average selling price of the so-called domestic industry has increased consistently and significantly from 100 in the base year to 152 in the POI. Therefore, it is amply clear that there is no price effect on the so-called domestic industry on account of imports from the subject countries.
 - iii. The Government companies are floating tenders. However, the DI is not participating for the products under PUC which may be based on the fact that the DI either does not have the capacity to supply or the technology to support. The DI should be directed to explain their failure in participating in the tenders for domestic supply of the products under the PUC to the Government companies. Furthermore, the alleged DI shall be directed to provide details with respect to the participation and success rate in such tender during the tenure of the said levy.
 - iiii. The DI also alleged during personal hearing that overseas suppliers are granting long credit periods to Indian customers to push sale of their goods. On perusal of Balance Sheets of DI for different years available on the website of Ministry of Corporate Affairs, it appears that DI is also granting similar credit to their customers and their outstanding was as high as 50% of their sales. Also average 14-15% of sales was made with credit period of more than 180 days.
 - liv. The DI has alleged that its products are suffering price suppression/depression on account of the low prices of the imported products. Further, it is alleged that the DI has lost tenders on account of such lower pricing of imported products. In this regard, it is submitted that the alleged DI has nowhere provided any evidence to substantiate its claim that the imported goods have lower pricing. It is clear that the DI is not engaged in R&D with respect to the PUC in as much as it has admitted that there is not much scope for R&D left therein. Therefore, it is submitted that if the DI's R&D

activities are not undertaken with respect to SDH transmission equipment, but some other products (i.e., products not covered within the scope of PUC such as OTN/DWDN), then the cost of such R&D ought to be regarded as irrelevant to the present review/investigation and thereby, kept out of the computation undertaken for the determination of injury margin for the alleged dumping in the present case. Accordingly, it is requested that the DI be directed to provide details of the nature of R&D undertaken by it and with respect to what products such R&D has been undertaken.

Submissions made by the Domestic Industry

65. The following are the submissions made by the domestic industry with regard to injury and causal link:
- a. Dumped imports from subject countries have remained significant despite anti-dumping duty. The deployment of imported SDH equipment by various consumers in general and deployment of Huawei equipment by various consumers in particular establish that the domestic industry has suffered significant injury despite existing anti dumping duties.
 - b. The subject imports have increased in relation to total imports and consumption in India despite anti-dumping duty.
 - c. The subject imports are undercutting and underselling the prices of domestic industry to a significant extent. The price undercutting is despite low prices already kept by the domestic industry.
 - d. The imports are preventing the price increases that would have occurred in the absence of dumped imports. The imports are causing both price suppression and depression. Resultantly the domestic industry is faced with negative profits, cash profits, PBIT and return on investment. The market share of the domestic industry had declined whereas that of the imports from subject countries has increased.
 - e. As regards the argument that petitioner has not provided data on capacity and capacity utilisation for the injury period, the petitioner refer and rely on the original final findings wherein the issue has been settled
 - f. The sales with the domestic industry declined in 2011-12 but increased thereafter. It is submitted that since the domestic industry kept its prices matching to the import prices, the sales volumes and consequently production improved over the period. However the volume of sales is far lower that what the company has achieved in the past or in the base year of the injury period
 - g. The profits earned by the petitioner from production and sale of the product under consideration in the domestic market declined over the injury period. So significant has been decline in the profits over the years that the petitioner has suffered financial losses since 2011-12. Consequently, return on investments and cash flow also deteriorated. This is a situation when anti-dumping duty is in existence. Cessation of anti-dumping duty and non enhancement of current duty would lead to much worse situation of the domestic industry. The domestic industry is unable of increase its profitability due to the fact that

the importers are importing the product claiming it as non SDH and the evading the duty. Therefore, the remedial effect of anti-dumping duty is undermined.

- h. Despite the fact that the petitioner is India's first optical networking product company which is innovating and creating significant intellectual property, and anti dumping duty is in place, the market share of domestic industry has not increased. The same has, in fact, declined due to continued dumping of the product under consideration in India.
- i. Whereas the petitioner had expected to increase its market share by introduction of new products to expand its range, the market share of the petitioner has declined over the years because of presence of dumped imports in the market
- j. The wages have declined significantly during the POI as compared to 2011-12.
- k. In a technology product, the R&D needs to be done in every 6 months unlike other products. The products need to be upgraded with the increased demand of the customers. R&D is not required only for a new product but to upgrade the new products as well to meet the requirement of the market.
- l. The parties are wrongly interpreting the data to suit their purpose. The depreciation has increased only mildly.
- m. The opposing interested parties failed to note that the petitioner is faced with negative return on investment which in itself is sufficient to establish the injury suffered by the domestic industry.
- n. Interest cost to the domestic industry has reduced from 100 points in the base year to 71 points in period of investigation. The interest cost has declined over the period.
- o. The petitioner has significant export activities. Its profits in combined operations in domestic and exports continue to be positive. However, export profits are at present financing the domestic losses. It may be appreciated that no company can survive in the long run on such basis. Dumping has created very adverse situation for the domestic industry.
- p. The legal requirement is either establishment of price undercutting or price suppression or price depression. Price undercutting is not a mandatory condition to establish price effect. The petitioner offered some price and yet lost the order establishes that the prices offered by the foreign producers were lower. However, since exporters and producers have responded to the present investigation, the price undercutting can be determined PCN wise at this stage
- q. The petitioner never disputed increase in selling price during the period of investigation. However, the cost of sale has increased but domestic industry is unable to increase its price in proportion to increase in cost or to the level of cost.
- r. The domestic industry is suffering financial losses since 2011-12. The opposing interested parties have put forth their arguments without any factual basis. As regards the claim of Huawei India, the company has nowhere in their submissions stated that they are earning profits. Nor the interested parties have provided any evidence to establish that Huawei India is a producer of the product under consideration or it is earning profits.

- s. There is no legal requirement to provide information of price underselling and injury margin. However, the petitioner has provided information to the best of its ability. Now that the exporters have responded, the injury margin would be determined on the basis of the information filed by them
- t. The petitioner also claims that the Authority should determine Non Injurious Price on the basis of the return on investment as per the company norms and not 22% arbitrarily. Annexure III provides guidelines to determine Non Injurious Price. However it also has to be seen from case to case basis. Final findings of the Authority in the original case is referred and relied upon
- u. The Petitioner submits that development in technology means a new technology which replaces the previous one. For example CDR to pen drives. However, the upgradation of technology is the natural phenomena and every technological product needs to be upgraded from time to time to meet the demand of the customers. An SDH equipment (i) converts voice and data into digital signals, (ii) bundle them into packets (iii) transmits the same from one place to other place and (iv) decodes and segregates the same into voice and data for delivering to customer. With the higher usage of voice and data, there was a need for enhancing/upgrading the capacity of the SDH equipment. Further the SDH equipment needs to be upgraded from time to time in order to meet the requirement of the customers and to make the product more efficient. This upgradation process requires lots of R&D. Thus, the product under consideration is being constantly upgraded to higher versions, which may be sold by different names. The Designated Authority should clarify that the scope of the product under consideration is "SDH transmission equipment" in any of its form and includes all upgraded versions of the product under consideration.
- v. The petitioners submit that the dumping and consequent injury to the domestic industry is considered for the period pre-determined at the stage of initiation. Any consequent development is of no relevance. The proposition of the opposing interested parties will skew the sanctity of the period of investigation and its relevance.
- w. Despite high protection, the domestic industry is faced with continued dumping and is suffering injury. The imports are entering the Indian market in huge volumes and the importers are resorting to all sorts of methods to avoid payment of anti-dumping duty and bringing the product into India. DRI investigations have already proved the same. In the event of cessation of anti-dumping duty, these importers will have open access to dumped imports to the detriment of domestic industry.
- x. The anti-dumping duty is not against imports per se. The anti-dumping duty is against unfair imports. The petitioner on the basis of positive evidence established that there is continued dumping causing injury to the domestic industry which itself is sufficient to prove likelihood of dumping and injury in the event of cessation of anti-dumping duty.
- y. Decline in demand for the product under consideration is because of the following factors:
 - i. Significant drop in procurement by the Govt. owned/controlled entities due to 2G spectrum scandal

- ii. MTNL and BSNL are struggling financially
- iii. Hyper competition resulting in unprofitable tariff levels
- iv. Reclassification or misclassification- DRI investigations have revealed how imports of product under consideration are being declared as non SDH and have been misclassified. This has further led to understated demand.
- z. The Petitioner in any case is suffering due to decline in demand and the imports have intensified its injury. It is submitted that dumping need not be the only or primary cause of injury
- aa. If India is no longer a large market to attract potential exports, then why at all the exporters have objection to extension of duty. Evasion of anti-dumping duty proves the desperation of the importers to bring in the dumped product in the Indian market. It shows clear likelihood of continuation of dumping and consequent injury to the domestic industry
- bb. The statement of the interested party that imposition of duty as high as 266% has the capability to greatly change the trend of demand and supply in the market itself proves that the imports have been curbed due to imposition of duty and with the cessation of anti-dumping duty imports from China would increase.

Examination by the Authority

66. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties. However, the specific submissions made by the interested parties, and considered relevant, are addressed by the Authority herein below;

A. Volume Effect

Assessment of import volumes

67. The Authority had called for the imports data pertaining to the PUC from the DGCI&S. which was made available to the Authority by the DGCI&S. The Authority as per its past practice in a large number of investigations has adopted the import volumes as reported by the DGCI&S. Accordingly, the assessment of import volumes is seen as under.

Imports	Unit	2010-11	2011-12	2012-13	POI (Annualised)	POI (April, 2013-June, 2014)
Subject Countries						
-China PR	Nos	18	4,847	5,206	1907	2,384
-Israel	Nos	37,954	20,100	5,180	9,583	11,979
Subject Countries as a	Nos				11,490	14,363

whole		37,972	24,947	10,386		
Other Countries	Nos	1,441	1,127	1,077	2,483	3,104
Total Imports	Nos	39,413	26,074	11,463	13,973	17,467

68. It is seen that the imports of the subject goods from China have increased from the base year till 2012-13 and thereafter decreased in the POI. From Israel, though the imports declined from 2010-11 till 2012-13 but in the POI the imports increased over the previous year.

Assessment of demand

69. The Authority has determined the demand or the apparent consumption of the subject goods in the country as the sum of the domestic sales of the domestic producers and the imports from all sources. The demand so assessed can be seen in following table.

Demand	Unit	2010-11	2011-12	2012-13	POI (Annualised)	POI
Sales of Domestic Industry (in domestic market)	Nos	20,069	6,263	5,970	6,454	8,067
Sales of Others (in domestic market)	Nos	7,379	3,407	2,093	2,138	2,673
Imports from Subject Countries						
-China PR	Nos	18	4,847	5,206	1907	2,384
-Israel	Nos	37,954	20,100	5,180	9,583	11,979
Imports from Subject Countries as a whole	Nos	37,972	24,947	10,386	11,490	14,363
Imports from Other Countries	Nos	1,441	1,127	1,077	2,483	3,104
Total Demand/Consumption	Nos	66,861	35,744	19,526	22,565	28,206
Sales of Domestic Industry in Total Demand	%	30	18	31	29	29

Sales of Others in Total Demand	%	11	9	10	8	8
Imports from Subject Countries in Total Demand						
-China	%	0	14	27	9	9
-Israel	%	57	57	27	43	43
Imports from Subject Countries as a whole in Total Demand	%	57	71	54	52	52
Imports from Other Countries in Total Demand	%	2	3	6	11	11
Total Demand/Consumption	%	100	100	100	100	100

70. It is seen that the total demand of the subject goods has decreased substantially from the base year till 2012-13 and increased thereafter. The sales of the domestic industry have shown declined throughout the injury period in comparison to the base year. Further, the total imports of the subject goods from the subject countries in the total demand has shortly increased during the injury period as compared to the base year.

Import volumes and market share

71. With regard to the volume of the dumped imports, the Designated Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. Annexure-II (ii) of the anti-dumping rules provides as under: -

“While examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports, either in absolute term or relative to production or consumption in India”

72. The market share of the dumped imports from the subject countries is given in following table.

	Unit	2010-11	2011-12	2012-13	POI (Annualised)	POI (April, 2013-June, 2014)
Imports						
Subject Countries						
-China PR	Nos	18	4,847	5,206	1907	2,384
-Israel	Nos	37,954	20,100	5,180	9,583	11,979

Subject Countries as a whole	Nos	37,972	24,947	10,386	11,490	14,363
Other Countries	Nos	1,441	1,127	1,077	2,483	3,104
Total Imports	Nos	39,413	26,074	11,463	13,973	17,467
Total Demand/Consumption	Nos	66,861	35,744	19,526	22,565	28,206
Total Production	Nos	28,178	9,769	9,669	11,773	14,716
Market Share in Imports:						
Subject Countries-						
-China	%	0.05	18.59	45.42	13.65	13.65
-Israel	%	96.30	77.09	45.19	68.58	68.58
Subject Countries as a whole	%	96.35	95.68	90.60	82.23	82.23
Other Countries	%	3.65	4.32	9.40	17.77	17.77
Subject Countries Imports in relation to:						
Total Imports	%	96.35	95.68	90.60	82.23	82.23
Demand	%	56.79	70.23	53.70	51.81	51.81
Production	%	135	255	107	98	98

73. It is seen that the market share of the imports of the subject goods from the subject countries in relation to total imports of the subject goods has declined throughout the injury period but still remains significant. Further, the market share of the imports of the subject goods from the subject countries in relation to total demand of the subject goods in India has declined over the injury period. Also, whereas the imports from the subject countries in percentage terms have remained significant, the production percentage of the Indian production has declined.

B. Price Effect

74. With regard to the effect of the dumped imports on prices, the Authority examined whether there has been a significant price undercutting and underselling 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.

Price Undercutting

75. For the purpose of determining the price undercutting in respect of the subject countries, the Authority has determined the landed value for the subject countries for the Period of Investigation on the basis of the response filed by the cooperative exporters from the subject countries. This was necessitated because in the DGCI&S data for the injury period, PCN to PCN mapping/matching was not possible as the DGCI&S import data does not give complete information to construct the PCNs. Further, each consumer procures SDH equipment meeting its specific requirement. SDH equipment used by a consumer at one station might differ from SDH equipment

used at other stations in terms of associated physical and optical properties. Therefore, the PCN to PCN matching/mapping of the subject goods of the domestic industry vis-à-vis the exported subject goods of the cooperative exporters was done for the POI as these parties had provided the PCN wise details. A comparison of the Net Sales Realisation (NSR) of the domestic industry with the landed values of so determined for the cooperative exporters from the subject countries for the POI shows that the price undercutting margin is significant in respect of China PR and negative in respect of Israel.

SN	Particulars	Unit	POI (April, 2013- June, 2014)
A	China PR		
	Landed Value	Rs/No	***
	Net Sales Realisation	Rs/No	***
	Price Undercutting	Rs/No	***
	Price Undercutting	%	***
	Price Undercutting Range	%	35 to 50
B	Israel		
	Landed Value	Rs/No.	***
	Net Sales Realisation	Rs/No.	***
	Price Undercutting	Rs/No.	***
	Price Undercutting	%	***
	Price Undercutting Range	%	(-) 180 to 195
C	Subject Countries		
	Price Undercutting	Rs/No.	***
	Price Undercutting	%	***
	Price Undercutting Range	%	(-) 35 to 50

Price Underselling

76. For the purpose of determining the price underselling in respect of the subject countries, the Authority has determined the landed value for the subject countries on the basis of the response filed by the cooperative exporters for comparing it with the corresponding Non-Injurious Price of the domestic industry. This was necessitated because in the DGCIS data for the injury period, PCN to PCN mapping/matching was not possible as the DGCIS import data does not give complete information to

construct the PCNs. Further, each consumer procures SDH equipment meeting its specific requirement. SDH equipment used by a consumer at one station might differ from SDH equipment used at other stations in terms of associated physical and optical properties. However, this PCN to PCN matching/mapping of the subject goods of the domestic industry vis-à-vis the exported subject goods of the cooperative exporters was done for the POI as the domestic industry and the cooperative exporters had provided the PCN wise details. Further, the products exported by different cooperative exporter are different in features in the sense that some have exported only equipments and some have exported equipments as well cards or only cards, and the domestic industry has used only the equipments. Therefore, for most of the PCNs, mapping/matching of PCNs of the domestic industry with the PCNs of the cooperative exporter has been done by constructing the cost of these PCNs on the basis of the cost of the parts and components of the domestic industry except where equipment to equipment PCNs matched. As a consequence, the NIP of the domestic industry for each individual cooperative exporter is different. For China PR, weighted average NIP of the cooperative exporters has been taken. A comparison of the Non Injurious Price (NIP) of the domestic industry with the landed values of so determined shows the price underselling margins as under.

Particulars	UOM	China PR	Israel
NIP	Rs/No.	***	***
Landed Price	Rs/No.	***	***
Price Underselling	Rs/No.	***	***
Price Underselling	%	***	***
Price Underselling	% Range	70 to 80	(-) 5 to -10

Price suppression & price depression

77. In order to determine whether the imports of the product under consideration are suppressing or depressing the prices of the product under consideration in the domestic market, the Authority has considered the trends in the cost of sales and the sales revenue for the domestic industry as per the data provided by the domestic industry. The relevant information is given below.

Parameters	Unit	2010-11	2011-12	2012-13	POI Annualised
Cost of sales	Rs./No.	***	***	***	***
Trend	Index	100	174	186	196
Selling price	Rs./No.	***	***	***	***

Trend	Index	100	116	161	159
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78. It is seen that though the selling price of the domestic industry has increased throughout the injury period, the trend of the cost of sales shows that the cost of sales of the domestic industry has increased much more than the corresponding selling price, resulting in price depression and suppression.

Examination of Economic Parameters relating to Domestic Industry

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

Capacity and capacity utilization:

80. The Petitioner claimed that the core of production in this industry is in the design and development of the product. The actual process of manufacturing and extent thereof can be in house or outsourced depending on requirement. The petitioner claimed that it can meet the entire Indian demand without any addition to plant and machinery, since producers in this industry leverage the capacities of Electronic Manufacturing Services partners, who in turn have enough capacities to meet the next 10 years requirements of India. In other words, capacity and capacity utilization must be seen in terms of intellectual property and ability of the company to deploy qualified personnel to carry out necessary design and development and manage its global supply chain. On this account, the petitioner has sufficient capacity to meet the Indian demand. In view of the same, the petitioner claimed that capacity and capacity utilization may be considered irrelevant parameter in the present case.

81. The Petitioner also claimed and no interested parties disputed that production of the product under consideration is extremely peculiar. Further, the petitioner claimed that capacity to produce is not an appropriate parameter in the fact and circumstances of the present case as the manufacturers decide to outsource part production activity depending on a number of factors. The Authority holds that petitioner’s claim on this score is correct.

Production and sales volumes

82. The production and the sales volumes of the domestic industry moved as shown below:

Particulars	Unit	2010-11	2011-12	2012-13	POI (Annualised)	POI
Production	Nos	***	***	***	***	***
Index	<i>Trend</i>	100	32	37	48	48
Domestic Industry Sales	Nos	***	***	***	***	***
Index	<i>Trend</i>	100	31	30	32	32

83. It is seen that the production trend of the domestic industry shows that the production declined significantly in the year 2011-12 in comparison to the base year but from 2011-12 till the annualised POI, it showed significant increasing trend. The domestic industry's sales trend shows that the domestic sales also declined significantly in the years 2011-12 and further in 2012-13 in comparison to the base year but in the POI, the domestic sales increased.

Factors affecting prices:

84. As stated before, the landed price of imports being offered by foreign producers are significantly below the selling price of the domestic industry. As a result of significant price difference between the imported product price and domestic industry price, consumers have switched over part of their demand to the imported product. Further, the domestic industry has been forced to reduce its prices not only in subsequent supplies to the same customer, but also supplies to other customers in the market as well.

85. The domestic industry claimed that there is dramatic decline in the prices offered by Chinese suppliers. As a result of continued competition from foreign suppliers and loss of business, the domestic industry has been lowering its prices with every successive offer. The imports are, therefore, clearly having significant price depressing effect in the Indian market.

Profit/Loss

86. The profit/loss of the domestic industry was determined in respect of its domestic operations. The verified information showed as follows.

Particulars	Unit	2010-11	2011-12	2012-13	POI (A)	POI
Profit/Loss	Rs Lacs	***	***	***	***	***
Index	<i>Trend</i>	(100)	(1161)	(518)	(777)	(777)
Cash Profits	Rs Lacs	***	***	***	***	***
Index	<i>Trend</i>	100	(116)	23	(22)	(22)
ROI	%	***	***	***	***	***
Index	<i>Trend</i>	100	(484)	(112)	(338)	(338)

87. It would be seen that domestic industry is suffering losses over the injury period. However, losses suffered by the domestic industry have increased during the period of investigation as compared to the base year. The domestic industry is suffering cash losses and negative return on investment during the period of investigation.

Inventories

88. The petitioner claimed that the product under consideration is produced only after taking firm order based on detailed specifications and these goods are not kept in inventories. The Authority holds that inventories are not a parameter reflecting injury to the domestic industry.

Employment, wages and productivity

89. From the information given below, the Authority notes that the employment has declined since 2012-13 and the wage position of the domestic industry has increased mainly due to enhancement of capacities, but productivity in terms of production per day and production per employee show decline.

Particulars	Unit	2010-11	2011-12	2012-13	POI (A)	POI
Employment	No.	***	***	***	***	***
Trend	<i>Index</i>	<i>100</i>	<i>101</i>	<i>91</i>	<i>79</i>	<i>79</i>
Productivity	Nos/Day	***	***	***	***	***
Trend	<i>Index</i>	<i>100</i>	<i>31</i>	<i>34</i>	<i>48</i>	<i>48</i>
Wages	Rs. Lakh	***	***	***	***	***
Trend	<i>Index</i>	<i>100</i>	<i>126</i>	<i>103</i>	<i>101</i>	<i>101</i>
Wages	Rs./MT	***	***	***	***	***
Trend	<i>Index</i>	<i>100</i>	<i>399</i>	<i>274</i>	<i>209</i>	<i>209</i>

Ability to raise funds

90. The petitioner claimed that investments in plant and machinery are not a critical factor in the present case. In fact, funds requirements in this industry are more on account of working capital than in fixed assets. Ability of this industry to raise funds may, therefore, seriously be affected with the present level of profitability of the domestic industry.

Assessment on Injury

91. Having regard to the information made available by various interested parties and the investigation conducted, the Authority notes that the subject imports in have remained significant in absolute terms and in relation to production & consumption in India. There is significant decline in the import price over the injury period. The imports are significantly undercutting the prices of the domestic industry in the market. The imports are also depressing the prices of the product under consideration in the domestic market. The performance of the domestic industry deteriorated in terms of

profits, return on investment, cash flow and growth despite the anti-dumping duty in existence during the period under investigation. The deterioration in the performance of the domestic industry during the injury period is quite significant.

Causal link and Analysis of Other Factors

92. Having examined the existence of material injury and volume and price effects of dumped imports on the prices of the domestic market in terms of its price undercutting, price underselling and price suppression and depression effects, the Authority has also examined whether other indicative parameters listed under the Indian Rules and Agreement on Anti Dumping could have contributed to injury to the domestic industry. Therefore, the following parameters have been examined:
- i. Imports from third countries: - Imports from the countries not under investigation are either insignificant or at prices higher than the import prices from the subject countries and, therefore, do not affect the prices in the domestic industry.
 - ii. Contraction in Demand: - The demand for the subject goods decreased up to 2012-13 in comparison to the base year but showed increasing trend thereafter. Therefore, possible contraction in demand cannot be attributed to the injury to the domestic industry.
 - iii. Pattern of consumption: - No significant change in the pattern of consumption has been noted.
 - iv. Conditions of competition: - The goods are freely importable. The applicant is the major producer of the subject goods. Therefore, the domestic competition could not be attributed to the injury to the domestic industry. No other evidence of conditions of competition or trade restrictive practices has been brought to the knowledge of the Authority.
 - v. Developments in technology: - It is noted that there were no significant changes in the technology relating to SDH items covered under the PUC which could have caused injury to the domestic industry.
 - vi. Export performance of the domestic industry: - There is no evidence on record to show that exports of the Domestic Industry have any impact on its performance considered hereinabove.
 - vii. Productivity: - The productivity of the domestic industry has improved in terms of the total output. Therefore, this cannot be attributed to the injury to the domestic industry.
93. The non-attribution analysis as above shows that no other factor other than the dumped imports from China PR have affected the domestic industry.

Factors establishing causal link

94. The analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has deteriorated due to dumped imports

from the subject countries. Therefore, the causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- a. The dumped import prices and consequently the landed price of imports from the subject countries steeply declined, resulting in significant price undercutting. As a direct consequence, the domestic industry was forced to reduce the prices.
- b. Reduction in the selling prices by the domestic industry adversely affected the profits, cash flow and return on investments of the DI.
- c. Even though the domestic industry responded to decline in import prices, significant positive price undercutting resulted in increase in the market share of imports from the subject countries. As a direct consequence, market share of the domestic industry declined.
- d. In spite of increase in demand and reduction in selling prices by the domestic industry, the market share of the domestic industry declined due to significant reduction in landed price of imports. This retarded the growth of the domestic industry.
- e. The significantly low prices being offered by the foreign producers have prevented the domestic industry from increasing its production and sales to the level it could have in the absence of dumping.

95. The Authority, therefore, concludes that the domestic industry suffered material injury and the injury have been caused by the dumped imports from the subject countries.

Magnitude of Injury and Injury Margin

96. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The comparison has been done by determining the non injurious price for the model imported in India. Separate comparison has been done and injury margin determined for each model imported. Thereafter, the weighted average injury margin has been determined considering the associated import volumes. The injury margins have been worked out as follows.

Injury Margin Table

Country	Producer/Exporter	NIP (Rs per PCN)	Landed Value (Rs per PCN)	Injury Margin (Rs per PCN)	Injury Margin% (Rs per PCN)	Injury Margin Range% (Rs per PCN)
China	M/s ZTE Corporation Ltd	***	***	***	***	45-55

PR						
	M/s Alcatel-Lucent Shanghai Bell Co. Ltd.	***	***	***	***	50-60
	M/s Huawei Technologies Co. Ltd.	***	***	***	***	35-45
	M/s Hangzhou ECI Telecommunication Co. Ltd.	***	***	***	***	75-85
	All other producers/exporters	***	***	***	***	90-100
Israel	M/s ECI Telecom Ltd.	***	***	***	***	(-)5 to (-)10
	All other producers/exporters	***	***	***	***	215-225

H. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY

H1. Submissions by the Domestic Industry

97. The domestic industry submitted as under in support of its claim of likelihood of continuation or recurrence of dumping and injury:
- i. Significant dumping margin during the POI establishes that the dumping is likely to continue and intensify in the event of cessation of present anti dumping duty.
 - ii. The imports from the subject countries are showing the increasing trend even in the presence of anti dumping duty, thereby showing that the imports would increase in the event of withdrawal of anti dumping duty.
 - iii. The producers in the subject countries maintain huge capacities to produce the product under consideration. In case of revocation of anti dumping duty, the volume of imports is bound to increase further.
 - iv. The landed price of imports is undercutting the prices of the domestic industry without anti dumping duty. Therefore, cessation of anti dumping duty is likely to cause significant adverse volume and price effect on the domestic industry.
 - v. The price at which Huawei China has been exporting the PUC to third countries are far higher than the prices at which Huawei China is exporting the PUC to India. In

fact, the third countries prices of Huawei China clearly establish discriminatory prices being adopted by Huawei China in exporting the PUC to India.

- vi. The Indian market for the product under consideration is highly price sensitive. The consumers decide their source, with the price being the foremost consideration. In fact, all orders are placed on the basis of price comparison. Such being the case, availability of such low priced imports from subject country in the market would definitely cause an adverse impact over the Domestic Industry.
- vii. The subject goods of major producers are not allowed to sell the product in major countries like US, UK and Australia. India being a huge market and the closure of such markets for the Chinese producers, the dumped imports are likely to enter the Indian market in the event of cessation of anti dumping duty.
- viii. The demand of Indian market is likely to increase in view of upcoming tenders. This fact coupled with the continued dumping and material of Chinese producers being banned by major countries like US, Australia and UK, in all probability the dumped imports are likely to enter the Indian market in the event of cessation of anti dumping duty.
- ix. DRI is conducting investigations against imports of product under consideration. If such practices of duty evasions are prevailing when anti-dumping duty in force, there is a strong likelihood that in the event of cessation of anti-dumping duty, the dumped imports from subject countries would enter the Indian market at significant volumes. The factors relevant to likelihood of dumping are relevant to the likelihood of injury as well in the present case and the same are relied upon.
- x. The producers from the subject countries have significant capacity which establishes that in the event of revocation of duties, the exports to India will intensify.
- xi. Both dumping margin and injury margin in the current POI are positive and significant. The price undercutting is positive too.
- xii. The import prices are materially below selling price of the domestic industry. The consumers would therefore switch to imported product in the event of cessation of anti-dumping duty which will lead to significant increase in imports of the product.
- xiii. The domestic industry is already suffering price depression due to dumped import prices which are even below cost of sales of the domestic industry. In case of revocation of anti-dumping duty, the domestic industry shall have to reduce their selling price further to compete with dumped imports, driving it even below the cost of sales, leading to severe price injury.
- xiv. The importers during the period of anti-dumping duty have been importing the product claiming it to be non SDH to evade anti-dumping duty. The same importers are likely to bring in the dumped imports in huge volumes in the event of cessation of anti-dumping duty.

- xv. Surplus capacities have been considered as one of the parameters to prove likelihood of injury. However, continued dumping and injury to the domestic industry itself is sufficient to prove likelihood of continuation of dumping and injury.
- xvi. Minimum level of imports do not prove that there would not be recurrence of dumped imports. Huawei is attracting 266% of anti-dumping duty. The low volume of imports prove the effect of anti-dumping duty and in the event of cessation of anti-dumping duty, the imports are likely to increase. The Authority in the past has extended same anti-dumping duty when there were low volumes or even zero imports from the subject countries. The petitioner requests the Authority to adopt the same approach.
- xvii. The Petitioner has provided relevant evidence of sales restrictions on Huawei products in other countries. These documents are even available in public domain. The company by denying such facts raises serious doubts on its credibility and arguments put forth.
- xviii. There is no legal requirement to provide information on future demand. The petitioner is required to establish that in the event of cessation of anti-dumping duty, there would be likelihood of dumping and injury.
- xix. Evasion of anti-dumping duty proves the desperation of the importers to bring in the dumped product in the Indian market. It shows clear likelihood of continuation of dumping and consequent injury to the domestic industry.

H2. Submissions by the opposing interested parties

98. The opposing interested parties have made the following submissions with regard to likelihood of continuation or recurrence of dumping and injury:
- i. Volume of imports between original period and subsequent periods: The Petitioner alleged that the volume of imports reported in previous cases as well as in the current period would show that volume of imports in case of subject countries have “remained quite significant” despite imposition of duty. It is submitted that the submissions of the Petitioner are contradicted by the facts placed on record by them, which indicate that the imports by the subject countries in the period of investigation are the lowest in the last ten years. Further, the imports have seen a decline of 50% in the injury period itself. Therefore, an analysis of the import volume proves that there is clearly no indication of likelihood whatsoever.
 - ii. Freely disposable present and potential capacities with foreign producers: It is submitted that nothing in the petition seems to indicate any evidence placed on record to substantiate the extent of excess capacities existing in the subject countries. Given that the claim of the Petitioner remains unsubstantiated by evidence, no further response is required to be provided until a cogent analysis corroborated by evidence is placed on record.
 - iii. Price attractiveness of the Indian Market: The Petitioner has claimed that if anti-dumping duties are allowed to expire, the imports from the subject

countries are likely to undercut prices of the domestic industry. It is unclear on what basis the Petitioner has made this claim as there appears to be no actual analysis or evidence provided in the petition. Yet again, the Petitioner has forwarded empty claims without a shred of evidence to corroborate them. Further, there is no claim in the petition that undercutting will be as a result of dumped prices from the subject countries. Merely claiming potential price undercutting cannot be the reason for continuation of duties ad infinitum.

- iv. Vulnerability of Domestic Industry in terms of price sensitivity of the product and the Indian market: The Petitioner again bases its claim on hypothetical price undercutting. As averred above, the Petitioner's estimations hinge on a highly speculative claim and need to be disregarded in light of the complete absence of any evidence.
- v. Market share held by the subject countries in the Indian market: The fact that the market share of the subject countries is significant does not in any manner indicate that cessation of duties will lead to dumping or consequent injury.
- vi. Sales restrictions in other countries: It is the claim of the Petitioner that major producers in the subject countries are not allowed to sell the product in major countries like US, UK and Australia. Therefore, since India is a "huge market", the "dumped" imports are likely to enter the Indian market if duties are allowed to expire. However, the Petitioner has provided no actual evidence that exports of the product under consideration from China or Israel have in fact declined to these major markets.
- vii. Future increase in demand in India: The Petitioner goes on to claim that this falling demand is likely to increase in the future. This claim is based on certain impending tenders by Network of Spectrum and BSNL – tenders for which no evidence or substantiation has been provided yet again. In any event, it is submitted that a likelihood of injury cannot be proved on the basis of a future increase in demand. The injury cannot be deemed to exist solely on the analysis of the increase in demand. The increase in demand has to be observed in the connection with other injury parameters such as the demand of the Petitioner's products. Therefore, due to the absence of a correlation between the increase in demand and the other injury parameters, this averment should be rejected.
- viii. A number of investigations by the Directorate of Revenue Intelligence: The Petitioner has claimed that the DRI is conducting investigations against imports of the product under consideration. The Petitioner then goes on to admit that it has no information about the details of such an investigation. However, despite admittedly having no information regarding this investigation, the Petitioner believes that these investigations are an indication of likelihood of continuation or recurrence of dumping and injury. Assuming without conceding that some producers are under investigation for duty evasion, there is still no correlation of that with the cessation of duty and

likelihood implications thereof. The Petitioner's averments, therefore, ought to be disregarded out rightly.

- ix. The Petitioner has insisted that even if one of the above conditions is satisfied, the duties cannot be allowed to expire. However, as established above, not even one of the above conditions is corroborated with evidence, i.e., duly substantiated. Therefore, the petition should be rejected due to the abovementioned reasons.
- x. Application does not contain information to satisfy the condition for continuation of existing duties as set out in Rule 23. The Applicant has determined substantial dumping margin in the Petition on some hypothetical basis. But the fact of the matter is that as provided by the Applicant itself, the export price is based on Applicant's price and not actual 'export price' which is untenable under the AD Act and the Rules.
- xi. The claim of the Applicant that imports even after imposition of duties remained significant is not based on any reliable information. The imports claimed by the Applicant are based on some hypothetical basis which has no evidentiary value. Thus, the Applicant failed to establish any likelihood aspect under this heading also.
- xii. As per the Applicant, the subject goods are produced against orders and they have even requested to treat capacity not as an appropriate parameter. Having made that argument considering their own capacity, how can the Applicant presume that the foreign producers have got huge excess capacity?
- xiii. The Applicant has made tall claims on price attractiveness without providing any factual information about actual price of imported PUC from subject goods.
- xiv. The petition does not contain any information to enable the Designated Authority to decide that the expiry of duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The information as seen in the Application clearly shows that the expiry of duty is not likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
- xv. The claim of the Applicant that imports even after imposition of duties remained significant is not based on any reliable information. The imports claimed by the Applicant are based on some hypothetical basis which has no evidentiary value. Thus, the Applicant failed to establish any likelihood aspect under this heading.

H3.Examination by the Authority

99. The present investigation is a sunset review of the anti-dumping duties imposed on the imports of the subject goods from China PR and Israel. Under the Rules, the Authority is required to determine whether there is likelihood of dumping and injury to the domestic industry if the existing duties are removed and, therefore, continued imposition of antidumping duty is warranted or not. This also requires examination

whether the duty imposed is serving the intended purpose of eliminating the injurious dumping.

100. The Authority notes that as far as Huawei China, ZTE Corporation Ltd, China and Alcatel-Lucent Shanghai Bell Co. Ltd., China are concerned, there is no need to examine the post POI data as well as to do the likelihood analysis because continuous dumping and injury have been established in the POI of the present investigation in respect of these companies. As far as HETC, China is concerned, the re-examination of their data has shown that there is negligible (less than ***) dumping in the POI and in this behalf, the Authority has, therefore, examined the post POI exports to India as well as third countries and found that the same were un-dumped. Therefore, there is no likelihood of dumping. As far as ECI Telecom, Israel is concerned, it is seen that the exports of the PUC to India in the POI and to India as well as third countries in the post-POI are not at dumped prices and thus there is no likelihood of dumped imports from ECI Telecom, Israel if the duty is revoked. Still, the Authority has carried out the likelihood analysis. Regarding the claim of the Domestic Industry with respect to freely disposable present and potential capacities with foreign producers, no tangible evidence has been provided by the domestic industry, which has itself claimed that since the manufacturing of the assemblies is outsourced, capacity does not have much relevance meaning. Regarding the claim of the Domestic Industry with respect to price attractiveness of the Indian market, vulnerability of Domestic Industry in terms of price sensitivity of the product, sales restrictions in other countries impacting demand in India, market share held by the subject countries in the Indian market and the future increase in demand in India, it is seen that the demand for SDH technology is in fact in decline because new technologies are being preferred making it improbable that future demand will increase. Thus there is not any merit in the domestic industry's these claims. Regarding the claim of the Domestic Industry with respect to a number of investigations by the Directorate of Revenue Intelligence, it is seen that the present investigation is based on its independent facts and merits.

I. POST DISCLOSURE STATEMENT COMMENTS

(A) Post Disclosure comments of the opposing interested parties

101. The Authority notes that post Disclosure Statement submissions made by the opposing interested parties are repetitive in nature and have already been dealt with in the Disclosure Statement. The opposing interested parties have, in brief, filed the following post Disclosure Statement submissions:
- i). The present sunset review is illegal as there is no legally valid anti-dumping duty in existence. During the original investigation, several interested parties had appealed the final findings to the Hon'ble CESTAT. The Hon'ble CESTAT disposed off the appeals by remanding the matter to the Designated Authority. By remanding the matter, the Hon'ble CESTAT had principally quashed the final findings issued vide

Notification No. 14/2/2009-DGAD dated 19 October, 2010 and the Customs Notification No. 125/2010 dated 16 December, 2010. The Hon'ble CESTAT directed the Designated Authority to reconsider the issues raised by interested parties. Pursuant to this, the Designated Authority granted a post-decisional hearing to parties and issued new final findings vide Notification No. 14/2/2009-DGAD dated 10 February, 2012. However, the Ministry of Finance did not issue any customs notification pursuant to the new final findings. It is no solace to argue that the previous customs notification will continue because the Designated Authority reconfirmed the previous findings in the new final findings, as that customs notification had already been quashed by the Hon'ble CESTAT. Since there was no customs notification pursuant to the new final findings, all sets of proceedings thereafter including collection of anti-dumping duty till date and the present sunset review are illegal. It would be prudent for the Designated Authority to terminate the present sunset review immediately.

- ii). The sunset review should have been completed within 12 months from the date of initiation. The present sunset review is illegal as the Designated Authority had failed to conclude the same within 12 months as provided in Rule 23(2) of the AD Rules. The Designated Authority has no jurisdiction to extend the time period for a sunset review as that power has not been granted to the Designated Authority in the Customs Tariff Act, 1975 and the AD Rules. For violation of Rule 23(2) of the AD Rules, the present review is illegal and should be terminated forthwith.
- iii). The time given to comment on the disclosure statement was inadequate as respondents were only provided five working days to examine the lengthy disclosure statement and file the comments. This has seriously prejudiced Respondents in defending their interests effectively.
- iv). It is reiterated that the customs department is collecting anti-dumping duties even on components / parts / spares imported on a standalone basis despite the fact that these have been specifically kept outside the purview of Product under Consideration by the Authority. Interested parties have to suffer undue hardship by paying anti-dumping duties even on those products that are outside the scope of this investigation. Therefore, it is requested to clarify the product scope in the form of a separate note in the duty table mentioning that "components / parts imported on a standalone basis including Printed Circuit Boards are outside the scope of PUC and, therefore, not subject to levy of Anti-dumping Duty". A "printed" circuit board consists of insulated board with proper conductors laminated on it. Conductors may be formed by photo chemical etching process or by deposition. A "printed" circuit board does not contain any external material which is loaded or affixed in the slots/places/positions earmarked in the "printed" circuit board. Such Printed Circuit Board is neither an SDH equipment nor a part/component thereof.
- v). The Designated Authority has observed that STM-256 shall continue to be part of the product scope. Respondents submit that admittedly STM-256 could not be imported into India during the POI as technical approvals/permissions to deploy the same are not in place in the country. When permissions to deploy STM-256 is not even in place

in India, no user will express requirement for the same and as a result, STM-256 would naturally not be exported to India nor could be supplied by the domestic industry to Indian users. Therefore, it is requested that the aforesaid observation be modified and the Designated Authority may exclude STM-256 from the product scope.

- vi). Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only) and Digital Cross Connect (DXC) (For SDH Application only) are covered in the PUC. As is evident, the definition does not say that these products are SDH equipments. The definition says that such equipments are included in the product under consideration only if designed for SDH applications, i.e., though such goods are not SDH equipments but may be designed to be used only with SDH equipment. If fact, these goods are equipments used between an SDH equipment and other network/board band equipments. These equipments are not used to transmit voice or data in the optical fibre as the SDH Equipment and should be kept out of the PUC.
- vii). It is an admitted position that Tejas does not manufacture broadband or cellular equipments. However, such equipments are subjected to anti-dumping duty, if certain populated boards (having technology of SDH) are used in manufacturing such equipments. There are no manufacturers of such equipments in India.
- viii). Imposition of anti-dumping duty on Multiple Products is illegal. The Designated Authority in its determination for imposition of anti-dumping duty has included many articles, which is illegal. The Authority under Rule 4 (b) has to identify the “article liable for anti-dumping duty”, whereas in the present case the Designated Authority wrongly identified the articles subject to antidumping duty.
- ix). Respondents submit that during the original investigation, PTN was included in the product scope in a very arbitrary manner. While PTN was excluded from the product scope in the Final Findings notified vide Notification No. 14/2/2009-DGAD dated 19 October 2010, it was arbitrarily made part of the product scope when a corrigendum was issued to above final findings vide Notification No. 14/2/2009-DGAD dated 22 October, 2010. The interested parties were not even given an opportunity to comment on this change of product scope during the original investigation. At least in the present review, the Designated Authority should examine on merits whether PTN should be made part of the product scope. It is to be noted that SDH and PTN are completely different technologies serving different needs. PTN or Packet Transmission Network is used to deliver Ethernet services. Though PTN may provide both PDH and SDH services (dual-functionality), it is to be noted that the original investigation and the sunset review is limited only to SDH transmission equipment/SDH transmission technology and not dual or multi-functional equipment. Therefore, PTN cannot be a part of the product scope as it is a dual-functional equipment.
- x). The present investigation being an SSR does not impose any duty on the Authority to follow an erroneous determination of PUC in the past. There are cases in India and elsewhere wherein the Authority reduced the scope of PUC in the SSR. Thus,

decision of PUC in the original investigation is not an open and shut case for the Authority not to be further examined in the SSR. In the present case, there is case on merit for exclusion of certain items from PUC like PTN which the Authority may reconsider.

- xi). Normal Value for the cooperating exporters from China should be calculated based on the actual prices prevailing in China. In the instant case HETC, China has fully cooperated in the investigations and has also been granted the market economy treatment (MET). Therefore, considering the overriding provisions of Section 9A (1) (c) of the Customs Tariff Act, 1975, it would be more appropriate to consider the costs and price data of HETC for the purpose of the determination of the normal value for the exporters from China as the same have been found acceptable by the Authority as a true reflection of market economy driven costs and prices. The disclosure statement is completely silent as to why the prices of the Chinese company, which has been granted MET, are not acceptable for the purpose of determining the normal value for other producers from China.
- xii). No valid or legitimate grounds exist for not using ECI's information for determination of Normal Value for ZTE Corporation Ltd., M/s Huawei Technologies Co., Ltd. and M/s Alcatel-Lucent Shanghai Bell Co. Ltd. The sole ground for not adopting the information of ECI for the purpose of computing the normal value for these companies is the apparent refusal of ECI to share its PCNs. This ground is completely non-existent on account of the reasons that BOQ for these companies are to be designed based on their own PCNs and not on the basis of the PCNs of ECI. Therefore, PCNs of ECI are of no consequence. Further, once the BOQ for the PCNs is decided for the individual exporter, the Authority has to merely take into account the prices of the individual parts and components as reported by ECI. There is no compromise with regard to the claim of confidentiality by ECI as neither the PCNs nor the prices of individual parts and components are required to be disclosed to other parties. There is absolutely no reason as to why the Authority cannot take the price / cost of components of ECI, Israel to work out the normal value for these companies instead of taking the exaggerated prices / costs of the Domestic Industry.
- xiii). The Hon'ble Supreme Court in *Shenyang Matsushita S. Battery Co. Ltd. v. Exide Industries Ltd. and others*, (2005) 3 SCC 39 has observed with affirmation that the Designated Authority can resort to the last alternative only when the first two methods have been exhausted. It is submitted that the Designated Authority already has information on prices or constructed value in a market economy third country i.e. Israel in this case as ECI Israel has fully cooperated in this investigation and has provided its data to the Designated Authority. The Designated Authority also has information on ECI Israel's prices for exports to other countries. In addition to this, since the Designated Authority has awarded market economy treatment to Hangzhou ECI, China PR, the Designated Authority could have easily adopted the prices or cost of production data of Hangzhou ECI. It is incorrect to state that PCN comparison

would not have been possible if ECI Israel's or Hangzhou ECI's data would have been considered. It is to be noted that both ECI Israel and Hangzhou ECI have exported full equipment to India. Further, even the domestic industry has supplied full equipment in India. If the Designated Authority could select cost of various parts of the equipment from the costing data of the domestic industry for PCN comparison, the same method could have been adopted for ECI Israel and HETC, China, so as both companies must have supplied their costing data to the Designated Authority based on which their normal value had been calculated. The Designated Authority should have at least adopted the normal value of HETC, China. It is submitted that if commercially accepted prices from cooperating exporters from China PR are available, then the same may be adopted for other exporters who have not been granted market economy status.

- xiv). The Designated Authority has denied market economy treatment to ASB on the mere ground that there is state shareholding in the company. The Designated Authority has failed to consider the submissions made by the Appellant during the course of investigation. ASB submits that mere state shareholding in a company cannot itself be a ground not to grant market economy status to exporter. The Designated Authority has denied market economy treatment to Huawei China also without valid reasons and inspite providing all the relevant documents during the verification.

- xv). The comparison of PCNs for the products exported by the exporters with that of the domestic industry is very critical in this case as quantum of anti-dumping duty is based on this analysis. It is submitted that ASB had provided detailed observations on why all the PCNs of the domestic industry were not matching with any PCN of ASB. The primary reasons for this were that i) ASB had exported only cards while the domestic industry had supplied full SDH transmission equipment during the POI, and ii) the domestic industry's PCNs were of higher configuration as almost all PCNs were supporting more than one transmission technology, i.e. SDH + OTN, etc. due to which costs of these PCNs was higher in comparison to ASB's PCNs which are single-functionality (SDH only) having substantially lower cost of production. In spite of these critical differences, the Authority has rejected ASB's comments on 10 PCNs and applied its own prudence and wisdom to construct cost of such PCNs based on the cost of domestic industry. Respondents submit that due to such an approach, ASB is afraid that PCN comparison is no longer fair and transparent as claimed by the Designated Authority because the Designated Authority has now applied its own discretion for PCN comparison which seems arbitrary. It is submitted that due to this approach, the dumping and injury margin calculated for ASB seems incorrect and these should be recalculated in light of ASB's comments on all the PCNs.

- xvi). ASB's exports are not at dumped/injurious prices. This fact is well established from ASB's transaction-wise export data as well as ASB's prices in all the tenders which it has lost to the domestic industry. ASB had quoted significantly high prices in these

tenders whereas the domestic industry had quoted significantly low prices. ASB's prices were higher even after excluding anti-dumping duty in the prices. This clearly establishes that ASB has never dumped its goods during the POI and during the injury analysis period and shall continue this in the future. Therefore, there is no likelihood of dumping and injury to the domestic industry from ASB's exports of the subject goods.

- xvii). Many substantial arguments made by Huawei concerning various contentious issues in the investigation such as erroneous constitution of PUC, lack of merit in domestic industry and standing claims, allegation of dumping and likelihood and recurrence of the same, alleged continued injury to the domestic industry, methodologies of determination of dumping margin and injury margin etc. before the Authority with undeniable evidences and supporting documents still stand unexamined with the required seriousness which those submissions warranted.
- xviii). The proposed determination of Dumping Margins for Huawei is highly flawed as a result of an improper methodology of determination of normal value proposed by the Authority. While reiterating the arguments that the denial of MET to Huawei is unjustified as provided in their comments on verification report which is once again reiterated here, it is even more unjustified that the Authority adopted an improper method to determine normal value in case of Huawei by ignoring the best options available with it. Having denied MET, unfortunately, the Authority straightaway considered the last option in the chronology of options provided in the Rules, that is, price actually paid or payable in India duly adjusted to include reasonable profit. There are no justifiable reason which has prevented the Authority from considering the initial options in the chronology though information on such basis was at the free disposal of the Authority, and it is still available. The proposal of the Authority to opt for the last option in the chronology of options in para 7 of annexure I of AD rules is not only inappropriate qua the position of Huawei, but the approach is also inconsistent with past decision of the Authority itself. The Office of Designated Authority being a quasi judicial body what is equally important is adherence to its past practices which has same effect of a legal provision.
- xix). Huawei's submission is that it is the prerogative of the Authority to use best available information and in the present case the Authority did not exercise its prerogatives and determined NV in case of Huawei based on cost of production of Indian producer which is highly distorted and too far away from the reality. The cost of production of DI has no nexus to the normal value of subject goods produced by Huawei and using such basis has caused exorbitant and unrealistic dumping margins in case of exports of Huawei. The Authority could have preserved confidentiality of information provided by the producer from Israel without any difficulty and still have used the same in case of Huawei. Thus, the dumping margin allegedly found on Huawei is not the result of any real situation of dumping practiced by the company, but the outcome

of an erroneous, improper and flawed methodology of normal value determination adopted by the Authority. The cost of the petitioner is unrealistically high due to self inflicted reasons best known to them and Huawei should not be at the receiving end of such unjustified higher costs which is reflected in the exorbitant dumping margin proposed to be determined for Huawei.

- xx). Any positive dumping margin proposed to be determined in case of Huawei is merely the outcome of a wrong normal value and determination of dumping margin in a fair and appropriate manner would show no dumping in case of exports by Huawei. The methodology proposed by the petitioner and proposed to be adopted by the Authority suggests that the petitioner found consideration of Indian cost as the basis of normal value is the only way to slap anti dumping duties on exporters from China PR and there would not be any dumping margin based on any other proper basis as enshrined in para 7 of Annexure I of the rules. It is thus requested to the Authority is that the Authority should not succumb to the foul cry of petitioner for continued imposition of anti dumping. Thus, neither there is any case of continued dumping and injury nor likelihood of dumping and injury.
- xxi). An important issue which has been raised by Huawei since the beginning of the present investigation is that the petitioner has resorted to excessive confidentiality and even the disclosure statement barely discloses anything. Huawei requests the Authority to make fair disclosures about the PCN wise cost of production of petitioner used for the purpose of Normal value. There is no justification of non disclosure of this information to Huawei as the entire allegation of dumping on Huawei is based on the cost of production (COP) of petitioner. When the COP of petitioner has got a huge adverse impact on Huawei, there is no justification for not disclosing PCN wise cost details or a meaningful range at least is highly unjustified.
- xxii). The BOQ designed for ZTE's PCN includes many components, which are either not, warranted at all or excess quantities of the required components have been incorporated / integrated in the BOQ designed for ZTE's PCN. It appears that this has been done at the instance of the Domestic Industry and it is for this reason that ZTE has been requesting for complete transparency and disclosure of the comments received from the Domestic Industry. Further, it is submitted that the BOQ, which ZTE has received from the Authority along with the disclosure statement, includes many components that were not integrated in the original BOQ. Accordingly, the Authority is requested to provide the comments of the domestic industry on the amendment suggested by ZTE on the BOQ designed for ZTE, which the Authority may have considered while finalizing the BOQ for ZTE. ZTE also requests the Authority to consider its comments to amend the BOQ for ZTE.
- xxiii). A contentious issue concerning SDH since original investigation is that Tejas Networks Ltd cannot be called as a 'domestic industry' within the meaning of AD

rules by no stretch of imagination and the issues continues in this SSR investigation also. Tejas is nothing but a company engaged in some assembly of subject goods after importing the parts and consideration of Tejas as the domestic industry under Rule 2 (b) is untenable. They do not qualify to constitute the domestic industry. In the alternative, Huawei India should be considered in the ambit of domestic industry. Imports by Huawei India or its relation with the exporter is not a reason to preclude their argument completely. The Authority in the past had considered companies who have imported in the scope of Domestic Industry as per the discretions available with it. It is not either a case that the behaviour of Huawei India is that of a trader. Huawei India is clearly a producer who can be considered as the Domestic Industry.

- xxiv). The Designated Authority is willing to consider an intellectual property holder who does not manufacture in India as domestic industry, while on the other hand, is not considering Huawei India as domestic industry though it possesses intellectual property in India as well as manufactures the subject goods in India. This shows that the Designated Authority has applied different and arbitrary standards to examine domestic industry status of Tejas Networks Limited and Huawei India. It is submitted that if Tejas Networks Limited is considered as domestic industry, then even Huawei India should be considered as domestic industry as facts and circumstances of both the companies appear to be same. Further, while providing information on production in India, the Designated Authority has not provided information on other producers of the subject goods in India.
- xxv). Huawei India should have been considered Domestic Industry. It has remained undisputed that Huawei India is engaged in the domestic production of the PUC during the POI and, therefore, it should have been considered as the Domestic Industry also and its claim merely because of the reasons that it is related to the Huawei China and imported the PUC during the POI should not have been rejected. In fact import made by Huawei India during the POI were negligible which were meant to meet the requirement of pending contractual obligations at that point of time.
- xxvi). ASB submits that in the present case, negative dumping margin was calculated for ECI, Israel. Despite this fact, the Designated Authority has failed to exclude undumped imports of ECI Israel from the total volume of dumped imports in the injury analysis. Such a lapse has seriously distorted the injury analysis in the present case.
- xxvii). The Respondents submit that an analysis of injury parameters reveal that the domestic industry is not suffering any injury and there is no causal link between alleged dumping and injury. It is to be noted that in a sunset review, the legal threshold is to examine whether dumping and injury are likely to continue or recur if anti-dumping duty is revoked. It is apparent that demand for the subject goods has been sharply declining in India during the injury analysis period. Imports of the subject goods have also declined in a similar fashion. It is expected that demand for the subject goods will

continue to decline as SDH transmission technology is on the verge of getting outdated. Users are graduating to advanced technologies such as DWDM and OTN. It is submitted that the domestic industry's real challenge is the shift in user preference to better technologies and not imports of the subject goods from the subject countries.

- xxviii). While the domestic industry is showing losses and decline in return on investment, it should be appreciated that SDH transmission technology is on the verge of phasing out. Therefore, the domestic industry should not expect high profits and returns in this segment as users are shifting their preference to advanced technologies. This is the major challenge for the domestic industry and not imports of the subject goods.
- xxix). Another reason for injury to the domestic industry is the aggressive pricing policy adopted by the domestic industry to win tenders. The prices of the domestic industry are so low that almost all bids during the injury analysis period have been won by the domestic industry. As per the information available with Respondents, the prices quoted by the domestic industry were way lower than the prices quoted by exporters.
- xxx). The domestic industry has not suffered any injury on account of continued imports from subject countries. The imports from the subject countries are attracting anti dumping duties as high as 266% and if the domestic industry has suffered any injury thereafter, then it proves beyond any doubt that the reason for injury to the domestic industry is something else and anti dumping duties has no purpose to serve.
- xxxi). Export orientation is also the cause of the injury, if any, in the domestic market. The export of the Petitioner has increased significantly from 100 in the base year to 554 in the POI.
- xxxii). ZTE submits that the Authority is requested to make the adjustments in the price of the components of the domestic industry which the Authority proposes to consider for the normal value determination on account of the facts that the domestic industry is not the manufacturer or producer of the part and components of the product concerned and has imported the same from other countries. Adjustments like Port Charges (Indian Port), Overseas Transportation (Port of Origin to India) and Inland Transportation (Factory of the exporter of the part / component to the port of Origin), Overseas Marine Insurance (Port of Origin to India), Port Charges (port of Origin), Inland Transportation (Indian Port to the factory of the domestic industry), Standard profit of the Job Worker / exporter of the part / component should be adjusted.
- xxxiii). The Designated Authority has not provided actual production and domestic sales figures for the domestic industry. These are critical volume parameters that should have been disclosed in the disclosure statement. The Authority is requested to provide the absolute numbers of production, capacity, domestic sales and exports of the domestic industry considering the consistent practice of the Authority.

- xxxiv). No valid or legitimate grounds exist for not resorting to the likelihood analysis. It is submitted that the reason provided in the disclosure statement for not doing the likelihood analysis for Huawei China, ZTE Corporation Ltd, China and Alcatel-Lucent Shanghai Bell Co. Ltd., China is that continuous dumping and injury have been established during the POI. In this context, attention of the Authority is invited to the fact that the reason provided in the disclosure statement for not resorting to the likelihood analysis is neither enunciated anywhere in the law nor in line with the consistent practice of the Authority. Further, it is submitted that the Authority has resorted to the likelihood analysis in plethora of cases despite the fact that continuous dumping and injury have been established during the POI. In view thereof, it is requested Authority to do the likelihood analysis in the present investigation also.
- xxxv). Huawei disputes the proposed conclusions on likelihood aspect. Without prejudice to the fact that causal link examination is more important in the present case considering the fact that there is an unusual kind of demand decline concerning the product, certain observations that there is continued dumping and injury and likelihood is obvious is an unfounded argument. It is submitted that there is neither any current dumping and injury nor any likelihood of dumping and injury in the present case. The entire case brought up by the petitioner is on manufactured facts and they are not even qualified to be true producer of the subject goods. The petitioner is attempting to ensure the continuance of duties as an ornament which is impermissible as per the essence of AD Agreement and there is no justification to the claim that there is likelihood of dumping and injury in the event of expiry of duty.
- xxxvi). The Price Undercutting is calculated only for the POI against the consistent practice of the Authority to calculate the same for the entire injury period, i.e., for the POI and the preceding 3 years. The Authority has followed the said approach in plethora of cases. In view thereof, the Authority is requested to calculate the price undercutting for the entire injury period.
- xxxvii). It is submitted that the landed value has not been considered in the price suppression and price depression analysis done in the disclosure statement in gross violation of the consistent practice of the Authority. As a consistent practice of the Authority, the landed value is to be considered while doing the price suppression and price depression analysis. The Authority has followed the said approach in plethora of cases Accordingly, the Authority is requested to also consider the landed value in the price suppression and price depression analysis.
- xxxviii). Till the stage of public hearing, Ovum Reports had been relied upon by the domestic industry for import volume and value, and information on market share. It is noted that DGCI&S data has been relied upon in this investigation for the first time in the disclosure statement. If the Designated Authority had decided to rely upon DGCI&S

data in this investigation, there was an obligation on the Designated Authority to inform all the interested parties about this and provide the DGCI&S data to all interested parties. At least, the Designated Authority should have provided DGCI&S data to interested parties along with the disclosure statement so that interested parties were in a position to examine the data and offer their comments. Reliance on DGCI&S data completely changes the injury parameters, and the domestic industry should have been directed to file updated injury information, which has not happened in this case.

- xxxix). The petition filed by the domestic industry requesting initiation of the sunset review was not duly substantiated in terms in Rule 23(1B) of the AD Rules. Further, Respondents had strongly objected to the domestic industry's reliance on Ovum Reports for import volume and value of the subject goods. The Designated Authority seems to have brushed aside Respondents' contentions by observing that it has considered DGCI&S data for import volume and injury analysis. It is submitted that merely because the Designated Authority has relied upon DGCI&S data does not cure the defects in the petition filed by the domestic industry.
- xl). The domestic industry has claimed significantly high imports of the subject goods from the subject countries in the application as well in their written submissions *vis-à-vis* the import data considered by the Authority in the disclosure statement. The domestic industry has provided significantly higher imports volume to claim dumping, injury and causal link and justifying initiation of the investigation. Accordingly, it is requested to the Authority to terminate the investigation at the earliest as a contrary approach will encourage the domestic producers to use the fabricated or misleading import data to get the investigation initiated.
- xli). HETC, China submits that the Designated Authority has rightly determined that HETC, China, on account of being wholly foreign owned and controlled, is operating under Market Economy Conditions since its costs are comparable to that of Israel. Further, the Designated Authority rightly has determined individual margins for HETC and ECI. However, the companies submit that they deny the finding of the Designated Authority with regard to the margin for HETC. The data placed on record, which was also verified in the onsite verification, clearly reflects a negative dumping margin. The exporters, therefore, request the Designated Authority to take the same into consideration.
- xlii). As regards the various allegations regarding incomplete data being filed by ECI and HETC, the exporters submit that they have placed their complete sales data on record. Further, the exporters had also made available their detailed books and records during the time of verification and demonstrated to the Designated Authority's satisfaction that all exports to India were reported accurately. All elements of the exporters' data including volume, pricing, PCNs, cost and margins have well substantiated to the

Designated Authority's satisfaction. Therefore, any allegations made against the veracity of the exporters' data may be disregarded.

- xliii). HETC, China submits that as regards China, it is critical to note that due to competition factors, the landed price of the product exported from HETC cannot be priced substantially lower than the domestic industry's product. Therefore, HETC objects to the high injury margin calculated for HETC when in fact the goods have been sold at comparable prices in the domestic market. HETC requests the Designated Authority to reconsider its injury margin calculations.
- xliv). It is submitted that the purpose of a sunset review is to examine whether continuation of anti-dumping duty is warranted in light of the likelihood of dumping and injury due to imports of the product under consideration. As per the provisions in the Act, the Central Government may extend the anti-dumping duty for a further period of five years if it is found that cessation of such duty is likely to lead to continuation or recurrence of dumping and injury. The provisions envisage that the same anti-dumping duty is to be continued that had been levied in the original investigation. It is submitted that in view of the above provisions, in the event the Designated Authority decides to extend anti-dumping duty, it is requested that the quantum of anti-dumping duty should not increase the duty that was imposed during the original investigation. The Designated Authority may consider continuing the same rate of duty which was levied pursuant to the original investigation.
- xliv). Further, the Designated Authority may note that several interested parties had challenged the original investigation and the customs notification pursuant to it before the Hon'ble CESTAT. It is expected that the Hon'ble CESTAT will issue its final order disposing the appeals in the next two to three weeks. In light of this, the Designated Authority is requested to issue its final findings in the present review only after the Hon'ble CESTAT's final order disposing the appeals is issued so that a proper determination is made in this case.

(B) Post Disclosure Comments of the Domestic Industry

102. The Authority notes that most of the post Disclosure Statement submissions made by the domestic industry are repetitive in nature and have already been dealt with in the Disclosure Statement. Following are, in brief, the post Disclosure Statement submissions made by the domestic industry:

- i. The imports are entering the Indian market at dumped prices. The dumping margin is not only above de minimis but also substantial. Both dumping margin and injury margin in the current POI are positive and significant.
- ii. Imports were significantly undercutting the prices of the domestic industry. Further, the imports were suppressing and depressing the domestic prices.

- iii. The price depression and suppression effect of dumped imports has resulted in significant erosion in profitability of the domestic industry. In fact, profits declined to such an extent that the domestic industry started suffering financial losses and negative return on capital employed.
- iv. The domestic industry is already suffering price depression due to dumped import prices which are even below cost of sales of the domestic industry. In case of revocation of anti-dumping duty, the domestic industry shall have to reduce their selling price further to compete with dumped imports, driving it even below the cost of sales; leading to severe price injury.
- v. The producers from subject country have significant capacity which establishes that in the event of revocation of duties, exports to India will intensify.
- vi. The petitioner submits that in the past Findings the Authority has distinguished between Printed Circuit Board (PCB) and Populated Circuit board by stating that PCB are populated as per the design developed by the manufacturer and thereafter, apart from loading of software, there is only a need to arrange them in a shelf and adjust them to a circuit. Further the Authority has stated that PCB is within the scope of product under consideration. The only situation where PCBs are beyond the scope of the product under consideration is when such PCB are not meant for production of SDH equipment. Further, it is submitted that PCB is a part of product under consideration due to the reasons that it is a propriety of the manufacturer and it has no other use apart from production of SDH equipment
- vii. It is noted that Authority has treated Huawei India as an ineligible domestic industry. However, the petitioner had contended that Huawei India does not constitute a domestic producer. In fact, the Designated Authority had recorded an elaborate finding in the original investigations on (a) meaning of production and (b) how Huawei, VMCL and Prithvi did not constitute a domestic producer. In fact, Huawei India is admittedly bringing its components and assembling the same in India and selling the product.
- viii. Regarding the dumping margin in the case of ECI, the disclosure statement states that the normal value has been based on cost of production of the producer and a "reasonable profit" has been added thereon. Petitioner submits that the rule prescribes addition of reasonable profit on the basis of actual profits earned by the company. Thus, the Authority is requested to add profit on the basis of actual profit earned by the company in accordance with the rules. The petitioner also requests the authority to determine dumping margin in respect of the third country exports and hold thereafter whether there is no likelihood of dumping and injury.
- ix. The questionnaire responses filed by Huawei China and Huawei India clearly show that the questionnaire responses filed by these parties in any case are grossly insufficient to grant them individual dumping margin. Huawei India itself claimed before the Authority prior to initiation that its share in Indian demand is significantly

high. At the same time, the questionnaire response filed either by Huawei China or by Huawei India does not show this kind of sale having been made by them. If such significant Indian demand is being met by Huawei India, it follows that Huawei has sold quite significant volume of SDH equipment in the Indian market. The response filed by them does not show this kind of sales having been made by Huawei. It is, thus, evident that significant information has been suppressed by Huawei China and Huawei India while responding to the Authority.

- x. It is a clear case that Huawei India has attempted to bring in SDH Transmission Equipment in the name of components and avoid anti dumping duties. The SDH equipment so procured by the consumers and DRI action/decision thereon clearly establish that what has been imported into India is within the scope of the product under consideration. In any case, the petitioner requests the Authority to clarify how the Authority has treated imports of the product where DRI and other authorities in the country have considered that these de-facto amounts to import of the product under consideration. If other authorities in the country have treated these imports as imports of the product under consideration, the Authority cannot treat the same differently. The Authority refers to the recent final findings in case of Melamine, wherein the Authority sought information from DRI. The same approach could have been taken in the present case owing to large number of show cause notices issued by DRI and penalties imposed. In view of this, the petitioner requests the Authority to reject the questionnaire response on the grounds that the party has not provided sufficient information on imports of the product under consideration into India.
- xi. With respect to the "SDH PCN Mapping of DI vs Huawei China", in their submission, Huawei China has indicated that it has exported only three SDH equipment and nine cards/PCBAs to India in the period of investigation. Huawei has further stated that these three equipment PCNs are a close match to three equipment PCNs sold by domestic industry in the POI period and this has been accepted by the Authority. In this regard, Tejas makes the submissions that (a) the three equipment PCNs sold by domestic industry are not identical to those exported by Huawei China and differ from them in terms of usage, capacity and interface ports. This has also been accepted by both Huawei China and DI in the presence of the Authority. It is noted that in every case of a mismatch between exporter PCN and domestic industry PCN, the Authority has always compared with domestic industry's normatted cost of production using the actual weighted average price of the domestic industry's bill of parts and components constituting the PCN. However, in the case of Huawei China's three equipment PCNs, this methodology has not been followed and instead the Authority has considered the nearest matching PCN supplied by Huawei China. The methodology is thus inconsistent between the methodology applied for other exporters and methodology applied for Huawei as disclosed in the disclosure statement; (b) although domestic industry's detailed Bill of Material (BOM) for each PCN has been shared with every exporter for the purpose of fine-tuning and notional adjustments to the actual weighted average price of domestic industry's cost of production for each importer

PCN, similar level of part/component detail for exporter PCNs has not been shared with the domestic industry. This has severely prejudiced the interests of the domestic industry and (c) all normatted cost constructions done by domestic industry for the exporter PCNs have been based on very limited configuration information supplied by the importers without any backup or other substantiation. As a result, the final normal values constructed appear biased against the domestic industry.

- xii. All normatted cost constructions done by domestic industry for the exporters' PCNs have been based on very limited configuration information supplied by the importers without any backup or other substantiation. As a result, the final normal values constructed appear biased against the domestic industry
- xiii. The cost of production of the domestic industry should not be normatted at all within the meaning of Annexure-III [para 4(iii)] and actual cost of production should be considered for determination of Non Injurious Price.
- xiv. The determination of non-injurious price is inappropriate and is against the object and intent of the dumping law, as interpreted by the Hon'ble Supreme Court in Reliance Industries vs. DA.
- xv. There is no inefficient utilization of production facilities. Since Annexure-III provides for segregating injury due to inefficient utilization, the Designated Authority shall not reduce the NIP by presuming inefficient utilization.
- xvi. Utmost care is required to be taken while determining whether or not lower capacity utilization during the POI is due to inefficient utilization of production capacities.
- xvii. Determination of NIP at ex-factory level does not mean that while comparing NIP and Landed price of imports, NIP should be ex-factory and landed price should be at port. This interpretation and practice of the authority is against the Rules and principles of equity and natural justice.
- xviii. Even under CAS-3 commission is classified under selling overheads. Hence, commission shall be included while calculating the NIP. In case the foreign producer has paid commission, the same is considered part of landed price whereas commission paid by the domestic industry is to be excluded under the rules.
- xix. Transportation cost from the factory to warehouse must be included while calculating the NIP. Warehouse is nothing but extended factory gate of the company. All expenses till transfer of ownership should be taken into consideration while determination of NIP.
- xx. Rule 4 (vii) is contrary to Rule 4 (vi). Since Rule 4 (vi) is completely in line with CAS -3, bad debts shall not be treated as non-cost item and should be allowed while determination of NIP.
- xxi. For the purpose of return on capital employed, fixed assets must be included at gross value basis and not on net basis. Rather, DA must consider the replacement value of fixed assets which have depreciated substantially at original cost/replacement cost.

- xxii. The Designated Authority must add excise duty to the Domestic Industry's NIP and countervailing duty on imports for determining injury margin. If excise duty is not added to the non injurious price and countervailing duties is not added to the landed price of imports, the injury margin is proportionately understated.
- xxiii. The selling price and non injurious price of the domestic industry should be compared with the landed price of imports only after adding the transportation costs. The comparison of NIP of the Domestic Industry without including the associated freight with the landed price of imports will not constitute a fair comparison and would lead to gross under estimation of the injury suffered by the industry.
- xxiv. The injury margin is understated to the proportionate extent, if the sales tax paid by the Domestic Industry is not added to the NIP as imports are attracting special additional duty.
- xxv. Sales tax, excise duty, discounts, commission are payable at ex-factory level and, therefore, the fact that injury margin is being determined at ex-factory level does not imply that the sales tax and excise duty cannot be added.
- xxvi. Fibcom India Ltd, one of the domestic producers of the product under consideration in India, is surprised to read the methodology for determining the Anti-Dumping duty, especially the applicability of the proposed duty rate 35% to 45% on Huawei against the existing rate of 266% and also drastically reduction in duty %age on all other producers/exporters in China PR from 266% to 90% -100% only.
- xxvii. Fibcom is also surprised on the acceptance of the Data of Huawei, China, i.e., their export claim of three equipments and nine cards/PCB/As as against the fact known to DRI who found them involved in heavy duty evasion for SDH Products and imposed penalty on Vodafone, Idea, Tata Teleservices. Infact Tata Teleservices has accepted duty evasion which shows that SDH was supplied by Huawei. All these exports have not been declared to DGAD. This is a gross misrepresentation of facts by Huawei.
- xxviii. Fibcom further reiterate that Fibcom is one of the domestic producers of the product under consideration in India. Fibcom has suffered significant injury because of continued dumping of the product in the country despite existing anti- dumping duty. While the present injury to domestic industry is because of circumvention of anti-dumping, and further reduction in anti-dumping duty will adversely impact the domestic companies.
- xxix. The high cost of funds for Indian domestic companies is the key concern to compete with the foreign vendors as the cheaper funds are to these companies. Also longer payment terms are acceptable to these vendors even up-to one year.
- xxx. In the light of the contentions raised, information provided and submissions advanced, the Authority may be pleased to extend the existing ADD in its existing form, manner and quantum.
- xxxi. The domestic industry submits that anti dumping duty may be imposed as percentage of the CIF value of imports of the subject goods from the subject country (ad valorem

form of duty) as the product under consideration includes a number of product types where the associated costs and prices of different product types vary depending upon configurations.

(C) Examination by the Authority

103. The Authority notes that most of the post disclosure statement submissions made by the domestic industry and the opposing interested parties are repetitive in nature and have already been dealt with in the Disclosure Statement and again have been addressed in this Final Findings Notification under the appropriate headings. Nonetheless, the Authority has addressed these issues to the extent considered relevant as under:

i). Regarding the claim of some co-operative exporters from China that since there was no customs notification pursuant to the new final findings, all sets of proceedings thereafter including collection of anti-dumping duty till date and the present sunset review are illegal, as there is no legally valid anti-dumping duty in existence and thus it would be prudent for the Designated Authority to terminate the present sunset review immediately, the Authority notes that in the remand findings dated 10th February, 2012, the Authority has held that the final findings earlier notified by the Authority did not require any modification and further that no part of the Final Findings Notification dated 19th October, 2010 was required to be modified as a result of the post decisional hearing conducted by the Authority. It may be appreciated that the Hon'ble CESTAT in its remand order has clearly directed the Authority that *".....Any modifications made in the final findings would be considered by giving effect to the same by the Government by carrying out the necessary amendments to the impugned notifications imposing anti-dumping duty....."*.

ii). Regarding the claim of some of the co-operative exporters from China that the present sunset review is illegal as the Designated Authority had failed to conclude the same within 12 months as provided in Rule 23(2) of the AD Rules, it is to be noticed that the Hon'ble High Court of Delhi in W.P.(C) 2310/2015 has already passed its judgement on 06.01.2016 holding that the Central Government has the power to grant an extension of 6 months for concluding a review.

iii). Regarding the claim that the time given to comment on the disclosure statement was inadequate, the Authority notes that the time of nine days given was sufficient and all interested parties have submitted elaborate comments on the Disclosure Statement.

iv). Regarding the claim of some of the co-operative exporters from China that the interested parties have to suffer undue hardship by paying anti-dumping duties even on those products that are outside the scope of this investigation and, therefore, a separate note mentioning that "components / parts imported on a standalone basis

including Printed Circuit Boards are outside the scope of PUC, the Authority notes that under the Product Under Consideration heading, it has already dealt with this issue.

v). Regarding the claim of the opposing interested parties to exclude STM-256, Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), Digital Cross Connect (DXC) (For SDH Application only), the Authority notes that it has covered these products with SDH application only and not for non-SDH applications. Further, as far as broadband or cellular equipments are concerned, the Authority has put a Note 3 in the PUC that *“When SDH is imported as a part of eventual broadband / cellular equipment, the AD Duty shall be payable only on the SDH portion of the imports. Similarly, when eventual Broadband / Cellular equipment is imported as a part of the SDH equipment, the AD Duty shall be payable only on the SDH portion of the imports”*.

vi). Regarding the claim of the opposing interested parties that the imposition of anti-dumping duty on multiple products is illegal, the Authority notes that the PUC covers only SDH products having similar nature and application and not on the multiple products.

vii). The Authority notes that in their post Disclosure Statement, the opposing interested parties have contested the decision of the Authority regarding removal of PTN from the “exclusion list” in the Note 4 of the Duty Table in the Final Findings Notification No. 14/2/2009-DGAD dated 19th October, 2010, read with Corrigendum No 14/2/2009 dated 22nd October, 2010 and further read with Final Findings Notification No 14/2/2009 dated 10th February, 2012. In this behalf, the Authority notes that according to the Association of United Telecom Services Providers of India (COAI), New Delhi, they have got technical advice from the Telecom Engineering Centre (TEC), Department of Telecommunications, New Delhi that in the technical opinion of TEC SDH and PTN (using IP-MPLS/MPLS-TP etc, technologies) are different. On the other hand, the Domestic Industry has given its technical inputs claiming that the SDH equipment evolved over years to cater to the bursty and high capacity data/ broadband traffic which in turn were marketed by many in industry as a new class of equipment called PTN and hence PTN should also be classified as an SDH class of equipment. The Authority is of the view that the present investigation being the sunset review investigation, the Authority has thus kept the scope of the PUC same as in the original investigation and accordingly, retained the Note 4 in the Duty Table as it was in the Final Findings Notification No. 14/2/2009-DGAD dated 19th October, 2010 read with Corrigendum No 14/2/2009 dated 22nd October, 2010 and further read with Final Findings Notification No 14/2/2009 dated 10th February, 2012.

viii). Regarding the claim of the opposing interested parties that the Normal Value for the cooperating exporters from China should be calculated based on the data of

HETC, China which has fully cooperated in the review investigation and has also been granted the market economy treatment and further that no valid or legitimate grounds exist for not using ECI's information for determination of Normal Value for ZTE Corporation Ltd., Huawei Technologies Co., Ltd. and Alcatel-Lucent Shanghai Bell Co. Ltd, solely on the ground that the information of ECI for the purpose of computing the normal value for these companies is the apparent refusal of ECI to share its PCNs, the Authority notes that it has elaborately dealt with these claims of the opposing interested parties and for the valid reasons as explained above in detail, the Authority could not consider Israel as a surrogate country for determining the constructed normal value of these non-market economy Chinese countries in this investigation. No new tangible facts or evidence have been brought before the Authority.

ix). Regarding the claim of ASB that the Designated Authority has denied market economy treatment to ASB on the mere ground that there is state shareholding in the company, the Authority notes that not only state shareholding is significant, but also significant percentage of nominees on the Board of Directors represent the State, out of which, a government nominee is also the Chairman of the Board of Directors. Thus state interference cannot be ruled out. Therefore, the Authority reiterates that ASB cannot be granted market economy treatment status.

x). As far as the claims of Huawei China that their MET claims has been wrongly rejected, the Authority notes that during the verification, the company could not provide evidence backed with documents about the complete details/sources of raw material suppliers and the sources of capital invested by its promoters. Therefore, the company was informed that since these basic documents/information which are crucial for examining the market economy treatment status have not been made available, there was no justification in going ahead with the verification of the data pertaining to the domestic sales and its related cost of production. The market economy status to M/s Huawei Technologies Co., Ltd., China PR was, therefore, not granted.

xi). As far as the claims of the cooperative exporters that because of the faulty PCN to PCN comparison methodology adopted by the Designated Authority, the dumping and injury margins, as the case may be, so calculated seems incorrect and these should be recalculated in light of these exporters' comments on all the PCNs, and further claim that the BOQ designed for these exporters' PCNs include many components, which are either not warranted at all or excess quantities of the required components have been incorporated / integrated, the Authority draws their attention again to the facts that to construct the normal values for the purpose of calculating the dumping margin for these non-market economy Chinese companies as also to determine the injury margin for these Chinese companies as well as ECI, Israel and HETC, China, efforts were made to match the PCNs of the domestic industry with those of these companies. The Authority notes that in their post Disclosure Statement comments regarding the PCN to PCN matching/mapping done by the Authority, both the

cooperative exporters and the domestic industry have contested that in the case of some of the PCNs, the mapping/matching adopted by the Authority is not acceptable to them. In this regard what the Authority has noted is that the exporters have not objected to the mapping of the Authority where the mapping was acceptable to them but the domestic industry has objected to. Likewise the domestic industry has not objected to the mapping of the Authority where the mapping was acceptable to them but the exporters have objected to. The Authority notes that the reason for this is that the SDH equipments/cards etc. have different capacity, redundancy or non-redundancy, different cross connect capacity, number of interfaces used, optical reach etc. etc. In this regard, the Authority notes that in the beginning the Authority had shared only the 15 digit PCNs (like E43B0400K0CAA0S) of the exporters with the domestic industry and vice versa for PCN to PCN matching. The domestic industry had prepared its BOQ based on the 15 digit PCN only. However, later on for more clarity, transparency and objectivity, as also because PCN to PCN matching was found to be difficult because of variations in the equipments/cards exported with those of the domestic industry's equipments, the Authority organised one-to-one meetings between the domestic industry and the exporters along with detailed description of the equipments/cards covered by the PCNs, i.e., what's its capacity, whether it is a redundant or non-redundant equipment, what's its cross connect capacity, how many interfaces are used in the said equipment, what is the optical reach of the equipment etc. Thereafter, the domestic industry again constructed its BOQ for various equipments/cards/PCBAs exported by these exporters based on the features. That is the reason the BOQ prepared by the domestic industry based solely on the 15 digit PCN was amended by the domestic industry later on based on the complete description of the product/PCN which explained its nature/type etc., by either adding some new parts/components, interfaces, or removing some. The Authority, thereafter, instead of accepting the BOQ of the domestic industry, arranged more one-to-one meetings to arrive at a consensus because not only the exact matching/mapping was not found to be possible in many of the PCNs because of the variations, complexities and end-use of the equipments/cards, but also because no party was fully agreeing to the mapping of the other. The Authority, therefore, had to use its own wisdom and prudence based on the discussions with the technical experts of the domestic industry and the exporters to arrive at the closest possible mapping. What is to be appreciated is that in the case of Alcatel, for example, matching/mapping done by the Authority for many of the PCNs has been accepted by Alcatel. Likewise Huawei China and ZTE have also accepted some matching/mapping and contested some. The Authority notes that as different cards/equipments exported have variations in capacity, end-use etc, vis-a-vis the equipments of the domestic industry, there is bound to be some conflict in what the exporters expect the BOQ of the domestic industry to be and what the domestic industry expects the Authority should adopt the BOQ. That exactly is the reason that in the post Disclosure Statement comments, the domestic industry as also the exporters have not accepted the matching/mapping adopted by the Authority fully. However, the Authority, based on the post Disclosure Statement comments of the

domestic industry and the exporters, has re-examined the mapping/matching of the PCNs where there is conflict and finds that the mapping/matching adopted by the Authority is in order as the same was based on the discussions with the technical experts of the exporters and the domestic industry and its own prudence arrived at on the basis of generally acceptable technical features or its alternates of those equipments/cards prevalent in the industry, and thus no change in mapping/matching is warranted.

xii). Regarding the claim of the opposing interested parties that they had strongly objected to the domestic industry's reliance on Ovum Reports for import volume and value of the subject goods and thus the petition filed by the domestic industry was defecting, the Authority notes that the Authority has relied upon the DGCI&S import data for capturing the volume of imports from the subject countries and not the Ovum report and thus there is no merit in the claim of the opposing interested parties.

xiii). Regarding the claim of the opposing interested parties that negative dumping margin was calculated for ECI, Israel and despite this fact, the Designated Authority has failed to exclude un-dumped imports of ECI, Israel from the total volume of dumped imports in the injury analysis, the Authority notes that what it has done is correct because the Authority, as per its practice, has captured the entire import volume from Israel to assess the total demand to assess injury. The claim of the opposing interested parties is, therefore, without merit.

xiv). Regarding the claim of the opposing interested parties that an analysis of injury parameters reveal that the domestic industry is not suffering any injury and there is no causal link between alleged dumping and injury, the Authority notes that the detailed examination during the course of the investigation has shown that the imports are significantly undercutting the prices of the domestic industry in the market. The imports are also depressing the prices of the product under consideration in the domestic market. The performance of the domestic industry has deteriorated in terms of profits, return on investment, cash flow and growth despite the anti-dumping duty in existence during the period under investigation.

xv). Regarding the claim of the opposing interested parties and the domestic industry regarding excessive claim of confidentiality, the Authority notes that the information which are confidential in nature and provided by the interested parties on confidential basis have been treated so wherever warranted after due examination of the confidentiality claims as per the general practice followed by the Authority. Therefore, the concerns of the interested parties have been adequately addressed.

xvi). Regarding the claim of the opposing interested parties that the transaction-wise DGCI&S data has not been provided by the Authority to the responding exporters which jeopardizes the injury analysis of the domestic industry, the Authority reiterates that as far as capturing the import volume is concerned, the consolidated

figures as provided by DGCI&S for the tariff codes for SDH equipments and parts of SDH equipments have been used. It is further explained that as far as Price Undercutting and Under Selling are concerned, the Authority has determined the landed value for the subject countries on the basis of the response filed by the cooperative exporters from the subject countries and that this was necessitated because in the DGCI&S data for the injury period, PCN to PCN mapping/matching was not possible as the DGCI&S import data does not give complete information to construct the PCNs whereas the cooperative exporters and the domestic industry have given PCN wise details for the POI and thus PCN to PCN mapping/mapping was done for these exporters and the domestic industry. Regarding the claim that the landed value has not been considered in the price suppression and price depression analysis in gross violation of the consistent practice of the Authority, the Authority finds no merit in the claim as for price suppression/depression, the cost of sales is compared with the selling price.

xvii). Regarding the claim of the opposing interested parties that in the event the Designated Authority decides to extend anti-dumping duty, the quantum of anti-dumping duty should not increase the duty that was imposed during the original investigation, the Authority notes that the sunset review is an independent investigation and if the data for the POI of the review investigation so warrants, the Authority can amend the duty, as the Authority has done in several review investigations in the past. Further, the Hon'ble CESTAT has not passed any interim or final order as yet on the pending appeals.

xviii). As far as the claim of the domestic industry that the producers from subject countries have significant capacity which establishes that in the event of revocation of duties, exports to India will intensify, the Authority has already determined that Huawei China, HETC China, Alcatel and ZTE are dumping the PUC and has thus recommended imposition of the duties on them. In any case, the domestic industry has not provided any tangible and substantial evidence regarding their claim of excessive capacity of the co-operating exporters.

xix). As far as the claim of the opposing interested parties that the Designated Authority is willing to consider an intellectual property holder who does not manufacture in India as domestic industry, while on the other hand, is not considering Huawei India as domestic industry though it possesses intellectual property in India as well as manufactures the subject goods in India, the Authority notes that various arguments have been made by the interested parties questioning Tejas Networks Ltd's standing as eligible domestic industry with major proportion in the total Indian production. However, only after detailed examination of the production analysis of the Applicant, as also of substantial transformation carried out by it during the process of producing the PUC, the Authority has held that Tejas Networks Ltd accounts for a major proportion of the total domestic production of the subject goods during the POI

and constitutes domestic industry within the meaning of the Rule 2 (b) and satisfies the criteria of standing in terms of Rule 5 (3) of the Anti- dumping Rules.

xx). Regarding the claim of Huawei India that it should be treated as the eligible domestic industry, the Authority notes that every investigation is based on its own facts and merits and, therefore, reference to any other decision in the past investigations does not have any bearing on the case under investigation. The Authority thus re-iterates that since Huawei India is a fully owned group company of Huawei China and has also imported the PUC in the POI of the present sunset review investigation and filed the importers questionnaire response, there is no merit in the claim of Huawei India for considering it as the domestic industry within the meaning of Rule 2(b) of the Anti Dumping Rules for the purpose of the present sunset review investigation.

xxi). Regarding the request to do the likelihood analysis by determine the dumping margin in respect of the third country exports and hold thereafter whether there is no likelihood of dumping and injury, the Authority has analysed the data of ECI Israel for third country exports and found out the exporter has not exported to third countries at dumped prices. As far as cooperative exporters from China are concerned, the Authority in a large number of investigations has also taken the view that if there is dumping and injury in the POI, there may not be any need to do the likelihood analysis as the duty will be imposed on the basis of the margins in the POI.

xxii). As regards the claim of the domestic industry regarding injury to it because of the dumped imports, the Authority, on the basis of the information made available by various interested parties and the domestic industry, notes that the there is no doubt that the though the demand has declined yet the subject imports have remained significant in absolute terms and in relation to production & consumption in India. The imports are significantly undercutting the prices of the domestic industry in the market. The imports are also depressing the prices of the product under consideration in the domestic market. The performance of the domestic industry has deteriorated in terms of profits, return on investment, cash flow and growth despite the anti-dumping duty in existence during the period under investigation. The deterioration in the performance of the domestic industry during the injury period is quite significant.

xxiii). Regarding the claim of the domestic industry that the Authority has distinguished between Printed Circuit Board (PCB) and Populated Circuit board by stating that PCB are populated as per the design developed by the manufacturer and thereafter, apart from loading of software, there is only a need to arrange them in a shelf and adjust them to a circuit and further that the PCB is a part of product under consideration due to the reasons that it is a propriety of the manufacturer and it has no other use apart from production of SDH equipment, the Authority has already concluded that Populated Circuit Board/Assemblies; (for SDH use) are very much

part of the PUC. However, the Authority has also determined that Printed Circuit Boards are of the nature of parts and components, and thus if Printed Circuit Boards are imported on stand-alone basis, they remain outside the scope of the PUC.

xxiv). Regarding the claim of the domestic industry that the Authority has determined the dumping margin in the case of ECI Israel based on the cost of production of the producer and has added a "reasonable profit" thereon whereas the Authority should have added profit on the basis of actual profit earned by the company in accordance with the rules, the Authority notes that it has followed the normal practice as the domestic sales of ECI Israel, a market economy exporter, are less than five percent of the exports sales to India.

xxv). Regarding the various submissions of the domestic industry relating to the NIP determination and various ex-factory expenses and taxes, including the submission that for determining NIP, the cost of production of the domestic industry should not have been normated, the Authority holds that NIP of the domestic industry has been calculated based on Annexure-III of the AD Rules which is a consistent practice of the Authority. All non-allowable expenses have not been taken into consideration and the Annexure-III clearly lays down the expenses which shall not to be considered while assessing non-injurious price. As far as the Hon'ble S.C. judgement in the Reliance Industries matter relied upon by the domestic industry is concerned, the Authority notes that the Annexure-III has been included in the AD Rules after the said judgement and thus become applicable, and being consistently followed by the Authority. As far as the submission of the domestic industry regarding inclusion of commission is concerned, the Authority notes that although the same may be an allowable expense under CAS-3, Annexure-III does not allow the same to be included in the calculation of the NIP.

xxvi). As regards the issue of equivalent units or adoption of actual production figures without normation for determination of costs, as raised by the DI at the very advanced stage of investigation, the Authority notes that the contention suggested by DI is not supported by any technical reasoning (in terms of the time required for production etc). Further, the products manufactured are technology products, which have limited life, irrespective of number of units actually produced or sold.

xxvii). The authority also notes that the DI does not have any installed capacity of its own. The PUCs are manufactured by outsourcing to the Electronic Contract Manufacturers on job contract basis. In fact, DI has claimed that it is in position to execute the orders received without having any installed capacity of their own and capacity is not a constraint due to use of EMS. Therefore, the procedure as prescribed under para 4(iii) of Annexure-III to Anti Dumping Rules regarding Principles for determination of Non-Injurious Price has been followed. This methodology has been consistently applied in many other similar investigations. The relevant extract of the

rules is as under:

“The best utilisation of production capacities, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of production capacities.”

xxviii). Regarding the claim of the domestic industry that the questionnaire responses filed by Huawei China and Huawei India clearly show that the questionnaire responses filed by these parties are grossly insufficient to grant them individual dumping margin as in the responses significant information has been suppressed, the Authority notes that export data filed by Huawei China was duly verified by the Authority and thereafter only, the individual dumping margin has been calculated for them. Huawei India has not been considered to be qualifying as domestic industry within the meaning of the AD Rules.

xxix). Regarding the claim of the domestic industry that Huawei India has attempted to bring in SDH Transmission Equipment in the name of components and avoid anti dumping duties and that the SDH equipment so procured by the consumers and DRI action/decision thereon clearly establish that what has been imported into India is within the scope of the product under consideration and further that owing to large number of show cause notices issued by DRI and penalties imposed, the Authority ought to have sought information from the DRI, the Authority notes that the export data filed by Huawei China was duly verified by the Authority and thereafter only the individual dumping margin has been calculated for them. Therefore, the Authority has dealt with this issue on its own merits as per the Anti Dumping Rules. The Authority is also of the opinion that the DRI proceedings, in any case, are the proceedings which are independent of anti dumping proceedings and thus, if the DRI finds that some exporters/importers are misusing the law, the DRI will take necessary action against them as per their procedure in such cases in accordance with law.

xxx). Regarding the claim of Fibcom India Ltd questioning the methodology adopted for the proposed duty rates for Huawei against the existing rate and also drastic reduction in duty %age on all other producers/exporters in China PR, the Authority notes that the present review investigation is an independent investigation wherein the dumping margins and the injury margins have been calculated based on the verified data for the POI, after following a transparent and elaborate methodology of PCN to PCN mapping/matching, and thus previous margins have no relevance.

xxxi). Regarding the claim of the domestic industry to recommend anti dumping duty as percentage of the CIF value of imports of the subject goods from the subject countries (ad valorem form of duty), the Authority notes that it has recommended duties as percentage of the CIF value of imports.

J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

104. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the end user. The end user could still maintain two or even more sources of supply.
105. 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 affect the availability of the product to the consumers.

K. CONCLUSION

106. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in this final finding and on the basis of the above analysis of the state of continuation of dumping and consequent injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that:

- i). As far as Huawei China, ZTE Corporation Ltd, China, Alcatel-Lucent Shanghai Bell Co. Ltd., China are concerned, there is continued dumping of the subject goods from these companies in the period of investigation. Dumped imports are causing injury to the domestic industry in the period of investigation.
- ii) As far as HETC, China is concerned, the re-examination of their data has shown that there is negligible (less than ***) dumping in the POI and in this behalf, the Authority has, therefore, examined the post POI exports to India as well as third countries and found that the same were un-dumped. Therefore, there is no likelihood of dumping. As far as ECI Telecom, Israel is concerned, it is seen that the exports of the PUC to India in the POI and to India as well as third countries in the post-POI are not at dumped prices and thus there is no likelihood of dumped imports from ECI Telecom, Israel if the duty is revoked.

L. RECOMMENDATIONS

107. Having concluded as above, the Authority is of the view that the antidumping measure is required to be recommended to offset dumping of the subject goods originating in or exported from the subject countries and its consequential injury to

the domestic industry.

108. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of 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, antidumping duty as indicated in the duty table below, which shall be as a percentage of CIF value of imports, 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/ Subheading	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit
1.	851762 & 851770	***"Synchronous Digital Hierarchy transmission equipment" as per notes below	China PR	China PR	M/s ZTE Corporation Ltd.	M/s ZTE Corporation Ltd.	48.42	% of CIF Value of Imports
2.	Do	Do	China PR	China PR	M/s Alcatel-Lucent Shanghai Bell Co. Ltd.	M/s Alcatel-Lucent Shanghai Bell Co. Ltd.	54.09	Do
3.	Do	Do	China PR	China PR	M/s Huawei Technologies Co., Ltd.	i). M/s Huawei Technologies Co., Ltd., China PR Or ii) Huawei Tech Investment Co., Ltd., Hong Kong Or iii) Huawei International Pte Ltd., Singapore	37.73	Do
4.	Do	Do	China PR	China PR	Hangzhou ECI Telecommunication Co. Ltd.	M/s ECI Telecom Ltd., Israel	NIL	Do
5.	Do	Do	China PR	China PR	Any other than Sl. No. 1,2,3 and 4 above	Any	86.59	Do

Sl. No.	Heading/ Subheading	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit
6.	Do	Do	China PR	Any other than China PR	Any	Any	86.59	Do
7.	Do	Do	Any	China PR	Any	Any	86.59	Do
8.	Do	Do	Israel	Israel	M/s ECI Telecom Ltd.	M/s ECI Telecom Ltd.	NIL	Do
9.	Do	Do	Israel	Israel	Any other than Sl. No 8 above	Any	9.42	Do
10.	Do	Do	Israel	Any other than China PR and Israel	Any	Any	9.42	Do
11.	Do	Do	Any other than China PR	Israel	Any	Any	9.42	Do

***Note 1. The product under consideration will include “Synchronous Digital Hierarchy transmission equipment, viz., STM-1, STM-4, STM-16, STM-64, STM-256, in assembled, CKD, SKD form, its assemblies and sub-assemblies or fitted with eventual broadband / cellular equipment. Product under consideration will also include Add Drop Multiplexers (ADM) (For SDH Application only), Multiple Add Drop Multiplexers (MADM) (For SDH Application only), and Digital Cross Connect (DXC) (For SDH Application only), Populated Circuit Boards (For SDH Application Only) and parts / components imported as a part of equipment, so long they are imported along with the equipment or its assemblies / subassemblies. The Product under consideration will also include Software meant for SDH, which is an integral part of these equipments, which may be bought either as a part of the equipment or separately. However components/ parts imported on a standalone basis are outside the purview of Product under Consideration.*

***Note 2. SDH Equipment essentially transmits signals through the medium of Optical Fibre. There may be SDH equipment meant for transmission through electrical Copper Medium or Microwave Radio Medium. The SDH Equipment transmitting the data through optical fibre alone shall be subject to levy of antidumping duty.*

***Note 3. When SDH is imported as a part of eventual broadband / cellular equipment, the AD Duty shall be payable only on the SDH portion of the imports. Similarly, when eventual Broadband / Cellular equipment is imported as a part of the SDH equipment, the AD Duty shall be payable only on the SDH portion of the*

imports.

***Note 4. PDH, CWDM, DWDM, Microwave systems, GPON, DSLAM, MSAN, BITS, Routers, PDSN, SGSN, MGW, BTS, BSC, MSC, ONT, HLR, HSS and MRP being non-SDH in any of its form are outside the scope of PUC and, therefore, not subject to levy of AD Duty.*

***Note 5. Microwave Radio Terminals which could have an STM-1 interface to the SDH transmission equipment and act as a physical media to enable the connectivity between the radio and the SDH equipment are outside the purview of payment of AD Duty.*

109. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.
110. An appeal against the order of the Central Government arising out of these findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(A.K.Bhalla)

Additional Secretary & Designated Authority